

Supreme Court to Address Class Action Standing in Ramirez Case: To Recover, Must Absent Class Members Establish Actual Injury?

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The U.S. Supreme Court granted certiorari on December 16, 2020 in *TransUnion, LLC v. Ramirez* on the question of “[w]hether either Article III or Rule 23 permits a damages class action where the vast majority of the class suffered no actual injury, let alone an injury anything like what the class representative suffered.” *Ramirez* will give the high court the opportunity to clarify how Article III standing requirements apply to class members in class actions.

Sergio L. Ramirez sued under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681, claiming a car dealer refused to sell him a car after a credit check by TransUnion incorrectly stated he was listed on the Treasury Department’s Office of Foreign Assets Control (“OFAC”) database. *Ramirez v. TransUnion, LLC*, 951 F.3d 1008, 1016-1017 (9th Cir. 2020). OFAC keeps a list of individuals, including terrorists, with whom US companies cannot engage in business for national security reasons. Ramirez sued on behalf of himself and more than 8,000 others alleged to be falsely identified on credit checks as individuals flagged by OFAC. *Id.* at 1017. The plaintiffs argued that TransUnion did not ensure accuracy by cross-checking the names on OFAC’s database’s list with other information. *Id.* at 1022. The district court certified a class under F.R.C.P. Rule 23 and denied TransUnion’s motion to decertify, even though only plaintiff Ramirez established that (1) the false OFAC information had actually been disseminated to a potential creditor and (2) credit was denied as a result. *Id.* at 1033. At trial, a jury awarded plaintiff and the class more than \$60 million in damages, including \$984.22 in statutory damages and \$6,353.08 in punitive damages per class member. *Id.* at 1022. The Ninth Circuit upheld the district court’s award of statutory damages, but reduced the amount of punitive damages from \$52 million to \$32 million. *Id.* at 1037. TransUnion filed a petition for *certiorari*, which the Supreme Court granted on December 16, 2020.

In considering Article III standing, the high court will have the opportunity to address a question it left unanswered in *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1542 (2016). There, the Supreme Court ruled a “concrete” injury is required to establish standing under Article III, even where an injury has otherwise been established for statutory purposes under FCRA. *Id.* The Court did not address whether the concrete injury requirement applies just to the named representative plaintiff or also to class members in a certified class action. *Id.* at 1547 n.6. In *Ramirez*, TransUnion argues that class members lacked standing because there was no evidence introduced at trial that anyone other than

Ramirez was turned down for a loan. Another 1,853 class members had their credit reports containing the false OFAC information disclosed to a third party, while there was no evidence that anyone saw the remaining approximately 6,300 class members' credit reports with the OFAC flag. *Ramirez v. TransUnion, LLC*, 951 F.3d at 1028. Applying *Spokeo*, the Ninth Circuit agreed with TransUnion that Article III standing requirements applied to each class member, but found that all of the 8,185 class members had standing on the basis that the misleading reports were "available" to lenders, which created "a material risk of harm." *Id.* at 1027. Notably, Judge McKeown dissented from this part of the panel's ruling, reasoning that only the 1,853 members whose information was actually disseminated suffered a concrete injury. *Id.* at 1038.

Whether the Ninth Circuit's views on class member standing survive the scrutiny of the Supreme Court remains to be seen. When the Court addressed Article III standing in *Spokeo*, the decision requiring a concrete injury for class representative standing was reached 6-2, and three new justices are now on the Court. Whether class members must establish standing by submitting evidence of actual, concrete injury—as opposed to the mere "risk" thereof—could well be a game-changer for defendants facing class actions where the named plaintiff has a sympathetic but unique story and few, if any, absent class members were harmed.

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