

No. 26-1601

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Alicia McFadden and Chauvon McFadden,
Plaintiffs-Appellants,

v.

Experian Information Solutions, Inc.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Virginia at Alexandria
No. 1:25-cv-1097-MSN-WEF
Hon. Michael S. Nachmanoff

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INTRODUCTION

In its response brief, Experian seeks to recast the McFaddens' Fair Credit Reporting Act (FCRA) claims against Experian as a "creditor-debtor dispute." But the allegations in the McFaddens' complaint must be taken as true: An auto dealership wrongly applied a payment to the McFaddens' loan with TD Bank that caused the account to be fully paid and satisfied. For seven months after that payoff, the account was reported as paid and closed with a \$0 balance. Nonetheless, seven months later, after TD Bank refunded the pay-off amount to the dealership, Experian began inaccurately reporting that the McFaddens were delinquent on their car payments during the time the loan had been paid and satisfied, their loan account had been closed, and they were prevented from making loan payments. The McFaddens provided Experian with documentation to support the inaccuracy, and Experian's own credit reporting data confirmed it as well. Nonetheless, Experian did not address their dispute.

The issue is not a "creditor-debtor dispute," but rather a quintessential credit reporting dispute. Experian is a sophisticated credit reporting agency. It suggests no basis for feigning uncertainty about the

fact that a consumer cannot make a payment on an account that has been paid and closed. And it did not need to conduct any legal inquiry to address the inaccuracy the McFaddens identified. The outcome of a separate dispute between TD Bank and the McFaddens that arose after TD Bank refunded the erroneous pay-off amount to the dealership does not justify Experian's refusal to address the McFaddens' attempt to correct the credit reporting for the seven-month period that loan had been paid and closed. This lawsuit is about the inaccuracy that appears in Experian's credit reports, which the McFaddens alleged Experian could verify had it reasonably attempted to do so.

Although the McFaddens' allegations should have been treated as true, the district court did not allow the McFaddens' case to proceed to discovery so that evidence to support their allegations could be considered. Instead, the district court dismissed their complaint with prejudice under Federal Rule of Civil Procedure 12(c). The court held, as a matter of law, that the error the McFaddens identified was not "objectively and readily verifiable" under *Roberts v. Carter-Young, Inc.*, 131 F.4th 241 (4th Cir. 2025). That holding was incorrect. As the McFaddens explained in their opening brief, the complaint alleged that

Experian could have verified the McFaddens' claim objectively and readily based on information provided by the McFaddens, information from its own records, and information available from TD Bank had Experian reinvestigated the dispute as required by FCRA, 15 U.S.C. § 1681i. The district court's conclusion that a FCRA plaintiff can never allege that this type of dispute is one that a consumer reporting agency must investigate is inconsistent with *Roberts* and with FCRA's text, structure, and purpose.

While purporting to agree that consumer reporting agencies can be held responsible for inaccuracies that are "objectively and readily verifiable," Experian asks this Court to apply that standard in a way that would impose a lesser burden on consumer reporting agencies than furnishers. This Court should reject Experian's argument because it is inconsistent with *Roberts*' reasoning and with the framework that FCRA establishes for ensuring the accuracy of credit reports.

Experian's argument that the McFaddens' allegations failed to satisfy *Roberts* is also wrong. The complaint alleged that Experian incorrectly reported that the McFaddens were late and delinquent on their car loan during the period when the loan was paid off and their

account was closed, and that Experian had the ability to investigate and address that inaccuracy. Experian's contrary argument incorrectly portrays the McFaddens' dispute as raising the same legal question as their separate litigation against TD Bank. But the McFaddens' dispute with Experian did not call on Experian to predict the outcome of that separate legal proceeding—it required only that Experian investigate the status of the McFaddens' auto loan account during the period in which TD Bank had closed the account because their loan was paid in full. Experian's speculation that a hypothetical state law might exist that would speak to this dispute is not a sufficient reason under *Roberts* for Experian to refuse to fulfill its FCRA duties, or for the district court to dismiss the McFaddens' FCRA claims against Experian.

ARGUMENT

I. Whether an inaccuracy in a credit report satisfies *Roberts*' "objectively and readily verifiable" standard does not depend on whether the defendant is a furnisher or a consumer reporting agency.

