

# SUPREME COURT REINS IN OUT-OF-CONTROL CLASS ACTIONS: TECHNICAL STATUTORY VIOLATIONS INSUFFICIENT TO CONFER CLASS MEMBERS' STANDING

Insights  
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The U.S. Supreme Court just gave employers and businesses a powerful tool to fight back against those class actions seeking monetary damages where class members only experienced technical statutory violations. By a 5-to-4 vote in *TransUnion v. Ramirez*, the Court substantially reduced a \$40 million class action jury verdict by eliminating three quarters of the class. The Court ruled that individuals who suffered purely technical violations of the Fair Credit Reporting Act's (FCRA) procedural and notice provisions with no actual disclosures to third parties or other evidence of harm do not have standing to pursue FCRA claims despite the availability of statutory damages. What can you take away from Friday's ruling to assist in defending class actions that threaten your business?

## Rare Class Jury Trial Involving Atypical Class Representative Prompts SCOTUS Review On Multiple Damages Class Issues

This case caught the attention of businesses across the country after a Northern District of California jury awarded \$40 million to 8,184 absent class members in a FCRA lawsuit based on the experiences of a single class representative. This was only one of a handful of occasions where a class action actually proceeded to a jury trial and reached a verdict, as opposed to dismissal or settlement, and presented a number of important issues involving standing and typicality.

### *The Facts – Nightmare at the Car Dealership*

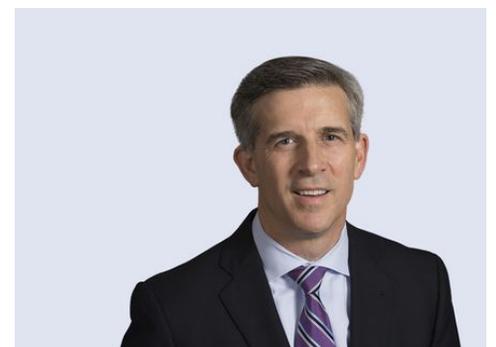
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The case arose from class representative Sergio Ramirez's experiences at a car dealership in February 2011. Mr. Ramirez went to the dealership with his wife and father-in-law to buy a new car. After negotiating the terms of the deal, the dealership ran a credit check on Mr. Ramirez and his wife. The credit report contained an alert stating that Mr. Ramirez's name matched the names of two individuals on the Office of Foreign Assets Control's (OFAC) list of individuals to whom businesses in the United States are not permitted to transact business due to terrorism, drug trafficking, national security, or foreign policy related reasons. Although Mr. Ramirez's middle initial and date of birth did not match the individuals listed in the report, the dealership refused to sell the vehicle to Mr. Ramirez and ultimately only agreed to sell it to his spouse. Mr. Ramirez testified that this caused him significant embarrassment, shock, and fear, such that he even cancelled an impending vacation to Mexico out of concern over the alert and his name appearing on the OFAC's list.

After learning of the alert, Mr. Ramirez testified that he contacted TransUnion, the company that supplied the credit report. Mr. Ramirez claimed that TransUnion told him over the phone that there was no alert on his credit report. To verify this, Mr. Ramirez requested a copy of his credit report. In response, TransUnion sent Mr. Ramirez two separate mailings. The first mailing enclosed a copy of his credit report (without the OFAC alert) and including the FCRA's mandatory "Summary of Rights" form. The second letter explained that Mr. Ramirez's name potentially matched a name on the OFAC's database and provided information about the OFAC list but did not include the "Summary of Rights" form. Nevertheless, Mr. Ramirez followed up with TransUnion and the company removed the alert such that it would not appear in any future disclosures.

### ***The District Court Proceedings and Trial***

Mr. Ramirez filed a putative class action in February of 2012 against TransUnion claiming that it violated the FCRA by failing to follow reasonable procedures to ensure that the accuracy of the OFAC alerts to avoid false-positives, disclose to the class members their entire credit reports, and provide a summary of FCRA rights enclosed with the OFAC alert correspondence to class members. The District Court ultimately certified a class that included all individuals to whom TransUnion sent the letter stating that their name was a potential match to one on the OFAC list. This included

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individuals who received their own credit information at home but never had their reports sent to any third parties. Specifically, out of the 8,184 class members, less than 25% (1,852) actually had a report disseminated to someone other than themselves. Additionally, no evidence was introduced that any class members besides Mr. Ramirez was ever hindered in obtaining credit.

