***Appeal No. 09-15030***

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

NOEMIA CARVALHO, on behalf of herself and other similarly situated people,

*Plaintiff-Appellant,*

vs.

EQUIFAX INFORMATION SERVICES, LLC; EXPERIAN INFORMATION SOLUTIONS, INC.; TRANSUNION LLC,

*Defendants-Appellees.*

On Appeal From the United States District Court
for the Northern District of California
Hon. Jeremy Fogel
Case No. 5:08-cv-01317-JF

# BRIEF OF *AMICI CURIAE* NATIONAL CONSUMER LAW CENTER AND NATIONAL ASSOCIATION OF CONSUMER ADVOCATES IN SUPPORT OF PLAINTIFF-APPELLANT'S PETITION FOR REHEARING OR REHEARING EN BANC

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## RULE 26.1 DISCLOSURE STATEMENT

The National Consumer Law Center (NCLC) is a non-profit, tax exempt Massachusetts corporation qualified under section 501(c)(3) of the Internal Revenue Code. NCLC has never issued shares or securities.

The National Association of Consumer Advocates (NACA) is a non-profit membership organization of law professors, public sector lawyers, private lawyers, legal services lawyers, and other consumer advocates. Organized under the laws of the Commonwealth of Massachusetts, it is tax-exempt under section 501(c)(6) of the Internal Revenue Code. It has no parent corporation, nor has it issued shares or securities.

Dated: September 20, 2010

Respectfully submitted,

/s/ Richard J. Rubin
Richard J. Rubin

Attorney for *Amici Curiae*

## I. STATEMENT OF INTEREST

*Amici Curiae* NCLC and NACA are nonprofit organizations that work on behalf of consumers. *Amici* have extensive experience on consumer protection matters, including Fair Credit Reporting Act (FCRA) issues. *Amici's* interest in this appeal flows from their efforts to protect the integrity of the FCRA rights of consumers, as described in their accompanying Motion for Leave to File an Amicus Brief.

The Panel's imposition of an extra-statutory requirement that consumers must prove a verifiable inaccuracy before they can submit a dispute to a consumer reporting agency (CRA) will greatly harm consumers and undermine the marketplace that relies on the trustworthiness of the credit reporting system to make risk assessments. The Panel may not have been apprised of the unintended consequences when it adopted here the credit reporting industry's wholesale attack on the FCRA.

Undersigned counsel are a principal and contributing author of NCLC, *Fair Credit Reporting* (6th ed. 2006 and Supp.), a treatise whose focus is the FCRA. NCLC and counsel appear now in this role. *Amici* welcome this opportunity, albeit belated, to help explain a topic that is so central to the well-being of our credit-based economy.

## II. SUMMARY OF ARGUMENT

The FCRA provides that a CRA must conduct a "reasonable reinvestigation" of disputed information appearing on a consumer's credit report and then delete or modify any item that "is found to be inaccurate or incomplete *or cannot be verified*." (Emphasis added). The opinion reverses this statutory language and the very reason for a CRA reinvestigation – to filter out unverifiable information – by holding that unverifiable information need not be investigated at all and instead must be retained *because* it cannot be verified.

The Panel effectively nullified this essential FCRA provision by imposing upon consumers the *ultra vires* requirement before lodging a statutory dispute of making the often impossible showing that the challenged information is verifiably inaccurate. This judicially-invented screening device is the opposite of the FCRA's reinvestigation requirement, whose very purpose is to determine whether an inaccuracy exists. The breadth of the Panel's language insures that consumer reports will be rife with precisely the unverifiable and unreliable information that Congress explicitly designed the FCRA to exclude.

The Panel created a second extra-statutory requirement that consumers must obtain a costly (and unrealistic) litigation or arbitration resolution in their favor before disputing information. The Panel acted under the rubric of preventing consumers from mounting "collateral attacks" on information contained in their

reports. However, true collateral attacks are already foreclosed by another section of the FCRA that excludes "frivolous or irrelevant" disputes. § 1681i(a)(3).

Ultimately, the Panel opinion eliminates the "grave responsibilities" that Congress gave the CRAs to insure that only accurate, complete, and verifiable information appears on credit reports. Congress achieved that goal by designing the FCRA specifically to prevent CRAs from ignoring consumer disputes. This opinion renders useless the Congressional resolve to make the CRAs heed consumers' perceptions that a report is inaccurate. Without question, armed with this opinion CRAs will now claim that most consumer disputes cannot be addressed under the FCRA investigation process, seriously compromising the integrity of the entire credit reporting system.

