Courts Signal Higher FCRA Bar For Identity Theft Claims

By **Brian Kiolbasa** (November 3, 2026)



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In July, the U.S. Court of Appeals for the Tenth Circuit in Ward v. National Credit Systems Inc. joined the U.S. Courts of Appeal for the Second, Fourth, Fifth and Eleventh Circuits in concluding that for a consumer to maintain a Fair Credit Reporting Act claim against a furnisher of credit in connection with a dispute alleging inaccurate reporting, the consumer must first show that the disputed information was "objectively and readily verifiable" as inaccurate, and not based solely on a consumer's assertions.

In the months since the Ward opinion was released, district courts in California and Washington have adopted Ward's reasoning, signaling a potential shift in the traditionally consumer-friendly Ninth Circuit, especially as it relates to claims involving identity theft and fraud.

Background: The FCRA Generally

Congress enacted the Fair Credit Reporting Act, Title 15 of the U.S. Code, Section 1681, in 1970 "to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy," per the U.S. Supreme Court's 2007 ruling in Safeco Insurance Co. of America v. Burr.

The FCRA mandates that "[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."

Practitioners who litigate FCRA cases know that certain obligations are triggered under the statute upon notice of a dispute — when a furnisher of credit receives notice from a credit reporting agency, or CRA, that a consumer disputes the information the furnisher provided.

When a furnisher receives notice of a dispute from a CRA, the furnisher must conduct a reasonable investigation with respect to the disputed information, review all relevant information provided by the CRA and report the results of the investigation to the credit reporting agency.[1]

The reasonable investigation requirement for credit furnishers is considered to be more extensive and thorough than that of a CRA, as CRAs typically lack any direct relationship with a consumer and thus must rely on the furnisher's investigation and determination.[2]

The FCRA provides a private right of action to consumers for a furnisher's willful or negligent noncompliance with these requirements, which may entitle successful consumers to recover statutory damages, actual damages, punitive damages (in the case of willful noncompliance) and attorney fees.[3]

The Tenth Circuit's Decision in Ward

In Ward, a consumer sued under the FCRA alleging a failure to conduct a reasonable investigation of a disputed debt arising out of a residential lease that his daughter had secured using his personal information. After trial, the plaintiff was awarded $500,000 in

emotional distress damages, and the furnisher appealed.

On appeal, the Tenth Circuit held that inaccuracy is a prima facie element of an unreasonable investigation claim under the FCRA, and that a consumer "must demonstrate the disputed information was objectively and readily verifiable by the furnisher of the information ... as containing a mistake or error."

Notably, the court recognized that the FCRA "does not extinguish the requirement for a consumer to establish inaccuracy just because he submits an identity theft report," and a "consumer's submission of an identity theft report supported solely by his own allegations cannot establish the disputed information was inaccurate."[4]

The Tenth Circuit ultimately joined the Second, Fourth, Fifth and Eleventh Circuits in concluding that under the FCRA, "reported information is actionably 'inaccurate' only if that information is objectively and readily verifiable" by the furnisher as containing a mistake or error.

Inquiring as to what it means for information to be "objectively and readily verifiable as inaccurate," the Tenth Circuit answered its own question as follows: A "dispute that involves complex fact-gathering and in-depth legal analysis of the sort that courts would typically perform is not objectively and readily verifiable. A dispute that implicates unsettled questions of law and requires credibility determinations and quasi-discovery isn't either."[5]

Potential Impact on FCRA Claims in the Ninth Circuit

Consumer disputes claiming inaccuracy of credit reporting due to identity theft or fraud are commonly received by CRAs and credit furnishers, and FCRA case filings have recently reached a 10-year high.[6]

District courts in the Ninth Circuit have historically defined inaccuracy under the FCRA as information that is "patently incorrect" or "materially misleading."[7]

Under this standard, courts in the Ninth Circuit regularly deferred to juries when facing questions regarding the reasonableness of a credit furnisher's dispute investigation, including in cases alleging identity theft and fraud.[8] This is to say that, under the existing Ninth Circuit approach, courts have expected credit furnishers to investigate and resolve questions of legal significance in order to meet their obligations under the FCRA.

However, that approach may be changing following Ward.

On Aug. 27, the U.S. District Court for the Central District of California cited Ward with favor in Osuolale v. Experian Information Solutions Inc., finding that a consumer's claim alleging inaccurate reporting under the FCRA based on a dispute involving the termination of a vehicle lease was not "the type of straightforward application of law to facts that [the lessor's servicer] could objectively and readily verify."[9]

The court thus granted the servicer's motion for summary judgment, where the alleged inaccuracy was based on a small claims judgment that the consumer argued reformed the vehicle lease, a position that had been "vigorously disputed," according to court documents.

