No. 16-16438

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: ALAN R. RIEKKI,
Debtor.

ALAN R. RIEKKI,
Appellant,

– v. –

BAYVIEW FINANCIAL LOAN SERVICING, et al.,
Appellees.

On Appeal from the United States District Court
For the District of Nevada
Docket No. 2:15-cv-02320-RCJ-NJK

BRIEF OF AMICI CURIAE NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER, NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AND NATIONAL CONSUMER LAW CENTER IN SUPPORT OF APPELLANT AND SEEKING REVERSAL OF THE DISTRICT COURT'S DECISION

TARA TWOMEY, ESQ.
NATIONAL CONSUMER BANKRUPTCY
RIGHTS CENTER
1501 The Alameda, Suite 200
San Jose, CA 95126
(831) 229-0256
tara.twomey@comcast.net

On brief: Joshana McVeigh
March 6, 2017

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Riekki v. Bayview Financial Loan Servicing, No. 16-16438

Pursuant to Fed. R. App. P. 26.1, Amicus Curiae, the National Association of Consumer Bankruptcy Attorneys, the National Association of Consumer Bankruptcy Attorneys, the National Consumer Law Center make the following disclosure:

All three organizations are 501(c) organizations that have no shareholders.

1) Is party/amicus a publicly held corporation or other publicly held entity? **NO**

2) Does party/amicus have any parent corporations? **NO**

3) Is 10% or more of the stock of party/amicus owned by a publicly held corporation or other publicly held entity? **NO**

4) Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? **NO**

5) Does this case arise out of a bankruptcy proceeding? **YES**. If yes, identify any trustee and the members of any creditors' committee. **Rick A. Yarnall, Chapter 13 Trustee**

This 6th day of March, 2017.

/s/ Tara Twomey
Tara Twomey, Esq.
Attorney for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

Rules

Other Authorities

STATEMENT OF INTEREST OF AMICI CURIAE

NCBRC is a nonprofit organization dedicated to preserving the bankruptcy rights of consumer debtors and protecting the bankruptcy system's integrity. The Bankruptcy Code grants financially distressed debtors rights that are critical to the bankruptcy system's operation. Yet consumer debtors with limited financial resources and minimal exposure to that system often are ill-equipped to protect their rights in the appellate process. NCBRC files *amicus curiae* briefs in systemically-important cases to ensure that courts have a full understanding of the applicable bankruptcy law, the case, and its implications for consumer debtors.

NACBA is a nonprofit organization of approximately 3,000 consumer bankruptcy attorneys nationwide. NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

The National Consumer Law Center (NCLC) is a public interest, non-profit legal organization incorporated in 1971. It is a national research and advocacy organization focusing specifically on the legal needs of low income, financially distressed and elderly consumers.

NCBRC, NCLC, NACBA and its membership have a vital interest in the outcome of this case. A fresh start for the honest but unfortunate debtor is the

cornerstone of consumer bankruptcy. The Fair Credit Reporting Act ("FCRA") was enacted to ensure, among other things, fair and accurate consumer credit reporting by imposing certain obligations on consumer reporting agencies, and on furnishers of credit information. A furnisher's failure to comply with the FCRA hampers the debtor's ability to reestablish his credit and can create unnecessary barriers to employment and housing opportunities.

AUTHORSHIP AND FUNDING OF AMICUS BRIEF

Pursuant to Fed. R. App. P. 29(c)(5), no counsel for a party authored this brief in whole or in part, and no person or entity other than NACBA, its members, and its counsel made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The Fair Credit Reporting Act ("FCRA") was enacted to ensure, among other things, fair and accurate consumer credit reporting. To that end, the FCRA imposes certain obligations on consumer reporting agencies (CRAs), like Experian and Equifax, and on furnishers of credit information, such as Midland and Bank of America. For example, section 1681c(a) of the Fair Credit Reporting Act limits the time that CRAs may report certain information (e.g., 10 years for bankruptcy cases). The section, however, is inapplicable to furnishers. Conversely, section 1681s-2 imposes certain duties specifically on furnishers of credit information.

Here the district court erred in dismissing Riekki's claims against Midland for several reasons. First, the court misapplied section 1681c(a)—a section that only applies to CRAs—to preclude Riekki's claims against Midland—a furnisher. Second, the court failed to apply section 1681s-2, which requires furnishers to provide accurate information to the consumer reporting agencies and to conduct reasonable investigations of consumer disputes. Had the district court properly applied section 1681s-2, Riekki's claims would easily have survived a motion to dismiss because Midland, the furnisher, failed to report accurate information regarding Riekki's account and then failed to conduct a reasonable investigation when Riekki disputed Midland's reporting.

As this Court has noted, the credit reporting industry "traffic[s] in the reputations of ordinary people." *Dennis v. BEH-1,* 520 F.3d 1066, 1071 (9th Cir. 2016). For those consumers who have suffered severe financial distress and sought a fresh start through the bankruptcy, accurate credit reporting is critical. A furnisher's failure to comply with the FCRA significantly undermines this fresh start and makes the road to recovery longer than it might be otherwise. Inaccurate reporting hampers the debtor's ability to reestablish his credit and can create unnecessary barriers to employment and housing opportunities.

If permitted to stand, the district court's decision will eviscerate furnishers' obligations to report debt discharged in bankruptcy accurately and consistently with industry standards and regulatory guidance. Because the district court misapplied the statutory provisions of FCRA, the decision below must be reversed.

ARGUMENT

I. Introductory Framework

A. Chapter 13 Bankruptcy

The Bankruptcy Code provides several avenues of relief for individuals facing significant financial distress. In a chapter 7 case, a trustee is appointed to liquidate the debtor's non-exempt assets and distribute the proceeds to creditors. 11 U.S.C 704. Alternatively, the debtor may seek to reorganize his financial affairs under

chapter 13. In a chapter 13 bankruptcy the debtor proposes a plan for repayment of a portion of his debt. Chapter 13 plans that meet the requirements set forth in the Code are confirmed by the bankruptcy court. 11 U.S.C. 1322, 1325. Once confirmed, the chapter 13 plan represents a universal contract between the debtor and his creditors, which controls the debtor/creditor relationship and fixes the parties' respective rights and obligations. *See* 11 U.S.C. 1327; *In re Than*, 215 B.R. 430, 435 (B.A.P. 9th Cir. 1997). Debtors generally make payments under confirmed plans to the trustee for distribution to creditors. Upon completion of payments under the plan debtors receive a discharge of all debts provided for by the plan, with limited exceptions. 11 U.S.C. 1328(a).

Here, Mr. Riekki, along with his wife, filed a chapter 13 bankruptcy on September 5, 2010. *In re Riekki*, No. 10-26900 (Docket Entry #1), Addendum A, p. A4.[1] They agreed to make payments for 54 months, and agreed to pay general unsecured creditors with allowed claims 100% of what they were owed. *Id.*

[1] The docket and relevant bankruptcy court documents are included in Addendum A for the convenience of the court. "The court may take judicial notice at any stage of the proceeding." Fed. R. Evid. 201(d); *see Bryant v. Carleson*, 444 F.2d 353, 357 (9th Cir. 1971). This Court has held that it may "take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

Confirmation Order, Addendum A, pp. A10. (¶ 1.08 and 1.13) The chapter 13 plan was confirmed on September 12, 2011, and subsequently modified on May 2, 2014. *Id*. Docket Entry #106 and #155, Addendum A, pp. A5, A6. After completion of payments under the plan, an order of discharge entered on October 6, 2014. *Id*. Discharge Order, Addendum A, p. A12.

B. The Fair Credit Reporting Act

Congress enacted the Fair Credit Reporting Act (the "FCRA") in 1970 "to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy." 15 U.S.C. 1681–1681x; *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52, 127 S. Ct. 2201, 2205 (2007). Accordingly, a purpose of the FCRA 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…." *Id*. 1681(a). To that end, Congress gave consumers the right to dispute the accuracy of information in credit reports and to require consumer reporting agencies to conduct a "reasonable reinvestigation" into the accuracy of a report. *Id*. 1681i(a)(1)(A). Additionally, the FCRA requires the entity that provided the information to the CRA, often called the "furnisher," to participate in that process by conducting its own investigation. *Id.* 1681s-2(b).

In this case Experian is the consumer reporting agency or CRA, and Midland is the furnisher.

i. Metro2® Reporting Standards

The Consumer Data Industry Association ("CDIA") is an international credit reporting trade association that has developed uniform reporting standards approved by three the major nationwide CRAs and accepted and used by major creditors and debt collectors. CDIA's "Metro 2® Format" is a standard electronic data reporting system the CRAs use to promote uniform and consistent credit reporting data. *See* 2015 Credit Reporting Resource Guide, Addendum B, pp. B2-B3 ("2015 Credit Guide"). Metro 2® has been designed so that vital information is defined in a way that facilitates the provision of accurate and complete reporting.

