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

JOINT APPENDIX
Volume I of III

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February 1, 2021

Petition for Writ of Certiorari Filed Sept. 2, 2020
Petition for Writ of Certiorari Granted Dec. 16, 2020

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The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following page in the appendix to the Petition for Certiorari:

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-17244

SERGIO L. RAMIREZ,

Plaintiff-Appellee,

v.

TRANS UNION LLC,

Defendant-Appellant.

RELEVANT DOCKET ENTRIES

Date Filed	#	Docket Text
11/02/2017	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 11/09/2017. Transcript ordered by 12/01/2017. Transcript due 01/02/2018. Appellant Trans Union LLC opening brief due 02/09/2018. Appellee Sergio L. Ramirez answering brief due 03/12/2018. Appellant's optional reply brief is due 21 days after service of the answering brief. [10640728] (JBS) [Entered: 11/02/2017 08:51 AM]
* * *		

Date Filed	#	Docket Text
03/26/2018	13	Submitted (ECF) Opening Brief for review. Submitted by Appellant Trans Union LLC. Date of service: 03/26/2018. [10813357] [17-17244] (Clement, Paul) [Entered: 03/26/2018 06:09 PM]
03/26/2018	14	Submitted (ECF) excerpts of record. Submitted by Appellant Trans Union LLC. Date of service: 03/26/2018. [10813360] [17-17244] (Clement, Paul) [Entered: 03/26/2018 06:15 PM]
03/27/2018	15	Filed clerk order: The opening brief [13] submitted by Trans Union LLC is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [14] submitted by Trans Union

Date Filed	#	Docket Text
		LLC. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10813590] (SML) [Entered: 03/27/2018 09:13 AM]
		* * *
04/02/2018	18	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA. Date of service: 04/02/2018.[10821649] [17-17244] (Pincus, Andrew) [Entered: 04/02/2018 04:47 PM]
		* * *
04/03/2018	20	Filed clerk order: The amicus brief [18] submitted by Chamber of Commerce of the United States of America is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover

Date Filed	#	Docket Text
		color: green. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10822451] (SML) [Entered: 04/03/2018 11:30 AM]
		* * *
05/25/2018	26	Submitted (ECF) Answering Brief for review. Submitted by Appellee Sergio L. Ramirez. Date of service: 05/25/2018. [10885956] [17-17244]--[COURT UPDATE: Attached corrected brief. 05/31/2018 by SLM] (Francis, James) [Entered: 05/25/2018 11:46 AM]
05/25/2018	27	Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Sergio L. Ramirez. Date of service: 05/25/2018. [10885976] [17-17244] (Francis, James) [Entered: 05/25/2018 11:52 AM]
		* * *
05/31/2018	29	Filed clerk order: The answering brief [26] submitted by Sergio L. Ramirez is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by

Date Filed	#	Docket Text
		certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the supplemental excerpts of record [27] submitted by Sergio L. Ramirez. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10891371] (SML) [Entered: 05/31/2018 11:54 AM]
		* * *
07/16/2018	37	Submitted (ECF) Reply Brief for review. Submitted by Appellant Trans Union LLC. Date of service: 07/16/2018. [10944341] [17-17244] (Clement, Paul) [Entered: 07/16/2018 04:53 PM]
07/17/2018	38	Filed clerk order: The reply brief [37] submitted by Trans Union LLC is filed. Within 7 days of the filing of this order, filer is

Date Filed	#	Docket Text
		ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10944866] (SML) [Entered: 07/17/2018 10:09 AM]
		* * *
01/18/2019	47	Notice of Oral Argument on Thursday, February 14, 2019 - 09:00 A.M. - Courtroom 1 - San Francisco CA. * * *
		* * *
02/14/2019	51	ARGUED AND SUBMITTED TO M. MARGARET MCKEOWN, WILLIAM A. FLETCHER and MARY H. MURGUIA. [11190699] (BJK) [Entered: 02/14/2019 02:11 PM]
		* * *
02/27/2020	54	FILED OPINION (M. MARGARET MCKEOWN, WILLIAM A. FLETCHER and

