IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 00-15946

TOBY NELSON,
Plaintiff-Appellant,

v.

CHASE MANHATTAN MORTGAGE CORPORATION, *et al.*,
Defendant-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

BRIEF OF THE FEDERAL TRADE COMMISSION AS *AMICUS CURIAE*, SUPPORTING APPELLANT AND URGING REVERSAL

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INTEREST OF THE FEDERAL TRADE COMMISSION

The Fair Credit Reporting Act ("FCRA" or "the Act"), 15 U.S.C. §§ 1681 *et seq.*, seeks to ensure the "[a]ccuracy and fairness of credit reporting." 15 U.S.C. § 1681(a). In recognition of the importance of such accuracy and fairness to the interests of individual consumers and to the efficient functioning of the banking system, Congress imposed obligations both on consumer reporting agencies (CRAs) such as credit bureaus that compile consumer reports, and on creditors and others who provide information to those agencies. *See*, *e.g.*, 15 U.S.C. § 1681(b) (requiring CRAs to "adopt reasonable procedures" for credit reporting, "in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information"); 15 U.S.C. § 1681s-2 (requiring furnishers of information to provide accurate information and to investigate and report the results of all disputes regarding such accuracy).

Congress has entrusted the Federal Trade Commission ("FTC" or "the Commission") with primary responsibility for governmental enforcement of the FCRA as it applies to CRAs and those who furnish information to them. 15 U.S.C. § 1681s. The Act states that any violation of the FCRA "shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C. § 45(a)] and shall be subject

to enforcement by the Federal Trade Commission under section 5(b) thereof [15 U.S.C. § 45(b)] * * * ." 15 U.S.C. § 1681s(a)(1). The Commission regularly brings enforcement actions pursuant to that authority.[1] It has issued interpretive guidance regarding various aspects of the Act's requirements. 16 C.F.R. Part 600. In light of the Commission's key role administering the FCRA, this Court has found it appropriate to defer to the Commission's analysis of the Act's provisions. *See Ollestad v. Kelley*, 573 F.2d 1109, 1111 (9th Cir. 1978).

The Commission also recognizes, however, the importance of private enforcement actions as a vital additional means of securing compliance with the FCRA's requirements. Congress has provided broad authority for consumers to seek damages for the violation of the FCRA by "any person." 15 U.S.C.

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[1] Recently, for example, the Commission initiated three actions against the major consumer reporting agencies, to correct failures to provide adequate consumer access for inquiries about credit report errors. *See United States v. Equifax Credit Information Servs., Inc.*, No. 1:00-CV-0087 (N.D. Ga. Jan. 26, 2000); *United States v. Experian Information Solutions, Inc.*, No. 3-00CV0056-L (N.D. Tex. Jan. 20, 2000); *United States v. Trans Union LLC*, No. 00C 0235 (N.D. Ill. Jan. 24, 2000). Those actions resulted in consent judgments including injunctive relief and the payment of $2.5 million in civil penalties. *Id.*; *see* Press Release, Nation's Big Three Consumer Reporting Agencies Agree To Pay $2.5 Million To Settle FTC Charges of Violating Fair Credit Reporting Act, available at: http://www.ftc.gov/opa/2000/01/busysignal.htm.

§§ 1681n, 1681o. In the present case, a district court has improperly precluded consumers from invoking such remedies with respect to any and all FCRA violations committed by entities that furnish credit information to CRAs, including failures to correct errors brought to their attention. This holding flies in the face of clear statutory language, and will, if upheld, seriously weaken the enforcement of the Act. Especially since the district courts have reached conflicting decisions on this point, and this Court's ruling will likely be the first appellate precedent, the outcome of this case is of great importance to the Commission.

ISSUE PRESENTED FOR REVIEW

Whether a private right of action, created by Sections 616 and 617 of the FCRA, 15 U.S.C. §§ 1681n, 1681o, may be based on a violation of the requirements of Section 623(b) of the Act, 15 U.S.C. § 1681s-2(b).

