
CASE NO. 26-2678

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT

LESLEY KAPLAN,
on behalf of herself and all others similarly situated,
Plaintiff-Appellee,

v.

TRANS UNION LLC,
Defendant-Appellant.

On Appeal from the United States District Court for the
Eastern District of Pennsylvania, Case No. 2:24-cv-2438,
Hon. Wendy Beetlestone, Chief United States District Judge

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES
OF AMERICA, WASHINGTON LEGAL FOUNDATION, AND THE
AMERICAN BANKERS ASSOCIATION AS *AMICI CURIAE*
IN SUPPORT OF DEFENDANT-APPELLANT**

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CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America, Washington Legal Foundation, and the American Bankers Association each states that it is a nonprofit, tax-exempt organization incorporated in the District of Columbia. Each organization has no parent corporation, and no publicly held company has 10% or greater ownership in it.

/s/ Adam G. Unikowsky

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STATEMENT REGARDING CONSENT

Defendant-Appellant consents to the filing of this brief; Plaintiff-Appellee did not respond to the request for consent regarding this brief.¹

IDENTITY AND INTEREST OF *AMICI*

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business organization. As the nation’s leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of concern to the nation’s business community, including cases involving class actions.

Washington Legal Foundation (“WLF”) is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as an *amicus curiae* to oppose improperly certified classes.

¹ Under Fed. R. App. P. 29(a)(4)(E), *amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

The American Bankers Association (“ABA”) is the voice of the nation’s \$25.3 trillion banking industry, which is composed of small, regional and large banks that together employ over 2 million people, safeguard \$20.1 trillion in deposits and extend \$13.5 trillion in loans. The ABA frequently files *amicus* briefs on matters of interest to its members, including in the class-action context. The ABA has a strong interest in ensuring the proper interpretation and application of Rule 23’s requirements, because improperly certified class actions threaten substantial harm to businesses, including the ABA’s members.

The District Court’s class-certification order is premised on a mistaken interpretation of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681c-2, which if left undisturbed would threaten the integrity of the consumer reporting system, to the detriment of businesses and consumers alike. The District Court also failed to conduct the rigorous analysis required by Rule 23 before certifying a class. The class here consists of all individuals who received a particular letter in the mail, but the District Court disregarded the need for individualized proceedings to determine whether each individual suffered a concrete injury because of the letter—a highly fact-specific inquiry that defeats predominance under Rule 23(b)(3). *Amici* have a strong interest in ensuring that federal district courts interpret the FCRA correctly and comply with Rule 23’s standards in certifying any class thereunder.

INTRODUCTION

The District Court’s certification order is based on its conclusion that the FCRA “mandates a distinct sequence of events for fraud blocks,” under which a consumer’s request requires the reporting agency to automatically “block the relevant information,” then determine whether to ultimately “decline to block” the information. JA14-15.

As TransUnion explains, that statutory analysis is wrong. The FCRA does not require consumer reporting agencies to “first block the relevant information,” *id.*, then proceed to determine whether a block is ultimately justified. That interpretation collapses the FCRA’s express distinction between *declining* to block the information upfront and *rescinding* any previously imposed block. *See* 15 U.S.C. § 1681c-2(c)(1). This legal error by itself warrants reversal of class certification.

Even if the District Court’s statutory analysis were correct, however, the certification order should be reversed because class certification violates Rule 23’s requirements. Plaintiffs seeking to certify a damages class must *prove*—not merely plead—that common issues predominate over individual ones. And that requirement applies equally when the individualized issue is class members’ Article III standing. Here, the class’s sole defining feature is individuals who received a particular letter declining a requested block, but mere receipt of that letter is not an Article III injury-in-fact. Each class member must still demonstrate concrete harm stemming from

TransUnion’s alleged failure to *immediately* block the relevant information—an inherently individualized inquiry that defeats predominance.