In *Roberts*, this Court held that a furnisher's duty to reinvestigate disputes under FCRA is triggered when a consumer asserts that a credit report contains an inaccuracy that is "objectively and readily verifiable." 131 F.4th at 253. As the McFaddens' opening brief explained, the *Roberts*

standard applies with equal force to consumer reporting agencies. Br. 19–22. Both furnishers and consumer reporting agencies have a statutory obligation to reinvestigate disputes concerning the “completeness or accuracy” of information, 15 U.S.C. §§ 1681i(a)(1)(A), 1681s-2(b)(1), and it is the statutory language about “completeness or accuracy” to which *Roberts* looked in adopting the “objectively and readily verifiable standard,” *Roberts*, 131 F.4th at 249–50. That FCRA imposes identical standards on furnishers and consumer reporting agencies reflects the fact that the standard governs the exact same dispute: A consumer *must* file a dispute with a consumer reporting agency under section 1681i to trigger a furnisher’s duty to investigate under section 1681s-2, and the furnisher must in turn report the results of its reinvestigation back to the consumer reporting agency. *See* Opening Br. 20–21. And because *Roberts* looked to precedent involving claims against consumer reporting agencies under section 1681e(b), *Roberts*’ analysis applies to claims under that provision as well. *Id.* at 21–22.

Experian does not address any of the foregoing textual or structural arguments. And Experian purports to agree that the *Roberts* standard “applies here.” Response Br. 16. Nonetheless, Experian argues that

“application of [that] standard is sensitive to context,” because “creditors and credit reporting agencies have different roles and duties in investigating consumer disputes under the FCRA,” *id.* at 17 (quoting *Johnson v. MBNA Am. Bank*, 357 F.3d 426, 432 (4th Cir. 2004)). In Experian’s view, “critical distinctions between furnishers and credit reporting agencies affect what is ‘readily verifiable’ for a credit reporting agency in the context of a ‘reasonable’ reinvestigation or ‘reasonable’ process.” *Id.*

Experian’s argument conflates distinct elements of FCRA claims. Although a plaintiff, to state a FCRA claim, must identify an inaccuracy that is “objectively and readily verifiable,” that inaccuracy is not the only element of the claim. For instance, if the plaintiff is challenging the outcome of a completed reinvestigation process under section 1681i, the plaintiff must also allege that the defendant, whether a consumer reporting agency or furnisher, did not “conduct a reasonable investigation.” 15 U.S.C. § 1681i(a)(1)(A) (consumer reporting agencies); *Roberts*, 131 F.4th at 249 (describing the failure to conduct a “reasonable investigation” as an element of a claim against a furnisher).

In assessing the “reasonableness” of an investigation—that is, in evaluating the step *after* determining whether there is an “objectively and readily verifiable” inaccuracy—some courts have considered whether the defendant is a consumer reporting agency or a furnisher. *See Hinkle v. Midland Credit Mgmt.*, 827 F.3d 1295, 1302 (11th Cir. 2016) (“[W]hat constitutes a ‘reasonable investigation’ will vary depending on the circumstances of the case and whether the investigation is being conducted by a [consumer reporting agency] under § 1681i(a), or a furnisher of information under § 1681s-2(b).”). Thus, *Roberts* recognized that “other circuits have observed that furnishers and consumer reporting agencies have distinct functions under the FCRA, and that those functions are relevant when considering what sorts of investigations furnishers and consumer reporting agencies can be expected to undertake.” 131 F.4th at 251 n.6.

Contrary to Experian’s suggestion, Response Br. 17, however, *Roberts* also makes clear that, in adopting the “objectively and readily verifiable” standard, the Court was concerned with the “kind of inaccuracy (or incompleteness) a plaintiff must allege to satisfy the first element of a failure to investigate claim”—that is, that “the plaintiff

submitted a dispute over the accuracy of information.” *Roberts*, 131 F.4th at 249. The Court was not addressing the third element—that is, whether the “furnisher failed to conduct a reasonable investigation.” *Id.* Thus, *Roberts* did not “address any differences between furnishers’ and consumer reporting agencies’ obligations under the FCRA.” *Id.* at 251 n.6. As explained above, *Roberts* textually grounded the “objectively and readily verifiable” standard in the requirement—common to both consumer reporting agencies and furnishers—that a consumer dispute must concern the “completeness or accuracy” of information in a credit report to trigger the indirect dispute process. *Id.* at 249–50. And *Roberts* looked to precedent “deal[ing] with consumer reporting agencies, not furnishers” in adopting that standard. *Id.* at 251 n.6. To be sure, the *Roberts* standard is “consistent with” the requirement that “an investigation into the accuracy and completeness of information in a credit report must be reasonable.” *Id.* at 251 (citing *Johnson*, 357 F.3d at 430–31. But the *Roberts* standard addresses the type of inaccuracy that a consumer may dispute under section 1681i, rather than the reasonableness of the procedures that a consumer reporting agency or a furnisher uses to investigate an inaccuracy.