STATEMENT OF THE CASE

Plaintiff Toby Nelson brought this action against defendant Chase Manhattan Mortgage Corporation ("Chase"), alleging that Chase violated Section 623(b) of the Act, 15 U.S.C. § 1681s-2(b), by failing to take appropriate steps to address Mr. Nelson's dispute regarding information Chase had furnished to the major CRAs. *See* Third Supplemental Complaint ("3d Compl."), ¶ 24, ER 22-

23.[2] As alleged in the complaint, this claim arises out of the following facts. In 1998, plaintiff took out a mortgage with a cosigner who later filed for bankruptcy. Plaintiff was the primary obligor on the mortgage and made all payments in full and in a timely manner, even after his cosigner declared bankruptcy. After having some trouble being approved for credit, plaintiff obtained a copy of his credit report from Experian, one of the three major CRAs in the U.S., and discovered that Chase had reported to Experian that his account was "included in or discharged through bankruptcy chapter 7, 11 or 12." 3d Compl., Exh. 1, ER 26. After Mr. Nelson disputed the accuracy of Chase's reported information by sending a letter to both Chase and Experian, Chase informed him that its internal operating procedures required this notation in order "to prevent contact with the party(ies) involved in violation of the bankruptcy laws." 3d Compl., ¶ 10 & Exh. 2, ER 20, 27. Chase then slightly changed the information it reported to Experian, so that the relevant notation reflected that only one of the parties to the mortgage had filed for bankruptcy. Plaintiff contends, however, that Chase's actions did not deal with the problem adequately, and that he has continued to experience difficulty in obtaining credit.

[2] "ER" refers to the Excerpts of Record filed by plaintiff-appellant.

3d Compl., ¶¶ 11-14, ER 20-21. Plaintiff further claims that Chase failed to send corrective notices to another consumer reporting agency. 3d Compl., ¶¶ 15-17, ER 21. Plaintiff contends that all of these alleged failures constituted violations of Section 623(b) of the FCRA, 15 U.S.C. § 1681s-2(b). 3d Compl., ¶ 24, ER 22-23.

Chase moved to dismiss. Chase argued, *inter alia*, that Section 623 of the Act creates a duty "only * * * to the consumer reporting agency," and that a consumer therefore cannot assert a cause of action to enforce the requirements of the section. Chase Motion to Dismiss, Apr. 5, 1999, Dkt. No. 4, at 7.

The district court granted the motion to dismiss, stating that:

> [n]either party has cited, and the Court has not been able to locate, any case which confers a private right of action for alleged violations of § 1681s-2(b) by a furnisher of information to a credit reporting agency.

Order, Apr. 14, 2000, at 3, ER 41. Plaintiff moved for reconsideration, citing two recent district court cases that have recognized the availability of a private right of action for violations of Section 623(b). *See DiMezza v. First USA Bank, Inc.*, __ F. Supp. 2d __, 2000 WL 708458 (D.N.M. May 1, 2000); *Campbell v. Baldwin*, 90 F. Supp. 2d 754 (E.D. Tex. 2000); *see also McMillan v.*

Experian Information Servs., Inc., No. 3:99cv1481 (D. Conn. July 18, 2000)[3] (not cited below, but reaching same result); *Dornhecker v. Ameritech Corp.*, 99 F. Supp. 2d 918 (N.D. Ill. 2000) (same). Despite these holdings, the court below denied plaintiff's motion for reconsideration, stating that "[t]he court decision in the district of New Mexico does not constitute controlling authority." Order, May 16, 2000, ER 43-44.

[3] For the Court's convenience, we include as an addendum a copy of this case, as well as another cited case that is not yet reported or available on electronic services.

ARGUMENT

I. The Plain Language of the Statute Provides for a Private Cause of Action to Enforce Section 623(b).

The district court's rationale for rejecting plaintiff's claim — the lack of "controlling [judicial] authority" that "confers a private right of action" for violations of Section 623(b) — not only ignores a number of district court decisions that have recognized such a right, but neglects the primacy of statutory language. It is Congress, not the courts, that "confers" a federal statutory cause of action. As in any matter of statutory interpretation, the inquiry begins (and often ends) "with the plain meaning of the statute's language." *See Botosan v. Paul McNally Realty*, __ F.3d __, 2000 WL 781015 at *3 (9th Cir. June 20, 2000) (citing *United States v. Alvarez-Sanchez*, 511 U.S. 350, 356 (1994)). Where, as here, Congress has clearly and expressly provided for a private right of action, no prior case law is necessary.

In the present case, the language creating the private cause of action could hardly be more clear. Sections 616 and 617 of the Act, 15 U.S.C. §§ 1681n, 1681o, expressly create private damage actions for, respectively, willful and negligent violations of the FCRA. In the parallel language of those sections, "*[a]ny person*" who fails "to comply with *any requirement* imposed under [the

FCRA] *with respect to any consumer* is liable *to that consumer* * * * ." (Emphasis added.)