Date Filed	#	Docket Text
		MARY H. MURGUIA) REVERSED and VACATED as to the amount of punitive damages; REMANDED with instructions to reduce the punitive damages to $3,936.88 per class member; AFFIRMED in all other respects. The parties shall bear their own costs on appeal. Judge: MHM Authoring, Judge: MMM Concurring & dissenting FILED AND ENTERED JUDGMENT. [11610732] (AKM) [Entered: 02/27/2020 09:45 AM]
03/12/2020	55	Filed (ECF) Appellant Trans Union LLC petition for panel rehearing and petition for rehearing en banc (from 02/27/2020 opinion). Date of service: 03/12/2020. [11627057] [17-17244] (Clement, Paul) [Entered: 03/12/2020 08:01 AM]
04/08/2020	56	Filed order (M. MARGARET MCKEOWN, WILLIAM A. FLETCHER and MARY H. MURGUIA): Judges Fletcher and Murguia have voted to deny the petition for panel rehearing and petition for rehearing en banc. Judge McKeown has voted to grant the petition for panel

Date Filed	#	Docket Text
		rehearing and petition for rehearing enbanc. The petition for en banc rehearing has been circulated to the full court, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35. Appellant's petition for rehearing and petition for rehearing en banc is DENIED (Doc. [55]). [11655091] (AF) [Entered: 04/08/202009:42 AM]
04/14/2020	57	Filed (ECF) Appellant Trans Union LLC Joint Motion to stay the mandate. Date of service: 04/14/2020.[11660461] [17-17244] (Clement, Paul) [Entered: 04/14/2020 11:33 AM]
04/15/2020	58	Filed order (M. MARGARET MCKEOWN, WILLIAM A. FLETCHER and MARY H. MURGUIA): The joint motion filed by the parties to stay the mandate pending Appellant's filing of a petition for writ of certiorari is GRANTED (Doc. [57]), pursuant to Fed. R. App. P. 41(d)(2). The mandate is stayed for ninety (90) days pending the Appellant's filing of a petition for writ of certiorari in the Supreme Court. If such a

Date Filed	#	Docket Text
		petition is filed, the stay shall continue until final disposition by the Supreme Court. [11662206] (AF) [Entered: 04/15/2020 03:56 PM]
06/22/2020	59	Filed (ECF) Appellant Trans Union LLC Joint Motion for miscellaneous relief [To Extend the Stay of the Mandate]. Date of service: 06/22/2020. [11729374] [17-17244] (Clement, Paul) [Entered: 06/22/20200 1:55 PM]
06/24/2020	60	Filed text clerk order (Deputy Clerk: WL): The joint motion to extend the stay of the mandate (Docket Entry #[59]) is granted. [11731760] (WL) [Entered: 06/24/2020 09:14 AM]
* * *		

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 3:12-cv-00632

SERGIO L. RAMIREZ,

Plaintiff,

v.

TRANS UNION LLC,

Defendant.

RELEVANT DOCKET ENTRIES

Date Filed	#	Docket Text
02/09/2012	1	COMPLAINT against Trans Union, LLC (Filing fee $ 350, receipt number 34611070378.). Filed by Sergio L. Ramirez. (Attachments: # 1 Summons) (ga, COURT STAFF) (Filed on 2/9/2012) (Entered: 02/09/2012)
* * *		
04/06/2012	11	ANSWER to Complaint by Trans Union, LLC. (Frontino, Brian) (Filed on 4/6/2012) (Entered: 04/06/2012)
* * *		
07/02/2012	26	*First Amended* ANSWER to Complaint by Trans Union,

Date Filed	#	Docket Text
		LLC. (Bell, Jeffrey) (Filed on 7/2/2012) (Entered: 07/02/2012)
		* * *
08/01/2012	30	MOTION for Judgment on the Pleadings *and Motion to Strike* filed by Trans Union, LLC. Motion Hearing set for 9/13/2012 09:00 AM in Courtroom F, 15th Floor, San Francisco before Magistrate Judge Jacqueline Scott Corley. Responses due by 8/15/2012. Replies due by 8/22/2012. (Attachments: # 1 Proposed Order, # 2 Certificate/Proof of Service) (Newman, Stephen) (Filed on 8/1/2012) (Entered: 08/01/2012)
		* * *
09/07/2012	39	RESPONSE (re 30 MOTION for Judgment on the Pleadings *and Motion to Strike*) *in Opposition to Defendant's Motion for Judgment on the Pleadings* filed by Sergio L. Ramirez. (Attachments: # 1 Certificate/ Proof of Service, # 2 Proposed Order) (Soumilas, John) (Filed on 9/7/2012) (Entered: 09/07/2012)
09/21/2012	40	REPLY (re 30 MOTION for Judgment on the Pleadings *and*