Metro 2® reporting standards designate a series of reporting requirements triggered by bankruptcy filings and provide detailed instruction as to how credit reports should be notated at *every stage* of the bankruptcy proceedings. For Chapter 13 filings, Metro 2® directs furnishers to flag reports beginning with the month that the bankruptcy petition is filed. Different codes are to be used at every phase of the bankruptcy process. Once the all payments have been made by the Chapter 13 debtor according to the plan and discharge has been entered, Metro 2® dictates that the furnishers report: 1) the account status at the time of the petition, 2) the payment history, 3) a current balance of zero 4) a currently monthly payment

due of zero, and 5) an amount past due of zero. 2015 Credit Guide, Addendum B, p. B6, B7.

ii. Federal Trade Commission Staff Summary

To help consumers understand their rights and guide industry participants in navigating their obligations under the FCRA, for decades, the Federal Trade Commission ("FTC") provided Staff Commentary on key issues. In 2011 and in response to the Dodd-Frank Act's grant of new FCRA authorities to the Consumer Financial Protection Bureau ("CFPB"), the FTC rescinded the Commentary and issued a summary of interpretations to assist the CFPB and guide industry participants in complying with their FCRA obligations.[2] Federal Trade Commission, "40 Years of Experience with the Fair Credit Reporting Act; An FTC Staff Report with Summary of Interpretations." ("2011 FTC Summary").[3] While the FTC interpretations are not binding regulation, many courts have accorded persuasive weight to them, as they are interpretations of the federal agency that had been given the primary enforcement jurisdiction of the FCRA for over four decades. *See, e.g.*, *Farmer v. Phillips Agency, Inc*., 285 F.R.D. 688, 696, n.12

[2] The CFPB has not issued any further regulatory guidance beyond the 2011 FTC Summary with respect to the intersection of bankruptcy and the FCRA.
[3] https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf.
Relevant pages of the FTC Staff Summary are contained in Addendum C.

(N.D. Ga. Sept. 20, 2012) (prior FTC Staff Commentary was not binding, but court found it instructive); *In re Miller*, 335 B.R. 335, 347 n.7 (Bankr. E.D. Pa. 2005) (court may "defer to the FTC's interpretations of the act on issues not expressly addresses [sic] by Congress").

C. The FCRA Must Work in Tandem With the Bankruptcy Code in Order to Ensure Debtors a "Fresh Start."

With a primary goal of giving the debtor a fresh start, a bankruptcy case relies on all participants within the debt restructuring system to play their respective parts. In chapter 13 cases, the debtor is obligated to make monthly payments under the plan to a chapter 13 trustee. In turn, the chapter 13 trustee remits funds to creditors as specified in the plan. The creditors, bound by the terms of the bankruptcy stay and confirmation order, are required to suspend all efforts at collecting outstanding debts. 11 U.S.C. 362, 1327. The culmination of the process is a discharge and fresh start for the debtor.

Accurate credit reporting during and after the bankruptcy is critical to any debtor's ability to make a fresh start. Creditors, employers, insurers, landlords and other entities rely heavily on credit reports in making determinations of whether to extend credit, employment, housing or insurance to consumers. *See* Part V, *infra*. Rebuilding financial credibility following a bankruptcy is essential for debtors hoping to start with a clean slate. Creditors and the CRAs alike play a powerful

role in reshaping the financial futures of consumers. The purpose of a chapter 13 reorganization can be dramatically undercut by misreported information on a credit report.

Unfortunately, creditors frequently fail to provide accurate reporting during and after bankruptcies, neglecting to update accounts and judgments which they know to have been discharged. *See Acosta v. Trans Union*, 243 F.R.D. 377, 391 n.3 (C.D. Cal. 2007) (bankruptcy lawyer's survey of approximately 900 clients found that 64% of Trans Union reports and 66% of Equifax reports erroneously list one or more discharged debts as due and owing); *White v. Trans Union*, 462 F. Supp. 2d 1079, 1082 (C.D. Cal. 2006).

II. Midland Failed to Comply with Industry Standards set forth by the CDIA through Metro 2.®

"Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that is furnishes to a consumer reporting agency." 12 C.F.R. 1022.42. As part of those policies and procedures, furnishers, such as Midland, should be: "[u]sing standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies." 12 C.F.R. Pt. 1022, Appx. E, III(b). Furnishers are also encouraged to delete, update, and correct their

records in order to avoid furnishing inaccurate investigations and to conduct reasonable investigations of disputes. *Id*. at III(h),(i).

Metro 2® has been designed so that information vital to the preparation of accurate consumer reports is defined in a way that facilitates the routine provision of accurate and complete information. Compliance with Metro 2® is critical because it serves as the "common language" of credit reporting.

> "[I]f (furnishers) in that industry are to communicate meaningfully among themselves within the framework of the FCRA, it proves essential that they speak the same language, and that important data be reported in categories about which there is genuine common understanding and agreement. Likewise, if [the CRA] is to "insure maximum possible accuracy" in the transmittal of that data through its reports, it may be required to make sure that the criteria defining categories are made explicit and are communicated to all who participate."

Cassara v. DAC Services, Inc., 276 F.3d 1210, 1225 (10th Cir. 2002).

Metro 2® provides detailed instructions for reporting accounts of a bankruptcy debtor. Relevant to this case and pursuant to Metro 2®, once all payments have been made, as required under the chapter 13 plan, and a discharge has entered, the balance on all accounts should be zeroed out. Specifically, the *current balance, scheduled monthly payment amount* and *amount past due* must all be listed as zero. Once this reporting has been completed, Metro 2® provides that reporting for the account should be discontinued. 2015 Credit Guide, Addendum

B, p. B7. Precise records regarding the bankruptcy proceeding are critical to the debtor's ability to obtain a fresh start. The failure to accurately report debts discharged in bankruptcy can impair the debtor's ability to obtain future credit, limit housing and employment opportunities, and increase insurance costs. *See* Part V, *infra*.

In this case, the Riekkis filed their chapter 13 bankruptcy petition on September 5, 2010, and received their discharge on October 6, 2014. *In re Riekki*, No. 10-26900 (Docket Entry #1 and Discharge Order), Addendum A, pp. A4, A12. In February 2015, five months following the discharge, Mr. Riekki obtained a credit report from Experian. E.R.102 (FAC, ¶ 173). Notwithstanding, his bankruptcy discharge, he alleges that the February 2015 report shows that Midland continued to report derogatory credit information for November 2014. E.R.102 (FAC, ¶ 173). Specifically, Midland included a past-due balance for a debt that was discharged in bankruptcy. E.R.102 (FAC, ¶ 173). Mr. Riekki disputed the derogatory information with the consumer reporting agency detailing the errors and necessary corrections. E.R.102 (FAC, ¶ 174-76). Notwithstanding this demand, Mr. Riekki alleges that Midland continued to report derogatory information. E.R.104 (FAC, ¶ 184).

Based on the statutory mandates, regulatory guidance, and industry standards, Midland's reporting of Mr. Riekki's discharged bankruptcy debt, as alleged, constitutes a violation of the FCRA.

III. The District Court Erred by Focusing Exclusively on the Time Limitations in Section 1681c(a), and Failing to Consider the Accuracy and Reinvestigation Requirements of Section 1681s-2.

A. Section 1681c(a) Is Not Applicable to Furnishers, Such As Midland.

Section 1681c(a) of the FCRA sets forth the time limitations for the reporting of adverse information in a consumer credit report. This section prohibits CRAs from reporting "[c]ases under title 11 or under the Bankruptcy Act" after ten years from the date of filing and other adverse information beyond a period of seven years. This section is not applicable to furnishers, like Midland.[4] Additionally, this section solely pertains to the *amount of time* that adverse information can be reported. Nothing in the text of 1681c(a) excuses CRAs or furnishers from reporting inaccurate information. The court erred in dismissing Riekki's claims against Midland—a furnisher—based on section 1681c(a).

[4] Furnishers do have an obligation to provide the operative date that starts the time periods. 15 U.S.C. § 1681s-2(a)(5)(A)(requiring furnishers to "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 [i.e. collection, charge-off or similar action]").

B. The District Court Failed to Consider the Accuracy Requirements of Section 1681s-2.

The district court completely ignored section 1681s-2, which outlines the responsibilities of *furnishers* of information to report accurate information. By cherry-picking one section of the FCRA and focusing exclusively on the time limits imposed upon *CRAs* in section1681c, the court dispensed with any examination of Midland's absolute failure to review or correct inaccuracies in its reporting. *See* 15 U.S.C. 1681s-2(b).

The interpretation of the district court reduces section1681s-2 to mere statutory surplusage when in fact, this section of the FCRA explicitly imposes upon furnishers a clear and critical duty to provide accurate information, and an obligation to correct information that they know to be inaccurate. Riekki does not object to a CRA's statutory ability to report the *existence* of a bankruptcy or a discharged debt per the time limits in section 1681c. He does object to the inaccurate reporting by Midland and its failure to correct that reporting following his request for reinvestigation. *See* 11 U.S.C. 1681s-2(b). The district court's evaluation of Riekki's claims under section 1681s-2 never left the tarmac, because the court used section 1681c to ground the discussion entirely, summarily dismissing the notion that there is any accuracy requirement for the post-discharge reporting of debts. The court missed the point.

The court based its dismissal of Riekki's complaint upon its own flawed reasoning in *Abeyta v. Bank of America*, 2016 WL 1298109 (D. Nev. 2016), where it found that section 1681c "undermines any arguments that . . . debts discharges in bankruptcy [are] . . . unreportable." E.R. 010-013.

This narrow view intentionally relieves the court of any responsibility to analyze the case through the prism of section 1681s-2 and relevant industry standards, which meticulously outline the obligation of furnishers to make accurate reports. The standards in Metro 2® set forth how to report consumer debt during every phase of the bankruptcy process, from the filing of the plan through completion and discharge. Metro 2® itself would be completely irrelevant if the only obligation imposed by the FCRA was that CRAs discontinue reporting the existence of consumer bankruptcies after ten years. The court's analysis eliminates any duty of accurate reporting or reasonable reinvestigation on the part of the furnisher.

C. Midland Failed to Comply with its Duty to Conduct a "Reasonable Reinvestigation" Under Section 1681s-2(b).

The district court acknowledges the obligation of furnishers to delete information that is "inaccurate, incomplete, or unverifiable," relying on *Gorman v. Wolpoff & Abramson LL*, 584 F.3d 1147, 1154 (9th Cir. 2009), but neglects to hold Midland accountable or even address Riekki's allegations that the reporting of the

debts were inaccurate. *Gorman* stands for the proposition that technically accurate reports can also be misleading. The district court's cursory mention of *Gorman* completely avoids discussion of *Gorman's* central principles.