Section 623 of the Act, 15 U.S.C. § 1681s-2, imposes two distinct sets of obligations on persons who (like Chase) furnish information to CRAs. Section 623(a) imposes broad duties on such furnishers to refrain from knowingly reporting erroneous information, to correct and update furnished information, and to provide various types of notice. Section 623(b) imposes further obligations, which are triggered only upon a dispute regarding the completeness or accuracy of particular information that a person has furnished to a CRA. In such instances, the furnisher is required to conduct an investigation, review all relevant information, and report the results of the investigation to CRAs. In the present case, plaintiff has alleged that Chase failed to fulfill its obligations under Section 623(b). *See* 3d Compl., ¶ 24, ER 22-23.

Section 623 does not itself contain language creating private remedies, but recognizes the facial applicability of Sections 616 and 617 by *selectively limiting* their effect. Specifically, Section 623(c), 15 U.S.C. § 1681s-2(c), provides that Sections 616 and 617 "do not apply to any failure to comply *with subsection (a)*," apart from certain state enforcement proceedings not pertinent here. (Emphasis added.) Section 623(d), 15 U.S.C. § 1681s-2(d), further

confirms the limitation on enforcement of the provisions of subsection (a), by stating that it "shall be enforced exclusively under [15 U.S.C. § 1681s] by the Federal agencies and officials and the State officials identified in that section." Neither Section 623(c) nor Section 623(d) contains any words that limit the availability of Section 616 and 617 private remedies with respect to violations of *subsection (b)* of Section 623.

Application of these provisions clearly shows that the district court erred in failing to recognize the availability of a private right of action based on violations of Section 623(b). As an acknowledged furnisher of information to CRAs, Chase plainly qualifies as "any person" under Sections 616 and 617, and just as plainly has statutory duties under Section 623. In the present case, Mr. Nelson is a "consumer" who alleges that Chase has willfully or negligently failed to comply with its Section 623(b) obligations, "with respect to" his complaint. If these allegations are sustained, Sections 616 and 617 expressly make Chase liable in damages "to that consumer," unless some other provision of the Act limits their application. And while Section 623(c) carves out the general duties of Section 623(a) from private damage liability, it does nothing to foreclose the application of Sections 616 and 617, according to their express terms, to violations of the specific dictates of Section 623(b).

II. Well-Reasoned Case Law Supports Availability of a Consumer Cause of Action for Section 623(b) Violations.

The better-reasoned district court decisions have adopted the foregoing analysis. For example, in *DiMezza v. First USA Bank, Inc.*, *supra*, a victim of identity theft brought an action against a furnisher of information that had allegedly failed to fulfill its obligations, under Section 623(b), to investigate and correct disputed items. The court, analyzing the pertinent statutory language, stated:

> [a]bsent any explicit limitation, the plain language of [Sections 616, 617, 623(b) and (c)] provide a private right of action for a consumer against furnishers of information who have willfully or negligently failed to perform their duties upon notice of a dispute. * * * Accordingly, the plain language of the Fair Credit Reporting Act compels the conclusion that there is a private right of action for consumers to enforce the investigation and reporting duties imposed on furnishers of information.

DiMezza, 2000 WL 708458 at *3. The court expressly recognized that the limiting language of Section 623(c), on its face, "only applied to subsection (a)," and observed that another court's "extension of the limitation to subsection (b) is baffling." *Id*. at *4 (citing *Carney v. Experian Information Solutions, Inc.*, 57 F. Supp. 2d 496 (W.D. Tenn. 1999)). Similarly, the district court in *Campbell v. Baldwin*, *supra*, recognized that, although Sections 616 and 617 "do not apply 'to any failure to comply with subsection (a) of' [§ 623,] * * * individuals

who violate subsection (b) of [§ 623] are not exempted from civil liability." 90 F. Supp. 2d at 756.