Experian's argument that *Roberts* should apply differently to consumer reporting agencies and furnishers would make the reinvestigation process incoherent. *Roberts* concerned a furnisher's obligation to investigate consumer disputes under section 1681s-2(b), but that duty arises only after a consumer reporting agency receives the dispute under section 1681i(a)(1)(A) and transmits that dispute along with "all relevant information" to the furnisher. 15 U.S.C. § 1681i(a)(2)(A). Under Experian's view that *Roberts* applies differently to consumer reporting agencies and furnishers, a consumer reporting agency could decline to begin the reinvestigation process because the inaccuracy is not "objectively and readily verifiable" as to it, even where the furnisher could objectively and readily verify the information. Experian offers no reason why Congress would have enacted such a peculiar scheme.¹

¹ With respect to section 1681e, this Court has similarly recognized that it "serve[s] the same purpose" as section 1681s-2 of "ensuring accuracy in consumer credit reporting" and that a consumer reporting agency "can best fulfill its obligation to report accurately under § 1681e if it receives accurate information from a furnisher under § 1681s-2." *Saunders v. Branch Banking & Tr. Co. of Va.*, 526 F.3d 142, 148 n.3 (4th Cir. 2008). Thus, "the same standard of accuracy" applies to both provisions. *Id.*

This case highlights what Experian's argument would mean in practice. If Experian had complied with its duties under section 1681i upon receiving the McFaddens' dispute letters, it would have notified TD Bank of the dispute, 15 U.S.C. § 1681i(a)(2); received the results of TD Bank's investigation, *id.* § 1681s-2(b); made a decision about whether to delete or modify the disputed information, *id.* § 1681i(a)(5)(A); and, critically, provided the McFaddens with "a statement that the reinvestigation is completed" and a notice that the McFaddens could request a "description of the procedure used to determine the accuracy and completeness of the information," *id.* § 1681i(a)(6)(B). Each of these mandatory procedures is distinct from Experian's duty to "review and consider all relevant information submitted by the consumer" and "conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate." *Id.* § 1681i(a)(1)(A), (4).

Here, the McFaddens alleged that Experian failed to notify them of the results of any reinvestigation, as required by section 1681i(a)(6)(B). *See* Compl. ¶ 47 (JA 29). Experian's response is that "even if credited," this claim "adds nothing" because "[t]o get off the ground, such a claim also requires an underlying allegation of an actionable inaccuracy."

Response Br. 34. But that is exactly the problem: The *Roberts* standard dictates whether consumer reporting agencies will have to undertake the reinvestigation process and whether consumers will be able to seek redress against either consumer reporting agencies *or* furnishers if either fails to carry out their FCRA responsibilities. Given the statutory framework, it makes little sense to hold that the *Roberts* standard means one thing when applied to consumer reporting agencies and another when applied to furnishers.

Experian's remaining arguments are nothing more than rehash of arguments addressed in *Roberts*. Experian argues that consumer reporting agencies should not be required to address disputes that implicate legal issues. *See* Response Br. 16, 18, 21. But *Roberts* squarely holds that "both legal and factual disputes can form the basis of a § 1681s-2(b) claim," 131 F.4th at 252, and Experian identifies nothing in FCRA's text that would justify a different rule for claims against consumer reporting agencies. Experian also insists that consumer reporting agencies are not "tribunals" like courts of law. Response Br. 16, 20. But as *Roberts* recognizes, "[f]urnishers are not tribunals" either, yet they "can investigate disputes about 'objectively and readily verifiable'

information.” *Roberts*, 131 F.4th at 251. Consumer reporting agencies are fully capable of doing so as well, by following the procedures that Congress set out in section 1681i.

For these reasons, the Court should reject Experian’s argument that the *Roberts* standard applies differently to consumer reporting agencies and furnishers.

II. The McFaddens’ complaint satisfies *Roberts*.

In dismissing the McFaddens’ FCRA claims against Experian, the district court did not reject the McFaddens’ allegation that Experian’s reporting of their auto loan as past due and delinquent was inaccurate. Order at 5 n.3 (JA 7). As the complaint alleged, because the dealership mistakenly paid off their car loan, “their auto payment had been cancelled and TD Bank reported to the credit bureaus that the loan had been paid and satisfied with a \$0 balance.” Compl. ¶ 13 (JA 21). But even though the McFaddens’ account had been closed and “they no longer could make payments” on the loan, *id.* ¶ 17 (JA 22), TD Bank “reported to Experian that the account was in default and charged off as a bad debt.” *Id.* ¶ 14 (JA 21).