The District Court failed to engage in this analysis. Instead, it analyzed only the named plaintiff’s standing, which under this Court’s precedent is no substitute for asking whether individualized standing disputes defeat predominance. And even the District Court’s limited standing analysis was flawed—finding concrete injury-in-fact based on amorphous concepts like emotional distress. In any event, the District Court cited no evidence *proving* that class members uniformly suffered those harms such that individualized issues of Article III standing would not predominate. Thus, regardless of the named plaintiff’s own standing, the District Court’s certification order is inconsistent with Rule 23.

This error, moreover, has real-world consequences for both plaintiffs and defendants alike. Certifying a class filled with uninjured members magnifies the already-enormous pressure that class certification places on defendants, particularly in cases like this one involving statutory damages. And it likewise harms class members who actually *were* injured by diluting the strength of their claims, forcing them to litigate alongside uninjured class members who have no cognizable claim. Rule 23’s rigorous predominance requirement exists precisely to prevent these harms, and the District Court’s certification order should thus be reversed.

That outcome is particularly warranted here given the serious ramifications of the District Court’s flawed statutory interpretation. The District Court’s interpretation of the FCRA—requiring consumer reporting agencies to block information immediately upon request, before any determination of validity—threatens to exacerbate the harmful practice of “credit washing,” whereby bad actors exploit identity-theft protections to fraudulently remove accurate information from credit reports. The federal government has repeatedly warned about and taken enforcement action against this ongoing practice. The business community depends on the accuracy and integrity of the consumer reporting system, which in turn depends on consumer reporting agencies’ ability to make threshold determinations about a request’s legitimacy before blocking information. The District Court’s erroneous ruling denies consumer reporting agencies that ability, harming businesses and consumers alike. The class-certification order and its flawed statutory analysis should therefore be reversed.

ARGUMENT

I. The District Court Erred in Certifying a Class Filled with Uninjured Individuals, Which Defeats Predominance.

A. Rule 23(b)(3)’s Predominance Requirement Is Not Satisfied When Individualized Proceedings Are Needed to Determine Injury, As Is Plainly True of This Class.

“The class action is ‘an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.’” *Comcast Corp. v. Behrend*,

569 U.S. 27, 33 (2013) (citation omitted). For that reason, “Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

Plaintiffs seeking to certify a Rule 23(b)(3) damages class action “must actually *prove*—not simply plead—that their proposed class satisfies each requirement of Rule 23, including ... the predominance requirement of Rule 23(b)(3).” *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014). The predominance requirement is “demanding,” and “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623-24 (1997). The “requirement asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *Ferreras v. Am. Airlines, Inc.*, 946 F.3d 178, 185 (3d Cir. 2019) (internal quotation marks omitted). If all plaintiffs would “need to provide particularized evidence” to prove their claims, “common issues do not predominate over individual ones.” *Id.* at 186.

That principle applies in the same way when the individual issue is Article III standing. “Every class member must have Article III standing in order to recover

individual damages. Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (internal quotation marks omitted). When a putative class contains uninjured members, and the plaintiff fails to prove that common issues predominate over individual standing disputes, a class cannot be certified. *See Huber v. Simon’s Agency, Inc.*, 84 F.4th 132, 156 (3d Cir. 2023) (“[P]redominance concerns can arise when unnamed class members must submit individualized evidence to satisfy standing and recover damages.”); *see also Neale v. Volvo Cars of N. Am., LLC*, 794 F.3d 353, 368 (3d Cir. 2015) (“[A] properly formulated Rule 23 class should not raise standing issues.”).² To establish predominance, plaintiffs “should submit evidence enabling the District Court to estimate how many class members (or what proportion of them) have standing,” because if “few class members will be able to show” standing then the “proposed class is not sufficiently cohesive.” *Huber*, 84 F.4th at 157 (internal quotation marks omitted).

Here, regardless whether the District Court’s interpretation of the FCRA is correct, Article III injury is an individualized issue that defeats predominance. Even if TransUnion were required to immediately block information upon request (as the

² *Amici’s* position is that courts should never certify a class known to contain uninjured members, but this Court has rejected that view. *Neale*, 794 F.3d at 366-67. The Court has emphasized, however, that the presence of uninjured individuals within a class may defeat predominance. *Id.* at 368-69.