The Panel gave wholesale support to the CRAs' argument, frequently made but routinely rejected by the courts, that they are mere conduits of furnisher information. The Panel's adoption of this discredited industry proposition is unprecedented and contrary to the FCRA and to the opinions of every court that has addressed the issue, including several Courts of Appeal.

The decision establishes a *de facto* FCRA standard permitting information that is technically accurate but incomplete or misleading to be legally reported. This technical accuracy standard not only breaks with all other Courts of Appeal that have confronted it but also contradicts the decision of this Court in *Gorman v.*

*Wolpoff & Abramson*, 584 F.3d 1147 (9th Cir 2009). A quagmire of future litigation looms as courts in this jurisdiction and no doubt elsewhere attempt to unravel the rationale of the Panel opinion and determine how to apply its holdings in the face of the FCRA's explicit and unqualified command that misleading or unverifiable information must be deleted from the credit reporting system.

*Amici* respectfully request that the Panel decision be withdrawn and that a corrected opinion be issued applying the law as unambiguously established by the FCRA. *Amici* have no interest in the ultimate resolution of this case.

## III. ARGUMENT

### A. The Decision Erroneously Requires a Verifiable Inaccuracy in Order to Trigger a CRA's Reasonable Reinvestigation and to Establish Any Resulting Liability

#### 1. The Panel's Decision is Contrary to the Plain Language of the FCRA and Nullifies its Requirement to Filter Out Unverifiable Information

The FCRA does not require a showing of inaccuracy to impose liability for failure to conduct a reasonable investigation. The system that Congress created instead requires a CRA to conduct the required investigation whenever a consumer presents a non-frivolous [see subsection (4), *infra*] dispute challenging the accuracy or completeness of the subject information irrespective of whether the information is in fact inaccurate.

Specifically, the FCRA states:

> *[I]f the completeness or accuracy of any item of information* contained in a consumer's file at a consumer reporting agency *is disputed* by the consumer and the consumer notifies the agency directly…of such dispute, *the agency shall*, free of charge, *conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate* and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller.

15 U.S.C. § 1681i(a)(1)(A) (emphasis added).

The referenced paragraph (5) states in relevant part:

> *If*, after any reinvestigation under paragraph (1) of any information disputed by a consumer, *an item of the information* is found to be inaccurate or incomplete or *cannot be verified*, *the consumer reporting agency shall*--
>
> (i) *promptly delete that item of information from the file of the consumer*, or modify that item of information, as appropriate, based on the results of the reinvestigation;

15 U.S.C. § 1681i(a)(5)(A) (emphasis added).

The plain language of the Act contains no exception in either this section or any other provision that the disputed item must be verifiably inaccurate to trigger the required investigation or to impose liability for its breach. Indeed, the district court in this case candidly admitted that this requirement was created as a "judicial screening device." *Carvalho v. Equifax Info. Serv.*, 588 F. Supp. 2d 1089, 1099 (N.D. Cal.2008). By abandoning the actual language of the law and substituting its judicial view of how the system ought to work, the Panel adopted a judicially-

invented screening device that is at odds with the statutory scheme and renders portions of the Act useless. This screening device is contrary to the principal rationale of the reinvestigation requirement, that is, as stated by another court in rejecting this putative inaccuracy requirement, "the very purpose of the investigation is to determine whether an inaccuracy exists." *Whiting v. Harley-Davidson Fin. Servs.*, 534 F. Supp. 2d 823, 831 (N.D. Ill. 2008).[1]

Requiring that the disputed information be verifiably inaccurate also allows CRAs to blatantly violate the consumer's right to dispute items on a credit report and to ignore consumers' disputes so long as the consumer ultimately could not prove that the information is inaccurate. Of course, the FCRA already takes that possibility into account: if the information is indeed accurate but the CRA fails to properly reinvestigate, consumers certainly cannot prove economic harm to support actual damages and may be limited to claims for statutory or punitive

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[1] *See also Back v. Trans Union, L.L.C.*, 2008 WL 2444682, *3 (N.D. Ind. June 13, 2008):

> The purpose of an investigation is to prove that an item on the report is correct. TransUnion has not (and cannot) dispute that a consumer has a right to question an entry on a credit report if the consumer believes it has been reported incorrectly… If a debtor's account is purchased by another entity and the name of the account changes such that it is unrecognizable by the debtor, is the debtor within his rights to ask the credit reporting agency to investigate the account? It is clear to this court that the standard for requesting an investigation must be both low and in favor of the consumer, or else the consumer's "right to accuracy" is effectively abrogated.

damages only for willful violations. 15 U.S.C. § 1681n.

