## CONSUMER CREDIT

### NON-TRIBE MEMBER OF TRIBE "RENT-A-TRIBE" SCHEME NOT IMMUNE FROM LAWSUIT OVER UNLAWFUL INTEREST RATES

Williams v. Martorello, ___ F. 4th ___ (4th Cir. 2023).
https://cases.justia.com/federal/appellate-courts/ca4/21-2116/21-2116-2023-01-24.pdf?ts=1674588663

**FACTS:** The Lac Vieux Desert Band of Chippewa Indians (the "Tribe") and Defendant-Appellant Matt Martorello (collectively, the "Parties") allegedly created businesses to make small-dollar, high-interest-rate loans to Plaintiff-Appellees, who were various Virginia citizens (collectively, the "Borrowers"). The Loan Agreement contained a waiver provision in which the Borrowers agreed to consent to the jurisdiction of the Tribe, and eschewed to serve as a representative or participate as a member of a class lawsuit against the lender "and/or related third parties." The Borrowers acknowledged the waiver provision when signing the Loan Agreement. The Borrowers filed a class suit against the Parties, alleging that the Tribe created businesses alongside Martorello as part of a "Rent-a-Tribe" scheme in which a payday lender partnered with a Native American tribe to cloak the lender in the sovereign immunity of the tribe, precluding enforcement of usury laws that cap interest rates.

**Because Martorello is an individual, he was not a party exempted from class-action claims and liability.**

The Parties moved to dismiss for lack of subject matter jurisdiction, asserting that they were entitled to tribal sovereign immunity. The district court concluded that the Borrowers did not waive their right to participate in a class action against Martorello. Martorello appealed.

**HOLDING:** Affirmed.

**REASONING:** Martorello argued that the Borrowers waived their right to bring class action claims against him because the Borrowers forfeited the right to participate in class actions filed against the lender or "related third parties." Martorello contended that he was an "affiliated entity" of the lenders within this definition and thus, a party immune to class-action proceedings.

The court rejected that argument by reasoning that, when used together, the terms "affiliated" and "entity" typically refer to related organizations or corporate entities, not to individuals. If the term included all individuals affiliated with the entities, then including "related third parties" in the definition would be superfluous. The court concluded that because Martorello is an individual, he was not a party exempted from class-action claims and liability.

### FAIR CREDIT REPORTING ACT EXPRESSLY PRECLUDES A PRIVATE RIGHT OF ACTION AGAINST A FURNISHER FOR FAILING TO PROVIDE ACCURATE INFORMATION AS REQUIRED BY § 1681S-2(A)

### CONSUMER BRINGING AN FCRA CLAIM AGAINST A FURNISHER UNDER § 1681S-2(B) MUST ESTABLISH THREE FACTS

Dixon v. Mazda Fin. Servs., Inc., ___ F. Supp.3d ___ (S.D. Tex. 2022).
https://scholar.google.com/scholar_case?case=16080906052632652934&hl=en&as_sdt=6&as_vis=1&oi=scholarr

**FACTS:** Plaintiff Eugene Dixon entered a Consumer Credit Sale with Defendant Mazda Financial Services to purchase a vehicle. Dixon contended that Mazda Financial allowed a third party to repossess his vehicle and burdened him with a large volume of emails and negative information about his consumer report in an attempt to collect the debt.

Dixon sued Mazda Financial, alleging violation of the Fair Credit Reporting Act ("FCRA"), among other claims. Mazda Financial moved for summary judgment.

**HOLDING:** Granted.

**REASONING:** Dixon argued that Mazda Financial, as a furnisher of credit information to consumer reporting agencies, failed to provide accurate information as required by sections 1681s-2(a) and 1681s-2(b) of the FCRA.

The district court rejected Dixon's arguments. The court held that because violations of section 1681s-2(a) "shall be enforced exclusively" by certain federal agencies and federal and state officials, the FCRA explicitly precludes a private cause of action against Mazda Financial, a furnisher, for failing to provide precise information to credit reporting agencies. 15 U.S.C. § 1681s-2(d).

Furthermore, a plaintiff bringing an FCRA claim against a furnisher under section 1681s-2(b) must establish that (1) he disputed the accuracy or completeness of information with a consumer reporting agency; (2) the agency notified the furnisher of the consumer's dispute; (3) and the furnisher failed to conduct an investigation, correct any inaccuracies, or notify the agency of the results of the investigation. Here, because Dixon failed to provide summary judgment evidence on any of the three elements, Dixon's section 1681s-2(b) claim was conclusively negated and summary judgment for Mazda Financial was therefore appropriate.

## CLAIM PREMISED ON AN ALLEGEDLY DISCHARGED PRIVATE STUDENT LOAN IS NOT ACTIONABLE UNDER FAIR CREDIT REPORTING ACT

## LEGAL INACCURACY ERROR IS NOT ACTIONABLE UNDER THE FCRA

Mader v. Experian Info. Sols., Inc. ___ F.4th ___ (2d Cir. 2023). https://scholar.google.com/scholar_case?case=9000361603599098920&hl=en&as_sdt=6&as_vis=1&oi=scholarr

**FACTS:** Plaintiff-Appellant Michael Mader filed for bankruptcy and was released from all dischargeable debts. Experian Information Solutions ("Experian") sent a letter to Mader explaining that his student loan was not discharged and Mader was responsible for repaying the entire remaining balance. Experian included Mader's student loan on his credit report.

Mader filed suit against Experian under the Fair Credit Reporting Act ("FCRA"), alleging legal inaccuracies in credit reporting. The court granted summary judgment in favor of Experian. Mader appealed.

**HOLDING:** Affirmed.

**REASONING:** Mader argued his student loan was dischargeable because it was a private loan and not exempted from discharge under the Bankruptcy Code. Mader claimed that Experian violated the FCRA by inaccurately reporting his credit when it included his student loan on his credit report. The court disagreed.

Under the FCRA, a credit report is inaccurate when it is patently incorrect or misleading. The credit report's inaccuracy has to be based on objectively and readily verifiable information. The court held that Mader's allegation of inaccuracies evaded objective verification. There was no bankruptcy order explicitly discharging the debt. Mader's debt status was not sufficiently objectively verifiable without a customized fact and law analysis of its post-bankruptcy validity. Thus, the court could not deem Mader's credit report "inaccurate" under the FCRA. The court held that inaccuracies that turn on legal disputes are not actionable under the FCRA. Mader failed to allege an inaccuracy within the FCRA because the question of whether his loan qualified as dischargeable remained unresolved. This unresolved legal question rendered his claim not actionable under the FCRA.

**Inaccuracies that turn on legal disputes are not actionable under the FCRA.**