District Court erroneously held), each class member would still need to establish some concrete harm stemming from TransUnion’s failure to implement that block. *See TransUnion*, 594 U.S. at 442 (“No concrete harm, no standing.”); *Huber*, 84 F.4th at 152-54. And that concrete harm would need to be specifically attributable to the failure to *immediately* block the information, not any subsequent determination to decline or rescind the block. *Cf.* JA16 (finding commonality satisfied based on the question whether TransUnion “violates the FCRA by skipping the *initial* block” (emphasis added)). The relevant question for each class member to establish standing, then, is not simply whether their block request was denied, but whether the absence of a block during the interval between the class member’s request and TransUnion making a determination on the request caused the class member a concrete injury.

There is no way for common proof to answer that question on behalf of the class as a whole. The class’s sole defining feature—receipt of a letter that purportedly violated the statute—does not on its own establish injury, as both the Supreme Court and this Court have previously held. *See TransUnion*, 594 U.S. at 441-42 (holding that receipt of a letter, allegedly in the wrong format, did not constitute Article III injury); *Huber*, 84 F.4th at 152 (rejecting the view that “because SAI’s letter violated the FDCPA, any and all recipients of the letter automatically have standing to bring suit”).

Whether any particular class member suffered concrete harm from the absence of an immediate block will thus depend on facts unique to that class member—*i.e.*, whether (and if so how) their disputed information was disseminated; any adverse consequences produced by that dissemination; whether any claimed consequences are traceable to the timing of the block rather than to TransUnion’s ultimate determination that no block was warranted; etc. To determine whether each class member has standing, the District Court would need to conduct a series of individualized mini-trials on these issues. This need for extensive individualized proceedings defeats predominance. *See Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 172 (3d Cir. 2001) (“If proof of the essential elements of the cause of action requires individual treatment, then class certification is unsuitable.”); *see also Ferreras*, 946 F.3d at 186 (“any claim that an employee was working off-the-clock would require an individualized inquiry as to when and to what extent that happened,” and this “need to provide particularized evidence” means that “common issues do not predominate over individual ones”).

Of course, the same is also true if the District Court’s statutory analysis is wrong, as TransUnion rightly contends. If TransUnion is not required to immediately block the information, each plaintiff would need to demonstrate both that TransUnion was ultimately incorrect in its denial of the requested block *and* that TransUnion’s refusal to block caused the plaintiff a concrete injury. Again, the

question whether TransUnion correctly declined a block request is necessarily an individualized inquiry, turning on the legitimacy of the consumer’s identity-theft claim and the accuracy of the information at issue. Regardless of the merits of the District Court’s statutory analysis, then, individualized issues predominate and class certification is inappropriate.

B. The District Court’s Standing Analysis Is Fundamentally Flawed.

The District Court did not grapple with these individualized standing disputes, contrary to this Court’s precedent. *See Huber*, 84 F.4th at 157. It made no effort to “estimate how many class members (or what proportion of them) have standing.” *Id.* (internal quotation marks omitted). Instead, the District Court analyzed only the putative class representative’s standing. JA18-19. But that analysis is no substitute for the inquiry *Huber* requires, and in any event is fundamentally flawed on its own terms.

The District Court concluded that Kaplan suffered concrete harm based on “wasted time and resources,” “emotional distress,” and TransUnion’s publication to Barclays of “a copy of Kaplan’s credit report containing the inaccurate ... debt.” *Id.* But the publication to Barclays occurred *before* Kaplan submitted her block request. *See* Dist. Ct. Doc. 79 at 4. Thus, any claimed harm from publication would not be traceable to TransUnion’s actions in response to Kaplan’s initial block request—the only actions relevant under the District Court’s analysis. *See* JA16 (finding

commonality based on TransUnion’s failure to “issu[e] the initial block required” under the District Court’s interpretation of the FCRA).

