No Harm, no Foul—With TransUnion v. Ramirez, the Supreme Court Holds that Fed. Rule Civ. P. 23 Does not Permit a Damages Class Where Much of the Class Suffered no Injury

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Or to put it in legalese—“no concrete harm, no standing.” It does not get more simple than that. On June 25, 2021, the U.S. Supreme Court decided Trans Union v. Ramirez (“Ramirez”), a case involving whether class members who suffer no actual injury can be included in a damages class under Federal Rule of Civil Procedure 23. In a 5-4 decision written by Justice Kavanaugh, the Supreme Court held that they cannot because they do not have standing under Article III of the Constitution. The holding is important because it places limits on Congress’s ability to create statutory schemes that provide for damages in the absence of a concrete injury to potential class members.
In Ramirez, the lower court certified a class encompassing 8,124 absent class members who were allegedly subjected to inaccurate credit reporting by TransUnion, but the vast majority of whom had not actually suffered any injury because their credit reports were never disseminated to any third party. Specifically, the case involved the inaccurate reporting of consumers’ placement on a list of “specially designated nationals” by the Office of Foreign Assets Control (“OFAC”) indicating they were subject to sanctions and with whom business entities were forbidden to transact business. The lead plaintiff Ramirez had attempted to purchase a car from a dealership but was denied the opportunity when a credit report from TransUnion indicated he was on the OFAC list. Ramirez sued and sought to represent a class of 8,124 absent class members, 75% of whom Ramirez conceded suffered no actual concrete injury remotely similar to that sustained by him, when he was denied the opportunity to purchase a vehicle. Indeed, the credit reports of these absent class members had never been distributed to any third party. At most, the vast majority of absent class members were simply informed by TransUnion that their names had been reported on the OFAC list and had been subjected to potentially confusing mailings about the reports and how could they address them.

The lower courts found that the proposed class by Ramirez was certifiable under Rule 23. Specifically, the Ninth Circuit Court of Appeals, over a dissent, ruled that the claims of the lead plaintiff were sufficiently “typical” and that absent class members suffered an “injury” because they had been erroneously notified by mail that they were on OFAC’s sanctions list. Further, the mere possibility that the erroneous reports could have been distributed to third parties “suffic[ed] to show a material risk of harm to the concrete interests of all class members.” Accordingly, the Ninth Circuit Court of Appeals affirmed an adverse trial verdict against TransUnion though it lowered a class-wide punitive damages award.

The Supreme Court reversed. It held that in assessing whether a class member has suffered a “concrete harm” under Article III, as required by its earlier decision in Spokeo v. Robins, courts must “[a]ssess . . . whether the asserted harm has a “close relationship” to a harm traditionally recognized as providing a basis for a lawsuit in American courts – such as physical harm, monetary harm, or various intangible harms including (as relevant here) reputational harm.” In so ruling, the Court placed important restrictions on Congress’s authority to create statutory schemes involving damages where no “concrete harm” has been sustained. Such power would not only violate Article III requirements for bringing suit, but would also infringe upon Executive Branch prerogatives concerning law enforcement and thereby violate the separation of powers. As Justice Kavanaugh wrote, under Article III an injury in law is not an injury in fact. In the instant case, the Court ruled that those class members whose credit reports with the allegedly offending information were never disseminated to third parties suffered no cognizable concrete harm. In addition, the Court ruled that the receipt of potentially confusing mailings from Trans Union likewise did not cause concrete injury. For those class members whose credit reports were disseminated to third parties, the Court recognized that being labeled a “potential terrorist” was analogous to a false and defamatory statement and, therefore, satisfied Article III. The decision is important in that plaintiffs seeking to bring actions in federal courts predicated on statutory damages schemes will also need to demonstrate they sustained a “concrete harm” which, in many cases, they will be unable to do so.