Experian correctly does not dispute that an inaccurate statement on a credit report that a borrower is late on loan payments is an inaccuracy that can give rise to a FCRA claim. *See Guthrie v. PHH Mortg. Corp.*, 79 F.4th 328, 345 (4th Cir. 2023); Opening Br. 23–24. Experian argues, however, that the McFaddens’ dispute about that inaccuracy is “not objectively and readily verifiable *by Experian as a credit reporting agency*.” Response Br. 21 (formatting altered, emphasis added). As explained above, however, the Court’s analysis in *Roberts* refutes Experian’s argument that application of the *Roberts* standard depends on whether the FCRA defendant is a consumer reporting agency or a furnisher. Thus, if the inaccuracy in the McFaddens’ credit report would have been objectively and readily verifiable as to TD Bank, it also would have been objectively and readily verifiable as to Experian.

In any event, the McFaddens adequately alleged an objectively and readily verifiable inaccuracy under any plausible application of *Roberts*. As the opening brief explained, the McFaddens alleged that they provided Experian with detailed information about the events that caused TD Bank to regard their auto loan account as paid in full and therefore to refuse payment. *See* Opening Br. 25–26, 29–31. Further, the

McFaddens alleged that Experian's own account data could and would confirm the McFaddens' description of events. *Id.* And Experian would have been able to rely on TD Bank's report of its investigation as a furnisher to verify the McFaddens' claim. *Id.* at 30–31 (citing 15 U.S.C. § 1681i(a)(2)). Because the McFaddens' allegations must be taken “as true,” *Gelin v. Maryland*, 132 F.4th 700, 713 (4th Cir. 2025), the district court should have denied Experian's motion for judgment on the pleadings, rather than hold as a matter of law that the inaccuracy about the McFaddens' past due and delinquent status was (incurably) not objectively and readily verifiable. *See* Opening Br. 26–27.

Experian's arguments to the contrary rest on a misapplication of the *Roberts* standard and a mischaracterization of the McFaddens' allegations. Contrary to Experian's contention, the dispute that the McFaddens presented to Experian did not concern their responsibility to pay off the loan *after* the bank corrected the inadvertent payment of their car loan. As Experian notes, the McFaddens and TD Bank are litigating

that question in separate proceedings. *See* Response Br. 23–24.² The McFaddens’ dispute with Experian concerns *Experian’s* decision to report the McFaddens as late and delinquent on their car payments for the period *before* TD Bank refunded the improper payment to the dealership—a period of time when the loan was paid in full, the account was closed, and they could not have made any additional payments even if they wanted to do so. *See* Opening Brief 27.

Experian argues that resolving the McFaddens’ dispute would require it to decide “contested questions of contract law.” Response Br. 22; *see also id.* at 25 (arguing that the McFaddens’ dispute letters asked Experian “to offer a ‘legal opinion on the merits’ of a state-law contract claim” between the McFaddens and TD Bank). But if the allegations in the McFaddens’ complaint are taken as true, as they must be at this

² On September 7, 2026, an arbitrator determined that the McFaddens did not breach their contract with TD Bank because neither Maryland law nor TD Bank’s contract with the McFaddens authorized TD Bank to unilaterally reinstate a paid-off loan. The arbitrator concluded that TD Bank’s remedy, if any, must lie in a claim for unjust enrichment. *McFadden v. TD Bank, N.A.*, No. 01-26-0000-4985 (Am. Arbitration Ass’n Sept. 7, 2026). Although the arbitration ruling does not resolve the McFaddens’ FCRA claim against Experian, we have lodged it as an attachment to this reply brief for the Court’s awareness.

stage, there were no contested questions of contract law for Experian to resolve to verify that the McFaddens' "failure to pay" a paid-off loan that was closed by the lender "does not reflect financial irresponsibility." *Saunders*, 526 F.3d at 150.

Experian also argues that the McFaddens' dispute was not objectively and readily verifiable because "the decisionmaker must get the parties to come forward with relevant facts and resolve any material disputes." Response Br. 22. As part of the reinvestigation process under section 1681i, however, a consumer reporting agency must "review and consider all relevant information submitted by the consumer," 15 U.S.C. § 1681i(a)(4), and give the furnisher an opportunity to conduct its own investigation and report the results back to the consumer reporting agency, *id.* §§ 1681i(a)(2)(A), 1681s-2(b)(1). Thus, while Experian is correct that resolving the McFaddens' dispute would require it to "examine each document" the McFaddens submitted with their dispute letters, Response Br. 24, that is exactly what FCRA requires. Moreover, Congress directed that, at the end of the reinvestigation process, the consumer reporting agency must make a decision: either retain the disputed information on the credit report or, if the disputed "item of the

information is found to be inaccurate or incomplete or cannot be verified,” delete or modify it “based on the results of the reinvestigation.” 15 U.S.C. § 1681i(a)(5)(A)(i). Congress thus provided Experian a means by which it can gather information to resolve consumer disputes and imposed on Experian a duty to resolve them. Experian’s failure to fulfill its statutory responsibility is not excused by later-filed litigation between the McFaddens and TD Bank. *See* Response Br. 23–24.