As for the claimed “wasted time” and “emotional distress” injuries, the District Court relied on authorities addressing whether those harms are compensable in damages, which is distinct from whether they suffice as Article III injury. *See In re Lamictal Direct Purchaser Antitrust Litig.*, 957 F.3d 184, 194 (3d Cir. 2020) (“We have consistently distinguished injury from damages.”). The proper calculation of damages, after a plaintiff has already proven both injury and a successful claim on the merits, is a remedial question that turns on congressional intent—*i.e.*, whether Congress, in enacting the relevant statute, sought to award compensation for certain types of harm or other events. But the possibility of compensatory damages for certain harms or other events does not automatically translate those harms into Article III injury-in-fact. *See TransUnion*, 594 U.S. at 427 (“[U]nder Article III, an injury in law is not an injury in fact.”); *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) (“Article III standing requires a concrete injury even in the context of a statutory violation.”).

Thus, under the FCRA, a plaintiff who has already established a concrete injury—*e.g.*, disruption in her ability to purchase a car or rent an apartment—may recover compensatory damages for “psychological and stress-related suffering” because the FCRA “is legislation designed to ... protect[] consumers from the kind

of injury that will almost certainly result when erroneous information is inserted into a credit report.” *Cortez v. Trans Union, LLC*, 617 F.3d 688, 719 (3d Cir. 2010) (cited by the District Court, JA18-19); *see also* 15 U.S.C. §§ 1681n, 1681o (damages provisions of the FCRA). But that does not mean an individual who has experienced *no* tangible harm from the alleged FCRA violation has standing to pursue such relief based solely on their subjective distress. *See, e.g., Reilly v. Ceridian Corp.*, 664 F.3d 38, 44-46 (3d Cir. 2011) (rejecting wasted time and resources and “emotional distress” as sufficient harms by themselves, reasoning that they should be compensated only after a tangible injury occurs); *see also Barclift v. Keystone Credit Servs., LLC*, 93 F.4th 136, 145-46 (3d Cir.) (claimed embarrassment was insufficiently concrete harm), *cert. denied*, 145 S. Ct. 169 (2024).

Indeed, if abstract harms without concrete consequences were adequate under Article III, the Supreme Court would not have specified the separate requirement of “downstream consequences” or “adverse effects” from alleged informational injuries. *TransUnion*, 594 U.S. at 442 (quotation marks omitted); *Kelly v. RealPage Inc.*, 47 F.4th 202, 214 (3d Cir. 2022) (any alleged informational injury must have “led to ‘adverse effects’ or other ‘downstream consequences’” to be cognizable (citation omitted)); *cf. Pub. Int. Legal Found. v. Sec’y, Pa.*, 136 F.4th 456, 469 (3d Cir. 2025) (rejecting argument that plaintiff “has suffered adverse effects or downstream consequences” sufficient to establish standing “simply by having

‘expended considerable time and financial resources’ to vindicate its rights”), *cert. denied*, 146 S. Ct. 1785 (2026).

Still, even if these claimed injuries of wasted time and emotional distress could theoretically suffice for standing, the District Court identified no evidence demonstrating that they occurred on a classwide basis. Evidence that Kaplan herself spent time disputing her file, or that she experienced distress upon receiving TransUnion’s letter, says nothing about the experience of any other recipient. Some class members may have submitted a block request and simply moved on after receiving the denial letter. Others may have realized that their real dispute was with the seller or another third party, not TransUnion. Still others may have asserted identity theft as to debts that were in fact their own—and so suffered no cognizable harm of any kind when TransUnion declined to block accurate information. Whether a given recipient devoted meaningful time to the dispute, and whether and to what degree that recipient was distressed, are facts personal to that individual that could be established only through testimony from each class member—and which the District Court did not even purport to consider as to class members beyond Kaplan herself.

Similarly, even if some class members may have theoretically suffered Article III injury based on dissemination of their allegedly inaccurate information, *see TransUnion*, 594 U.S. at 433-34, the District Court did not examine the

proportion of class members who actually had their information disseminated after they had requested a block of that information. Indeed, as noted above, the only dissemination of Kaplan's own report occurred *before* she submitted her block request to TransUnion, when she applied for a Barclays credit card—and Barclays approved the application. *See* Dist. Ct. Doc. 79 at 4. That publication (even assuming it constitutes a harm) cannot be traceable to TransUnion's failure to impose an initial block, because no block had yet been requested.

