No. 20-297

In the Supreme Court of the United States

TRANSUNION LLC,
Petitioner,

v.

SERGIO L. RAMIREZ,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMERICAN ASSOCIATION FOR JUSTICE AS AMICUS CURIAE IN SUPPORT OF THE RESPONDENT

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INTEREST OF AMICUS CURIAE AND SUMMARY OF ARGUMENT[1]

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ's members primarily represent plaintiffs in consumer cases, personal injury actions, employment rights cases, and other civil actions. Throughout its more than seventy-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

AAJ files this brief to address two arguments—one of which falls within the scope of the questions presented, and one of which does not. *First*, we briefly wish to explain why respondent Sergio Ramirez and the Solicitor General are correct that, under this Court's decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), every class member here suffered concrete Article III injury as a result of petitioner TransUnion's repeated and willful violations of the Fair Credit Reporting Act (FCRA).

Second, we wish to respond to an argument made by two of TransUnion's amici—the Chamber of Commerce and the National Federation of Independent Business—that a class action cannot proceed past the certification stage if it potentially includes uninjured class members.

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[1] The parties have lodged blanket consent to file amicus briefs with the clerk. No counsel for a party authored this brief in whole or in part and no person other than *amicus curiae* and its counsel made a monetary contribution to its preparation or submission.

Because TransUnion's appeal arises from final judgment after a jury trial, this argument as to the correct "timing" for evaluating class-member standing is not presented here. Regardless, it is wrong. Nothing in the Constitution, Rule 23, or this Court's precedent requires amici's novel rule. Nor does it make sense as a practical matter. As this brief will explain, the lower courts have adopted a number of procedural mechanisms to address the rare possibility that uninjured class members could recover damages. And, consistent with this Court's decision in *Tyson Foods*, these mechanisms are intended to winnow out any uninjured class members at the appropriate time: post-judgment proceedings in a claims process.

Based on its members' expertise in class-action and consumer litigation—and its organizational concern for the development of the law in these areas—AAJ is well positioned to offer a unique perspective on the questions presented by this case.

ARGUMENT

I. The class members' injuries here comfortably satisfy Article III's minimum requirements.

Congress enacted the FCRA "to curb the dissemination of false information by adopting procedures designed to decrease that risk." *Spokeo*, 136 S. Ct. at 1550. The core purpose of the FCRA, in other words, "is to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report." S. Rep. No. 517, 91st Cong., 1st Sess. 1 (1969). In *Spokeo*, this Court made clear that—although "intangible"—this harm (or a "material risk" of this harm) can constitute a "concrete" Article III injury. 136 S. Ct. at 1549–50.

True, this Court also said in *Spokeo* that "bare procedural violation[s]" that result in "no harm" are not cognizable injuries. *See id.* at 1550. But TransUnion's violations in this case are worlds apart from "the dissemination of an incorrect zip code, without more." *Id.* Here, a jury found that TransUnion repeatedly violated the FCRA for years by falsely flagging nearly 10,000 class members as potential terrorists and national security threats in their credit reports. The evidence showed that TransUnion sent thousands of these credit reports to potential creditors and employers; thousands more were waiting to be sent at moment's notice. And the company compounded these violations by failing to send class members statutorily required disclosures—information Congress believed was critical to aid consumers in verifying the accuracy of their credit reports.

As Ramirez and the Solicitor General persuasively explain, both of *Spokeo*'s yardsticks—"history and the judgment of Congress"—confirm that the class members have suffered concrete harms, and thus have Article III standing. *See id.* at 1549. And this Court's informational-injury precedent only reinforces that conclusion. As a result, the decision below should be affirmed.