Date Filed	#	Docket Text
		Motion to Strike) filed by Trans Union, LLC. (Newman, Stephen) (Filed on 9/21/2012) (Entered: 09/21/2012)
		* * *
10/17/2012	45	ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS by Judge Jacqueline Scott Corley, denying 30 Motion for Judgment on the Pleadings. (wsn, COURT STAFF) (Filed on 10/17/2012) (Entered: 10/17/2012)
		* * *
01/09/2013	52	MOTION to Dismiss for Lack of Jurisdiction filed by Trans Union, LLC. Motion Hearing set for 2/28/2013 09:00 AM in Courtroom F, 15th Floor, San Francisco before Magistrate Judge Jacqueline Scott Corley. Responses due by 1/23/2013. Replies due by 1/30/2013. (Attachments: # 1 Declaration of Jeffrey B. Bell, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Declaration of Clint Burns, # 6 Proposed Order)(Newman, Stephen) (Filed on 1/9/2013) (Entered: 01/09/2013)

Date Filed	#	Docket Text
		* * *
02/06/2013	58	RESPONSE (re 52 MOTION to Dismiss for Lack of Jurisdiction) filed by Sergio L. Ramirez. (Attachments: # 1 Memorandum of Law in Support of Plaintiff's Response in Opposition to Defendant's Motion to Dismiss, # 2 Certificate/Proof of Service, # 3 Proposed Order) (Soumilas, John) (Filed on 2/6/2013) (Entered: 02/06/2013)
		* * *
02/20/2013	69	REPLY (re 52 MOTION to Dismiss for Lack of Jurisdiction) filed by Trans Union, LLC. (Attachments: # 1 Declaration of Jeffrey B. Bell, # 2 Exhibit A)(Newman, Stephen) (Filed on 2/20/2013) (Entered: 02/20/2013)
		* * *
03/15/2013	76	ORDER by Magistrate Judge Jacqueline Scott Corley denying 52 Motion to Dismiss for Lack of Jurisdiction (ahm, COURT STAFF) (Filed on 3/15/2013) (Entered: 03/15/2013)
		* * *

Date Filed	#	Docket Text
12/01/2013	81	Transcript of Proceedings held on March 13, 2013, before Judge Jacqueline Scott Corley. * * *
* * *		
04/25/2013	87	MOTION for Reconsideration re 76 Order on Motion to Dismiss/Lack of Jurisdiction filed by Trans Union, LLC. (Attachments: # 1 Proposed Order) (Newman, Stephen) (Filed on 4/25/2013) (Entered: 04/25/2013)
* * *		
05/15/2013	91	RESPONSE (re 87 MOTION for Reconsideration re 76 Order on Motion to Dismiss/Lack of Jurisdiction) *in Opposition* filed by Sergio L. Ramirez. (Attachments: # 1 Memorandum of Law, # 2 Certificate/Proof of Service, # 3 Proposed Order) (Soumilas, John) (Filed on 5/15/2013) (Entered: 05/15/2013)
05/22/2013	92	REPLY (re 87 MOTION for Reconsideration re 76 Order on Motion to Dismiss/Lack of Jurisdiction) filed by Trans Union, LLC. (Newman,

Date Filed	#	Docket Text
		Stephen) (Filed on 5/22/2013) (Entered: 05/22/2013)
		* * *
07/17/2013	100	**ORDER by Magistrate Judge Jacqueline Scott Corley denying 87 Motion for Reconsideration (ahm, COURT STAFF) (Filed on 7/17/2013) (Entered: 07/17/2013)**
		* * *
04/25/2014	119	Administrative Motion to File Under Seal filed by Trans Union, LLC. (Attachments: # 1 Declaration of Daniel Halvorsen in Support of Defendants Administrative Motion to Seal, # 2 Declaration of Stephen J. Newman in Support of Defendants Administrative Motion to Seal, # 3 Proposed Order, # 4 Redacted Version of Defendants Opposition to Plaintiffs Motion for Class Certification, # 5 Unredacted Version of Defendants Opposition to Plaintiffs Motion for Class Certification, # 6 Unredacted Version of Declaration of Denise Briddell in Support of Defendants Opposition (entirety under