Nor did the District Court identify any feasible method for identifying those members within the class whose information was disseminated to a third party, let alone for determining whether the disseminated information was inaccurate. Those inquiries would necessarily require individualized discovery and investigation for each of the approximately 280,000 class members. JA8. Thus, even if Kaplan herself suffered Article III injury, the District Court's failure to identify evidence supporting classwide injury precludes a finding of predominance. *See Huber*, 84 F.4th at 152 (noting inability to find "specific 'financial consequences' as a result of SAI's letter" on classwide basis, as named plaintiff "offered no such evidence"). Because dissemination and any harms flowing therefrom are precisely the kind of facts that will vary from one class member to the next, the District Court's own theory of injury confirms that individualized issues predominate.

In short, the District Court’s analysis did not establish standing for Kaplan herself, much less for the rest of the class. The class-certification order should be reversed for failure to comply with Rule 23(b)(3).

C. Certifying a Class Rife With Uninjured Members Harms Defendants and Injured Class Members Alike.

The District Court’s failure to conduct a rigorous predominance analysis is not a technicality. Premature certification of an overbroad class inflicts real harm on defendants, as well as on class members who have meritorious claims.

The harm to defendants (almost always businesses) is well known. “[T]he certification decision is typically a game-changer, often the whole ballgame,” for plaintiffs and defendants alike. *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 591 n.2 (3d Cir. 2012). “Certification of a large class may so increase the defendant’s potential damages liability and litigation costs” that even a defendant with a meritorious defense “may find it economically prudent to settle and to abandon” that defense. *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978); accord *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 743 (2023) (“[T]he possibility of colossal liability can lead to what Judge Friendly called ‘blackmail settlements.’” (quoting H. Friendly, *Federal Jurisdiction: A General View* 120 (1973))); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (“Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims.”).

An overbroad class magnifies that pressure. From a defendant's perspective, the bigger the class, the bigger the damages exposure—and that is especially so where, as here, the class seeks statutory damages for every letter recipient regardless of injury. It is no comfort to the defendant that it may eventually have the chance to winnow down the class; a defendant facing an excessively broad class must, as a matter of risk management, assume the worst. When overbroad classes are certified, the coercive effect of certification is amplified precisely because the district court failed to adhere to Rule 23's requirements.

Premature certification also harms absent class members with meritorious claims, for two reasons. First, because the District Court did not verify that the class members suffered a common, concrete injury, the class almost certainly includes many individuals who were not harmed at all by the absence of an immediate block—such as individuals whose blocks were properly denied, and consumers whose files were never accessed by anyone during the relevant time period. Those class members have far weaker claims than individuals who assert that the block was improperly denied, whose credit report without the block was disseminated, and who experienced specific, concrete harms as a result. Yet neither Kaplan nor the District Court identified any method of distinguishing those class members with viable claims from uninjured ones. Any class settlement would therefore be distributed to all class members, including those with no cognizable claim. The award to class

members who were actually injured—whose blocks were improperly declined and who suffered harms as a result—will be diluted by the flood of claims from individuals who were never injured and should never have been in the class.

Second, by certifying a class that includes so many individuals who were not injured (or cannot prove they were), the District Court increased the risk that the class will ultimately lose on the merits or be decertified. For example, at least as to class members who fraudulently requested blocks of accurate information on their credit reports, it is far from obvious that TransUnion’s failure to implement that block would constitute a “willful” violation even if the District Court’s statutory interpretation were correct. *See generally Smith v. LexisNexis Screening Sols., Inc.*, 837 F.3d 604, 610 (6th Cir. 2016) (“In order to willfully violate the FCRA, a [consumer reporting agency’s] action must entail ‘an unjustifiably high risk of harm that is either known or so obvious that it should be known.’” (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 68 (2007))). Additionally, during discovery in this case, TransUnion may have uncovered evidence of class members who were never injured—and TransUnion may also elicit such testimony at trial. Based on that evidence, TransUnion could move to decertify the class—or move for summary judgment or judgment as a matter of law—as to those class members whose requested blocks were correctly denied. Either result would significantly reduce any potential recovery for class counsel; thus, class counsel would have every incentive

to settle before that happens—and to accept a steep discount to do so. Class members with meritorious claims would thus lose twice over: the total settlement is lower because of the risk that the class will unravel, and the number of people sharing in it is larger because the class includes members who were never harmed.

