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 *AMICUS CURIAE* THE COMMITTEE TO SUPPORT THE ANTITRUST LAWS SUPPORTING RESPONDENT AND AFFIRMANCE

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I. INTERESTS OF *AMICUS CURIAE*

The Committee to Support the Antitrust Laws ("COSAL") is an independent, nonprofit corporation devoted to promoting and supporting the enactment, preservation, and enforcement of a strong body of antitrust laws in the United States. *See* https://www.cosal.org/about. COSAL is governed by its Board of Directors, which elects officers who supervise and control its day-to-day operations.[1]

This Court has long recognized the key role private litigation plays in enforcing the federal antitrust laws. *See, e.g.*, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 635 (1985) ("Without doubt, the private cause of action plays a central role in enforcing this regime."). "These private suits provide a significant supplement to the limited resources available to the Department of Justice for enforcing the antitrust laws and deterring violations." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 344 (1979). Private antitrust litigation often involves many common issues, including whether the defendants engaged in the alleged conduct, whether that conduct violated the antitrust laws, and whether any antitrust violation generally harmed the class.

[1] Pursuant to Rule 37.6, COSAL affirms that no counsel for a party authored this brief in whole or in part, and no person other than COSAL and their counsel made a monetary contribution intended to fund its preparation or submission. All parties have consented to the filing of this brief. *See* Blanket Consent filed by Respondent, Sergio L. Ramirez (Dec. 23, 2020) (Docket No. 10); Blanket Consent filed by Petitioner, TransUnion LLC. (Dec. 23, 2020) (Docket No. 11). In addition, no COSAL member whose firm is counsel for a party had any involvement in the organization's decision to file this amicus brief.

For these reasons, this Court has recognized that predominance—the most fiercely contested Rule 23 requirement—"is a test readily met in certain cases alleging . . . violations of the antitrust laws." *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 625 (1997).

The question on which this Court granted *certiorari* should not affect antitrust class actions. Petitioner, however, has made imprecise arguments and raised broader issues that seek to undermine the viability of the class action mechanism in general, and to rewrite the standard for typicality specifically, which could affect private enforcement of the antitrust laws. *Amicus* submits this brief to clarify the extraneous issues raised by Petitioner and to ground them in this Court's precedent.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

Small and medium-sized businesses are the lifeblood of the American economy. These companies use the nation's powerful antitrust laws and open access to the courts to bring unfair competition claims against cartels and dominant firms. The last several decades have seen rising concentration and decreasing competition across nearly all industries—but especially the tech sector—creating opportunities for abuse of market power and competition suppression, preventing smaller companies from reaching their full potential.[2] Private enforcement is

[2] *See generally Investigation of Competition in the Digital Marketplace: Majority Staff Report and Recommendations*, House Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary (Oct. 6, 2020) (finding that as they exist today, the big

vital to push back against these anticompetitive forces and to preserve vibrant competitive marketplaces for American businesses and consumers. The economic realities of private enforcement dictate that small and medium-sized businesses often press these claims through Rule 23.

This Court has recognized that private enforcement is "an integral part of the congressional plan for protecting competition." *California v. Am. Stores Co.*, 495 U.S. 271, 284 (1990); *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 745 (1977) (recognizing "the longstanding policy of encouraging vigorous private enforcement of the antitrust laws"); *Mitsubishi Motors Corp.*, *supra*. The federal government cannot prosecute every violation of federal antitrust laws. Nor has the federal government traditionally seen its role as compensative of the victims of antitrust violations. Private enforcement fills these significant gaps.[3] Maintaining robust private enforcement of the

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tech platforms each possess significant market power over large swaths of the economy and that in recent years, each company has expanded and exploited its power over the marketplace in anticompetitive ways, to the detriment of small and medium-sized businesses).

[3] *See* Lande, Robert H. & Davis, Joshua P., *Benefits From Private Antitrust Enforcement: An Analysis of Forty Cases,* 42 U.S.F. L. Rev. 879, 897, 906 (2008) (reviewing 40 successful private antitrust cases and finding that of the $18-19.6 billion recovered for victims in those cases, almost half of the total recovery came from 15 cases that did not follow government actions); Baxter, William F., *Separation of Powers, Prosecutorial Discretion, and the "Common Law" Nature of Antitrust Law,* 60 Tex. L. Rev. 661, 690-91 (1982) (same from the assistant A.G. in charge of the DOJ Antitrust Division during the Reagan administration); Lande, Robert H. & Davis, Joshua P., *Comparative Deterrence from Private Enforcement and Criminal Enforcement of the U.S. Antitrust Laws,* 2011 B.Y.U.

antitrust laws is even more important in the current market.

