

Class Actions Alert

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9th Circuit Holds All Members of a Certified Class Must Have Article III Standing To Recover Monetary Damages

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Key Points

- In a matter of first impression within the 9th Circuit, the court held that each member of a certified class must have Article III standing in order to recover individual monetary damages at trial.
- Those class members with no injury-in-fact within the meaning of Article III may not recover damages, and should be excluded either from the class definition or from calculation of any aggregate damage award.
- The 9th Circuit instructed district courts to “keep in mind that they will need a mechanism for identifying class members who lack standing” and should “winnow out” such non-injured class members.

On February 27, 2020, in *Ramirez v. TransUnion LLC*, the 9th Circuit held that individual class members must satisfy Article III’s standing requirements in order to recover individual monetary damages. Class members who experienced no injury-in-fact traceable to the alleged statutory violation or challenged conduct must be excluded from any class damages award. The panel’s decision, and the views expressed in a strong partial dissent, reflect the continued tension between the traditional goals of civil litigation as compensating for actual injuries—which the 9th Circuit described as “the fundamental nature of our judicial system”—and putative class actions that seek aggregated statutory damages for technical statutory violations on behalf of non-injured class members.

Background

The underlying litigation arises from a credit report by defendant TransUnion that identified plaintiff Ramirez’s name as matching two names on the U.S. Department of Treasury’s Office of Foreign Asset Control (OFAC) Database. The OFAC Database contains a list of terrorists, drug traffickers and other individuals and entities prohibited from doing business in or with the United States.

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TransUnion's inclusion of OFAC information on its credit reports originated as a service known as "OFAC Advisor," which ran a consumer's first and last name against the names on the OFAC Database and alerted merchants of potential risk. This service allegedly led to false matches for Ramirez and a class of over 8,000 consumers, many of whom were falsely informed by TransUnion that the OFAC alerts had been removed from their credit reports.

Ramirez filed a putative class action claiming that TransUnion's OFAC alert practices—including its failure to follow reasonable procedures to assure the accuracy of the data, excluding the OFAC alerts from the reports it sent the class members and failing to provide a summary of rights—violated various provisions of the Fair Credit Reporting Act (FCRA). After the district court certified the class, a jury found in favor of Ramirez and the class, awarding \$60 million in statutory and punitive damages. On appeal, TransUnion argued that because it did not send the credit reports of many of the class members to third parties, those class members did not suffer a concrete injury-in-fact as required for Article III standing for each of the FCRA claims asserted on their behalf by Ramirez as class representative.

The 9th Circuit's Opinion

The 9th Circuit held that each member of a class certified under Rule 23(b)(3) of the Federal Rules of Civil Procedure must establish Article III standing at the final judgment stage of a class action in order to recover monetary damages. The court acknowledged that its holding on this issue of first impression followed both from "Supreme Court precedent, as well as the fundamental nature of our judicial system." In addition, to permit uninjured class members to recover damages would contravene the Rules Enabling Act (27 U.S.C. § 2072(b)), by "transform[ing] the class action—a mere procedural device—into a vehicle for individuals to obtain money judgments in federal court even though they could not show sufficient injury to recover those judgments individually."

The majority opinion clarified that its holding does not apply to class actions seeking only injunctive relief under Rule 23(b)(2). The Court also confirmed that its holding was limited to the case before it—specifically, the entry of a classwide damages judgment following a jury trial of class claims certified under Rule 23(b)(3). The majority's opinion explained that its holding did not "alter the showing required at the class certification stage or other early stages of a case." At the same time, however, the majority instructed that district courts should bear standing requirements in mind when confronted with proposed Rule 23(b)(3) classes. The majority suggested that district courts refine class definitions to exclude persons without standing, or exclude non-injured class members from recovery "at the damages phase of the litigation."

Even so, when applying its holding to the case before it, the majority concluded that all 8,185 class members had standing on each of the claims to recover damages. While the panel acknowledged that the majority of class members did not have their credit reports disseminated to third parties, the fact that TransUnion made the reports readily available to potential creditors and employers—combined with the "highly sensitive and distressing nature" of the OFAC alerts, the risk of third-party access, and the federal government's awareness of the alerts—was sufficient to show a material risk of harm to the concrete interests of all class members.

In a partial dissent, Judge McKeown agreed with the majority's holding that "Article III and the Rules Enabling Act require all members of a damages class to have standing at trial." Applying that holding, however, Judge McKeown concluded that "[t]he standing issues at trial germinated from seeds sown during class certification." Specifically, because the district court did not fully address the standing requirements on a claim-by-claim basis, as Article III requires, the case was certified, tried to the jury and a multimillion damage award entered based primarily on the experiences of named plaintiff—and without sufficient inquiry as to the different experiences and lack of injury to class members. The result was that the defendant was liable on a multimillion damage award to all class members "based on the unfortunate and unrepresentative experience of a single plaintiff."

Takeaways

The majority opinion and partial dissent reveals continued tension between the traditional objective of litigation—to compensate actually injured claimants—and statutory regimes that permit recovery for technical violations of federal or state law. While the court confirmed that class members must satisfy Article III's standing requirement, the larger issue—including when those standing obstacles may defeat class certification—remains to be determined. To the extent the 9th Circuit purports to exclude consideration of class member standing at class certification, its decision creates a circuit split, insofar as the majority of circuits have held that courts abuse their discretion under Rule 23 by certifying classes that contain a significant number of uninjured class members.

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