In *Gorman,* the consumer refused to pay for a satellite television system claiming that the system was defective and the vendor's installation damaged his home. Unable to resolve the dispute directly with the merchant, Gorman disputed the charge directly with MBNA, who refused to refund the charge. Eventually, MBNA reported the delinquent account to the CRAs. After Gorman filed a dispute with the CRAs, MBNA still refused to update its records and note that a dispute existed. The *Gorman* court held that "[a] disputed credit file that lacks a notation of dispute may well be 'incomplete or inaccurate' within the meaning of the FCRA, and the furnisher has a privately enforceable obligation to correct the information after notice. §1681s-2(b)(1)(D)," *Id*. at 1165.

In stark contrast, there is no legal dispute over the status of Riekki's debt; all parties acknowledge that his debts were subject to the chapter 13 restructuring plan. He is not using the FCRA dispute process to attack the validity of the underlying debt to Midland but instead to dispute the post-discharge reporting of the debt. Midland had an obligation not to furnish misinformation relating to Riekki after it had "been notified by the consumer…that specific information [was] inaccurate, and…the information [was,] in fact, inaccurate." 15 U.S.C. 1681s-

2(a)(1)(B). After receiving such notice, Midland was required by section 1681s-2(b) to rigorously review the information contained in the report and modify, delete or block any inaccurate information. Midland did none of those things.

The court makes no discernible enquiry into the accuracy of the reported debt, despite citing a case (*Gorman*) that clearly recognizes the policy implications of debt reporting that is technically accurate but misleading.

D. The District Court Misstated the Time Restrictions of Section 1681c.

Further compounding its erroneous analysis, the district court incorrectly held that the time limitations in section 1681c start from the date of the bankruptcy discharge, where the Act clearly provides they start from the initial date of delinquency. While this language in the district court's opinion is *dicta*, in that Riekki brought this action against a furnisher under section 1681s-2(b) and not against a CRA under section 1681c, it is worth addressing this error.

While the FCRA permits bankruptcy cases to be reported for up to ten years, this does not extend the time that specific debts discharged in a bankruptcy case may be reported. The Act is very clear: the seven-year time period to report delinquent debt begins "upon the expiration of the 180-day period beginning on the date of the *commencement* of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action." 15 U.S.C.

1681c(c)(1)(emphasis added). That is, the time period for reporting runs from the first date of delinquency. Yet the district court completely ignored section 1681c(c)(1) noting that "[t]his court has previously stated that reporting agencies are entitled to report debts for seven years *after discharge*, as entitled by the plain language of 15 U.S.C 1681c." E.R. 010-013 (emphasis added). This is plainly inaccurate.

Not only is the district court's holding in contravention of the statutory language, the FTC has stated the exact opposite in issuing guidance that a discharged debt or judgment may be reported for only seven years from the date set forth in section 1681c(c)(1). The FTC has specifically stated:

> The reporting of bankruptcies is governed by subsection (a)(1). The reporting of accounts placed for collection or charged to profit and loss is governed by subsection (a)(4). The reporting of other delinquent accounts is governed by subsection (a)(5). *Any such item, even if discharged in bankruptcy, may be reported separately for the applicable seven-year period,* while the existence of the bankruptcy filing may be reported for ten years.

2011 FTC Summary at pp. 55-56, Addendum C, pp. C3-C4. Thus, if a debt became delinquent in January 2010 and was discharged in bankruptcy in 2014, as in Riekki's case, it may only be reported until June 2017. That debt cannot be reported until 2021, as the district court suggests. Otherwise, a consumer whose debts were already delinquent would be penalized for filing bankruptcy by having the time period for reporting reset, especially in the case of chapter 13 bankruptcies

where the discharge may not occur for several years after a petition is filed.

The Metro 2® format similarly provides that a bankruptcy filing or discharge does not change the commencement of delinquency, as it provides an example of a debt discharged in bankruptcy where the date of delinquency remains fixed and unchanged throughout the entire bankruptcy. 2015 Credit Guide at p. 5-41.

E. The District Court Erred in Failing to Consider Guidance from the Federal Trade Commission Directly on Point.

The FTC interpreted the FCRA requirement that CRAs follow "reasonable procedures to assure maximum possible accuracy," 15 U.S.C 1681e(b), as requiring CRAs to report a zero balance to reflect that a consumer is no longer liable for debt discharged in a bankruptcy case. Former FTC Staff Commentary, 16 C.F.R. Part 600, app, § 607 item 6; 2011 FTC Summary at p. 68, Addendum C, p. C6. In particular, the FTC stated: "A consumer report may include an account that was discharged in bankruptcy (as well as the bankruptcy itself), as long as it reports a zero balance to reflect the fact that the consumer is no longer liable for the discharged debt." 2011 FTC Summary at p. 68, Addendum C, p. C6. Furthermore, an account discharged in bankruptcy should not have any delinquencies reported after the discharge. *See Montgomery v. PNC Bank*, 2012 WL 3670650, *3 (N.D. Cal. Aug. 24, 2012) (where plaintiff alleged that no delinquencies should have been reported on a debt after it was discharged through

bankruptcy, defendant "has offered no authority which would suggest that this position is incorrect as a matter of law"); *see also Venugopal v. Citibank*, 2013 WL 1365992 (N.D. Cal. Apr. 3, 2013) (debtor stated FCRA claim for creditor's reporting of outstanding debt after discharge, even though another section showed "0" balance).

A CRA must employ reasonable procedures to keep its file current on past due accounts, which could include requiring furnishers to notify the CRA when a previously past-due account has been paid or discharged in bankruptcy. Where a CRA neglects to reconcile obviously inconsistent information, i.e., an entry in the consumer's file of a public record bankruptcy establishing that the consumer's debts were discharged with a trade line still showing the past-due status of the account, such inconsistency could be found to violate the requirement to follow reasonable procedures under section 1681e(b). *See White v. Trans Union, L.L.C.* 462 F. Supp. 2d 1079, 1082 (C.D. Cal. 2006).

Though the FTC guidance relates to the duties of CRAs as codified in section 1681e(b), it sets the standard as to what constitutes "accuracy" for the purposes of bankruptcy reporting, which is equally applicable to furnishers. Under section 623(a)(1)(A) of the FTC Summary, furnishers are prohibited from providing credit information to any CRA that the furnishers "knows or has reasonable cause to believe…is inaccurate." 2011 FTC Summary at p. 92,

Addendum C, p. C7. Moreover, once furnishers receive a dispute notice from the CRA, they have a duty to investigate and review "all relevant information provided by the CRA", and to "modify, delete, or permanently block" information that is inaccurate or incomplete. *Id.* at p. 96, Addendum C, p. C8. Courts have relied up the very provision of the FTC guidance regarding the reporting of accounts included in bankruptcy in decisions involving furnisher accuracy. *See Horsch v. Wells Fargo Home Mortg.*, 94 F. Supp. 3d 665, 675 (E.D. Pa. 2015) (quoting FTC guidance in holding that furnisher did not violate FCRA in reporting zero balance and stating "I therefore conclude that it is accurate to report zero balances on these accounts after the Notes are discharged in bankruptcy"); *Zombro v. Suntrust Bank* (*In re Zombro*), 2008 WL 1752211 (Bankr. E.D. Va. Apr. 14, 2008) (accepting FTC guidance and holding that creditor must report discharged debt in manner specified by it).

Though the FTC Staff Commentary and 2011 FTC Summary are not binding regulation, the commentary are guidelines "intended to clarify how the Commission will construe the FCRA in light of Congressional intent as reflected in the statute and its legislative history." 16 C.F.R. Pt. 600 app., para. 1. By declining to consider the FTC's interpretations of the FCRA, the court ignores the FTC careful analysis of the balance between reporting debt discharged in bankruptcy and providing the debtor with a fresh start.

IV. The District Court Erred in Dismissing Based on a de facto "Technical Accuracy" Standard

A vast majority of courts hold that compliance with the FCRA requires more than literal or technical accuracy. As the Third Circuit has noted, "the distinction between 'accuracy' and 'maximum possible accuracy' is not nearly as subtle as may at first appear, it is in fact quite dramatic." *Cortez v. Trans Union, L.L.C.*, 617 F.3d 688, 709 (3d Cir. 2010). Thus, a consumer report is inaccurate not just for a blatant error, but also if it is potentially misleading. *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1164 (9th Cir. 2009). As the Fourth Circuit stated, "a technical truth… can be as misleading as an outright untruth where it paints a misleading picture." *Dalton v. Capital Associated Indus., Inc.*, 257 F.3d 409, 415 (4th Cir. 2001).

While not explicitly stating that it was hewing to a standard of technical accuracy, the district court in fact relied upon such a standard in dismissing Riekki's case. Its holding that Midland's reporting was not inaccurate based on the existence of the bankruptcy, relies on a technical accuracy – yes, the debt did once exist and had been delinquent under the terms of a contract between the parties. But simply reporting those facts by themself, with nothing more, ignores or leaves out very critical information, i.e., the existence of a chapter 13 petition, the automatic stay that accompanies that filing, the existence of the chapter 13 plan,

the fact that Riekki made payments in compliance with the plan, and that the debt was ultimately discharged based on those compliant payments. These are all facts that Midland's reporting contradicted or ignored, in contravention to the industry Metro 2® reporting standards designed to ensure creditors properly report these facts when a chapter 13 bankruptcy exists.