Contrary to Experian’s suggestion, *id.* at 25, “legal training” was not required to resolve the question whether TD Bank had closed the McFaddens’ account during the period when their auto loan had been fully paid off. Experian only needed to check its own database and review the results of the investigation that TD Bank should have undertaken under section 1681s-2(b) as the furnisher of the disputed information. *See* Opening Br. 29–31. As the complaint alleges, Experian’s own documents and records confirmed and verified what the McFaddens’ documents proved: that the account had been paid and closed and the account was reporting that entire time as closed with a \$0 balance. Compl. ¶¶ 15, 17, 21 (JA 21–23). The McFaddens do not argue that Experian should have investigated their dispute using “Experian’s account data alone,”

Response Br. 26, but rather that information from the McFaddens, from its own data, and from TD Bank were sufficient to enable it to objectively and readily verify the inaccuracy on the McFaddens' credit reports. Experian's contention that it may have needed to "engage in 'quasi-discovery'" and could not have obtained information from TD Bank without "subpoena authority" is makeweight. Response Br. 25. Nothing in the McFaddens' complaint suggested that Experian was required to engage in fact-gathering steps beyond what FCRA requires, and Experian did not need to do any legal analysis to resolve the facts.

Ultimately, Experian's attempt to escape its FCRA responsibility rests on the contention that the disputed information in the McFaddens' credit reports might be accurate *if* a state law exists that would deem the McFaddens responsible for continuing to make timely loan payments after the loan was (mistakenly) paid in full and TD Bank closed the account and refused payment. Stated another way, Experian argues that its own ignorance of the existence of such a law is a sufficient basis for concluding that the inaccuracy about the McFaddens' delinquent status was not "objectively and readily verifiable." *Roberts* holds, however, that indirect disputes can implicate "both legal and factual disputes," 131

F.4th at 252, and thus forecloses the argument that an inaccuracy is not “objectively or readily verifiable” simply because it raises a legal question. Rather, under *Roberts*, a legal question would not be “objectively and readily verifiable” if it requires “in-depth legal analysis of the sort that courts would typically perform,” implicates “unsettled questions of law,” or presents some other basis for concluding that a reasonable investigation would “resemble full court proceedings.” *Id.* at 251. Any inquiry into whether there exists a state law that speaks to a particular dispute would not require Experian to engage in any of these court-like activities.

In sum, although Experian attempts to shift the focus, the McFaddens did not ask Experian to determine the validity of any debt they owed to TD Bank after TD Bank decided to refund the money. Instead, they challenge Experian’s reporting that they were late with payments and delinquent on their auto loan during the period when TD Bank had closed the account and prevented them from making payments. No payments were owed during that period, nor could they have been owed since TD Bank was in possession of the full amount of the payoff

the entire time. The district court erred when it concluded that the McFaddens failed to plead valid FCRA claims against Experian.

III. Experian's reading of *Roberts* would rewrite FCRA to curtail consumer reporting agencies' responsibilities to ensure that their credit reports are accurate.

Since its 1970 enactment, FCRA has imposed on consumer reporting agencies the duties to “assure maximum possible accuracy” and to reinvestigate consumer disputes. Fair Credit Reporting Act, Pub. L. No. 91-508, tit. VI, sec. 601, §§ 607(b), 611, 84 Stat. 1127, 1131–32 (1970). Experian seeks to diminish its responsibilities by placing the primary burden of addressing consumer disputes on furnishers. *See* Response Br. 1–2, 11, 17–19, 31. Congress, however, did not impose a duty on furnishers to investigate consumer disputes until 1996. *See* Consumer Credit Reporting Reform Act of 1996, Pub. L. No. 104-208, div. A, tit. II, subtit. D, ch. 1, § 2413, 110 Stat. 3009-426, 3009-447. Moreover, although that 1996 amendment to FCRA permitted consumers to submit disputes directly with furnishers, consumers cannot enforce a furnisher's duty to investigate direct disputes. 15 U.S.C. §§ 1681s-2(a)(8), (c)(1). Thus, even after the 1996 amendment, consumer reporting agencies retain their central role in ensuring that the consumer reports they prepare are “fair

and equitable to the consumer, ... with regard to the ... accuracy” of the information they contain. 15 U.S.C. § 1681(b).

