

Publications

Client Alert: A Record FCRA Verdict Entered Against TransUnion

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On June 20, a federal jury sitting in the Northern District of California *Ramirez v. TransUnion LLC* case awarded a class of 8,185 consumers the largest to date Fair Credit Reporting Act (FCRA) verdict, consisting of \$8 million in statutory damages and \$52 million in punitive damages.

The lawsuit was based on TransUnion's alleged failure to keep credit reports of ordinary consumers from being linked with similarly-named individuals listed on the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) [watch list](#). The watch list is a part of OFAC's enforcement effort and contains names of individuals and organizations linked to drug trafficking, terrorism and other criminal activities.

The named plaintiff, Sergio L. Ramirez, filed his complaint in February 2012 alleging that he was not able to buy a car in 2011 because TransUnion reported to lenders that his name potentially matched entries on OFAC's watch list. Ramirez further alleged that he attempted to have TransUnion correct the error on his report but received no assistance.

At trial, the class argued that TransUnion was required by FCRA to assure the accuracy of its reports and failed to cross-check OFAC hits against other personal identifiers, such as birth dates. The class further argued that TransUnion also violated FCRA by disclosing OFAC match information only to lenders requesting credit reports, but not to consumers, depriving consumers of opportunities to challenge and correct the information.

TransUnion countered these arguments at trial by blaming Ramirez's experience on credit reports getting "garbled" in multiple transmissions before reaching the auto dealer. TransUnion also argued that no actual damage resulted from the erroneous links to OFCA watch lists, because Ramirez, for example, was able to purchase a car in the same timeframe and on the same terms as would have been the case had his name not triggered the OFAC list connection.

The jury rejected these arguments and found that TransUnion: (1) willfully failed to follow reasonable procedures to assure the maximum possible accuracy of OFAC information it associated with class members, (2) willfully failed clearly and accurately to disclose OFAC information in written disclosures it sent to class members, and (3) willfully failed to provide class members a summary of their FCRA rights with each written disclosure actually made.

This is not the first time TransUnion has been in hot water over its OFAC reporting. In 2009 a single consumer brought a case against TransUnion over a credit report also provided to an auto dealer that erroneously linked her name to the OFAC watch list. The auto dealer was ultimately able to confirm that the consumer was not in fact on the OFAC list and she suffered no negative effects from the erroneous report. The case went to trial and the jury awarded plaintiff \$50,000 in compensatory damages and \$750,000 in punitive damages, which the district court reduced to \$100,000. On appeal, the Third Circuit Court of Appeals rejected TransUnion' arguments that it could not have violated FCRA because: (1) the OFAC alert was not part of a "consumer report" as defined by the FCRA and (2) the OFAC alert was not a part of the consumer's "file" as defined by the FCRA. The Third Circuit **affirmed** Trans Union's liability and the jury's award of compensatory and punitive damages, as remitted by the district court.

The massive award in the *Ramirez* case is a warning to all credit reporting agencies and furnishers of data about proactively monitoring and cross-referencing information that may end up in a person's credit report. This case also, however, raises questions whether: (1) a case similar to *Ramirez* would survive today's *Spokeo* scrutiny in light of the admitted lack of "concrete" injuries flowing from the allegedly erroneous reports and (2) another court would allow for class treatment of similar claims when each consumers' ability to demonstrate a concrete injury may differ significantly and require individualized scrutiny.