Most recently — indeed, subsequent to the filing of appellant's opening brief in this appeal — another district court has recognized that the plain language of the FCRA provides a private right of action for violations of Section 623(b). *See McMillan v. Experian Information Servs., Inc.*, *supra*, slip op. 7-8. That court relied both on the precision of the limiting language in Section 623(c), and on the fact that, at the same time Congress enacted Section 623, it also broadened the language of Sections 616 and 617 to cover FCRA violations by "any person." *Id.*[4]

By contrast, two other district courts that have found that there can be no private right based on violations of Section 623(b) have simply ignored the plain

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[4] Another case that reached the same result — albeit on the basis of reasoning we do not entirely endorse — is *Dornhecker, supra*. The *Dornhecker* court began by acknowledging the textual analysis of *Campbell*, but then addressed the issue as "whether an implied right of action exists," under the standards of *Cort v. Ash,* 422 U.S. 66 (1975). *See* 99 F. Supp. 2d at 926. To be sure, we agree with the *Dornhecker* court's assessment of the *Cort* factors, since Congress plainly intended to protect consumer interests and the recognition of this cause of action comports with the statutory scheme. However, resort to the *Cort* framework is unnecessary where, as here, the plain language of the statute affords an *express* private right of action. *See, e.g., Burgert v. The Lokelani Bernice Pauahi Bishop Trust*, 200 F.3d 661, 663-64 (9th Cir. 2000) (turning to a *Cort* analysis "[b]ecause neither [relevant statute] contains an express private right of action").

language of the statute. *See Carney v. Experian Information Solutions, Inc.*, 57 F. Supp. 2d 496 (W.D. Tenn. 1999); *Hornbeak v. Gold Key Leasing, Inc.*, IP 98-0795 (S.D. Ind. Mar. 3, 2000), *appeal pending*, No. 00-1728 (7th Cir., docketed Mar. 30, 2000). The *Carney* court committed a number of errors in its analysis. To begin with, that court incorrectly stated that Sections 616 and 617 of the FCRA, 15 U.S.C. §§ 1681n, 1681o, create liability only for "consumer reporting agencies and users of consumer reports," and observed that creditors who furnish information to CRAs do not fall within either of those two categories. 57 F. Supp. 2d at 500-01. That observation is beside the point, however, since Congress amended Sections 616 and 617 in 1996 to expand their reach from "consumer reporting agencies and users of consumer reports" to the present "any person." *See* Pub. L. No. 104-208, Div. A, § 2412, 110 Stat. 3009, 3009-446 (1996). The *Carney* court also asserted that "the provisions for civil liability set forth in [Sections 616 and 617] do not apply to any violation of [Section 623]." 57 F. Supp. 2d at 502. The court cited Section 623(c) for this proposition, ignoring the fact that it refers solely to claims based on Section 623(a), not those based on Section 623(b).

Apart from thus misreading of the statutory language, the *Carney* court opined that the obligations imposed by Section 623(b) "appear to exist solely for the

benefit of consumer reporting agencies which face liability under the remainder of the FCRA to the consumer for erroneous and inaccurate reporting." 57 F. Supp. 2d at 502; *see also Hornbeak*, slip op. 2 (following *Carney* on this point without further analysis). This reasoning is doubly flawed. First, any notion of the intended statutory "beneficiary" is irrelevant to the interpretive issue at hand. Whether a particular plaintiff is "one of the class for whose especial benefit the statute was enacted" is pertinent in determining whether a private cause of action may be *implied*, in the absence of express statutory authority. *Cort v. Ash*, 422 U.S. at 78. Such considerations are irrelevant where, as here, Congress has provided an *express* cause of action. *See* note 4, *supra*. Sections 616 and 617 do not limit the causes of action they create based on a standard of whom Congress intended to benefit. On the contrary, they expressly make "any person" who fails to comply with a FCRA requirement "with respect to any consumer" liable "to that consumer."

Furthermore, even if the sort of analysis that the *Carney* court engaged in were appropriate, its proper application would only reinforce the availability of a consumer cause of action here. Congress made abundantly clear that one of the overarching purposes of the FCRA was to require practices that ensure fairness and equity to consumers. *See* 15 U.S.C. § 1681. Although the practices

addressed by the Act initially focused on CRAs and users, the addition of Section 623 to the Act in 1996 expressly extended its reach to certain furnisher practices, and there is no reason to doubt that Congress intended these expanded protections also to inure to the benefit of consumers.[5] Indeed, as another district court that thoroughly surveyed the policies and legislative history of the FCRA concluded, "it is apparent that [consumers] are members of the class of people sought to be protected by the enactment of the FCRA." *See Dornhecker*, *supra*, 99 F. Supp. 2d at 926; *cf.* note 4, *supra*.