As the McFaddens have explained, *see* Opening Br. 33–38, the district court’s aggressive application of *Roberts*’ “objectively and readily verifiable” standard unduly diminishes consumer reporting agencies’ FCRA duties with respect to information that they include in their consumer reports—including, as here, the basic factual question whether consumers are late in making payments. For instance, as Experian acknowledges, if disputed information is not “readily verifiable” under *Roberts*, then a consumer reporting agency’s duty at the end of a reinvestigation to delete or modify information that “cannot be verified” will never be triggered. *See* Response Br. 31 (quoting 15 U.S.C. § 1681i(a)(5)(A)).

Similarly, Experian seeks to escape its reinvestigation responsibilities by asserting ignorance about the existence of state laws that hypothetically could make the McFaddens responsible for making payments during a period when the loan was paid off and the loan account was closed. Experian thus argues that it should be entitled to retain inaccurate trade line data on a consumer’s credit report without

any investigation because the terms of some unidentified state law claim could make it accurate. If accepted, that argument would enable consumer reporting agencies to continue reporting adverse information about a consumer's payment history even if, had the reinvestigation process been followed, a furnisher's investigation under section 1681s-2(b) would have confirmed that no such state law exists and that the consumer's dispute was valid. If a consumer reporting agency could avoid its FCRA responsibilities by pleading ignorance of the existence of state laws, then, contrary to *Roberts'* admonition, "the scope of an investigation" would be "limited to confirming accurate transcription of a debt's amount or the name of the debtor." 131 F.4th at 251–52. Although Experian denigrates this concern as a mere "policy argument[]," Response Br. 29, the potential for this outcome strikes at the heart of FCRA's "goal" of "ensur[ing] fair and accurate credit reporting," *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 60 (2024) (alteration in original) (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007)).

Experian insists that its application of *Roberts* would not mean that "a furnisher's mere insistence that a debt is owed" would "place[] a

dispute beyond the reach of FCRA.” Response Br. 30. But if Experian’s argument is taken at face value, a consumer reporting agency would never be required to modify or delete credit report information that is the subject of a disagreement between a consumer and the furnisher, lest it be viewed as “perform[ing] ‘analysis of the sort that courts would typically perform.’” *Id.* at 31 (quoting *Roberts*, 131 F.4th at 251). Indeed, a consumer reporting agency would never need to begin the reinvestigation process and notify the furnisher of the dispute, because, under the *Roberts* standard, consumer reporting agencies (and furnishers) have *no* FCRA obligations with respect to inaccuracies that are not “objectively and readily verifiable.” For instance, although section 1681i provides a procedure by which a furnisher can certify that information that cannot be verified “is complete and accurate,” 15 U.S.C. § 1681i(a)(5)(B)(i), a consumer reporting agency need never utilize that process if, as Experian suggests, a consumer reporting agency is never responsible for resolving contested facts. Thus, if the district court is correct that the McFaddens’ allegations are incurably insufficient as a matter of law, even if TD Bank had investigated the McFaddens’ dispute and agreed fully with the McFaddens’ version of the facts, Experian and

TD Bank could continue to report the McFaddens as late or delinquent on their loan payments (in order to, for instance, induce the McFaddens to settle their dispute with TD Bank). That cannot be correct.³

Experian relies on *Guthrie*, 79 F.4th 328, as an example of an objectively and readily verifiable inaccuracy that would satisfy *Roberts*, see Response Br. 30, but *Guthrie* cuts against Experian's position. There, the Court concluded that a furnisher, after receiving notice of an indirect dispute from a consumer reporting agency, had a duty to correct not only current delinquencies but also past delinquencies. See *Guthrie*, 79 F.4th at 345. The furnisher was aware that the consumer's debt was discharged in bankruptcy because it had received a copy of the discharge order

³ As explained in the opening brief, Opening Br. 31 n.5, the district court erred in relying on a TD Bank letter filed in the separate *Equifax* lawsuit to dismiss the McFaddens' claims against Experian. Experian nonetheless relies on that letter in arguing that TD Bank "defended the accuracy of its credit reporting" by promising the McFaddens that it would "backdate all payments to clear the negative credit reporting" if the McFaddens brought the account current. Response Br. 7 (citing Order 2 n.1 (JA 4)). TD Bank admitted in that letter, however, that "[b]ecause the account was closed, [it] could no longer apply payments to the account" during the period when the loan was paid off. Order 2 n.1 (JA 4). Moreover, the letter does not identify any state law that Experian now suggests might have made the McFaddens responsible for paying the loan during the period that the account was closed.

directly from the Bankruptcy Court. *Id.* at 334–35. But because *Guthrie* involved an indirect dispute (as required for the consumer to be able to sue), the furnisher’s duty arose only because the consumer reporting agency had a duty to investigate the consumer’s dispute. *See id.* at 245 & n.15. Under the application of *Roberts* that Experian advances here, however, the consumer reporting agency’s duty in *Guthrie* to send the dispute to the furnisher might never have been triggered if, as Experian suggests, “critical distinctions between furnishers and credit reporting agencies affect what is ‘readily verifiable.’” Response Br. 17. A proper application of the *Roberts* standard to consumer reporting agencies and furnishers alike is critical for FCRA’s framework for promoting accuracy in credit reporting to function.