In addition to *Gorman*, which stands for the principle that technically accurate but misleading reporting may be considered inaccurate, the district court relies on one of its own rulings in *Hernandez v. Wells Fargo Fin. Nat'l Bank,* 2014 U.S. Dist. LEXIS 51854 (D. Nev. Apr. 15, 2014), for the proposition that reporting a charged off debt as delinquent can never be inaccurate or misleading. This opaque reliance (also cited by Midland) strains to find an analogue with Riekki. *Hernandez* was a non-bankruptcy matter. When debtor Hernandez became more than 120 days delinquent on payment of his debt, Wells Fargo charged off the account and turned it over to a collection agency. Hernandez settled with the collection agency for an amount less than the original amount claimed due and subsequently sued Wells Fargo under the FCRA for failing to report that the debt was "fully satisfied." The district court found that Wells Fargo's reporting of a charge-off was not inaccurate.

Though *Hernandez* involved a suit against the furnisher for violation of 15 U.S.C. 1681s-2, the similarities end there. There is no charge-off in Riekki's case

because Riekki was never delinquent on his payments pursuant to the chapter 13 restructuring. The district court's application of *Hernandez*, is extraneous and misleading.

The question of whether information is "materially misleading" is one for the finder of fact. In *Seamans v. Temple Univ.*, 744 F.3d 853, 865 (3d Cir. 2014), the court concluded that whether or not technically accurate information reported under the FCRA is misleading to an extent it can be expected to have an adverse effect is generally a jury question. *Id.* at 865. In determining the genuineness of an issue, "all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Seamans*, 744 F.3d at 860, *citing Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); *see also Fishback v. HSBC Retail Serv. Inc.*, 944 F. Supp. 2d 1098, 1111 (D.N.M. 2013); *Valentine v. First Advantage SafeRent, Inc.* (*Valentine II*), 2009 WL 4349694, *8 (C.D. Cal. Nov. 23, 2009) ("[w]hether an omission was 'misleading'. . . . and thus is an 'inaccuracy,' is generally a question for the jury"). It could not possibly be evaluated on a motion to dismiss. Determining whether or not Midland's reporting was materially misleading is a decision to be made by the finder of fact.

V. The District Court's Application of the FCRA Significant Undermines the Fresh Start Policy of the Bankruptcy Code

The purpose of the FCRA is to protect consumers from abuses in credit reporting. The Congressional statement of purpose is codified in section 1681, which acknowledges that "consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers" 15 U.S.C. 1681(a)(3). By its very definitions, the statute anticipates the consequence of credit reporting upon a consumer's financial reputation "[T]here is a need to insure that consumer reporting agencies exercise their *grave* responsibilities with fairness, impartiality and a respect for the consumer's right to privacy." 15 U.S.C. 1681(a)(4) (emphasis added).

In fact, the FCRA was "the product of congressional concern over abuses in the credit reporting industry," *Guimond v. TransUnion Credit Info. Co*., 45 F.3d 1329, 1333 (9th Cir. 1995), designed not simply to create structure within financial industry but as a prophylactic for consumers. The district court's decision contravenes public policy as well as the legislative intent behind section 1681, which is expressly designed to protect consumers from the dissemination of inaccurate information about them. *See Kates v. Crocker National Bank,* 776 F.2d 1396, 1397 (9th Cir. 1985) ("The purpose of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., is to protect consumers from the transmission of

inaccurate information about them".)

The failure by furnishers and consumer reporting agencies to update the status of debts discharged in bankruptcy can cause significant hardship for consumers. The effect of a bankruptcy on a consumer's credit score is, of course, initially devastating. Debtors understand that filing bankruptcy may allow them a fresh start, but not without some consequences. However, it is a static event and, all other things being equal, a consumer's credit score will continue to improve each day that passes post-discharge. Failure to properly report the discharge of debts hampers that improvement. Another consequence of the failure to report that a debt has been discharged, as noted by one bankruptcy court, is that:

> [A] credit report entry that reflects a past due account is treated differently by prospective creditors in evaluating credit applications than an entry that reflects a debt that has been discharged in bankruptcy. The essential difference is that a discharged debt represents a historical fact, that the prospective borrower filed bankruptcy in the past and was relieved from the obligation. Nothing is now due. A past due debt represents a delinquent but legally enforceable obligation that must be resolved.

In re Helmes, 336 B.R. 105, 107 (Bankr. E.D. Va. 2005).

In Mr. Riekki's case, the bankruptcy should have become a "historical fact" upon the date of discharge in October 2014. It did not. There was nothing "static" about the bankruptcy for Mr. Riekki, despite the fact that the bankruptcy court had

discharged him of his obligations a month earlier. For a prospective creditor, it would appear that he had an ongoing monthly obligation, and the November 2014 delinquency date might indicate that he had neglected to comply with the terms of the chapter 13 repayment scheme.

Additionally, the continued reporting of a discharged debt undermines bankruptcy's fresh start because the debtor may feel compelled to pay the debt in order to obtain financing in the future. But, the significance of credit reporting to the consumer goes far beyond the potential for adverse credit decisions. With increasing frequency, credit reports are used to evaluate a consumer's right to obtain employment, housing and even professional licensure. These reports rely on accurate reporting by numerous furnishers. While problematic as a concept and despite the inherent margin for error in such a broad undertaking, these reports have been elevated in social status to function as a referendum on a consumer's integrity.

The injury to a consumer who cannot obtain financing for a new vehicle or rent an apartment because of a poor credit score is significant. Credit reports lack nuance. Using a complex algorithm, they reduce a consumer's character to a number, with sweeping consequences. As the Ninth Circuit put it, CRAs "traffic in the reputations of ordinary people" and thus have a huge responsibility to train employees to "understand the legal significance of the documents they rely on."

Dennis v. BEH-1, 520 F.3d 1066, 1071 (9th Cir. 2016).

Midland's "verified" information makes it appear as though Mr. Riekki is still not paying the balance on a debt for which he no longer has a legal obligation to pay. "[A] consumer's failure to pay a debt that is not really due 'does not reflect financial irresponsibility.'" *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009), quoting *Saunders v. Branch Banking & Trust Co. of Va.,* 526 F.3d 142, 150 (4th Cir. 2008). Yet, financial irresponsibility is precisely what is communicated when furnishers and consumer reporting agencies disseminate inaccurate information.

CONCLUSION

To resolve the issues on this appeal, this Court must rule that the district court erred in granting Midland's motion to dismiss. The question of whether information is materially misleading is generally one for the finder of fact. The district court's decision was rendered without consideration of the interplay between the Bankruptcy Code and the FCRA, as well as the legislative intent behind the latter. The district court failed to consider well-established Federal Trade Commission guidance on application of the FCRA. The court erred in holding that the time limitations espoused in 15 U.S.C. 1681c obviated the accuracy requirements of 15 U.S.C. 1681s-2, thereby avoiding discussion of the

inaccurate reporting by Midland, as well as Midland's failure to correct the error after being notified by Mr. Riekki . The dismissal of Mr. Riekki's claims against Appellees for failing to adhere to the industry standards set forth in Metro 2® was clear error. For these reasons, the ruling of the district court should be reversed.

/s/ Tara Twomey

Tara Twomey
Attorney for Amici Curiae
NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER
1501 The Alameda, Suite 200
San Jose, CA 95126
(831) 229-0256
tara.twomey@comcast.net

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and Ninth Circuit Local Rule 29(d) because this brief contains 6365 words, excluding parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This filing complies with 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 in Times New Roman 14-point type.

3. This brief has been scanned for viruses pursuant to Rule 27(h)(2).

/s/ Tara Twomey
Tara Twomey
Attorney for Amici Curiae

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 Ninth Circuit by using the appellate CM/ECF system on March 6, 2017. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Tara Twomey
Tara Twomey
Attorney for Amici Curiae

ADDENDUM A
BANKRUPTCY COURT DOCUMENTS
In re Riekki, No. 10-26900 (Bankr. D. Nev.)

DOCKET EXCERPT
In re Riekki, No. 10-26900 (Bankr. D. Nev.)

BAPCPA, CLOSED

U.S. Bankruptcy Court
District of Nevada (Las Vegas)
Bankruptcy Petition #: 10-26900-abl

Assigned to: AUGUST B. LANDIS
Chapter 13
Voluntary
Asset

Date filed: 09/05/2010
Date terminated: 10/14/2014
Debtor discharged: 10/06/2014
Joint debtor discharged: 10/06/2014
Plan confirmed: 05/02/2014
341 meeting: 11/30/2010

Debtor disposition: Standard Discharge
Joint debtor disposition: Standard Discharge

Debtor
ALAN R RIEKKI
6125 SPIELBURG STREET
LAS VEGAS, NV 89118
CLARK-NV
SSN / ITIN: xxx-xx-7046

represented by **PETER M. ALDOUS**
HAINES AND KRIEGER
8985 S. EASTERN AVE. STE. 350
LAS VEGAS, NV 89123
(702) 880 5554
Fax : 7023855518
Email: paldous@hainesandkrieger.com

GEORGE HAINES
HAINES & KRIEGER, LLC
8985 S EASTERN AVE
SUITE 350
HENDERSON, NV 89123

GEORGE HAINES
HAINES & KRIEGER, L.L.C.
8985 S. EASTERN AVE.
SUITE 350
HENDERSON, NV 89123
(702) 880-5554
Fax : (702) 385-5518
Email: ghaines@hainesandkrieger.com

DAVID KRIEGER
8985 S EASTERN AVE SUITE 350
HENDERSON, NV 89123
Email: dkrieger@hainesandkrieger.com

DAVID KRIEGER
8985 S EASTERN AVE SUITE 350
HENDERSON, NV 89123

Email: dkrieger@hainesandkrieger.com

DAVID KRIEGER
HAINES & KRIEGER, L.L.C
8985 S. EASTERN AVE.
SUITE 350
HENDERSON, NV 89123
(702) 880-5554
Fax : (702) 385-5518
Email: dkrieger@hainesandkrieger.com