Date Filed	#	Docket Text
		seal), # 7 Unredacted Version of Exhibit A to Declaration of Denise Briddell in Support of Defendants Opposition, # 8 Unredacted Version of Exhibit B to Declaration of Denise Briddell in Support of Defendants Opposition, # 9 Declaration of Clint Burns in Support of Defendants Opposition, # 10 Unredacted Version of Declaration of Michael OConnell in Support of Defendants Opposition (entirety under seal), # 11 Redacted Version of Declaration of Francine Cronshaw in Support of Defendants Opposition, # 12 Unredacted Version of Declaration of Francine Cronshaw in Support of Defendants Opposition, # 13 Redacted Version of Exhibit A to Declaration of Francine Cronshaw in Support of Defendants Opposition, # 14 Unredacted Version of Exhibit A to Declaration of Francine Cronshaw in Support of Defendants Opposition, # 15 Unredacted Version of Declaration of Colleen Gill in Support of Defendants

Date Filed	#	Docket Text
		Opposition (entirety under seal), # 16 Unredacted Version of Exhibit A to Declaration of Colleen Gill in Support of Defendants Opposition, # 17 Declaration of Stephen J. Newman in Support of Defendants Opposition, # 18 Redacted Version of Exhibit A to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 19 Unredacted Version of Exhibit A to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 20 Redacted Version of Exhibit B to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 21 Unredacted Version of Exhibit B to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 22 Redacted Version of Exhibit C to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 23 Unredacted Version of Exhibit C to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 24 Redacted Version of Exhibit D

Date Filed	#	Docket Text
		to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 25 Unredacted Version of Exhibit D to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 26 Redacted Version of Exhibit E to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 27 Unredacted Version of Exhibit E to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 28 Redacted Version of Exhibit F to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 29 Unredacted Version of Exhibit F to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 30 Redacted Version of Exhibit G to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 31 Unredacted Version of Exhibit G to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 32 Redacted Version of Exhibit H to Declaration of Stephen J.

Date Filed	#	Docket Text
		Newman in Support of Defendants Opposition, # 33 Unredacted Version of Exhibit H to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 34 Redacted Version of Exhibit I to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 35 Unredacted Version of Exhibit I to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 36 Redacted Version of Exhibit J to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 37 Unredacted Version of Exhibit J to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 38 Unredacted Version of Declaration of Lynn Romanowski in Support of Defendants Opposition (entirety under seal), # 39 Unredacted Version of Exhibit A to Declaration of Lynn Romanowski in Support of Defendants Opposition, # 40 Unredacted Version of Exhibit B to Declaration of Lynn

Date Filed	#	Docket Text
		Romanowski in Support of Defendants Opposition, # 41 Unredacted Version of Declaration of Peter Turek in Support of Defendants Opposition (entirety under seal), # 42 Unredacted Version of Exhibit A to Declaration of Peter Turek in Support of Defendants Opposition, # 43 Unredacted Version of Exhibit B to Declaration of Peter Turek in Support of Defendants Opposition, # 44 Certificate/Proof of Service) (Newman, Stephen) (Filed on 4/25/2014) (Entered: 04/25/2014)
	* * *	
05/09/2014	125	REPLY (re 111 MOTION to Certify Class (redacted version)) Plaintiff's Reply in Further Support of Motion to Certify Class filed bySergio L. Ramirez. (Attachments: # 1 Certificate/Proof of Service)(Soumilas, John) (Filed on 5/9/2014) (Entered: 05/09/2014)
	* * *	