These consequences are precisely why Rule 23 requires courts to determine predominance *before*, not after, certification, and why the District Court’s failure to do so here warrants reversal.

II. The District Court’s Statutory Analysis Threatens the Integrity of Consumer Reporting Agencies’ Information, Harming Businesses and Consumers Alike.

The District Court’s class-certification order rests on its conclusion that the FCRA requires a consumer reporting agency, upon receiving a block request, to first block the disputed information automatically and only then determine whether to “decline to block” it. JA14-15. TransUnion has explained why that reading is wrong as a matter of text: it collapses the FCRA’s express distinction between *declining* to block information upfront and *rescinding* a previously imposed block. *See* 15 U.S.C. § 1681c-2(c)(1). The District Court’s reading is also contrary to the FCRA’s purposes; as Congress recognized, “[t]he banking system is dependent upon fair and accurate credit reporting.” *Id.* § 1681(a)(1). But the District Court’s interpretation *promotes* unfair and inaccurate reporting, which is a serious threat to the integrity of the consumer reporting system.

The business community depends on the accuracy and integrity of the consumer reporting system, which in turn depends on consumer reporting agencies' ability to make threshold determinations about a request's legitimacy before blocking information. If left undisturbed, the District Court's ruling would strip consumer reporting agencies of that ability. Under its novel reading, any consumer who submits a block request—however implausible—would be entitled to have the disputed information removed from the consumer's file immediately, with the agency permitted to assess legitimacy only after the fact.

That regime would invite abuse. Already, consumer reporting agencies (and businesses that depend on those agencies) must deal with the fraudulent practice of “credit washing,” where bad actors misuse identity-theft protections to remove accurate, legitimate information from credit reports. The Federal Trade Commission (FTC) has repeatedly warned about and taken enforcement action against this practice.³ Indeed, only two months ago the FTC filed suit to stop another “unlawful

³ FTC Consumer Alert, *Influencers Are Pushing This Illegal Trick To “Fix” Your Credit Report* (Jan. 5, 2026), <https://consumer.ftc.gov/consumer-alerts/2026/01/influencers-are-pushing-illegal-trick-fix-your-credit-report>; Press Release, FTC, *FTC Acts to Shut Down ‘The Credit Game’ for Running a Bogus Credit Repair Scheme that Fleeced Consumers* (May 6, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-acts-shut-down-credit-game-running-bogus-credit-repair-scheme-fleeced-consumers>; Press Release, FTC, *FTC Halts Deceptive Credit Repair Operation That Filed Fake Identity Theft Complaints* (Mar. 21, 2022), <https://www.ftc.gov/news->

credit repair scheme” that “deceived thousands of consumers across the country” and involved “fil[ing] false identity theft reports . . . in attempts to remove negative information” from consumers’ credit reports.⁴

Government data highlights that the threat of manipulation to the credit-reporting system is rapidly growing. The Consumer Financial Protection Bureau (CFPB) received more than 6.6 million complaints in 2025, with more than 5.8 million of those complaints relating to credit or consumer reporting—reflecting “a 3,654 percent increase when compared to 2019.”⁵ This increase is not due to legitimate complaints but “coincide[s] with emerging technologies, such as large language models and autonomous software systems (‘AI Agents’) that empower bad actors to flood the system with duplicative and spurious submissions,” which have “made it harder for the Bureau and companies to address authentic grievances made by actual consumers.”⁶

events/news/press-releases/2022/03/ftc-halts-deceptive-credit-repair-operation-filed-fake-identity-theft-complaints.