CONCLUSION

This Court should reverse the judgment of the district court and remand for further proceedings.

October 20, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Reply Brief for Appellants complies with the type-style and type-volume limitations of Federal Rules of Appellate Procedure 32(a)(5), (6), and (7)(B). The brief is composed in a 14-point proportional typeface, Century Schoolbook. As calculated by my word processing software (Microsoft Word 365), the brief (excluding those parts permitted to be excluded under the Federal Rules of Appellate Procedure and this Court's rules) contains 4978 words.

/s/ Nandan M. Joshi

Nandan M. Joshi

ATTACHMENT

AMERICAN ARBITRATION ASSOCIATION
Case Number: 01-26-0000-4985

	)	
Alicia McFadden and	)	
Chauvon McFadden,	)	
	)	
Claimants,	)	
	)	
v.	)	ORDER ON CLAIMANTS’ MOTION
	)	TO DISMISS COUNTERCLAIM AND
TD Bank, N.A.,	)	RESPONDENT’S DISPOSITIVE
	)	MOTION ON COUNTERCLAIM
Respondent.	)	
	)	

This matter comes before the Arbitrator on Claimants’ Motion to Dismiss Respondent’s Counterclaim and Respondent’s Dispositive Motion as to its Counterclaims. These motions are essentially two sides of the same coin – both seeking dispositive resolution of Respondent’s claims for recovery of amounts it claims are due from Claimants. The parties have extensively briefed the issues with principal briefs filed on July 27, 2026, oppositions on August 17, 2026, and replies on August 28, 2026. Having considered the parties’ submissions, the overall case record, and the controlling law, the Arbitrator rules as follows:

The Counterclaim asserts Count I for breach of contract and Count II for unjust enrichment. At the center of both counts is this series of transactions:

- (i) Claimants entered into a contract with Mercedes Benz of Hunt Valley (“MBHV”) to purchase a 2020 Mercedes Benz GLS (“the GLS”) that was ultimately financed by Respondent TD Bank (“Respondent” or “TD”);
- (ii) over two years later, Claimants entered into a second transaction with MBHV for the purchase of a Mercedes Benz truck that was financed in part with a trade-in of the GLS;

(iii) in conjunction with the trade-in, MBHV made a payment of \$43,875.33 to TD to pay off the remaining balance on the GLS, causing TD to refund an excess payment to Claimants, close the loan account, release its lien on the GLS, and provide notice of clear title to Claimants;

(iv) shortly after the truck purchase, and unbeknownst to TD at the time, the truck transaction was modified to eliminate the trade-in of the GLS;

(v) about seven months after the trade-in elimination, MBHV requested that TD return the \$43,875.33 payment, and TD contacted Claimants regarding the return of the payment and reinstatement of the account, which TD now claimed was past due;

(vi) about two months after MBHV's request, TD paid the \$43,875.33 back to MBHV; and

(vii) TD has consistently asserted that the GLS loan account was reopened and past due.

Claimants did not make any payments on the loan for the GLS after they received notice of the account closure and lien release.

Respondent argues that its return of the \$43,875.33 payment reinstated the purchase contract on the GLS, enabling TD to invoke the full panoply of its rights under the contract, including interest, penalties, and recovery of attorney's fees. Alternatively, Respondent asserts, it is entitled to equitable relief because Claimants have been unjustly enriched by the payment back to MBHV and have effectively received a \$38,216.85 windfall (the \$61,684.77 amount financed on the GLS minus the \$23,467.92 in payments Claimants made).

Claimants argue that the purchase contract on the GLS was closed when TD marked it as such and gave free title to Claimants, that TD's voluntary payment to MBHV did not reinstate the contract, and that both TD and MBHV slept on their rights in not taking steps to obtain payment from Claimants at the time the trade-in was withdrawn. Claimants also make much of

Respondent's failure to formally plead that TD actually made the payment back to MBHV.¹ They also argue that a claim for unjust enrichment is legally barred by the parties' express written contract and by the statute of limitations.

The Arbitrator finds that the breach of contract claim fails as a matter of law. Under Maryland law, which governs the contract for purchase of the GLS, TD did as it was required to do, closing out the contract and marking it fully paid when it received the \$43,875.33 payment from MBHV. *See* Md. Com. Law § 12-1024(b). Section 12-1024(b)(i) clearly states that full payment of a consumer loan requires the creditor to treat the "*loan*" as "paid" or "canceled" and to inform the consumer in writing that "the *loan* has been paid in full." *Id.* (emphasis added). The statute requires closure of *the loan*, not just a release of the lien securing the loan as Respondent argues.