1. Article III's case-or-controversy requirement "is grounded in historical practice." *Spokeo*, 136 S. Ct. at 1549. Thus, if the "alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts"—if, in other words, "the common law permitted suit" in analogous circumstances—the plaintiff has suffered concrete injury. *Id.*

As Ramirez and the Solicitor General explain, the injuries caused by TransUnion's failure to undertake

reasonable procedures in violation of 15 U.S.C. § 1681e(b) bear a "close relationship" to those recognized under the common law of defamation. *See* Resp. Br. 24–27; SG Br. 16–17. By communicating false information about the class members, TransUnion damaged their "reputational and privacy interests," which "have long been protected in the law." *Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1114 (9th Cir. 2017); *see also Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 371 (1974) (White, J., dissenting) (describing "the historic rule" that "publication in written form of defamatory material . . . subjected the publisher to liability although no special harm to reputation was actually proved").

History is not the only factor in determining whether a statutory violation causes concrete injury—the "judgment" of Congress is equally "important." *Spokeo*, 136 S. Ct. at 1549. And here, that too points in favor of finding that the class members suffered concrete injury. Indeed, TransUnion's violations caused the precise injury that Congress sought to prevent with the FCRA's reasonable-procedures provision. *See Spokeo*, 136 S.Ct. at 1549–50; Pet. App. 22. All of the class members, therefore, have sufficiently shown Article III standing.

Remarkably, TransUnion questions even whether the 1,853 class members whose inaccurate reports were *disseminated* to potential creditors have standing, because "Ramirez offered no evidence that [the other class members were] denied credit or suffered any injury on account of the dissemination of information." Pet. Br. 23, 26, 40–43. Yet that position directly conflicts with *Spokeo*. Where a plaintiff shows "the risk of real harm," this Court held, he "need not allege any *additional* harm beyond the one Congress has identified." *Spokeo*, 136 S.

Ct. at 1549. Regardless, as the Solicitor General persuasively argues (at 17–21), the *actual* dissemination to potential creditors of inaccurate information about the 1,853 class members exposed them to an "almost inevitable risk" of adverse actions and reputational harm.

Nevertheless, according to TransUnion (at 40–42), because its OFAC alerts did not disseminate "materially false information," Ramirez must show more than a risk of harm to the class members—he must prove that they suffered *further* "injury on account of having a credit report containing a 'potential match' alert disseminated to a third party." That is wrong for at least three reasons.

First, the OFAC alerts *were* false—TransUnion never "correctly flagged" anyone on its OFAC list. Resp. Br. 11; *see* SG Br. 20 n.4. *Second*, that the common law may have required publication of false information for defamation doesn't matter. The harm identified by Congress need only bear "a close relationship to" the common-law analogue, and it does here. *Spokeo*, 136 S. Ct. at 1549. That is because, "[i]f a plaintiff were required to satisfy every element of a common law cause of action before qualifying for statutory relief, Congress's power to 'elevat[e] intangible harms' by defining injuries and chains of causation which will 'give rise to a case or controversy where none existed before' would be illusory." *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1010 (11th Cir. 2020) (Martin, J., concurring in part and dissenting in part) (quoting *Spokeo*, 136 S. Ct. at 1549).[2] *Third*, *Spokeo* did not, as TransUnion claims (at 40), confine its analysis

[2] As Ramirez explains, it is for this reason that TransUnion's repeated refrain that the harm here is analogous "a defamatory letter left in a desk drawer" is not only a misstatement of the facts and evidence, but also just irrelevant. *See* Resp. Br. 22, 27–28.

to cases involving "false" information. It described a "general principle[]": "[T]he violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact," and a plaintiff "in such a case need not allege any additional harm beyond the one Congress has identified." 136 S. Ct. at 1549–50. That principle controls here.

2. TransUnion's attack on class members' standing to bring disclosure claims under 15 U.S.C. § 1681g(a)(1) and (c)(2) also fails. *See* Resp. Br. 24–32. But this Court need not even analyze the *Spokeo* factors to reach that conclusion because, as the Solicitor General argues (at 21–25), it flows directly from this Court's informational-injury jurisprudence.