Date Filed	#	Docket Text
05/22/2014	128	AMENDED DOCUMENT by Trans Union, LLC. Amendment to 120 Opposition/Response to Motion *Revised, redacted Opposition pursuant to Order on Defendants Motion to Seal Opposition to Plaintiffs Motion to Certify*. (Attachments: # 1 Revised, redacted version of Declaration of Denise Briddell in Support of Defendants Opposition, # 2 Revised, redacted version of Exhibit A to Declaration of Denise Briddell in Support of Defendants Opposition, # 3 Revised, redacted version of Exhibit B to Declaration of Denise Briddell in Support of Defendants Opposition, # 4 Declaration of Clint Burns in Support of Defendants Opposition, # 5 Revised, redacted version of Declaration of Michael OConnell in Support of Defendants Opposition, # 6 Revised, redacted version of Declaration of Francine Cronshaw in Support of Defendants Opposition, # 7 Revised, redacted version of Exhibit A to Declaration of Francine Cronshaw in Support

Date Filed	#	Docket Text
		of Defendants Opposition, # 8 Revised, redacted version of Declaration of Colleen Gill in Support of Defendants Opposition, # 9 Revised, redacted version of Exhibit A to Declaration of Colleen Gill in Support of Defendants Opposition, # 10 Declaration of Stephen J. Newman in Support of Defendants Opposition, # 11 Revised, redacted version of Exhibit A to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 12 Revised, redacted version of Exhibit B to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 13 Revised, redacted version of Exhibit C to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 14 Revised, redacted version of Exhibit D to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 15 Revised, redacted version of Exhibit E to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 16 Revised, redacted version of Exhibit F to Declaration of

Date Filed	#	Docket Text
		Stephen J. Newman in Support of Defendants Opposition, # 17 Revised, redacted version of Exhibit G to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 18 Revised, redacted version of Exhibit H to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 19 Revised, redacted version of Exhibit I to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 20 Revised, redacted version of Exhibit J to Declaration of Stephen J. Newman in Support of Defendants Opposition, # 21 Revised, redacted version of Declaration of Lynn Romanowski in Support of Defendants Opposition, # 22 Revised, redacted version of Exhibit A to Declaration of Lynn Romanowski in Support of Defendants Opposition, # 23 Revised, redacted version of Exhibit B to Declaration of Lynn Romanowski in Support of Defendants Opposition, # 24 Revised, redacted version of Declaration of Peter Turek in Support of Defendants

Date Filed	#	Docket Text
		Opposition, # 25 Revised, redacted version of Exhibit A to Declaration of Peter Turek in Support of Defendants Opposition, # 26 Revised, redacted version of Exhibit B to Declaration of Peter Turek in Support of Defendants Opposition)(Newman, Stephen) (Filed on 5/22/2014) (Entered: 05/22/2014)
		* * *
06/24/2014	138	Transcript of Proceedings (Redacted) held on 5/29/14, before Judge Jacqueline S. Corley. * * *
		* * *
07/24/2014	140	**Order by Magistrate Judge Jacqueline Scott Corley granting in part and denying in part 111 Motion to Certify Class.(jsclc2S, COURT STAFF) (Filed on 7/24/2014) (Entered: 07/24/2014)**
		* * *
12/18/2014	149	MOTION For Clarification of July 24, 2014 Order Granting in Part and Denying in Part Motion to Certify Class re 140

Date Filed	#	Docket Text
		Order on Motion to Certify Class filed by Trans Union, LLC. Motion Hearing set for 1/22/2015 09:00 AM in Courtroom F, 15th Floor, San Francisco before Magistrate Judge Jacqueline Scott Corley. Responses due by 1/2/2015. Replies due by 1/9/2015. (Attachments: # 1 Proposed Order) (Newman, Stephen) (Filed on 12/18/2014) (Entered: 12/18/2014)
		* * *
01/07/2015	156	ORDER of USCA denying the petition for permission to appeal the district court's 7/24/14 Order granting in part and denying in part class action certification. (slhS, COURT STAFF) (Filed on 1/7/2015) (Entered: 01/07/2015)
01/22/2015	157	RESPONSE (re 149 MOTION For Clarification of July 24, 2014 Order Granting in Part and Denying in Part Motion to Certify Class re 140 Order on Motion to Certify Class) filed bySergio L. Ramirez. (Soumilas, John) (Filed on 1/22/2015) (Entered: 01/22/2015)
		* * *