There is nothing in the contract giving TD the right unilaterally to reinstate it once closed, nor has Respondent cited any legal authority for such a right. The Arbitrator is not convinced by Respondent's argument that this case is analogous to ones where a sales contract is mistakenly closed due to a final payment being applied to the wrong account or where a payment was made via check on an account with insufficient funds. Here, there was an actual payment made with the intention of closing the GLS loan account. Further, Respondent has not made any showing that it was legally required to make the re-payment to MBHV. TD voluntarily returned the payment to MBHV some nine months after reversal of the trade-in, and it consciously chose to relinquish the funds it had received to satisfy Claimants' debt. Even taking MBHV's request for the \$43,875.33 re-payment as the point of TD's first notice of the trade-in reversal, TD had ample time (the intervening two months until the re-payment was actually made) to address the

¹ The Arbitrator rejects this argument because strict rules of pleading do not apply in arbitration. Further, it is clear from the record that TD in fact repaid the \$43,875.33 back to MBHV.

matter with both MBHV and Claimants. TD could have re-negotiated new terms with Claimants, withheld the re-payment and told MBHV to pursue the issue with Claimants, or taken whatever other steps it deemed appropriate to address the matter. Count I of the Counterclaim will be dismissed.

Notwithstanding the dismissal of Count I, the Arbitrator finds that Respondent has stated a valid claim for unjust enrichment. Such a claim requires a showing of “(1) a benefit conferred upon the defendant by the plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.” *Swedish Civil Aviation Admin. v. Project Mgmt. Enters., Inc.*, 190 F. Supp.2d 785, 792-93 (D. Md. 2002). A “benefit” to the defendant is “anything that in any way adds to the other’s security or advantage.” *Lacks v. Ultragenyx Pharm., Inc.*, 734 F.Supp.3d 397, 437 (D. Md. 2024) (quotation marks and citation deleted). Unjust enrichment is an equitable remedy that is applied “when an enforceable contract does not exist but fairness dictates that the plaintiff receive compensation” *Dunnaville v. McCormick & Co., Inc.*, 21 F.Supp.2d 527, 535 (D. Md. 1998).

It is beyond question that Claimants have received a benefit from Respondent – the \$38,216.85 difference between the amount financed and the amount they have paid on the loan for the GLS.² Claimants have known of this benefit since when the trade-in was reversed – or at the very latest since TD contacted them about MBHV’s request for re-payment. They have known that TD’s refund to MBHV paid the remaining balance on the GLS. Finally, Claimants

² Damages for an unjust enrichment claim are based on restitution – a return to the plaintiff of the value of the benefit it bestowed on the defendant. *Mogavero v. Silverstein*, 79 A.2d 43, 52 (Md. Spec. App. 2002).

have received this benefit without making any payments to TD for it, and it would be manifestly inequitable for them to retain such a substantial windfall for free.

The Arbitrator is not convinced by Claimants' argument that a claim for unjust enrichment cannot be brought because of the parties' written contract. That principle does not apply where, as here, the existence of the contract is in dispute. *Swedish Civil Aviation*, 190 F.Supp.2d at 792. Unjust enrichment may be asserted as an alternative remedy where that is the case. Moreover, as Claimants have argued and the Arbitrator has found, the contract for purchase of the GLS has been extinguished.

Likewise, the Arbitrator does not find that the unjust enrichment claim is untimely. The claim arises out of the same transaction as the breach of contract claim and is asserted as an alternative cause of action. Once the underlying Loudoun Circuit Court action was stayed, Respondent asserted the unjust enrichment claim at the first opportunity – along with its answer filed in response to Claimants' Demand initiating this arbitration. The claim does not raise new issues, require new evidence, or prejudice Claimants. In light of these facts, under either Virginia or Maryland law, the filing of the unjust enrichment claim relates back to the filing of the original contract breach action and is not untimely. *See* VA Code § 8.01-6.1; *Crowe v. Houseworth*, 325 A.2d 592, 597 (Md. 1974).

Accordingly, Count II of the Counterclaim will remain in the case.

For all of the foregoing reasons, both Claimants' Motion and Respondent's Motion are granted in part and denied in part, and

- (1) Count I of the Counterclaim is dismissed with prejudice;
- (2) Count II of the Counterclaim will remain in the case.

SO ORDERED:



September 7, 2026

Mark E. Baker, Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on October 20, 2026, the foregoing was served through the Court's ECF system on counsel for all parties.

/s/ Nandan M. Joshi

Nandan M. Joshi