The Panel's inaccuracy requirement – plus its additional requirement that the inaccuracy has been verified as incorrect, perhaps even by a costly litigation or arbitration victory – nullifies both the §1681i(a)(5)(A) language quoted above and an essential purpose of the FCRA: to filter out unverifiable information. While inaccuracy is one benchmark, Congress stated that the actual objective of an FCRA investigation is to determine whether "an item of information is found to be inaccurate or incomplete *or cannot be verified*." § 1681i(a)(5)(A) (emphasis added). The FCRA requires that unverifiable information be deleted, not that it be retained and its retention be immune from liability. Yet as a result of the Panel's decision, consumers within this Circuit will be burdened with credit reports containing admittedly unverifiable information precisely because it is unverifiable, that is, its accuracy cannot be readily ascertained. This result is the opposite of the regime that Congress intended and adopted.[2]

The Panel belittled the consumer's argument that she should be "deemed

[2] Requiring an actual inaccuracy is contrary to other Consumer Credit Protection Act (CCPA) dispute rights, which also omit that requirement. For example, the Fair Debt Collection Practices Act imposes liability for violation of its dispute verification requirements irrespective of whether the consumer owes the debt or even has a colorable, let alone valid dispute. *See e.g. Mendez v. M.R.S. Associates*, 2005 WL 1564977, *4 (N.D. Ill. 2005) ("a consumer debtor is entitled to dispute and receive[ ] validation of a debt with . . . 'a good reason, a bad reason, or no reason at all'"); *see also Baker v. G.C. Services Corp.*, 677 F.2d 775, 777 (9th Cir. 1982) ("a debtor has standing to complain of violations of the Act, regardless of whether a valid debt exists").

innocent until proven guilty by a proper reinvestigation " *Carvalho v. Equifax Info Serv., LLC*, ___ F.3d ___, 2010 WL 3239477, *10 (9th Cir. Aug. 18, 2010). Yet deeming a consumer "guilty until proven innocent" is directly at odds with § 1681i(a)(5)(A)'s mandate to delete unverifiable information.

Neither § 1681i(a)(5)(A) nor Congress's purpose in protecting consumers and the marketplace from the adverse effects of credit reports containing unverifiable information was considered either by the Panel or by the First Circuit in the case cited by the Panel, *DeAndrade v. Trans Union LLC*, 523 F.3d 61 (1st Cir. 2008).[3] The Panel decision cannot be reconciled with § 1681i(a)(5)(A). *Amici* respectfully but urgently implore that this oversight be corrected.

### 2. The Panel's Decision Establishes a De Facto Technical Accuracy Standard, Contrary to Existing Circuit Precedent

This Court, as other Circuits, has rejected a "technical accuracy" standard

[3] A recurring theme at the heart of the CCPA is that dissemination of reliable credit information is essential to maintain the vitality of the credit granting system in a competitive and open market for the benefit of creditors and consumers alike. Just as Congress enacted the FCRA to enable credit grantors to make reliable lending decisions, the Truth in Lending Act, for example, establishes the corresponding principle through its disclosure requirements that consumers are best served through their own "informed use of credit." 15 U.S.C. § 1601(a). *See Till v. SCS Credit Corp.*, 541 U.S. 465, 482 (2004) ("Congress enacted the Truth in Lending Act in part because it believed consumers would individually benefit not only from the more informed use of credit, but also from heightened competition which would result from more knowledgeable credit shopping") (footnote, internal quotation, and citation omitted). The Supreme Court stated the guiding principle of this Congressional philosophy nearly 40 years ago: "[B]lind economic activity is inconsistent with the efficient functioning of a free economic system such as ours." *Mourning v. Family Publication Serv., Inc.*, 411 U.S. 356, 364 (1973).

under the FCRA.[4] Last year, this Court stated that "reports containing factually correct information that nonetheless mislead their readers are neither maximally accurate nor fair to the consumer." *Gorman v. Wolpoff & Abramson*, 584 F.3d 1147, 1163 (9th Cir. 2009). *Accord Dalton v. Capital Associated Indus., Inc.*, 257 F.3d 409, 415 (4th Cir. 2001); *Saunders v. Branch Bank & Trust Co.*, 526 F.3d 142, 148-50 (4th Cir. 2008); *Sepulvado v. CSC Credit Servs.*, 158 F.3d 890, 895 (5th Cir. 1998).