Date Filed	#	Docket Text
01/29/2015	160	REPLY (re 149 MOTION For Clarification of July 24, 2014 Order Granting in Part and Denying in Part Motion to Certify Class re 140 Order on Motion to Certify Class) *of Defendant Trans Union LLC in Support of Motion for Clarification of July 24, 2014 Order* filed by Trans Union, LLC. (Newman, Stephen) (Filed on 1/29/2015) (Entered: 01/29/2015)
		* * *
02/12/2015	163	**Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Further Case Management Conference and Motion Hearing held on 2/12/2015 re 149 MOTION For Clarification of July 24, 2014 Order Granting in Part and Denying in Part Motion to Certify Class re 140 Order on Motion to Certify Class filed by Trans Union, LLC. *** *The motion is denied without prejudice to renewal on summary judgment.**** (FTR Time 9:01-9:9:24; 10:55-10:56.)**

Date Filed	#	Docket Text
		(ahm, COURT STAFF) (Date Filed: 2/12/2015) (Entered: 02/12/2015)
		* * *
02/18/2015	167	**ORDER RE: PROPOSED CLASS NOTICE. Signed by Magistrate Judge Jacqueline Scott Corley on 2/18/2015. (ahm, COURT STAFF) (Filed on 2/18/2015) (Entered: 02/18/2015)**
		* * *
03/04/2015	172	MOTION to Certify Class filed by Sergio L. Ramirez. *CORRECTION OF DOCKET # 110-3*. (Soumilas, John) (Filed on 3/4/2015) Modified on 3/5/2015 (slhS, COURT STAFF). (Entered: 03/04/2015)
03/04/2015	173	MOTION to Certify Class by Sergio L. Ramirez. *CORRECTION OF DOCKET # 111*. (Soumilas, John) (Filed on 3/4/2015) Modified on 3/5/2015 (slhS, COURT STAFF). (Entered: 03/04/2015)
03/04/2015	174	MOTION to Certify Class by Sergio L. Ramirez. *CORRECTION OF DOCKET # 122*. (Soumilas, John) (Filed on 3/4/2015) Modified on 3/5/2015

Date Filed	#	Docket Text
		(slhS, COURT STAFF). (Entered: 03/04/2015)
		* * *
03/16/2015	176	Transcript of Proceedings held on 02/12/2015, before Magistrate Judge Jacqueline Scott Corley. * * *
		* * *
06/22/2015	184	**ORDER by Magistrate Judge Jacqueline Scott Corley granting 177 Motion to Stay (ahm, COURT STAFF) (Filed on 6/22/2015) (Entered: 06/22/2015)**
		* * *
07/29/2016	198	MOTION to Decertify Class filed by Trans Union, LLC. Motion Hearing set for 10/6/2016 09:00 AM in Courtroom F, 15th Floor, San Francisco before Magistrate Judge Jacqueline Scott Corley. Responses due by 8/12/2016. Replies due by 8/19/2016. (Attachments: # 1 Proposed Order) (Newman, Stephen) (Filed on 7/29/2016) (Entered: 07/29/2016)
		* * *
08/26/2016	201	RESPONSE (re 198 MOTION to Decertify Class) filed by Sergio

Date Filed	#	Docket Text
		L. Ramirez. (Attachments: # 1 Proposed Order)(Francis, James) (Filed on 8/26/2016) (Entered: 08/26/2016)
09/09/2016	202	REPLY (re 198 MOTION to Decertify Class) filed by Trans Union, LLC. (Newman, Stephen) (Filed on 9/9/2016) (Entered: 09/09/2016)
		* * *
10/17/2016	209	**ORDER by Magistrate Judge Jacqueline Scott Corley denying 198 Motion to Decertify Class. (ahm, COURT STAFF) (Filed on 10/17/2016) (Entered: 10/17/2016)**
		* * *
01/20/2017	218	Administrative Motion to File Under Seal *Motion for Summary Judgment* filed by Trans Union, LLC. (Attachments: # 1 Declaration of Michael O'Connell in Support of Administrative Motion to File Under Seal, # 2 Declaration of Stephen J. Newman in Support of Administrative Motion to File Under Seal, # 3 Proposed Order, # 4 Redacted Version of Defendant Trans Union LLC's Notice of Motion and Motion for