Later, on Sept. 9, the U.S. District Court for the Western District of Washington in King v. AT&T Corp. noted that established Ninth Circuit law was "consistent" with Ward and its predecessors that require consumers to make a prima facie showing of inaccurate reporting

to state an FCRA claim, including that the inaccuracy be "objectively and readily verifiable."[10]

The apparent adoption of Ward by these district courts suggests that consumers may no longer be able to initiate FCRA claims merely by arguing that they are victims of identity theft or fraud, and credit furnishers will not be tasked with resolving credibility determinations or engaging in investigations that require them to conduct the "quasi-discovery" that the Ward court cautioned against.

Takeaways

Courts in the traditionally consumer-friendly Ninth Circuit are finding Ward to be consistent with existing case law, indicating that this interpretation of the FCRA is gaining wider acceptance. This has implications for both financial institutions and consumers.

For consumers in the Ninth Circuit, the burden of pleading an actionable FCRA claim is now arguably higher, particularly in identity theft and fraud scenarios.

Furnishers of credit may now face reduced exposure in identity theft and fraud cases where the dispute depends solely or largely on the consumer's account, even when the consumer has made police reports or appeals to authorities to substantiate their claims.

Time will tell whether the U.S. Court of Appeals for the Ninth Circuit adopts the reasoning of its sister circuits or rejects their conclusion in favor of a more consumer-friendly approach, thereby creating a circuit split.

In the meantime, furnishers facing identity theft and fraud disputes in the Ninth Circuit should consider invoking Ward and the district court decisions following it at the pleading and summary judgment stages, particularly where the consumer's claim rests largely on his or her own assertions.

At the same time, furnishers should continue to conduct and carefully document reasonable investigations of every dispute, as the Ninth Circuit has not yet spoken on the issue, and its existing precedent still contemplates that furnishers may need to investigate questions of legal significance.

Brian Kiolbasa is counsel at Ballard Spahr LLP.

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[1] 15 U.S.C. § 1681s-2(b)(1); see also Gorman v. Wolpoff & Abramson, LLP, 584 F.3d 1147, 1153-54 (9th Cir. 2009).

[2] Gorman, 584 F.3d at 1156-57 (noting that CRAs typically "lack[] any direct relationship with the consumer" and thus maintain a "third-party status").

[3] See 15 U.S.C. § 1681n (willful); 15 U.S.C. § 1681o (negligent).

[4] See also 15 U.S.C. § 1681s-2(a)(1)(D) (noting that "[f]or the purposes of subparagraph (A) [which prohibits the furnishing of any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate], the term "reasonable cause to believe that the information is inaccurate" means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

[5] Ward, 182 F.4th at 933 (citation omitted).

[6] https://www.law360.com/banking/articles/2539061?nl_pk=ecf4125a-1190-483f-8b6d-6e7404703900&utm_source=newsletter&utm_medium=email&utm_campaign=banking&utm_content=2026-10-20&read_main=1&nlsidx=0&nlaidx=1.

[7] Gorman, 584 F.3d at 1163; see also Carvalho v. Equifax Info. Servs., LLC, 629 F.3d 876, 890-91 (9th Cir. 2010) (clarifying and adopting the "patently incorrect or materially misleading" standard.

[8] See, e.g., Guimond v. Trans Union Credit Info. Co., 45 F.3d 1329, 1332 (9th Cir. 1995) ("The reasonableness of the procedures and whether the agency followed them will be jury questions in the overwhelming majority of cases."); Romero v. Monterey Fin. Servs., LLC, No. 19cv1781 JM, 2021 WL 268635, at *3 (S.D. Cal. Jan. 27, 2021) ("Indeed, the reasonableness of any investigation involving identity theft is likely to be a highly individualized and fact-intensive inquiry."); Lara v. Experian Info. Sols., Inc., 625 F. Supp. 3d 1062, 1072-73 (S.D. Cal. 2022) (denying defendant's motion for summary judgment where its investigation of consumer's claim of identity theft lacked "any research or investigation outside of reviewing its own file").

[9] Osuolale v. Experian Info. Sols. Inc., et al., No. CV 25-07118-MWF (PVCX), 2026 WL 2536499, at *6 (C.D. Cal. Aug. 27, 2026) (citing Ward)).

[10] King v. AT&T Corp., et al., 2:25-CV-02270-LK, 2026 WL 2651548, at *4 (W.D. Wash. Sept. 9, 2026).