The Panel acknowledged *Gorman's* rejection of technical accuracy, but its actual holding establishes a conflicting *de facto* technical accuracy standard: the Panel's key statement holds that that information that is factually correct *cannot be misleading*, absent a legal adjudication or other formal resolution in the consumer's favor. 2010 WL 3239477 at *10. However, the very meaning of "technical accuracy" is that an item of information is factually correct but misleading.

For example, if a consumer did not make payments on a car because he did not receive a coupon book despite persistent requests and the end result was repossession, it is factually correct to report that nonpayment occurred. However, the FCRA establishes that reporting the nonpayment and repossession but failing to

[4] "Technical accuracy" is a term of art for information that is literally true but incomplete or misleading. Most federal courts have rejected this standard. *See* NCLC, *Fair Credit Reporting*, *supra*, §4.2.3.

report that they were the result of a bona fide dispute is inaccurate. These were the facts in *Saunders v. Branch Bank & Trust Co*., a case cited with approval by both the Panel and this Court in *Gorman*. Yet the Panel's reasoning would result in no liability in *Saunders* since the information reported would be factually correct that nonpayment and a repossession had occurred and there had been no legal resolution in favor of the consumer before the FCRA dispute was lodged.

In adopting the FCRA, Congress no doubt understood the maxim that truth often is subject to reasonable interpretation. At least in part for that reason, if the accuracy of information is unclear (unverifiable), at a minimum its resolution should be best left for the finder of fact. *Dalton*, 257 F.3d at 416 (whether literally true but potentially misleading report was inaccurate is a jury question); *Valentine v. First Advantage Saferent, Inc.*, 2009 WL 4349694, *8 (C.D. Cal. Nov. 23, 2009) ("Whether an omission was 'misleading…' and thus is an 'inaccuracy,' is generally a question for the jury"); *Smith v. Ohio Sav. Bank*, 2008 WL 2704719, *2-3 (D. Nev. July 7, 2008) (whether information was misleading and inaccurate was question for the trier of fact).

The unqualified holding that disputes to the credit bureaus "are not the proper vehicle for collaterally attacking the legal validity of consumer debts" [2010 WL 3239477 at *10] apparently means that when a dispute is in a "consumer-said-versus-furnisher said" posture – as many disputes are – the dispute cannot be

addressed using the FCRA dispute process but must await a formal and costly pre-dispute resolution. The holding applies to disputes involving, for example, debt collectors and debt buyers who typically do not have the documents to support their positions, as the CRAs would realize if they conducted a proper investigation. *See* Federal Trade Commission, *Repairing A Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*, July 2010, at 14-19, *available at* http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf. These debt collectors and debt buyers may be reporting debts that consumers either do not owe or do not recognize because they are ancient (past any statute of limitations or the FCRA obsolescence period), involve the incorrect consumer, or were incurred under different creditor names or as the result of identity theft. *Id.* Yet, the Panel would deny consumers subject to these abuses the ability to invoke the dispute rights of the FCRA, leaving their otherwise good credit smeared and depriving them and the economy of their participation in the consumer credit marketplace.

Indeed, the Panel went so far as to state that "[u]ntil the consumer has successfully resolved the legal dispute in her favor – for example, by means of a judgment, arbitration award, or settlement – we cannot say that a CRA reporting factually correct information about the disputed debt is misleading potential creditors." 2010 WL 3239477 at *10. The Panel opinion will require consumers to seek a state court declaratory judgment and forego the simple dispute

mechanism established by Congress.

This unprecedented holding will eliminate the gatekeeping role that Congress entrusted to the CRAs. The Panel's decision allows CRAs to argue that most consumer disputes are legal disputes that are unverifiable and thus cannot be resolved under the FCRA investigation process, leaving ill-motivated furnishers free to game the credit reporting system. Requiring such verification of an inaccuracy – including to the prohibitive degree of a litigation or arbitration victory – will seriously undermine the integrity of the credit reporting system by absolving the CRAs of any responsibility for the accuracy of adverse information in a consumer's file.