Date Filed	#	Docket Text
		Summary Judgment; Memorandum of Points and Authorities in Support Thereof, # 5 Unredacted Version of Defendant Trans Union LLC's Notice of Motion and Motion for Summary Judgment; Memorandum of Points and Authorities in Support Thereof, # 6 Declaration of Stephen J. Newman in Support of Motion for Summary Judgment, # 7 Redacted Version of Exhibit A, # 8 Unredacted Version of Exhibit A, # 9 Redacted Version of Exhibit B, # 10 Unredacted Version of Exhibit B, # 11 Exhibit C, # 12 Exhibit D, # 13 Redacted Version of Exhibit E, # 14 Unredacted Version of Exhibit E, # 15 Exhibit F, # 16 Redacted Version of Exhibit G, # 17 Unredacted Version of Exhibit G, # 18 Redacted Version of Exhibit H, # 19 Unredacted Version of Exhibit H, # 20 Redacted Version of Exhibit I, # 21 Unredacted Version of Exhibit I, # 22 Redacted Version of Exhibit J, # 23 Unredacted Version of Exhibit J, # 24 Redacted Version of Exhibit K, # 25

Date Filed	#	Docket Text
		Unredacted Version of Exhibit K, # 26 Redacted Version of Exhibit L, # 27 Unredacted Version of Exhibit L, # 28 Redacted Version of Exhibit M, # 29 Unredacted Version of Exhibit M, # 30 Exhibit N, # 31 Redacted Version of Exhibit O, # 32 Unredacted Version of Exhibit O, # 33 Redacted Version of Exhibit P, # 34 Unredacted Version of Exhibit P, # 35 Exhibit Q, # 36 Exhibit R, # 37 Redacted Version of Exhibit S, # 38 Unredacted Version of Exhibit S, # 39 Redacted Version of Exhibit T, # 40 Unredacted Version of Exhibit T, # 41 Redacted Version of Exhibit U, # 42 Unredacted Version of Exhibit U, # 43 Exhibit V, # 44 Redacted Version of Exhibit W, # 45 Unredacted Version of Exhibit W, # 46 Proposed Order)(Newman, Stephen) (Filed on 1/20/2017) (Entered: 01/20/2017)
		* * *
02/10/2017	221	Administrative Motion to File Under Seal *Plaintiff's Response In Opposition to Defendant's*

Date Filed	#	Docket Text
		Motion for Summary Judgment filed by Sergio L. Ramirez. (Attachments: # 1 Certificate/Proof of Service, # 2 Proposed Order, # 3 Redacted Version Of Plaintiff's Response In Opposition to Motion for Summary Judgment, # 4 Unredacted Version Of Plaintiff's Response In Opposition to Motion for Summary Judgment, # 5 Declaration of John Soumilas, # 6 Exhibit 1, # 7 Exhibit 2 (Redacted), # 8 Exhibit 2 (Unredacted), # 9 Exhibit 3 (Redacted), # 10 Exhibit 3 (Unredacted), # 11 Exhibit 4, # 12 Exhibit 5 (Redacted), # 13 Exhibit 5 (Unredacted), # 14 Exhibit 6 (Redacted), # 15 Exhibit 6 (Unredacted), # 16 Exhibit 7 (Redacted), # 17 Exhibit 7 (Unredacted), # 18 Exhibit 8 (Redacted), # 19 Exhibit 8 (Unredacted), # 20 Exhibit 9, # 21 Exhibit 10, # 22 Exhibit 11, # 23 Exhibit 12, # 24 Exhibit 13, # 25 Exhibit 14, # 26 Exhibit 15 (Redacted), # 27 Exhibit 15 (Unredacted), # 28 Exhibit 16 (Redacted), # 29 Exhibit 16 (Unredacted), # 30

Date Filed	#	Docket Text
		Exhibit 17 (Redacted), # 31 Exhibit 17 (Unredacted), # 32 Exhibit 18 (Redacted), # 33 Exhibit 18 (Unredacted), # 34 Exhibit 19 (Redacted), # 35 Exhibit 19 (Unredacted), # 36 Exhibit 20 (Redacted), # 37 Exhibit 20 (Unredacted), # 38 Proposed Order) (Soumilas, John) (Filed on 2/10/2017) (Entered: 02/10/2017)
	*	* *
03/03/2017	227	Administrative Motion to File Under Seal *(Reply in Support of Motion for Summary Judgment)* filed by Trans Union, LLC. (Attachments: # 1 Declaration of Stephen J. Newman in Support of Administrative Motion to File Under Seal, # 2 Proposed Order, # 3 Redacted Version of Reply in Support of Motion for Summary Judgment, # 4 Unredacted Version of Reply in Support of Motion for Summary Judgment, # 5 Declaration of Stephen J. Newman in Support of Reply in Support of Motion for Summary Judgment (Supplemental), # 6 Exhibit X, # 7 Exhibit Y, # 8 Exhibit Z) (Newman, Stephen)