Joint Debtor
MONA G RIEKKI
6125 SPIELBURG STREET
LAS VEGAS, NV 89118
CLARK-NV
SSN / ITIN: xxx-xx-4482

represented by **PETER M. ALDOUS**
(See above for address)

GEORGE HAINES
(See above for address)

GEORGE HAINES
(See above for address)

DAVID KRIEGER
(See above for address)

DAVID KRIEGER
(See above for address)

DAVID KRIEGER
(See above for address)

Trustee
RICK A. YARNALL
701 BRIDGER AVE., #820
LAS VEGAS, NV 89101
(702) 853-4500

represented by **RICK A. YARNALL**
701 BRIDGER AVE., #820
LAS VEGAS, NV 89101
(702) 853-4500
Email: ecfmail@LasVegas13.com

Filing Date	#	Docket Text
09/05/2010	1 (61 pgs)	Chapter 13 Voluntary Petition. Fee Amount $274. Filed by DAVID KRIEGER on behalf of ALAN R RIEKKI, MONA G RIEKKI (KRIEGER, DAVID) (Entered: 09/05/2010)
09/05/2010	2 (9 pgs)	Chapter 13 Plan #1 Filed by DAVID KRIEGER on behalf of ALAN R RIEKKI, MONA G RIEKKI (KRIEGER, DAVID) (Entered: 09/05/2010)

		COGAN on behalf of CR EVERGREEN, LLC (Related document(s)98 Motion to Set Aside filed by Creditor CR EVERGREEN, LLC) (COGAN, JEFFREY) (Entered: 08/08/2011)
08/09/2011	101	Hearing Scheduled/Rescheduled. Hearing scheduled 9/15/2011 at 02:30 PM at LBR-Courtroom 1, Foley Federal Bldg.. (Related document(s)98 Motion to Set Aside filed by Creditor CR EVERGREEN, LLC) (lgb) (Entered: 08/09/2011)
08/31/2011	102 (17 pgs; 3 docs)	Application for Compensation *of Haines & Krieger, LLC* for DAVID KRIEGER, Fees: $7,888.50, Expenses: $. with Proposed Order Filed by DAVID KRIEGER (Attachments: 1 Form of Order2 Exhibit of Fees)(KRIEGER, DAVID) (Entered: 08/31/2011)
08/31/2011	103 (3 pgs)	Notice of Hearing Hearing Date: 10/13/2011 Hearing Time: 2:30 pm Filed by DAVID KRIEGER on behalf of ALAN R RIEKKI, MONA G RIEKKI (Related document(s)102 Application for Compensation) (KRIEGER, DAVID) (Entered: 08/31/2011)
09/01/2011	104 (6 pgs)	Certificate of Service with Certificate of Service Filed by DAVID KRIEGER on behalf of ALAN R RIEKKI, MONA G RIEKKI (Related document(s)102 Application for Compensation) (KRIEGER, DAVID) (Entered: 09/01/2011)
09/01/2011	105	Hearing Scheduled/Rescheduled. Hearing scheduled 10/13/2011 at 02:30 PM at LBR-Courtroom 1, Foley Federal Bldg.. (Related document(s)102 Application for Compensation) (lgb) (Entered: 09/01/2011)
09/12/2011	106 (11 pgs)	Order Confirming Chapter 13 Plan. (Burks, LG) (Entered: 09/12/2011)
09/14/2011	107 (14 pgs)	BNC Certificate of Mailing - pdf (Related document(s)106 Order Confirming Chapter 13 Plan(BNC)) No. of Notices: 91. Service Date 09/14/2011. (Admin.) (Entered: 09/14/2011)
09/19/2011	108 (3 pgs)	Order Granting CR Evergreen, LLC's Motion to Set Aside Order Granting Objection to Claim Number 10 of CR Evergreen, LLC (Related document(s) 98)

02/28/2014	148 (9 pgs)	Modified Chapter 13 Plan Number 7 Filed by GEORGE HAINES on behalf of ALAN R RIEKKI, MONA G RIEKKI (HAINES, GEORGE) (Entered: 02/28/2014)
03/03/2014	149 (2 pgs)	Notice of Hearing on Confirmation of Chapter 13 Plan Hearing Date: 04/24/2014 Hearing Time: 1:30 PM Filed by GEORGE HAINES on behalf of ALAN R RIEKKI, MONA G RIEKKI (Related document(s)148 Modified Plan filed by Debtor ALAN R RIEKKI, Joint Debtor MONA G RIEKKI) (HAINES, GEORGE) (Entered: 03/03/2014)
03/04/2014	150	Hearing Scheduled/Rescheduled. Confirmation hearing to be held on 4/24/2014 at 01:30 PM at Foley Bldg, Third Floor. (Related document(s)148 Modified Plan filed by Debtor ALAN R RIEKKI, Joint Debtor MONA G RIEKKI) (ccc) (Entered: 03/04/2014)
03/18/2014	151 (6 pgs)	Certificate of Service Filed by GEORGE HAINES on behalf of ALAN R RIEKKI, MONA G RIEKKI (Related document(s)148 Modified Plan filed by Debtor ALAN R RIEKKI, Joint Debtor MONA G RIEKKI, 149 Confirmation Hearing filed by Debtor ALAN R RIEKKI, Joint Debtor MONA G RIEKKI) (HAINES, GEORGE) (Entered: 03/18/2014)
04/24/2014	152 (4 pgs)	Request for Special Notice with Certificate of Service Filed by SHERRY A. MOORE on behalf of BANK OF AMERICA, N.A. (MOORE, SHERRY) (Entered: 04/24/2014)
04/25/2014	153 (1 pg)	Notice of Docketing Error (Related document(s)152 Request for Special Notice filed by Creditor BANK OF AMERICA, N.A.) (ccc) (Entered: 04/25/2014)
04/28/2014	154 (4 pgs; 2 docs)	Amended Request for Special Notice with Certificate of Service Filed by SHERRY A. MOORE on behalf of BANK OF AMERICA, N.A. (Attachments: # 1 Certificate of Service) (MOORE, SHERRY) (Entered: 04/28/2014)
05/02/2014	155 (10 pgs)	Order Confirming Chapter 13 Modified Plan (Related document(s)148 Modified Plan filed by Debtor ALAN R RIEKKI, Joint Debtor MONA G RIEKKI.) (ccc)

CONFIRMATION ORDER
In re Riekki, No. 10-26900 (Bankr. D. Nev.)

Entered on Docket
September 12, 2011

Hon. Linda B. Riegle
United States Bankruptcy Judge

RICK A. YARNALL
CHAPTER 13 BANKRUPTCY TRUSTEE
701 Bridger Ave, Suite 820
Las Vegas, NV 89101
(702) 853-4500
RAY13mail@LasVegas13.com

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

IN RE:
ALAN R RIEKKI
MONA G RIEKKI

CHAPTER 13
CASE NO: BKS-10-26900-LBR

Hearing Date: September 01, 2011
Hearing Time: 1:30 P.M.

ORDER CONFIRMING CHAPTER 13 PLAN

The confirmation of the Debtor(s) Chapter 13 Plan having come on for hearing before the United States Bankruptcy Court, and there appearing the Chapter 13 Trustee or designee and _____, and with good cause appearing, it is hereby

ORDERED that any Objections to Confirmation have been resolved, and it is further

ORDERED that the Court finds that Debtor(s) have filed all documentation required by 11 U.S.C. § 521(a)(1) and the requirements for Confirmation pursuant to 11 U.S.C §1325 have been met; and it is further

ORDERED that the CHAPTER 13 PLAN# 6, ☐ Clerk's Docket # _____ OR ☒ attached hereto, is confirmed; and it is further

ORDERED that, pursuant to 11 U.S.C. § 330, the fees in the amount of $8,298.00 of which $1,500.00 was paid to such attorney prior to the filing of the petition and the balance of $6,798.00 which shall be paid by the Trustee pursuant to the Plan:
☐ shall be approved OR ☒ shall not be approved until after a separate notice and hearing.

Submitted by:

/s/Rick A. Yarnall
CHAPTER 13 BANKRUPTCY TRUSTEE

CC

Approved/Disapproved:

HAINES & KRIEGER, L.L.C.
Attn: David Krieger, 5041 N. Rainbow Boulevard
Las Vegas, NV 89130
(702) 880-5554

Rev 04/01/2011 generated 07/26/2011

7/20/11 4:31PM

Debtor Attorney	David Krieger, Esq.
Nevada Bar No.	9086
Attorney Firm Name	HAINES & KRIEGER, LLC
Address	1020 Garces Ave. Suite 100
City, State Zip Code	Las Vegas, NV 89101
Phone #	(702) 880-5554
Pro Se Debtor	

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
Debtor: **Alan R Riekki**
Last four digits of Soc. Sec. No.: **xxx-xx-7046**

Joint Debtor: **Mona G Riekki**
Last four digits of Soc. Sec. No.: **xxx-xx-4482**

BK - S - **10-26900**
Judge: **Linda B. Riegle** Trustee: **Rick A. Yarnall**
CHAPTER 13 PLAN # 6
Plan Modification ☐ NA ☒ Before Confirmation ☐ After Confirmation
Pre-Confirmation Meeting:
Date: 9/1/11 Time: **8:30 AM**
Confirmation Hearing:
Date: 9/1/11 Time: **1:30 PM**

CHAPTER 13 PLAN AND PLAN SUMMARY OF INTEREST RATES AND PLAN SUMMARY

☒ MOTION(S) TO VALUE COLLATERAL ☒ MOTION(S) TO AVOID LIENS
[Check if motion(s) will be filed]

YOU ARE HEREBY NOTIFIED THAT THIS PLAN AND THESE MOTIONS, IF APPLICABLE, WILL BE CONSIDERED FOR APPROVAL AT THE CONFIRMATION HEARING DATE SET FORTH ABOVE. THE FILING AND SERVING OF WRITTEN OBJECTIONS TO THE PLAN AND MOTIONS SHALL BE MADE IN ACCORDANCE WITH BR 3015(f) & 9014 AND LR 9014(e).