In *Spokeo*, this Court reaffirmed that the "inability to obtain information" that is statutorily subject to disclosure "constitutes a sufficiently distinct injury to provide standing to sue." 136 S. Ct. at 1549–50. In support of that proposition, this Court identified two of its previous cases: *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440 (1989), and *Federal Election Commission v. Akins*, 524 U.S. 11 (1996). These cases, courts and commentators recognize, hold that where a statute requires that certain information be disclosed to those it would help, "[t]he law is settled that a denial of access to [that] information qualifies as an injury in fact." *Env't Def. Fund v. EPA*, 922 F.3d 446, 452 (D.C. Cir. 2019) (cleaned up); *see also* Sunstein, *Informational Regulation and Informational Standing:* Akins *and Beyond*, 147 U. Penn. L. Rev. 613 (1999).

TransUnion brushes these cases off in a single paragraph, claiming that they only apply to a "failure to disclose [any] information *at all*." Pet. Br. 30 (emphasis

added). But this Court's precedent does not suggest that informational injury is an all-or-nothing inquiry—in other words, that Article III asks only whether a plaintiff has been deprived of *all* information to which she is statutorily required. Under TransUnion's logic, a person who submitted a FOIA request would lack standing to sue so long as the government sent him *something*—even if it was non-responsive or a response to someone else. Nothing supports that absurd result.

The rest of TransUnion's argument consists of complaints that Ramirez did not present evidence that the class members suffered shock or confusion as a result of the company's disclosure violations. Pet. Br. 31–33; *see also* Chamber of Com. & Nat'l Fed'n of Indep. Bus. *Amicus* Br. 16–19. But, as explained, whether class members suffered "any *additional* harm" injury *as a result of* the denial of the statutorily required information is irrelevant for standing purposes. *Spokeo*, 136 S. Ct. at 1549. Thus, for example, a government contractor seeking to confirm that it has been paid in full would have standing to challenge the denial of a FOIA request even if turns out that there was no underpayment. *See, e.g.*, *Pub. Citizen*, 491 U.S. at 449; *A Better Way for BPA v. DOE Bonneville Power Admin.*, 890 F.3d 1183, 1186 (9th Cir. 2018). A consumer likewise has a right to review their credit report under the FCRA before an adverse action "whether the report is accurate or not," and regardless of "whether having the report would allow [them] to stave off" the adverse action. *Long v. Se. Pa. Transp. Auth.*, 903 F.3d 312, 319-24 (3d Cir. 2018).

II. Neither Article III nor Rule 23 requires that absent class members submit evidence of personal standing at class certification.

Because this appeal arises from final judgment after trial, it does not present the question whether absent class members must establish their personal standing at class certification. TransUnion wisely does not ask the Court to weigh in on that question. Still, some of TransUnion's amici would have the Court go beyond the questions presented, this case's procedural posture, and the scope of TransUnion's own argument. The Chamber of Commerce and the National Federation of Independent Business, in particular, urge the Court "take this opportunity to explain that a rigorous assessment of standing must take place at the class certification stage." Chamber Br. 9. This Court should decline the invitation. But if it sees fit to address that unprecedented question, the Court should reject amici's argument and affirm the conclusion below that, at the certification stage, "only the representative plaintiff need allege standing." Pet. App. 16.

1. To begin, there is no *constitutional* basis for requiring that absent class members' personal standing be evaluated at the certification stage—as even TransUnion's amici implicitly acknowledge. *See* Chamber Br. 10 n.3. As this Court has explained, once the named plaintiff establishes Article III injury and membership in the class, the inquiry shifts "from the elements of justiciability to the ability of the named representative to 'fairly and adequately protect the interests of the class.'" *Sosna v. Iowa*, 419 U.S. 393, 403 (1975). *Spokeo* itself recognized that, to bring a class action, Article III requires the "named plaintiffs [to] . . . 'show that they personally have been injured, not that [the] injury has

been suffered by other, unidentified members of the class to which they belong.'" 136 S. Ct. at 1547 n.6 (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40, n. 20 (1976)); *see also, e.g.*, *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 771–73 (1976) (permitting class certification even though some class members "may not in fact have been actual victims of racial discrimination").

