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Do All Class Members Have Standing For Mere Statutory Violations? The Supreme Court Will Decide

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On March 30, the Supreme Court will hear arguments on whether a damages class action, is permitted by Article III of the Constitution or Rule 23 of the Federal Rules of Civil Procedure where the majority of the class has suffered no actual injury. Notably, this is the first time the Supreme Court will apply the rulings of *Spokeo*, which held that a plaintiff "cannot satisfy the demands of Article III by alleging a bare procedural violation," to an entire class. The Supreme Court's forthcoming decision will have significant implications on defenses to class actions, and could possibly expand liability for companies most often entangled in class actions with plaintiffs that have tenuous claims based only on statutorily created rights of action.

The facts of the case are straightforward: when he was trying to buy a car in 2011, Sergio Ramirez found out he was incorrectly put on a "terrorist list" by TransUnion LLC ("TransUnion"), a credit reporting agency. After ultimately rectifying the error, Ramirez sued on behalf of himself and 8,184 other TransUnion users who had also been incorrectly designated; Ramirez alleged that TransUnion violated the Fair Credit Reporting Act "by placing the false [Office of Foreign Asset Control] alerts on their credit reports and later sending misleading and incomplete disclosures about the alerts." A jury found in favor of the class, and awarded each class member $984.20 in statutory damages and $6,353.08 in punitive damages. TransUnion appealed, in part because the class members (besides Ramirez) lacked standing. The Ninth Circuit held that "each member of a class certified under Rule 23 must satisfy the bare minimum of Article III standing at the final judgment stage of a class action in order to recover monetary damages in federal court." The Ninth Circuit also held that each class member did in fact have the requisite standing to obtain damages, even though about three quarters of the class members did *not* have their reports disclosed to third parties; rather, the court found standing only because TransUnion violated those class members' statutory rights under the Fair Credit Reporting Act. TransUnion filed a writ of certiorari, and on December 16, 2020, the Supreme Court granted its petition.

The Supreme Court's ruling would make it particularly difficult for large companies subject to a variety of laws and regulations to defend against class actions. Google, eBay, along with several other technology companies and associations, have filed a brief in support of TransUnion, arguing that the services they provide "are often target for claims under federal and state laws that confer private rights of action and contain statutory damages provisions similar to the provisions in the … [FRCA] … includ[ing] the Wiretap Act, … the Stored Communications Act, … the Video Privacy Protection Act, … and the Telephone Consumer Protection Act." A ruling in TransUnion's favor could aid these companies in defending against damages claims based only on statutory violations.

The Supreme Court's decision could also affect the settlement process inherent in the litigation of class actions. The U.S. Chamber of Commerce and the National Federation of Independent Businesses filed an amicus brief arguing that affirming the Ninth Circuit's holding "would embolden [enterprising] lawyers to seek out atypical clients in order to leverage their uniquely sympathetic experiences into a multi-million-dollar damages award or settlement – all based on technical statutory violations." In their view, upholding the lower court's ruling would encourage settlements even more so than class actions already do.

Plaintiffs' counsel and defense attorneys alike will certainly be tuning into oral argument on March 30, and awaiting the Supreme Court's decision with bated breath.

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