Class actions are a well-established and effective means to encourage lawful corporate conduct. When one business cheats the system, it gains an unfair (and unlawful) financial advantage in the marketplace. *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 262 (1972) ("Every violation of the antitrust laws is a blow to the free enterprise system envisaged by Congress."). The deterrent effect of antitrust class actions on illegal corporate behavior is proven and significant.[4]

COSAL files this brief first and foremost to highlight that this case can be resolved simply and narrowly. The appeal turns on whether the injury alleged by Respondent on behalf of himself and the class is concrete under Article III of the Constitution. If the Petitioner is correct, most class members were uninjured. If the Respondent is correct, every class member was injured. Because answering that singular question will resolve this appeal, there is no reason for the Court to address broader issues

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L. Rev. 315 (2011) (demonstrating important deterrent effect of private enforcement of antitrust laws).

[4] *See, e.g.*, Hylton, Keith N., *Deterrence and Aggregate Litigation* (March 1, 2019). Boston Univ. School of Law, Law and Economics Research Paper No. 17-45, (available at SSRN: https://ssrn.com/abstract=3059583); Fitzpatrick, Brian T., *Do Class Actions Deter Wrongdoing?* (September 12, 2017). The Class Action Effect (Catherine Piché, ed., Éditions Yvon Blais, Montreal, 2018), Vanderbilt Law Research Paper No. 17-40 (available at SSRN: https://ssrn.com/abstract=3020282 or http://dx.doi.org/10.2139/ssrn.3020282); Hensler, Deborah H., et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 9, 119 (Rand Inst. for Civil Justice 2000).

Petitioner raises (which in any event go beyond the question presented).

Despite the narrow question before the Court and the full weight of contrary authority, Petitioner nevertheless argues that Rule 23 demands, at the class certification stage, that there must be *proof* that *every* class member suffered actual, concrete injury. Brief of petitioner TransUnion LLC (Docket No. 13) ("Pet. Br.") at 27. This Court has never imposed such a requirement at the class certification stage. *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016) (affirming class certification despite presence of 212 uninjured class members, representing 6.33 percent of class). Indeed, the question of whether uninjured class members may recover is "not fairly presented" where the "damages award has not yet been disbursed," *id.* at 1050, and the damages stage of the case necessarily follows Rule 23 proceedings as a matter of federal procedure and logic. As this Court noted in *Tyson Foods*, albeit it in a different but similarly important context, and which applies equally here, "while petitioner, respondents, or their respective *amici* may urge adoption of broad and categorical rules . . ., this case provides no occasion to do so. *Id.*, 136 S. Ct. at 1049.

U.S. competition policy could be seriously undermined if antitrust plaintiffs were required to show harm to every class member under Federal Rule of Civil Procedure 23(b)(3) at the class certification stage. Such a rule would greatly undermine the primary purposes of antitrust litigation—compensation and deterrence—while compromising its accuracy and efficiency. Additionally, Petitioner's reading of the typicality requirement could curtail private enforcement in certain cases where economic

realities dictate that the alternative to a class action is no enforcement at all. This case is a poor vehicle to take up these important issues and this Court need not and should not do so.

III. ARGUMENT

A. Whether Every Member Of A Class Has To Show Article III Standing At The Rule 23 Stage Of The Case Is Not Before The Court

Although Petitioner frames its standing argument as being grounded in Article III injury-in-fact jurisprudence, it makes numerous references to a never before recognized requirement that class plaintiffs demonstrate that *every* class member suffered a concrete injury *before* a class can be certified. *See, e.g.*, Pet. Br. at 31 ("To pursue his disclosure claims on behalf of . . . absent class members, then, Ramirez had to *prove* that each actually suffered some concrete injury . . . .") (emphasis in original).[5]

