

# Ninth Circuit Clarifies Standing Requirements for Damages Classes

**Proskauer on Advertising Law Blog** on April 23, 2020

In a decision that will have repercussions for consumer false advertising lawsuits, a Ninth Circuit panel recently ruled in a Fair Credit Reporting Act (“FCRA”) case that all class members must have standing at the trial stage of a class action for monetary damages.

[\*Ramirez v. TransUnion, LLC\*, 951 F.3d 1008 \(9th Cir. 2020\)](#).

In 2011, Plaintiff attempted to purchase a vehicle, only for the dealership to refuse the sale on the grounds that Plaintiff’s credit report indicated that he was on a “terrorist list.” Plaintiff brought the lawsuit in 2012 against credit reporting agency TransUnion, alleging that it incorrectly placed alerts on consumers’ credit reports listing them as threats to national security, and subsequently provided incomplete and confusing information about how to remove the alerts. The complaint claimed that in doing so TransUnion violated the FCRA. The case went to trial, and a jury awarded \$60 million in damages against TransUnion for three willful violations of the statute.

TransUnion appealed, arguing that only the representative plaintiff had suffered a cognizable injury as a result of TransUnion’s alleged actions. Other class members did not suffer the minimum harm required for Article III standing, TransUnion argued, because their credit reports were not shared with third parties. Plaintiff, on the other hand, contended that a demonstration of other class members’ standing was unnecessary because in a class action only the representative plaintiff is required to have standing.

Judge Murguia, writing for the majority, noted that previous Ninth Circuit decisions had addressed standing requirements for class members at the motion to dismiss and class certification stages, as well as at final judgment in class actions involving only injunctive relief. However, the question of class members' standing at the final stage of a money damages suit was one of first impression, and the panel agreed with TransUnion. Citing to the Supreme Court's holding in *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645 (2017) that all parties seeking to recover a monetary award in their own name must have standing, the majority opinion held that this requirement was no less applicable to unnamed class members in the class action context.

However, the success of TransUnion's legal arguments was cold comfort, because the majority held that, on the facts of this specific case, class members were harmed regardless of whether third parties received the incorrect information. To begin with, the majority noted, nearly a quarter of class members *had* had their reports disseminated to third parties. Moreover, even those class members whose reports had not already been shared were harmed. First, TransUnion's notices informing class members that they were considered potential security threats risked causing the uncertainty and stress that Congress sought to prevent by passing the FCRA. In addition, because the credit reports were made available to third parties at a moment's notice, plaintiffs were exposed to a material risk of harm. TransUnion did succeed, however, in its appeal of the damages award, as the majority found that the jury award was excessive and remanded to the district court with instructions to reduce the punitive damages by approximately a third.

Judge McKeown dissented in part. She agreed with the majority's holding that all class members must have standing at trial in a money damages suit, and that in this case the class members whose information was actually disseminated to third parties had standing. However, she disagreed that other class members had standing, arguing that the mere possibility of dissemination constituted a conjectural harm and that Plaintiff failed to establish a serious likelihood of disclosure of these class members' reports.

Although the decision represents a victory for this particular plaintiff, it serves as a warning to future class action plaintiffs seeking monetary damages that a class action cannot be used to excuse standing requirements for unnamed class members. Class action defendants should consider using the *Ramirez* decision to argue against monetary recovery for class members who lack standing. Watch this space for further developments.

[View Original](#)

**Related Professionals**

---

- **Baldassare Vinti**

Partner