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[5] In the court below, Chase suggested that the caption of Section 623 — referring to "responsibilities of furnishers of information to consumer reporting agencies" — evinces a duty owed "only to" CRAs. Chase Motion to Dismiss, Apr. 5, 1999, Dkt. No. 4, at 7. This argument is erroneous, for at least three reasons. First, the language of the caption is at best grammatically ambiguous. While Chase presumes that the prepositional phrase "to consumer reporting agencies" modifies "responsibilities," it is at least equally plausible that it modifies "furnishers" — *i.e.*, the caption simply refers to the duties owed by "furnishers of information to consumer reporting agencies," without specifying to whom those duties are owed. Second, as the *DiMezza* court recognized, Congress expressly indicated that, in the interpretation of the FCRA and related statutes, "[c]aptions and catchlines are intended solely as aids to convenient reference," and are not to be used to draw interpretive inferences. *See* Pub. L. No. 90-321, § 502, 82 Stat. 167 (1968), *reported as note following* 15 U.S.C. § 1601; *DiMezza*, 2000 WL 708458 at *3. Finally, even without such clear congressional guidance, the general rule is that a statutory caption "'[is] of use only when [it] shed[s] light on some ambiguous word or phrase' in the statute itself." *Carter v. United States*, 120 S. Ct. 2159, 2168 (2000) (quoting *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998)). Here the only ambiguity is in the caption, and that ambiguity certainly cannot trump the clear language of the statute.

III. The Statutory Framework, Legislative History, and Administrative Guidance All Confirm the Availability of a Private Cause of Action.

In analyzing a statute, a court may consider not only the language Congress used, but also what it omitted. In one case involving a different part of the FCRA, for example, the court stated that, "'[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion [or] exclusion.'" *Thomas v. Pierce, Hamilton, and Stern, Inc.*, 967 F. Supp. 507, 510 (N.D. Ga. 1997) (quoting *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991)). This principle is directly pertinent in here: the language of Section 623(c) that limits the availability of consumer causes of action expressly refers to actions for violations of Section 623(a), but pointedly omits any reference to Section 623(b). The implication of this omission is clear: by intentionally restricting the Section 623(c) limitation to one type of violation, Congress itself recognized the availability of a private cause of action for violations of the omitted Section 623(b).

This distinction also comports with the structure of the obligations imposed on credit information furnishers. Sections 623(a) and 623(b) impose two distinct

sets of duties. Section 623(a) obligations are generally broader in scope, applying in some degree to all consumers. Section 623(b) obligations, by contrast, are more focused, and are triggered only in those instances where a consumer has disputed a specific entry in his consumer report. In those instances, moreover, the stakes may be substantial for the consumer, who may face the identity theft problem asserted by the plaintiff in *DiMezza*, or otherwise may have reason to believe that his credit report is in error. Congress's allowance of a private right of action in the latter circumstance but not the former simply reflects part of the balance struck between consumer and creditor interests. *See DiMezza*, 2000 WL 708458 at *3. The district court's ruling in the present case distorts that balance, by failing to give effect to the consumer rights Congress expressly granted.

In light of the foregoing textual analysis, there is no need here for the Court to resort to other guides to statutory construction. Still, as one district court recently noted, "[i]t is, nonetheless, reassuring to observe that the Court's reading of the statute's plain meaning is consistent with both the legislative history and the Federal Trade Commission's interpretation * * * ." *McMillan, supra*, slip op. 8-9. Perhaps the most salient aspect of the legislative history of the 1996 FCRA amendments is the simple fact that they included *both* the

addition of Section 623 and the alteration of Sections 616 and 617. Before those amendments, the FCRA imposed no specific duties on furnishers of information; Congress filled that gap by adding Section 623, which imposes the substantive obligations described above. *See* Pub. L. No. 104-208, Div. A, § 2413, 110 Stat. 3009, 3009-447-48 (1996). Within the same enactment, Congress altered the language of Sections 616 and 617, which previously created private causes of action only against "[a]ny consumer reporting agency or user of information." 110 Stat. at 3009-446; *cf.* 15 U.S.C. §§ 1681n, 1681o (1994). By expanding that language to provide a private cause of action against "any person" who violated FCRA requirements, Congress recognized that other classes of persons could incur such liability. That change, made in tandem with the express addition of substantive requirements applicable only to furnishers, clearly evinces a congressional intent to make furnishers liable to consumers for specified FCRA violations.