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[5] *See also, e.g.*, Pet. Br. at 15 ("while it was *possible* that some class members suffered Article III injury, nothing in the class definition assured that any (let alone all) actually did") (emphasis in original); *id.* at 22 ("this case never should have been able to proceed as a class action in the first place"); *id.* at 25 ("Ramirez failed to prove that any, let alone all, absent class members suffered an Article III injury") (cleaned up); *id.* at 27 ("when a plaintiff seeks to *proceed* on behalf of a class seeking statutory damages, courts need to be especially vigilant to ensure that both the plaintiff and *every class member* has Article III standing 'for each claim [the class] seeks to press'") (emphases added) (quotes and brackets in original, citation omitted); *id.* at 28 (class plaintiffs "must demonstrate that *each and every* member suffered some common injury") (emphasis

Not only is such a suggestion a flagrant misstating of the law of this Court and the courts of appeals, but that issue also is not properly before the Court. It was not properly raised by Petitioner's petition for a writ of *certiorari* or its opening brief; there is no circuit split that warrants this Court's consideration; and it has not been the subject of briefing and thus the Court "lack[s] the benefit of the adversarial process in a complex area." *Apple Inc. v. Pepper*, 139 S. Ct. 1514, 1531 (2019) (Gorsuch, J., dissenting). Accordingly, *amicus* urges the Court not to reach this issue.

B. Rule 23 And Article III Are Satisfied Even When Not All Class Members Can Prove Injury At The Class Certification Stage Of A Case

Requiring proof that all class members were injured at the class certification stage is foreclosed by the Court's own precedent. *See, e.g.*, *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 n.6 (2016) ("[E]ven named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong.'") (citation omitted); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 276 (2014) ("[t]hat the defendant might attempt to pick off the occasional class member here or there through individualized rebuttal does not

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added); *id.* at 29 (class plaintiffs "failed to prove that any other member of the class—let alone *every* member, as Article III, the Rules Enabling Act, and *Town of Chester* all require—had standing to pursue either" claim) (emphasis in original); *id.* at 50 ("this case never should have been certified as a class action").

cause individual questions to predominate"); *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 460 (2013) (requiring that all class members can show injury would "put the cart before the horse" by conditioning certification on the plaintiffs "first establish[ing] that [they] will win the fray"); *see also Wal-Mart Inc. v. Dukes*, 564 U.S. 338, 354 (2011) ("the essential question" is "whether .5 percent or 95 percent" of the class was harmed, not whether all members were harmed). The rule is so well recognized that the petitioner in *Tyson Foods* "concede[d]" and "abandon[ed]" its argument "that a class action (or collective action) can never be certified in the absence of proof that all class members were injured." 136 S. Ct. at 1049.

The circuit courts are in harmony on this point. As recently as 2018, the First Circuit reaffirmed that the presence of some uninjured class members is not fatal to a class certification motion. *In re Asacol Antitrust Litig.*, 907 F.3d 42, 58 (1st Cir. 2018) ("We have not previously required every class member to demonstrate standing when a class is certified, nor do we do so today."); *see also In re Nexium Antitrust Litig.*, 297 F.R.D. 168, 180 (D. Mass. 2013) ("uninjured class members [are] not fatal to class certification" (collecting cases)), *aff'd,* 777 F.3d 9 (1st Cir. 2015).

The Third, Fifth, Seventh, Ninth, and Tenth Circuits are in accord. The Third Circuit has affirmed certification of a class "even when not all members of the plaintiff class suffered an actual injury, when class members did not have identical claims, and most dramatically, when some members' claims were arguably not even viable." *In re Nat'l Football League*

Players Concussion Injury Litig., 821 F.3d 410, 427 (3d Cir. 2016).[6]

Similarly, the Fifth Circuit has been clear that "[c]lass certification is not precluded simply because a class may include persons who have not been injured by the defendant's conduct." *Mims v. Stewart Title Guar. Co.*, 590 F.3d 298, 308 (5th Cir. 2009); *see also In re Deepwater Horizon*, 739 F.3d 790, 813 (5th Cir. 2014) (reaffirming the rule in *Mims*). The Seventh Circuit also has observed that the "possibility or indeed inevitability" of some uninjured class members "does not preclude class certification." *Kohen v. Pacific Inv. Mgmt. Co.*, 571 F.3d 672, 677 (7th Cir. 2009).[7]

This is also the rule in the Ninth Circuit. *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1137 n.6 (9th Cir. 2016) (for class certification purposes, plaintiffs need only show that it is "possible that class members have suffered injury, not that they did suffer injury, or that they must prove such injury at the

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[6] *See also, e.g.*, *Byrd v. Aaron's Inc.*, 784 F.3d 154, 168-69 (3d Cir. 2015) ("We have explained that the issue of standing is separate from the requirements of Rule 23."); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 306 (3d Cir. 2011) (*en banc*) ("[W]e did not state that an inquiry into the merits was necessary in order to prove that each class member has state[d] a valid claim as a prerequisite to class certification. Rather, the Rules and our case law have consistently made clear that plaintiffs need not actually establish the validity of claims at the certification stage.").