DEBTOR PROPOSES THE FOLLOWING CHAPTER 13 PLAN WITH DETERMINATION OF INTEREST RATES WHICH SHALL BE EFFECTIVE FROM THE DATE IT IS CONFIRMED.

Section I. Commitment Period and Calculation of Disposable Income, Plan Payments, and Eligibility to Receive Discharge

1.01 Means Test - Debtor has completed Form B22C – Statement of Current Monthly income and Calculation of Commitment Period and Disposable Income.

1.02 Commitment Period - The applicable commitment period is ☐ 3 years or ☒ 5 years. Monthly payments must continue for the entire commitment period unless all allowed unsecured claims are paid in full in a shorter period of time, pursuant to §1325(b)(4)(B). If the applicable commitment period is 3 years, Debtor may make monthly payments beyond the commitment period as necessary to complete this plan, but in no event shall monthly payments continue for more than 60 months.

1.03 Commitment Period and Disposable Income
☐ The Debtor is under median income. ☒ The Debtor is over median income.
The Debtor has calculated that the net monthly disposable income of $ **6,422.55** multiplied by the Applicable Commitment Period of **60** months equals $ **385,353.00** which shall be paid first to debtor's attorney fees with the balance to be paid to general non-priority unsecured creditors.

1.04 Liquidation Value Pursuant to §1325(a)(4)
Liquidation value is calculated as the value of all excess non-exempt property after the deduction of valid liens and encumbrances and before the deduction of trustee fees and priority claims. The liquidation value of this estate is: **16,522.50** . The liquidation value is derived from the following non-exempt assets (describe assets): _____.

1.05 Projected Disposable income - The Debtor(s) does propose to pay all projected disposable income for the applicable commitment period pursuant to §1325(b)(1)(B).

1.06 The Debtor(s) shall pay the greater of disposable income as stated in 1.03 or liquidation value as stated in 1.04.

1.07 Future Earnings The future earnings of Debtor shall be submitted to the supervision and control of Trustee as is necessary for the execution of the plan.

7/20/11 4:31PM

1.08 MONTHLY PAYMENTS:
a. Debtor shall pay to Trustee the sum of $ **426.00** for **10** (# of months) commencing **4/05/2011** . Totaling $**4,260.00**.
b. Monthly payments shall increase or decrease as set forth below:
The sum of $ **571** for **44** (# of months) commencing **2/5/11** . Totaling **25,124.00**
The sum of $__ for __ (# of months) commencing __. Totaling __

1.09 OTHER PAYMENTS - In addition to the submission of future earnings, Debtor will make non-monthly payment(s) derived from property of the bankruptcy estate or property of Debtor, or from other sources, as follows:

Amount of payment	Date	Source of payment
$ **3150.00**	3/17/2011	Total Paid In
$		
$		

1.10 TOTAL OF ALL PLAN PAYMENTS INCLUDING TRUSTEE FEES = **32,534.00**

1.11 Trustees fees have been calculated at 10% of all plan payments which totals = **3,253.40** This amount is included in 1.10 above.

1.12 Tax Refunds - Debtor shall turn over to the Trustee and pay into the plan annual tax refunds for the tax years:

1.13 ELECTION TO PAY 100% OF ALL FILED AND ALLOWED GENERAL NON-PRIORITY UNSECURED CLAIMS
a. ☒ 100% of all filed and allowed non-priority claims shall be paid by Trustee pursuant to this Plan.
b. ☐ General unsecured creditors will be paid interest at the rate of __%. [Check this box and insert the present value rate of interest - if debtors estate is solvent under §1325(a)(4).]

1.14 Statement of Eligibility to Receive Discharge
a. Debtor, **Alan R Riekki** **is eligible** to receive a Chapter 13 discharge pursuant to §1328 upon completion of all plan obligations.
b. Joint Debtor, **Mona G Riekki** **is eligible** to receive a Chapter 13 discharge pursuant to §1328 upon completion of all plan obligations.

Section II. Claims and Expenses

A. Proofs of Claim

2.01 A Proof of Claim must be timely filed by or on behalf of a priority or general non-priority unsecured creditor before a claim will be paid pursuant to this plan.

2.02 A CLASS 2A Secured Real Estate Mortgage Creditor shall be paid all post-petition payments as they become due whether or not a Proof of Claim is filed. The CLASS 2B secured real estate mortgage creditor shall not receive any payments on pre-petition claims unless a Proof of Claim has been filed.

2.03 A secured creditor may file a Proof of Claim at any time. A CLASS 3 or CLASS 4 secured creditor must file a Proof of Claim before the claim will be paid pursuant to this Plan.

2.04 Notwithstanding Section 2.01 and 2.03, monthly contract installments falling due after the filing of the petition shall be paid to each holder of a CLASS 1 and CLASS 6 secured claim whether or not a proof of claim is filed or the plan is confirmed.

2.05 Pursuant to §507(a)(1), payments on domestic support obligations (DSO) and payments on loans from retirement or thrift savings plans described in §362(b)(19) falling due after the filing of the petition shall be paid by Debtor directly to the person or entity entitled to receive such payments whether or not a proof of claim is filed or the plan is confirmed, unless agreed otherwise.

2.06 A Proof of Claim, not this plan or the schedules, shall determine the amount and the classification of a claim. Pursuant to §502(a) such claim or interest is deemed allowed unless objected to and the Court determines otherwise.

a. Claims provided for by the plan - If a claim is provided for by this plan and a Proof of Claim is filed, payments shall be based upon the claim unless the Court enters a separate Order otherwise determining (i) value of the creditors collateral; (ii) rate of interest; (iii) avoidance of a lien; (iv) amount of claim or (v) classification of a claim. If interest is required to be paid on a claim, the interest rate shall be paid in accordance with the Order Confirming Chapter 13 Plan or such other Order of the Court which establishes the rate of interest.

b. Claims not provided for by the plan - If a claim is not provided for by this plan and a Proof of Claim is filed, no payment will be made to the claimant by the Trustee or the Debtor until such time as the Debtor modifies the plan to provide for payment of the claim. Such claim or interest is deemed allowed unless objected to and the Court determines otherwise. If no action is taken by the Debtor, the Trustee may file a Motion to Dismiss the case or a Trustee's Modified Plan.

DISCHARGE ORDER
In re Riekki, No. 10-26900 (Bankr. D. Nev.)

United States Bankruptcy Court
District of Nevada

Case No. 10–26900–abl

Chapter 13

In re: (Name of Debtor)

ALAN R RIEKKI
6125 SPIELBURG STREET
LAS VEGAS, NV 89118

Social Security No.:
xxx–xx–7046

MONA G RIEKKI
6125 SPIELBURG STREET
LAS VEGAS, NV 89118

xxx–xx–4482

DISCHARGE OF DEBTOR AFTER COMPLETION OF CHAPTER 13 PLAN

The Court finds that the debtor filed a petition under Title 11, United States Code, on 9/5/10, that the debtor's plan has been confirmed, and that the debtor has fulfilled all requirements under the plan.

IT IS HEREBY ORDERED THAT:

1. Pursuant to 11 U.S.C. Section 1328(a), the debtor is discharged from all debts provided for by the Plan or disallowed under 11 U.S.C. Section 502, except any debt:

a. provided for under 11 U.S.C. Section 1322(b)(5), and on which the last payment is due after the date on which the final payment under the Plan was due;

b. in the nature of a domestic support obligation, as specified in 11 U.S.C. Section 523(a)(5);

c. for a student loan or educational benefit overpayment as specified in 11 U.S.C. Section 523(a)(8);

d. for a death or personal injury caused by the debtor's unlawful operation of a motor vehicle, vessel, or aircraft while intoxicated from using alcohol, a drug, or another substance, as specified in 11 U.S.C. Section 532(a)(9);

e. for restitution included in a sentence on the debtor's conviction of a crime, in a case commenced on or after November 15, 1990;

f. for a fine included in a sentence on the debtor's conviction of a crime, in a case commenced on or after October 22, 1994;

g. for restitution, or damages, awarded in a civil action against the debtor as a result of malicious or willful injury by the debtor that caused personal injury to an individual or the death of an individual, in a case commenced on or after October 17, 2005; or

h. for certain taxes to the extent not paid in full under the plan, in a case commenced on or after October 17, 2005.

2. Pursuant to 11 U.S.C. Section 1328(d), the debtor is not discharged from any debt based on an allowed claim filed under 11 U.S.C. Section 1305(a)(2) if prior approval by the Trustee of the debtor's incurring such debt was practicable and was not obtained.

3. Notwithstanding the provisions of Title 11, United States Code, the debtor is not discharged from any debt made nondischargeable by 18 U.S.C. Section 3613(f), by certain provisions of Titles 10, 37, 38, 42, and 50 of the United States Code, or by any other applicable provision of law.