And that is *all* they have to show at the certification stage for the action to be justiciable under Article III, as courts and commentators alike have broadly recognized. *See* Davis et. al., *The Puzzle of Class Actions with Uninjured Members*, 82 Geo. Wash. L. Rev. 858, 867 (2014) ("Standing doctrine does not prevent a court from certifying a class that contains members who will ultimately turn out not to have meritorious claims."). In fact, the very cases that amici cite in support make that clear. *See, e.g.*, *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1273 (11th Cir. 2019) (observing that "'all that the law requires' is that a *named* plaintiff have standing"); *see also,* 1 Rubenstein, *Newberg on Class Actions* § 2:3 (5th ed. 2016) ("[T]he vast majority of courts continue to heed the basic rule that the standing inquiry focuses on the class representatives, not the absent class members.").

This is not to say that absent class members' Article III standing *never* comes into play. To the contrary, as the Ninth Circuit correctly held, the issue presents itself at the time of final judgment, when the district court must then oversee a process for distributing any aggregate recovery to qualifying individual class members. Pet. App. 17; *see Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1053 (2016) (Roberts, C.J., concurring) ("Article III does not give federal courts the power *to order relief* to any uninjured plaintiff, class action or not.") (emphasis added);

see also, e.g., Klonoff, *Class Actions Part II: A Respite from the Decline*, 92 N.Y.U. L. Rev. 971, 986 (2017) (noting that an "Article III problem would arise only if a court intended to distribute funds to uninjured people"). The Constitution simply does not require that injury-in-fact be proven at the class-certification stage.

2. Nor does Rule 23's predominance impose such a requirement. As this Court has made clear, Rule 23(b)(3) "does not require a plaintiff seeking class certification to prove that each elemen[t] of [her] claim [is] susceptible to classwide proof." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013). And "it would 'put the cart before the horse,' . . . to read Rule 23 to require that a plaintiff demonstrate prior to class certification that each class member is injured." *In re Asacol Antitrust Litig.*, 907 F.3d 42, 58 (1st Cir. 2018).

Instead, all that Rule 23(b)(3) requires is that common questions "*predominate* over any questions affecting only individual [class] members." Fed. Rule Civ. Proc. 23(b)(3) (emphasis added). Indeed, "[t]he entire notion of predominance implies that the plaintiffs' claims need not be identical." *Krakauer v. Dish Network, LLC*, 925 F.3d 643, 658 (4th Cir. 2019); *see Amgen*, 568 U.S. at 469 (noting that the "focus of the predominance inquiry" is on whether the "proposed class is sufficiently cohesive to warrant adjudication by representation" (cleaned up)). Thus, as this Court has explained, a class can meet the predominance requirement "even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Tyson Foods*, 136 S. Ct. at 1045 (quoting 7AA Wright, Miller, & Kane, *Federal Practice and Procedure* § 1778, pp. 123–124 (3d ed. 2005)). The fact that

"some class members' claims will fail on the merits if and when damages are decided" is "generally irrelevant to the district court's decision on class certification." *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 823 (7th Cir. 2012); *see also Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1137 (9th Cir. 2016) ("[F]ortuitous non-injury to a subset of class members does not necessarily defeat certification of the entire class.").

So even if there are individualized questions about class members' injuries in a particular case, that matters for certification only if there is "reason to think that these questions will overwhelm common ones." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 276 (2014). No such reason exists here. Indeed, even on TransUnion's account, the injury question in this case is susceptible of classwide resolution—after all, TransUnion contends that *no* class member except for Ramirez suffered concrete injury because they have shown only "bare statutory procedural violation[s]." Pet Br. 30. Whether or not TransUnion is right, the standing question here will be answered on a classwide basis. As Judge Easterbrook has observed, "Rule 23 allows certification of classes that are fated to lose as well as classes that are sure to win." *Schleicher v. Wendt*, 618 F.3d 679, 686 (7th Cir. 2010).

3. In light of the above, "it is difficult to understand why the presence of uninjured class members at the preliminary stage should defeat class certification." *In re Nexium Antitrust Litig.*, 777 F.3d 9, 21 (1st Cir. 2015). "Ultimately, the defendants will not pay, and the class members will not recover, amounts attributable to uninjured class members, and judgment will not be entered in favor of such members." *Id.* at 21–22.