The reports of the pertinent congressional committees similarly reflect Congress's understanding that enactment of Section 623 would result in furnisher liability to consumers in some instances. The Senate Banking Committee, for example, stated that "[S]ection 623(c), as added by the bill, bars private citizens from bringing suit against furnishers of information for violations

of *certain duties* imposed on them * * * ." S. Rep. No. 104-185, Senate Committee on Banking, Housing and Urban Affairs, 104th Cong., 1st Sess. 53 (1995) (emphasis added); *see also* H. Rep. No. 103-486, House Committee on Banking, Finance and Urban Affairs, 103d Cong., 2d Sess. 53 (1994) (containing similar language).[6]

Furthermore, although the FTC has not previously had occasion to take a formal position on this interpretive question,[7] its prior pronouncements have consistently assumed the existence of such a private right of action. In a 1997 Federal Register notice announcing a statutorily-mandated notification of rights and responsibilities under the FCRA, the Commission noted that "credit card issuers [had] advocated adding a section spelling out the limitations [in Section 623] on consumers' ability to sue furnishers * * * ." 62 Fed. Reg. 35586, 35588 (1997). Although the Commission found it inappropriate to add such a

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[6] The 1996 FCRA amendments were enacted as part of an omnibus bill and created little direct legislative history to shed light on their meaning. The cited reports pertained to predecessor bills that Congress had failed to enact, but which contained proposed language very similar to that enacted in 1996. Courts have found this sort of legislative history to provide helpful guidance in analogous circumstances. *See, e.g., King v. United States Dep't of Justice,* 830 F.2d 210, 229 n.141 (D.C. Cir. 1987) (using history of predecessor bills in interpreting 1986 FOIA amendments).

[7] Pursuant to the Commission's standard practice with respect to the filing of *amicus* briefs in the U.S. courts of appeals, the entire Commission has considered and voted unanimously to approve the filing of the present brief.

section to the notice, this statement reflects the contemporaneous understanding of the Commission (and at least some furnishers) that consumers had the "ability to sue" to enforce some parts of the recently-enacted Section 623.

Similarly, the FTC's form entitled "A Summary of Your Rights Under the Fair Credit Reporting Act," published in the Code of Federal Regulations, informs consumers that they "may seek damages from violators. If a CRA, a user *or (in some cases) a provider of CRA data*, violates the FCRA, you may sue them in state or federal court." 16 C.F.R. Part 601, App. A (emphasis added).[8]

These indications of the Commission's understanding of the FCRA simply reinforce the language of the statute itself, which draws a clear line between violations of Section 623(a) and 623(b), and plainly allows consumers to sue for violations of the latter. The district court's refusal to apply the statute as written deprives consumers of important rights Congress expressly provided for, and undermines the dual public-private enforcement scheme that Congress carefully devised.

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[8] The staff of the Commission's Bureau of Consumer Protection has expressly taken the position, in an interpretive letter made publicly available, that "Section 623(b) * * * allows consumers to sue violators of this subsection to obtain damages (which may be punitive if the consumer shows willful violation) and attorney fees." *See* Letter from Clarke W. Brinckerhoff to Wainwright S. Watkins, June 24, 1999, available at: www.ftc.gov/os/statutes/fcra/watkins.htm.

CONCLUSION

For the foregoing reasons, the Commission respectfully urges this Court to reverse the district court's order of dismissal, and remand the case for further proceedings on the merits of plaintiff's claims.

Respectfully submitted,

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* The Commission wishes to acknowledge the substantial contribution to the preparation of this brief made by Julia M. Fromholz, a law clerk in the Office of the General Counsel.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Fed. R. App. P. 29(c), 29(d), and 32(a)(7). The brief is proportionately spaced using Times New Roman 14-point type. The brief contains 4,509 words.

_____
John F. Daly

CERTIFICATE OF SERVICE

I hereby certify that, on July 21, 2000, I dispatched the requisite number of copies of the foregoing Brief of the Federal Trade Commission as *Amicus Curiae* to the Clerk of this Court, by overnight courier.

On the same date and by the same manner of delivery, I served two copies of the Brief on each of the following counsel:

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ADDENDUM

Cited Cases Not Yet Reported

(1) *McMillan v. Experian Information Servs., Inc.*,
No. 3:99cv1481 (D. Conn. July 18, 2000)

(2) *Hornbeak v. Gold Key Leasing, Inc.*,
IP 98-0795 (S.D. Ind. Mar. 3, 2000),
appeal pending, No. 00-1728
(7th Cir., docketed Mar. 30, 2000)