[7] *See also, e.g.*, *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 823 (7th Cir. 2012) ("an argument that some class members' claims will fail on the merits if and when damages are decided [is] a fact generally irrelevant to the district court's decision on class certification") (citing *Kohen*, 571 F.3d at 677).

certification phase."), and the Tenth Circuit, *DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1198 (10th Cir. 2010) ("Rule 23's certification requirements neither require all class members to suffer harm or threat of immediate harm nor Named Plaintiffs to prove class members have suffered such harm.").

Even the courts of appeal that have required district courts to address the Article III standing of class members at the class certification stage, such as the Second and Eighth circuits, do not require plaintiffs affirmatively to prove that each individual class member has standing; rather, they consider whether the class definition is so broad that it sweeps in individuals who could not possibly have been injured by the defendant's conduct. This is the rule in the Second Circuit, *Denney v. Deutsche Bank AG*, 443 F.3d 253, 263-64 (2d Cir. 2006) (holding that it is not necessary that "each member of a class submit evidence of personal standing," but only that "[t]he class must . . . be defined in such a way that anyone within it would have standing"), *see also In re Visa Check/Mastermoney Antitrust Litig.*, 280 F.3d 124, 140 (2d Cir. 2001) ("If defendants' argument (that the requirement of individualized proof on the question of damages is in itself sufficient to preclude class treatment) were uncritically accepted, there would be little if any place for the class action device in the adjudication of antitrust claims.") (Sotomayor, J.) (citations omitted); and the Eighth Circuit, *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371, 377 (8th Cir. 2018) (a "class must be defined 'in such a way that anyone within it would have standing,'" but this "analysis of standing is not a 'review of the merits'" and the "fact that some plaintiffs may be unable to

succeed on their claims does not necessarily mean that they lack standing to sue") (citations omitted).

The tests set out in both lines of cases are satisfied where "the named plaintiffs and the absent class members contemplated by the class definition include only persons and entities who can allege causation and injury in accordance with Article III." *In re Deepwater Horizon*, 739 F.3d at 802; *id.* at 795 (holding the possibility of uninjured absent class members does not defeat Article III standing because economic harm was alleged and lack of injury was not conceded).

Conditioning certification on proof that all class members were injured would create practical conundrums at odds with Rule 23's structure and purpose. Rule 23(c)(1)(A) requires certification at an "early practicable time," and assessing class members' injuries at certification is often infeasible because their identities are unknown. A class "will often include persons who have not been injured by the defendant's conduct; indeed this is almost inevitable because 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." *Kohen*, 571 F.3d at 677. "Such a possibility or indeed inevitability does not preclude class certification." *Id.*

This appeal provides no basis to consider Petitioner's arguments which are foreclosed by the Court's prior decisions in *Tyson Foods*, *Spokeo*, *Halliburton*, *Amgen*, and *Dukes*. The circuit courts of appeals are in accord.

C. Rule 23 Gives The District Court Discretion To Handle Individual Questions Concerning Potentially Uninjured Class Members

It is within district courts' discretion to determine how best to handle subsets of uninjured class members that may be revealed as a case proceeds to the merits. *See* Fed. R. Civ. P. 23(c)(1)(C); *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 160 (1982) ("Even after a certification order is entered, the judge remains free to modify it in the light of subsequent developments in the litigation."). For example, courts may amend the class definition or grant summary judgment to defendants as to those plaintiffs who lack damages. *Stuart*, 910 F.3d at 377-78.