TransUnion's amici contend that removing uninjured class members at the certification stage nonetheless makes "practical sense" so that "parties do not needlessly expend time and money . . . litigating a certified class action through trial only for a court to conclude at final judgment that significant portions of the certified class lack standing." Chamber Br. 10. But as the amici themselves acknowledge, in many (if not most) cases, it is difficult to determine "whether the class as defined contains uninjured members." *Id.*; *see Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009) (noting that "at the outset of the case many of the members of the class may be unknown, or if they are known still the facts bearing on their claims may be unknown").

Given this, as we explain in Section III below, these practical concerns are better addressed by other mechanisms that courts have developed to deal with this issue after determining liability. In the end, while inclusion of uninjured class members at the certification stage may sometimes be "inefficient," "this is counterbalanced by the overall efficiency of the class action mechanism." *Nexium*, 777 F.3d at 22; *see also Kleen Prod. LLC v. Int'l Paper Co.*, 831 F.3d 919, 929 (7th Cir. 2016) ("The determination of the aggregate classwide damages is something that can be handled most efficiently as a class action, and the allocation of that total sum among the class members can be managed individually, should the case ever reach that point.").

III. Consistent with *Tyson Foods*, lower courts have developed administrable mechanisms to address the unlikely possibility that uninjured class members could recover damages.

TransUnion and its amici raise the specter of a flood of damages going to uninjured class members if the decision below is not reversed. But the decision below simply does not present this concern. For the reasons in Section I above, as well as those in Ramirez's and the Solicitor General's briefs, all class members here were injured—they suffered the same concrete injuries as a result of TransUnion's willful FCRA violations. And there were no individualized injury questions because all class members (including Ramirez) sought only statutory damages—not actual or consequential damages. *See* Resp. Br. 7.

Regardless, there is no reason for the Court to be concerned about the unlikely event of uninjured class members recovering damages after a trial and judgment. In *Tyson Foods, Inc. v. Bouaphakeo*, this Court sketched out an approach for how courts should deal with that possibility during the claims process that occurs long after class certification, and even after the final liability determination. And since that decision, the lower courts have continued to fill in the details, developing a number of mechanisms that adequately guard against recovery by uninjured class members.

1. *Tyson Foods* involved a wage-and-hour class action in which the defendant had failed to keep any employee time records, a violation that made it impossible for the plaintiffs to rely on their individual records in pursuing their claims. For that reason, the plaintiffs relied instead on representative testimony to establish how long it took

each employee to complete tasks that had been uncompensated. *See Tyson Foods*, 136 S. Ct. at 1043–44.

This Court rejected the defendant's argument that class certification needed to be reversed, even though the actual amount of uncompensated time varied from person to person, and the representative proof itself indicated that some members didn't qualify for overtime and were thus uninjured. *See id.* at 1047. Instead, Court affirmed a class *verdict* despite the fact that it was "undisputed that hundreds of class members suffered no injury." *Id.* at 1051 (Roberts, C.J., concurring). Even at the judgment stage, therefore, decertification was not required solely on the ground that the plaintiffs "ha[d] not demonstrated any mechanism for ensuring that uninjured class members do not recover damages here." *Id.* at 1049. The Court explained that this question was "premature" and was not "yet fairly presented by this case, because the damages award ha[d] not yet been disbursed, nor d[id] the record indicate how it will be disbursed." *Id.* at 1050.

Tyson Foods thus stands in opposition to the idea that courts "should not certify a proposed class when it is clear from the nature of the claims, the proposed class definition, and the undisputed evidence at the class certification stage that the proposed damages class includes more than a trivial number of individuals who would lack standing regardless of the evidence adduced at trial." Chamber Br. 9. And, contrary to amici's novel rule, *Tyson Foods* holds that a method for excluding uninjured class members need not be devised at certification—or even when the verdict is announced.[3]

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[3] This Court's other holding in *Tyson Foods* was that the

2. Since *Tyson Foods*, lower courts have successfully identified mechanisms to protect against the possibility that someone in a class will recover who wasn't injured by winnowing out any such people. The existence of these post-certification mechanisms demonstrates that amici's proposed certification-stage inquiry is unnecessary.