4. All creditors are prohibited from attempting to collect any debt that has been discharged in this case.

Dated: 10/6/14

BY THE COURT

Mary A. Schott
Clerk of the Bankruptcy Court

ADDENDUM B
EXCERPTS FROM
2015 CREDIT REPORTING RESOURCE GUIDE
(including Metro 2® Format Information)

2015 Credit Reporting Resource Guide ®

Automated Data Reporting

FEATURES OF THE METRO 2® FORMAT

- Accepted by all consumer reporting agencies, the Metro 2® Format enables the reporting of accurate, complete and timely credit information.
- Meets all requirements of the Fair Credit Billing Act (FCBA), the Fair Credit Reporting Act (FCRA), the Equal Credit Opportunity Act (ECOA) and all applicable state laws.
- Allows credit information to be added and mapped to the consumer's file with greater consistency.
- Allows complete identification information to be reported for each consumer (including co-debtor, co-signer, etc.) each month which improves the ability of the consumer reporting systems to match to the correct consumer.
- Accommodates cycle reporting of data, which allows more timely updating of the credit file.
- Accommodates additional information not provided in the Metro™ Format:
  - Full four digit year
  - New data elements
  - New values
  - Consumer-specific ties
  - Expanded functionality
- The Payment History Profile (up to 24 months) makes it possible for the credit grantor to supply automated updates/corrections for the file rather than costly manual updates/corrections, and reduces consumer disputes.

- Flexibility of the format provides for future enhancements.

Reporting in the Metro 2® Format greatly benefits the credit grantor, the consumer reporting agencies and your customer, the consumer.

Industry Reporting Standards

An industry standard for reporting consumer accounts will ensure the integrity and consistency of the credit information being reported.

- All accounts must be reported on a monthly basis.
- A final Account Status Code must be reported when the accounts are ultimately paid or closed with a zero balance.
- If reporting by cycles, all accounts must be reported at the close of each cycle.
- When reporting delinquent accounts, the "Industry Standard for Reporting Account Delinquency" must be followed.

Industry Standard for Reporting Account Delinquency

The "clock" for a 30-day delinquency starts 30 days after the **due date**, as opposed to the billing date.

The following example tracks an account history for four months, specifying the Metro 2® Account Status Code that should be reported. The Due Date for this example is the 15th of each month.

Date of Acct. Info.	**Jan. 1**	**Feb. 1**	**Mar. 1**	**Apr. 1**
Bills Received	1	2	3	4
Payments Past Due	0	1	2	3
# Days Past Due Date	0	17	45	76
Metro 2 Status Code	11	11	71	78

Definitions:

Metro 2 Status Code 11	0 – 29 days past due date
Metro 2 Status Code 71	30 – 59 days past due date
Metro 2 Status Code 78	60 – 89 days past due date

Explanation and Examples of FCRA Compliance/ Date of First Delinquency (Field 25)

Example 7: Displays an account that was delinquent before it was included in a Chapter 7 Bankruptcy.

Date of Account Information (Field 24)	Due Date (Not reported)	Number of Days Past Due Date (Not reported)	Account Status & Definition Field 17A	Date of First Delinquency (Field 25)
01/18/2015	01/15/2015	0	11 Current 0-29 days past the due date	Zero fill
02/18/2015	02/15/2015	3	11 Current 0-29 days past the due date	Zero fill
03/18/2015	02/15/2015	31	71 30–59 days past the due date	03/17/2015 (First Delinquency)
04/18/2015	02/15/2015	62	78 60–89 days past the due date	03/17/2015
05/18/2015	03/15/2015	64	78 60-89 days past the due date	03/17/2015
06/18/2015	03/15/2015	95	80 90-119 days past the due date Consumer Information Indicator = A Petition for Chapter 7 Bankruptcy	03/17/2015

Note: The month and year reported in the Date of First Delinquency are used by the consumer reporting agencies for purging purposes.

(continued)

B5

28. Questions: Accounts included in Bankruptcy Chapter 13:

(a) How should an account be reported when all borrowers associated to the account filed Bankruptcy Chapter 13?

Answer: Report the account according to the following guidelines:

	All Borrowers Filed Bankruptcy Chapter 13
Month BK Filed	• CII = D (Petition for Chapter 13 Bankruptcy) • Account Status = status at time of petition • Payment History = first character based on previous month's Account Status, plus prior history • Current Balance = outstanding balance amount • Scheduled Monthly Payment Amount = contractual monthly payment amount • Amount Past Due = dependent on status • Date of Account Information = current month's date **Note: Authorized Users (ECOA Code 3) on accounts included in a bankruptcy petition should either be terminated (ECOA Code T) or deleted (ECOA Code Z) from the account because they are not contractually liable for payments.**
Months Between Petition Filed & BK Resolution (Confirmed Plan, BK Dismissed, Withdrawn)	• CII = Blank (previous value reported is retained) or CII = D • Account Status = status at time of petition • Payment History = increment first position with value 'D' (plus history reported prior to BK filing) • Current Balance = outstanding balance amount • Scheduled Monthly Payment Amount = contractual monthly payment amount • Amount Past Due = dependent on status • Date of Account Information = current month's date
BK Chapter 13 Converted to BK Chapter 7	• CII = A (Petition for Chapter 7 Bankruptcy) or E (Discharged through Bankruptcy Chapter 7), as applicable **Note: With the reporting of the BK Chapter 7 indicator, continue updating the account by following FAQ 27(a).**

FAQ 28(a) continued on next page

FAQ 28(a) (continued)

	All Borrowers Filed Bankruptcy Chapter 13
Plan Confirmed	• CII = Blank (previous value reported is retained) or CII = D • Account Status = status at time of petition • Payment History = increment with value 'D' (plus prior months' history) • Current Balance = Chapter 13 plan balance[1], which should decline as payments are made • Amount Past Due = Zero • Terms Duration & Terms Frequency = report changed values, if applicable • Scheduled Monthly Payment Amount = Chapter 13 plan payment amount • Date of Account Information = current month's date
Plan Completed – All payments made according to plan – no further obligation	• CII = H (Discharged/completed through BK Chapter 13) • Account Status = status at time of petition • Payment History = increment first position with value 'D' (plus prior months' history) • Current Balance = Zero • Scheduled Monthly Payment Amount = Zero • Amount Past Due = Zero • Date of Account Information = current month's date **Note: After reporting CII 'H' for all Filers, discontinue reporting the account.**
Plan Completed – All payments made according to plan – consumer continues to make payments on Secured Debt (example: mortgage)	• CII = Q (Removal value) • Account Status = status that applies • Payment History = first month, increment first position with value 'D'; in subsequent months, increment based on prior month's status • Current Balance = Outstanding balance amount • Scheduled Monthly Payment Amount = updated contractual monthly payment amount • Amount Past Due = dependent on status • Date of Account Information = current month's date
BK Dismissed or Withdrawn	• CII = applicable dismissed or withdrawn value (L or P) • Account information as it applies going forward

[1] If the Chapter 13 plan balance amount is not clearly communicated to the lender, the lender should consult with internal Legal to determine what amount to report in the Current Balance field. If the lender (e.g., unsecured creditor) does not receive a confirmed amount from the Bankruptcy court, report the outstanding balance.

ADDENDUM C
EXCERPTS FROM
40 Years of Experience with the Fair Credit Reporting Act:
An FTC Staff Report with Summary of Interpretations
(July 2011)

40 YEARS OF EXPERIENCE WITH THE FAIR CREDIT REPORTING ACT

AN FTC STAFF REPORT WITH SUMMARY OF INTERPRETATIONS

July 2011
Federal Trade Commission

Section 605 – Requirements Relating to Information Contained in Consumer Reports

15 USC 1681c

Section 605(a) generally provides time limits beyond which CRAs cannot include information in consumer reports, subject to exceptions set forth in section 605(b).

1. GENERAL

This section sets forth time periods beyond which CRAs may not include information in consumer reports, except in the circumstances set out in section 605(b).[176] Even if no specific adverse item is reported, a CRA may not furnish a consumer report referencing the existence of adverse information that predates the times set forth in this subsection.[177] Section 605(a) does not require CRAs to report all adverse information within the time periods set forth, but only prohibits them from reporting adverse items beyond those time periods.[178]

2. SECTION APPLIES TO CRAS, NOT USERS

This section applies only to reporting by CRAs and does not limit creditors or others from using adverse obsolete information. Similarly, this section does not bar a creditor from disclosing adverse obsolete information concerning its transactions or experiences with a consumer, because the information is not a consumer report.[179]

3. DATE THAT CRA ACQUIRED THE INFORMATION IRRELEVANT

The times or dates set forth in this section relate to the occurrence of events involving adverse information, which determine whether the item is obsolete. The date that the CRA acquired the adverse information is irrelevant to how long that information may be reported.[180]

4. PROVISION LIMITED TO "ADVERSE" INFORMATION

The seven-year reporting period applies only to "adverse" information that casts the consumer in a negative or unfavorable light. CRAs are not bound by that seven-year limit in reporting dates of employment and educational histories, because such dates are not "adverse" information.[181]

5. RETENTION OF INFORMATION IN FILES

CRAs may retain adverse information described in subsection (a) and furnish it in reports for purposes that are exempt under subsection (b), described below. For example, the CRA may retain obsolete information for the purpose of furnishing it to persons engaged in (1) credit transactions or the underwriting of life insurance involving a principal amount of $150,000 or more, or (2) the employment of any individual with an annual salary expected to equal $75,000 or more.[182]

Section 605(a)(1) prohibits CRAs from reporting "Cases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years."

1. RELATION TO OTHER SUBSECTIONS

Section 605(a) imposes time limitations on reporting of adverse information by CRAs. The reporting of bankruptcies is governed by subsection (a)(1). The reporting of accounts placed for collection or charged to profit and loss is governed by subsection (a)(4). The reporting of

other delinquent accounts is governed by subsection (a)(5). Any such item, even if discharged in bankruptcy, may be reported separately for the applicable seven year period, while the existence of the bankruptcy filing may be reported for ten years.[183]

2. VOLUNTARY BANKRUPTCY

A voluntary bankruptcy petition may be reported for ten years from the date that it is filed (even though formal discharge of the debts occurs by later ruling), because the filing of the petition constitutes the entry of an "order for relief" under this subsection, just like a filing under the Bankruptcy Act (11 U.S.C. §301).[184]

3. DISMISSED BANKRUPTCY

A dismissed involuntary bankruptcy petition, or a withdrawn or dismissed voluntary petition, may be included in a consumer report for ten years from the date that the order dismissing the petition was entered.[185] See discussion in comment 611(a)-4.