### 3. The Panel's Decision Ignores the Grave Responsibilities that Congress Imposed on CRAs

This case poses the recurring question of what CRAs should do with information whose accuracy cannot be easily ascertained. Given their economic incentives, the CRAs would rather not take the reasonable measures mandated by Congress necessary to resolve these issues and therefore have been pushing the position that they can wash their hands of the problem.[5] The CRAs have

[5] CRAs have little economic incentive to conduct proper investigations, let alone improve them. Consumers are not the paying customers for credit bureaus – furnishers pay the bureaus' bills. Consumer disputes represent an expense to the bureaus, which minimize the resources devoted to them by using automation that produces formalistic results. In fact, one credit bureau has reduced the amount it pays to its vendor that handles disputes to a mere $0.57 per dispute letter.

consistently argued that they are merely conduits of furnisher information or, in other words, they are only the "library." Anne Kadet, *Why the Credit Bureaus Can't Get It Right*, SmartMoney.com, February 9, 2009, available at http://www.smartmoney.com/spending/rip-offs/why-the-credit-bureaus-cannot-get-it-right/#ixzz0ysYwfO8H (quoting Maxine Sweet, Experian's Director of Public Education).

This blanket industry position is exactly what the Panel endorsed in this case. The Panel gave the argument wholesale support, stating that "credit reporting agencies are not tribunals. They simply collect and report information furnished by others." 2010 WL 3239477 at *10. The Panel explicitly rejected any argument that CRAs must undertake a "searching inquiry" into the consumer's dispute. *Id.*

The Panel's endorsement of CRAs as mere conduits or libraries is not just unprecedented and ultra vires; it is contrary to the FCRA as well as the opinions of all other courts that addressed the issue. Congress entrusted CRAs with the "grave responsibility" to ensure that information is accurate and to properly investigate disputes. 15 U.S.C. § 1681(a)(4). Furthermore, as discussed above, Congress ordained the default position that information that CRAs cannot verify must be

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*Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports*, at 23-25, available at http://www.nclc.org/issues/credit_reporting/content/automated_injustice.pdf.

deleted.

The Panel's decision conflicts with decisions by other Courts of Appeal and district courts, including at least four within this Circuit, that have properly refused to relieve CRAs of their "grave responsibilities." These cases have all required the "searching inquiry" that this Panel eschewed, holding that a CRA's duties extend beyond simply forwarding a dispute to a furnisher and accepting the results of the furnisher's reinvestigation. Contrary to the Panel's opinion, a CRA reinvestigation may not simply "parrot" the response of a furnisher but must fulfill its independent duty to evaluate the accuracy of information. *See, inter alia, Cushman v. Trans Union Corp.*, 115 F.3d 220, 224-25 (3d Cir. 1997) (rejecting the CRA argument that it "is never required to go beyond the original source in ascertaining whether the information is accurate"); *Stevenson v. TRW Inc.*, 987 F.2d 288, 293 (5th Cir. 1993) ("In a reinvestigation of the accuracy of credit reports, a credit bureau must bear some responsibility for evaluating the accuracy of information obtained from subscribers"); *White v. Trans Union*, 462 F. Supp. 2d 1079, 1083 (C.D. Cal. 2006) (rejecting argument that confirmation of the accuracy of information from its original source is a reasonable inquiry as a matter of law). Additional cases holding that CRAs have independent duties in the reinvestigation process are cited in NCLC, *Fair Credit Reporting*, *supra*, Chapter 4, at notes 580 and 593.

Furthermore, confining the CRAs' duties to merely a conduit does not take

into account whether the CRA has reason to doubt the reliability or veracity of the furnisher. What if the furnisher is a creditor or debt collector whose only incentive to report negative information is to pressure the consumer into paying, even if the consumer has already paid or is not the debtor? This illustration is not fanciful. *Rivera v. Bank One*, 145 F.R.D. 614 (D.P.R. 1993) (reporting a debt to a CRA is a "powerful tool designed, in part, to wrench compliance with payment terms…"); *Greene v. Capital One Bank*, 2008 WL 1858882, at *4 (D. Utah Apr. 23, 2008) ("[i]t is certainly not beyond belief that a furnisher of information might use the false tradeline as a club in negotiating down a judgment, as may have happened in this case"). The Panel opinion now relieves CRAs from their Congressionally-mandated obligation to conduct a reasonable reinvestigation to prevent such abuse.[6]