During the trial, the jury only heard Mr. Ramirez's story. Based on Mr. Ramirez's account, it found that TransUnion's policies violated the FCRA. Under the FCRA, each plaintiff is entitled to statutory damages between \$100 and \$1,000. Here, the jury awarded each class member \$984.22 in statutory damages (nearly the maximum) and \$6,353.08 in punitive damages. This resulted in a total verdict of \$60 million.

### ***The Appeal***

TransUnion appealed the verdict as well as the District Court's Rule 23 class certification decision to the 9th Circuit Court of Appeals arguing, among other things, that the class should not have been certified. It contended that, because Mr. Ramirez's damages claim was not typical of the class, the absent class members did not have standing as they did not suffer any concrete injuries. TransUnion also argued that the punitive damages award was too high.

While the 9th Circuit reduced the punitive damages award \$3,936.88 per class member, it held that the differences between the injuries suffered by Mr. Ramirez and the class did not defeat the Rule 23 typicality requirement because the underlying theories of liability for the injuries were the same. The 9th Circuit further held that each class member had standing because the alleged FCRA violations presented a material risk of harm to the privacy and reputational interests of the class as the OFAC information could have been disclosed to a potential creditor at a moment's notice.

The Supreme Court agreed to review the case on the limited issue of whether Article III of the Constitution or Federal Rule of Civil Procedure 23 permits a damages class action when the majority of the class did not suffer an injury comparable to that of the class representative.

### **The Upshot: Availability of Statutory Damages Alone Are Insufficient To Confer Standing**

The Supreme Court held that the vast majority of the absent class members did not introduce sufficient evidence of Article III standing. To have standing to sue in federal court, a plaintiff must have suffered some actual or threatened concrete (injury in fact) and particularized (personal) injury. The Court once again clarified that in a class action involving damages, each member of the class must demonstrate standing and, in turn, a concrete injury. In reaching this decision, the Court concluded that Congress's decision to make available a statutory damages remedy by itself fails to qualify as a concrete injury to confer standing. Rather, the Court reasoned that courts must be more vigilant in analyzing standing in such circumstances to ensure that plaintiffs are actually and concretely injured, rather than drawn into federal courts by the lure of statutory damages.

Here, the Court held that that the class was overbroad as it included individuals who never had the OFAC alerts disclosed to third parties. The Court found that the lack of evidence of any concrete actual or imminent harm foreclosed the absent class members from recovering any damages. The Court explained that, "in cases such as these where allegedly inaccurate or misleading information sits in a company database, the plaintiffs' harm is roughly the same, legally speaking, as if someone wrote a defamatory letter and then stored it in her desk drawer. A letter that is not sent does not harm anyone, no matter an asserted risk of future harm." On the other hand, the Court concluded that the class members whose OFAC alerts were disclosed to third parties did suffer a concrete injury akin to reputational damage.

Additionally, the Court concluded that none of the class members suffered any concrete injury just because TransUnion failed to enclose a summary of FCRA rights enclosed with the OFAC alert correspondence to class members, as it had contemporaneously provided the notice in a separate envelope along with the individual's credit report. As the Court noted, the class members did not introduce any evidence that they failed to receive any required information or even opened the envelopes.

### ***Ramirez v. TransUnion* May Provide Needed Relief to Employers Facing Class Actions Involving Technical Statutory Violations**

Friday's decision may have a broad potential impact for employers beyond potential FCRA claims. Indeed, the

decision could impact employers facing class or multi-plaintiff actions in federal court involving privacy claims involving statutory damages (such as biometric time-clock laws), certain ADA accessibility claims, or other state or local statutory claims involving statutory damages. Employers and their lawyers should conduct such review of any such pending class claims in federal and even state court to assess the impact of *Ramirez v. TransUnion* and whether class de-certification is warranted and appropriate.

If you have questions about how best to effectively defend against employment, discrimination, wage and hour class or multi-plaintiff claims, regardless of whether in an administrative or legal setting, please contact the authors of this Supreme Court alert or your Fisher Phillips attorney. To ensure you stay up to speed with the latest developments, make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.