To take one example, in *In re Nexium Antitrust Litigation*, the First Circuit considered the defendant's objection that some class members were not injured by its anticompetitive practices because they would have bought the defendant's brand-name drugs out of brand loyalty—regardless of the availability of comparable generic drugs. *See* 777 F.3d at 20. The court rejected the defendant's "mere[] speculat[ion] that a mechanism for exclusion [could not] be developed later." *Id.* at 21. As it explained, whether a class member was injured could be determined from unrebutted consumer testimony, "in the form of an affidavit or declaration," stating "that, given the choice, he or she would have purchased the generic." *See id.* at 20. That this mechanism might entail "*some* individualized determinations at the liability and damages stage d[id] not," the court held, "defeat class certification." *Id.* at 21 (emphasis added).

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plaintiffs' representative evidence was permissible. *See* 136 S. Ct. at 1047. That was particularly so because the defendant had failed to keep adequate individualized records: "Since there were no alternative means for the employees to establish" injury, the plaintiffs could "introduce a representative sample to fill an evidentiary gap created by the employer's failure" to follow federal law. *Id.* Notably, the same evidentiary problem exists in this case—as Ramirez explains, TransUnion's "recordkeeping practices prevented total and reliable identification of when, and to whom, it had sold OFAC alerts." Resp Br. 16 (citing JA 114–15).

Of course, as the First Circuit held in a subsequent decision, if the defendant's decision to challenge those determinations would cause individualized questions to predominate over common ones, then certification may ultimately not be appropriate. *See Asacol*, 907 F.3d at 58. What matters is that district courts "offer a reasonable and workable plan for how that opportunity will be provided in a manner that is protective of the defendant's constitutional rights and does not cause individual inquiries to overwhelm common issues." *Id.*; *see Ruiz Torres*, 835 F.3d at 1137 (observing that "the district court is well situated to winnow out [] non-injured members at the damages phase of the litigation, or to refine the class definition").

Courts throughout the country have done just that. They have, for instance, approved the use of expert methodology to determine what percentage of the class should be removed for absence of injury, and then used that methodology in combination with sworn consumer affidavits and electronic data to ensure that only injured members of the class recover damages. *See, e.g.*, *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 335 F.R.D. 1, 23–25 (E.D.N.Y. 2020). And they have done so based on the specific context and facts before them. In *Restasis*, for example, the court's plan relied "on the extensive and particularized data created in the pharmaceutical industry that reveals the number of prescriptions purchased by each consumer and how much each end-payor paid for each prescription." *Id.* at 31. As the court in that case explained, "[t]hese common components will significantly narrow the scope of individualized damages calculations, which will likely involve simple arithmetic." *Id.* Other courts have employed similar methods to "remove [uninjured class

members] from the aggregate damages award . . . [a]t the claims administration stage." *In re Lidoderm Antitrust Litig.*, 2017 WL 679367, at *18–*19 (N.D. Cal. Feb. 21, 2017); *see also, e.g.*, *In re Zetia (Ezetimibe) Antitrust Litig.*, 2020 WL 5778756, at *19 (E.D. Va. Aug. 14, 2020).

This is true even for cases, like this one, that involve statutory damages. In *Krakauer v. Dish Network*, for instance, the Fourth Circuit rejected the defendant's argument that a class seeking statutory damages under the Telephone Consumer Protection Act should have been decertified because it "include[d] a large number of uninjured persons." 925 F.3d at 657. The court held that "[t]he class-wide data"—including "aggregate" and "class-wide records" in the defendant's custody—"obviated any concern on this score." *See id.* at 657–58. As Judge Wilkinson explained, the TCPA "creates a simple scheme for determining if a violation occurred, whether a defense is available, and what the damages ought to be." *Id.* at 659. So does the FCRA: It sets out a "simple scheme" for determining liability, and provides for statutory damages in the event of a violation. And, just as in *Krakauer*, here "the advantages of class resolution . . . follow directly from the statute." *Id.*

CONCLUSION

This Court should affirm the decision below.

Respectfully submitted,

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