Petitioner's repetition of the argument that uninjured class members will be allowed to recover damages gives it no greater weight and entirely ignores standard class action practice. Unsurprisingly, arguments like these have routinely been rejected by the federal courts, both in the context of Article III standing and in the context of Rule 23. *Kohen*, 571 F.3d at 676 (rejecting standing challenge to class containing some uninjured members because "each member of the class will have to submit a claim for the damages it sustained as a result of the [defendant's misconduct]"); *Torres*, 835 F.3d at 1140-41 (noting, in context of rejecting challenge to class action that included uninjured members, that "[o]f course, the partitioning of damages among class members may lead to individual calculations. Yet those calculations would not impact a defendant's liability for the total amount of damages."); *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 660 (7th Cir. 2015) ("'[A] class member either wins or, by virtue of losing,

is defined out of the class and is therefore not bound by the judgment.'") (citation omitted); *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1167-68 (9th Cir. 2014) (affirming bifurcation of class action proceedings into liability and damages phases in case involving individualized damages and citing cases regarding same). This approach "preserve[s] both [the defendant's] due process right to present individualized defenses to damages claims and the plaintiffs' ability to pursue class certification on liability issues based on . . . common questions." *Id.* at 1168.

If the ultimate resolution of the case on the merits may be that some class members are entitled to damages and others are not, the proper course is not to deny class certification but to ensure that, at the end of the day, any award of damages to the class is allocated so that class members with meritorious damages claims receive their proper share and those without such claims take nothing. Thus, in *Tyson Foods*, where the parties agreed that some class members had not shown an entitlement to damages, the Supreme Court rejected the assertion that the class must be decertified, and instead remanded for further proceedings to determine whether the award could properly be apportioned. 136 S. Ct. at 1049-50. Even the concurring opinion in *Tyson Foods*, while expressing doubts about the ultimate outcome, agreed that if there were a methodology for allocating damages only to those class members who suffered damages, both certification of the class and judgment in its favor could be sustained. *See id.* at 1051-53 (Roberts, C.J., concurring).

Rule 23's central efficiency goals would be thwarted by requiring denial of certification or

complete decertification—rather than an adverse merits decision with respect to class members without damages or an adverse standing decision coupled with exclusion of specific uninjured class members—if even a single member of a proposed class were shown to be uninjured at any stage of the case.

Moreover, Petitioner's reading of the Rules Enabling Act (Pet. Br. at 28) would require plaintiffs to establish injury in fact, on the merits, for each class member *both* at the class certification stage and *again* at trial. This would run afoul of the policies underlying the Seventh Amendment's Reexamination Clause. *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1303 (7th Cir. 1995) ("[T]he judge must not divide issues between separate trials in such a way that the same issue is reexamined by different juries."). Requiring "a judge to find facts that later will be addressed again by a jury in effect requires plaintiffs to prevail on the same facts twice. This places plaintiffs at a terrible strategic disadvantage . . . A right to have a jury hear a case rather than a judge, but only after winning before a judge, is not much of a right at all." Davis, J. & Cramer, E., *Antitrust, Class Certification, and the Politics of Procedure*, 17 Geo. Mason L. Rev. 969, 1011-12 (2010); *see also* Fed. R. Civ. P. 23 Advisory Committee Note ("Subdivision (b)(3) encompasses those cases in which a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.") (emphasis added). It would also violate established Supreme Court precedent limiting courts from conducting full-blown merits inquiries at the class certification stage. *Amgen*, 568 U.S. at 466 ("Rule 23

grants courts no license to engage in free-ranging merits inquiries at the certification stage. Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied."); *Dukes*, 131 S. Ct. at 2552 n. 6 (a district court has no "'authority to conduct a preliminary inquiry into the merits of a suit'" at class certification unless it is necessary "to determine the propriety of certification") (quoting *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 177 (1974)); Fed. R. Civ. P. 23 Advisory Committee Note to subd. (c)(1) ("[A]n evaluation of the probable outcome on the merits is not properly part of the certification decision"). Adoption of such a rule would, for all practical purposes, end class certification as a useful management tool.

D. The District Court Correctly Applied Existing Rule 23(a)(3) Standards In Certifying The Class

Contrary to Petitioner's argument, Rule 23 requires only that the claims of a named plaintiff be sufficiently typical of the claims of the class. Petitioner complains that Respondent was the "perfect plaintiff." Pet. Br. at 45. No case has ever held that there is no typicality where the named plaintiff is *too good*. Moreover, that is not an administrable standard. To the extent Petitioner thought the named plaintiff's testimony was too good, and therefore somehow prejudicial, *id.*, Petitioner could have sought to limit the testimony by means of a motion in *limine* or a jury instruction, Resp. Opp. to Cert. at 4, 13, 21 & 22 n.3. Here, Petitioner did neither and therefore

the typicality of Respondent is not properly before this Court.[8]

Even if the Court does reach this issue, Petitioner asserts a definition of typicality which has long been rejected. A named class representative may assert an additional claim that the class does not have so long as that claim will not become the focus of the litigation. *See, e.g.*, *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 343-45 (3d Cir. 2010) (holding that named class representatives who pursued individualized injury claims in addition to class-wide reimbursement claims did not have conflict of interest with members of the larger class).