### 4. Congress Already Permits CRAs to Dismiss Truly Meritless Disputes as "Frivolous or Irrelevant"

The Panel was rightly concerned, as was the First Circuit in *DeAndrade*,

[6] Misuse of credit reporting of medical debt, as here, has been the subject of extensive commentary. *See, e.g.* Federal Reserve study finding that 52% of all accounts reported by collection agencies consisted of medical debt. Robert Avery et al, *An Overview of Consumer Data and Credit Reporting, Fed. Reserve Bulletin*, at 69 (Feb. 2003). The predictiveness of medical debt has also been questioned. *See Use of Credit Information Beyond Lending: Issues and Reform Proposals: Hearing before the Subcommittee on Financial Institutions and Consumer Credit, House Committee on Financial Services*, 110th Congr. (2010) (statement of Mark Rukavina, Executive Director of the Access Project), available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/rukavina_testimony_5.12.10.pdf.

about "collateral attacks" and insubstantial disputes regarding the validity of consumer debts. (A true "collateral attack" would involve a question that has already been adjudicated by a court, not one that is still open to resolution.) However, Congress protected the credit reporting system against such disputes in §1681i(a)(3) by allowing CRAs to summarily reject any "frivolous or irrelevant" dispute. *See Williams v. Colonial Bank*, 826 F. Supp. 415, 417-18 (N.D. Ala. 1993). Thus, Congress has already established the "screening device" in the FCRA for meritless disputes.[7]

Furthermore, this provision for frivolous or irrelevant disputes would be superfluous if consumers were required to prove the inaccuracy of disputed items in a court or arbitration proceeding before invoking the FCRA dispute process. Thus, the Panel opinion also violates to the rule of statutory construction to avoid rendering any provision superfluous. *See, e.g., Galindo-Romero v. Holder*, ___ F.3d ___, 2010 WL 3435175, *6 (9th Cir. Sept. 2, 2010).

[7] This Court has previously commented on this §1681i(a)(3) screening device and another crucial FCRA statutory investigation "filtering mechanism" in the context of the judicial restraint conspicuously absent from the Panel opinion: "The statute has been drawn with extreme care, reflecting the tug of the competing interests of consumers, CRAs, furnishers of credit information, and users of credit information. It is not for a court to remake the balance struck by Congress…" *Nelson v. Chase Manhattan Mortgage Corp.*, 282 F.3d 1057, 1060 (9th Cir. 2002).

### 5. The Alternative Remedy Suggested By The Panel Is Ineffectual

The Panel opined that consumers have an alternative remedy by submitting a § 1681i(b) written statement of dispute. Those familiar with the credit reporting system know that this written statement as a practical matter is virtually worthless. The statement appears at the bottom of the consumer report and is rarely seen by potential creditors, who in any event often forego receiving an actual credit report and only see a credit score or summary of the report highlights. But most important, the consumer statement does not affect credit scores. Federal Trade Commission and Federal Reserve Board, *Report to Congress on the Fair Credit Reporting Act Dispute Resolution Process* (Aug. 2006), at 22, available at www.ftc.gov/os/comments/fcradispute/P044808fcradisputeprocessreporttocongress. Contrary to the Panel's impression, the written dispute statement is no substitute for CRA compliance with the credit reporting duties imposed by Congress.

## IV. CONCLUSION

*Amici* urge that the Petition for Panel Rehearing and for Rehearing En Banc be granted and that the Panel opinion be corrected in accordance herewith.

Respectfully submitted,

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## STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, undersigned counsel declares that there are no known related cases pending in this Court.

**CERTIFICATION OF COMPLIANCE PURSUANT TO FED. R. APP. P. 32(a)(7)(C) AND CIRCUIT RULE 32-1 FOR CASE NUMBER NO. 09-15030**

I certify pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1 that the attached Brief of *Amici Curiae* complies with the type-volume limitation of Fed. R. App. P. 32(a)(5)and (6) as it is proportionately spaced, has a typeface of 14 points, and contains 3,943 words, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

Date: September 20, 2010

/s/ Richard J. Rubin
Richard J. Rubin

## CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 2010, I electronically filed the foregoing Brief of *Amici Curiae* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit, with service of copies to the following counsel using the appellate CM/ECF system:

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