

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-297

TRANSUNION LLC, PETITIONER

v.

SERGIO L. RAMIREZ

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case and requests that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae in support of neither party. Petitioner and respondent have both agreed to cede five minutes of argument time to the United States, and therefore consent to this motion.

1. The Fair Credit Reporting Act (FCRA or Act), 15 U.S.C. 1681 et seq., imposes various requirements on credit reporting agencies (CRAs), which are entities that regularly compile and disseminate personal information about individual consumers. As

relevant here, FCRA requires that, "[w]henver a [CRA] prepares a consumer report," the CRA "shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. 1681e(b) (reasonable-procedures requirement). FCRA also provides that, upon a consumer's request, a CRA must disclose all information in the consumer's file and provide the consumer with a written summary of rights containing specified information. 15 U.S.C. 1681g(a) (1) (disclosure requirement); 15 U.S.C. 1681g(c) (2) (A) (summary-of-rights requirement). A consumer may sue to recover actual or statutory damages for certain violations of the Act. 15 U.S.C. 1681n, 1681o.

This case presents the question whether all members of the plaintiff class suffered an Article III injury-in-fact when petitioner willfully violated FCRA by (a) producing consumer reports that erroneously designated the class members as individuals who are barred from engaging in transactions in the United States, without using reasonable procedures to ensure the accuracy of those designations; (b) failing to disclose upon request all information in each class member's consumer file; and (c) failing to provide each class member with a summary of rights. The brief for the United States argues that all class members suffered Article III injury from each of those violations.

This case also presents the question whether the certification of a statutory-damages class in this case violated the typicality requirement of Federal Rule of Civil Procedure 23(a)(3). The brief for the United States argues that the courts below did not adequately consider whether respondent's status as class representative, and his testimony concerning the distinct injuries he suffered, created an untoward risk that the jury's statutory-damages award would overcompensate unnamed class members who did not suffer comparable injuries. The United States further argues that the case should be remanded to the court of appeals to consider whether petitioner raised an adequate contemporaneous objection to the procedures utilized at trial.

2. The United States has a substantial interest in the resolution of the questions presented and has participated in oral argument in cases raising similar Article III and Rule 23 issues. FCRA's private right of action, and private suits seeking recovery under the Act, provide an important supplement to the federal government's enforcement efforts. And many other federal laws contain similar provisions authorizing persons whose statutory rights have been violated to sue for statutory damages. Accordingly, the United States has presented oral argument as amicus curiae in cases raising Article III questions similar to those presented here. See, e.g., Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2016) (No. 13-1339); First Am. Fin. Corp. v. Edwards,

567 U.S. 756 (2012) (No. 10-708) (per curiam) (dismissing writ of certiorari as improvidently granted).

In addition, the United States has a substantial interest in the proper application of Rule 23. The government views private class actions under this rule as an important supplement to its own enforcement suits, and the United States is often a defendant in both class and collective actions. The United States has previously presented oral argument as amicus curiae in other cases involving class-action rules and practices. See, e.g., Frank v. Gaos, 139 S. Ct. 1041 (2019) (No. 17-961) (per curiam); Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036 (2016) (No. 14-1146).

In light of the government's substantial interests in the questions presented, the United States' participation at oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General

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