Section 605(a)(2) prohibits CRAs from reporting "Civil suits, civil judgments, and records of arrest that from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period."

1. OPERATIVE DATE

For a civil suit, the term "date of entry" means the date the suit was filed. A protracted civil suit may be reported for more than seven years from the date the case was filed, if the governing statute of limitations has not expired. For a civil judgment, the term "date of entry" means the date the judgment was entered.[186]

2. PAID JUDGMENTS

Paid judgments cannot be reported for more than seven years after the judgment was entered, because payment of the judgment eliminates any "governing statute of limitations" under this subsection that might otherwise lengthen the time period.[187]

Section 605(a)(3) prohibits CRAs from reporting "Paid tax liens which, from date of payment, antedate the report by more than seven years."

1. INAPPLICABILITY TO UNPAID LIENS

If a valid tax or other lien remains unsatisfied, it may be reported as long as it remains filed against the consumer because this subsection addresses only paid tax liens.[188] See comment 605(a)(5)-2.

Section 605(a)(4) prohibits CRAs from reporting "Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years."

1. RELATION TO OTHER SECTIONS

This section establishes the reporting period for collections and chargeoff accounts at seven years. Section 605(c)(1) sets forth the method for determining the date that starts the seven year period. Section 623(a)(5) requires a party that reports such accounts to a CRA to provide the "date of delinquency" that the CRA will use to calculate the seven year period. See comments 605(c)-2 and 623(a)(5)(A)-2.

and closed or terminated, to avoid furnishing reports on former customers or other customers for whom the credit grantor lacks a permissible purpose. (See also discussion in comment 604(a)(3)(A)-4C).[217]

8. CONSUMER AUTHORIZATION

A CRA providing reports pursuant to written consumer consent, as permitted by section 604(a)(2), must maintain reasonable procedures to assure that the authorizations are genuine.[218]

Section 607(b) states: "Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."

1. RELATION TO OTHER SECTIONS

Section 623 imposes accuracy duties on creditors, debt collectors, and other furnishers of information to CRAs. It does not expand or reduce CRAs' duties under this section.[219]

2. GENERAL

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. If a CRA reports an item of information that turns out to be inaccurate, it does not violate this section if it has established and followed reasonable procedures in reporting the item. However, when a CRA learns or should reasonably be aware of errors in its reports that may indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise), it must review its procedures for assuring accuracy and take any necessary steps to avoid future problems. Similarly, it should establish procedures to avoid reporting information from its furnishers that appears implausible or inconsistent.[220]

A consumer report need not be tailored to the user's needs, and may contain any information that is complete, accurate, and not obsolete on the consumer who is the subject of the report. A consumer report may include a list of recipients of reports on the consumer, subject to the prohibition in section 604(c)(3) against disclosing prescreening inquiries to parties other than the consumer.[221]

3. REQUIRED STEPS TO IMPROVE ACCURACY

If the CRA's review of its procedures reveals, or the CRA should reasonably be aware of, steps it can take to improve the accuracy of its reports at a reasonable cost, it must take any such steps. It should correct inaccuracies that come to its attention. A CRA must also adopt reasonable procedures to eliminate systematic errors that it knows about, or should reasonably be aware of, resulting from procedures followed by its sources of information. For example, if a particular credit grantor has often furnished erroneous consumer account information, the CRA must require the creditor to revise its procedures to correct whatever problems cause the errors or stop reporting information from that creditor.

4. COMPLETENESS

A. Completeness of report. CRAs are not required to include all existing derogatory or favorable information about a consumer in their reports. (See, however, discussion in comment 611(c)-2, concerning inclusion of consumer dispute statements.) However, a CRA may not mislead

its subscribers as to the completeness of its reports by deleting favorable information and not disclosing its policy of making such deletions.[222]

B. Completeness of item of information. A CRA must report significant, verified information it possesses about a credit account or other item of information included in the consumer's credit file. For instance, a CRA may report delinquent accounts in consumer reports, but must accurately note later payments or other significant activity on the account.[223]

5. REPORTING OF CREDIT OBLIGATIONS

A. Past due accounts. A CRA that employs reasonable procedures to keep its files current on past due accounts (for example, by requiring its creditors to notify the CRA when a previously past due account has been paid or discharged in bankruptcy) complies with this section.[224] A CRA that refuses to accept updated and corrected information from a party providing data on loan accounts, and still maintains that information in its database, does not have in place "reasonable procedures to assure maximum possible accuracy of information" to comply with section 607(b) with respect to such accounts.[225]

B. Joint obligations. Any report of a joint obligation must accurately report the relation of the consumer to the obligation. A personal guarantee of a debt incurred by another (including a corporation) may be included in a consumer report on the individual who is the guarantor, if the report accurately reflects the nature of the individual's involvement.[226]

6. REPORTING OF BANKRUPTCIES

A consumer report may include an account that was discharged in bankruptcy (as well as the bankruptcy itself), as long as it reports a zero balance to reflect the fact that the consumer is no longer liable for the discharged debt. Similarly, if a reported bankruptcy has been dismissed, the CRA should report that fact.[227] It is not a reasonable procedure to label an account that has been discharged in bankruptcy as "charged off as bad debt" if the account was open and not charged off when the consumer filed bankruptcy. Such a designation would be inaccurate or misleading, as it would indicate that the creditor had written off the account at the time of bankruptcy when it had not in fact done so.[228] However, a creditor or CRA is not prohibited from reporting that an account has been charged off when it in fact was charged off.[229]

7. PROTECTION AGAINST ALTERATION

CRAs must adopt reasonable security procedures to minimize the possibility that computerized consumer information can be altered by either authorized or unauthorized users of the information system.[230]

8. LOGICAL ERRORS

A CRA must maintain procedures to avoid reporting information with obvious logical inconsistencies, such as a credit account opened when the consumer was known to be a minor.

Section 607(c) states: "A consumer reporting agency may not prohibit a user of a consumer report furnished by the agency on a consumer from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report."

Section 623 – Duties of Furnishers of Information to CRAs 15 USC 1681s-2

Section 623(a)(1)(A) prohibits furnishing information to any CRA if the furnisher "knows or has reasonable cause to believe that the information is inaccurate." However, **section 623(a)(1)(C)** provides a safe harbor if the furnisher clearly and conspicuously specifies an address where consumers can send disputes concerning the accuracy of information about them.

1. GENERAL

Persons may furnish information concerning their transactions with consumers to CRAs and others, and CRAs may gather information, without consumers' permission and over their objection.

2. FURNISHER ADDRESS FOR DISPUTING INFORMATION

An address specification is effective only if the furnisher "clearly and conspicuously" communicates the address to consumers. For example, the furnisher could mail a letter to the most recent address supplied by the consumer, consisting solely of information about where consumers should send dispute notices. A creditor that provides regular billing statements may include the address in such statements.

Section 623(a)(2) provides, "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."

1. RELATION TO OTHER SECTIONS

Section 623(e) required the Federal financial agencies and the Commission to issue guidelines and regulations on the "accuracy and integrity" of information supplied to CRAs, which they published in 2009. See comment 623(e)-1. Starting July 21, 2011, the Bureau assumes this rulemaking authority.

2. CESSATION OF RELATIONSHIP WITH CRA

If a furnisher of information to a CRA determines that previously provided information "is not complete or accurate," it must "promptly notify" the CRA and provide anything needed to make the information complete and accurate. This obligation applies even when a furnisher no longer has a contractual relationship with the CRA to which it originally furnished information.[297]

Section 623(a)(3) provides, "If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such

Section 623(a)(9) requires an entity whose principal business is "providing medical services, products, or devices," that furnishes consumer information to a CRA, to notify the CRA that it is a "medical information furnisher" for FCRA purposes.

Section 623(b) requires that a furnisher that receives a dispute notice from a CRA must investigate the disputed information, review all relevant information provided by the CRA, and report the results of the investigation to the CRA. If the furnisher finds that the information is incomplete or inaccurate, it must report those results to all nationwide CRAs to which it furnished the information. If it finds that the disputed information is inaccurate or incomplete, or cannot be verified, it must modify, delete, or permanently block that item of information (for purposes of reporting to CRAs) before the expiration of the period specified by section 611(a)(1).

1. GENERAL

Once a CRA notifies a furnisher that a consumer disputes the completeness or accuracy of the furnisher's information, the furnisher is required to conduct an investigation of the disputed information, review all relevant information provided by the CRA, and report its findings to the CRA (and to other CRAs if it finds the data to be inaccurate or incomplete).[304] The obligation to investigate under this section is triggered by the receipt of a notification from a CRA; the furnisher may not require a separate written request from the consumer before conducting the required investigation.[305]

2. NATURE OF INVESTIGATION

The furnisher's investigation must be reasonable under the circumstances. It may be either simple or complex, depending on the nature of the dispute. See comment 611(a)-2, discussing CRA dispute investigations. Unless the furnisher is able to confirm the disputed item of information, it must cease reporting it.

Section 623(c) provides that sections 616-617 (which allow individual actions for violations of most provisions of the FCRA) do not apply to violations of section 623(a)&(e) (furnishers providing accurate information to CRAs) or 615(e) ("red flags" rules). **Section 623(d)** provides that those sections "shall be enforced exclusively by the federal agencies and officials and the State officials identified in section 621."

Section 623(e) assigned the Commission and Federal financial agencies responsibility for promulgation of guidelines and regulations regarding the accuracy and integrity of information provided to CRAs. Starting July 21, 2011, the Bureau will assume rulemaking authority under this section.