Here, Petitioner concedes that Ramirez is not presenting a claim for monetary damages that the other class members are not. Pet. Br. at 46. The injury for which the plaintiff is seeking a remedy is the same as the injury suffered by the class.[9]

Petitioner's attempt to redefine typicality to require that the plaintiff must be the same or that the injury must be identical–has been appropriately and

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[8] To the extent Petitioner (Pet. Br. at 45) and its *amici* argue that Respondent's circumstances were so atypical as to violate Petitioner's due process rights, that issue is not only incorrect but waived.

[9] While the typicality requirement of Rule 23(a)(3) is not satisfied where the variation in claims strikes at the heart of the respective causes of action, at the "heart" of § 1681e(b) are two requirements: (1) that the credit report is inaccurate; and (2) that the CRA did not employ reasonable procedures to ensure maximum possible accuracy of the credit reports it furnished. *Dalton v. Capital Assoc. Indus.*, 257 F.3d 409, 415 (4th Cir. 2001). Because proving these elements for Ramirez's claim advanced the claims of other class members, his claims are typical of those of the class he seeks to represent.

repeatedly rejected. *See, e.g.*, *Butler v. Sears Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) ("It would drive a stake through the heart of the class action device, in cases in which damages were sought rather than an injunction or declaratory judgment, to require that every member of the class have identical damages."); *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1175 (8th Cir. 1995) (holding variations in individual damages will not defeat typicality). Such barriers would undermine the important function that class actions serve in redressing a wide range of legal violations, including antitrust. That the facts or personal situation of the named plaintiff is not identical should have no bearing on the analysis. *Castillo v. Bank of Am., NA*, 980 F.3d 723, 729 (9th Cir. 2020) ("Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical."); *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 953 (7th Cir. 2006) ("Refusing to certify a class because the plaintiff decides not to make the sort of person-specific arguments that render class treatment infeasible would throw away the benefits of consolidated treatment.").

The requirement of typicality is not primarily concerned with whether each person in a proposed class suffers the same type of damages; rather, it is sufficient for typicality if the plaintiff endured a course of conduct directed against the class. *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) ("it is not necessary that all class members suffer the same injury as the class representative") (citation omitted). "[E]ven relatively pronounced factual differences will generally not preclude a

finding of typicality where there is a strong similarity of legal theories" *NFL*, 821 F.3d at 428; *see also De La Fuente v. Stokely–Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983) (affirming certification of a class challenging a farmworker recruitment system even though some of the named plaintiffs had not worked for the defendant company during the disputed years and even though it was not clear that all plaintiffs had worked in the specific employment situation as the named plaintiffs). When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underline individual claims. 1 Newberg on Class Actions § 3:34 (5th ed. 2011).

Moreover, the typicality requirement is designed only to protect absent class members by ensuring that a class representative pursues their interests. *Gen. Tele. Co.*, 457 U.S. at 158 n.13 ("Typicality serves as a guidepost[] for determining whether under the particular circumstances . . . the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence."). Petitioner's argument is not that Mr. Ramirez failed to pursue the interests of the absent class members but that as the "perfect plaintiff" he did so too well. That is exactly backwards. It finds no support in Rule 23, case law,[10] or the underlying

[10] Petitioner's "perfect plaintiff" case, *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 344 (4th Cir. 1998), is inapposite. Here, Respondent asserted identical claims for the same type of injury suffered by the certified class. In contrast in *Broussard*, Meineke had to defend against claims

purposes of class actions. The new typicality standard Petitioner proposes would also be unworkable in practice—asking courts to assess not only whether a class representative will be effective in pursuing the interests of the class (which courts should do) but also whether the class representative will be *too effective*—which courts should not ask and would have a terribly difficult time answering.

IV. CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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that no named plaintiff actually had in their own name and upon which no plaintiff could be cross-examined. The Fourth Circuit decertified this class action largely because "Meineke was forced to defend against a fictional composite without the benefit of deposing or cross-examining the disparate individuals behind the composite creation." *Id.* This case is very different.