⁴ Complaint ¶ 2, *FTC v. Credit Glory LLC*, No. 2:26-cv-05387 (D. Ariz. Aug. 3, 2026), ECF No. 3; *see also* Press Release, FTC, *FTC Stops Sprawling Credit Repair Scheme that Scammed Consumers Out of Nearly \$200 Million* (Aug. 10, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/08/ftc-stops-sprawling-credit-repair-scheme-scammed-consumers-out-nearly-200-million>.

⁵ CFPB, *Consumer Response Annual Report: January 1 – December 31, 2025*, at 75 (Mar. 2026), https://files.consumerfinance.gov/f/documents/cfpb_2025-cr-annual-report_2026-03.pdf.

⁶ *Id.*; *see also* Press Release, CFPB, *The CFPB is Correcting Flaws to Restore Integrity and Utility to the Consumer Complaint System* (June 24, 2026),

Particularly in this environment, the District Court’s statutory interpretation risks exacerbating these abuses by allowing bad actors to trigger mandatory blocks regardless of the legitimacy of their requests. This approach will lead to more inaccuracies and misrepresentations in credit reports, thereby obstructing financial institutions’ capacity to make informed assessments of individuals’ credit risk, ultimately harming both businesses and consumers. *Cf. Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1158 (11th Cir. 1991) (“[T]he very economic purpose for credit reporting companies would be significantly vitiated if they shaded every credit history in their files in the best possible light for the consumer.”).

Tellingly, the FTC’s recent Complaint describes the very safeguard that the District Court’s interpretation would eliminate—and treats it as one of the reasons the scheme ultimately failed to deliver on its promises. Specifically, the Complaint explains that filing an identity-theft report “does not automatically result in the removal of negative information from consumers’ credit reports,” because consumer reporting agencies “typically review identity theft reports submitted to them to determine whether those reports were wrongfully filed, in which case the [consumer reporting agency] *may decline to block* the requested negative information.” Compl.

<https://www.consumerfinance.gov/about-us/newsroom/the-cfpb-is-correcting-flaws-to-restore-integrity-and-utility-to-the-consumer-complaint-system/> (discussing improvements to consumer complaint portal in an effort to address these improper practices).

¶ 67, *FTC v. Credit Glory LLC*, *supra* note 4 (emphasis added). Precisely because of this ability to decline the requested block, the fraudulent actors in that case “generally fail[ed] to remove negative information from consumers’ credit reports.” *Id.* ¶ 68. Thus, the federal agency charged with policing credit-repair fraud understands current law to permit exactly what the District Court held the FCRA forbids—a consumer reporting agency’s review of a block request for legitimacy *before* any block is imposed—and recognizes that this review is a bulwark against fraud, not a statutory violation.

Mandatory blocking—what the District Court’s interpretation would require—would make credit reports less accurate and reliable, obstructing the ability of lenders and other businesses to assess credit risk and ultimately harming the consumers who depend on an accurate reporting system to obtain credit on appropriate terms. These consequences of the District Court’s interpretation underscore both why it is wrong and why this Court should not permit it to serve as the foundation for a certified class. Accordingly, the Court should reverse the class-certification order and reject the statutory interpretation on which it rests.

CONCLUSION

The District Court's class-certification order should be reversed, and the case remanded for further proceedings.

Dated: October 8, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Under Federal Rules of Appellate Procedure 29 and 32(g), and Local Rules 31.1(c) and 28.3(d), the undersigned counsel certifies as follows:

1. I am a member of the bar of this Court.
2. This brief complies with the type-volume limitation of Rule 29(a)(5) because the brief contains 5,015 words, excluding the parts of the brief exempted by Rule 32(f).
3. This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because the brief was prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.
4. The text of the electronic brief is identical to the text in the paper copies.
5. A virus detection program, CrowdStrike, has been run on the file and no virus was detected.

Dated: October 8, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2026, I electronically filed the foregoing brief with the Clerk of the Court using the appellate CM/ECF system. Ten hard copies of the foregoing brief were sent to the Clerk's Office via overnight delivery. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished via CM/ECF.

Dated: October 8, 2026

/s/ Adam G. Unikowsky