Date Filed	#	Docket Text
		(Filed on 3/3/2017) (Entered: 03/03/2017)
		* * *
03/22/2017	231	Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Motion Hearing held on 3/22/2017 re: 218 Administrative Motion to File Under Seal *Motion for Summary Judgment* filed by Trans Union, LLC, 221 Administrative Motion to File Under Seal *Plaintiff's Response In Opposition to Defendant's Motion for Summary Judgment* filed by Sergio L. Ramirez, 227 Administrative Motion to File Under Seal *(Reply in Support of Motion for Summary Judgment)* filed by Trans Union, LLC., and 230 MOTION for Leave to File *Sur-reply Brief In Further Support Of Plaintiff's Opposition To Defendant's Motion For Summary Judgment* filed by Sergio L. Ramirez. Defendant's Motion for Summary Judgment is denied. The motions to seal are denied

Date Filed	#	Docket Text
		without prejudice to refiling by March 29, 2017. * * *
		* * *
03/27/2017	233	**ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT. Signed by Magistrate Judge Jacqueline Scott Corley on 3/27/2017. (ahm, COURT STAFF) (Filed on 3/27/2017) (Entered: 03/27/2017)**
		* * *
04/05/2017	236	Administrative Motion to File Under Seal *Summary Judgment Documents* filed by Trans Union, LLC. (Attachments: # 1 Declaration of Brent Newman, # 2 Exhibit A-C, # 3 Declaration of Michael O'Connell, # 4 Declaration of Jason S. Yoo, # 5 Proposed Order, # 6 Exhibit A - Expert Witness Disclosures (Redacted), # 7 Exhibit A - Expert Witness Disclosures, # 8 Exhibit B - Sadie Rebuttal Report (Redacted), # 9 Exhibit B - Sadie Rebuttal Report, # 10 Exhibit E - Briddell Declaration (Redacted), # 11 Exhibit E -

Date Filed	#	Docket Text
		Briddell Declaration, # 12 Exhibit H - O'Connell Class Cert. Declaration (Redacted), # 13 Exhibit H - O'Connell Class Cert. Declaration, # 14 Exhibit I - O'Connell Motion to Stay Declaration (Redacted), # 15 Exhibit I - O'Connell Motion to Stay Declaration, # 16 Exhibit J - O'Connell Declaration in Support of MSJ (Redacted), # 17 Exhibit J - O'Connell Declaration in Support of MSJ, # 18 Exhibit K - Romanowski Declaration (Redacted), # 19 Exhibit K - Romanowski Declaration, # 20 Exhibit L - Turek Declaration (Redacted), # 21 Exhibit L - Turek Declaration, # 22 Exhibit M - Accuity Deposition (Redacted), # 23 Exhibit M - Accuity Deposition, # 24 Exhibit O - Coito Deposition (Redacted), # 25 Exhibit O - Coito Deposition, # 26 Exhibit S - Lytle Deposition (Redacted), # 27 Exhibit S - Lytle Deposition, # 28 Exhibit T - O'Connell Deposition (Redacted), # 29 Exhibit T - O'Connell Deposition, # 30 Exhibit U - Ramirez Deposition

Date Filed	#	Docket Text
		(Redacted), # 31 Exhibit U - Ramirez Deposition, # 32 Exhibit 7 - Additional OFAC Hit Analysis (Redacted), # 33 Exhibit 7 - Additional OFAC Hit Analysis, # 34 Exhibit 8 - Gill Deposition (Redacted), # 35 Exhibit 8 - Gill Deposition, # 36 Exhibit 15 - TU0006659 (Redacted), # 37 Exhibit 15 - TU0006659, # 38 Exhibit 16 - TU0009213-14 (Redacted), # 39 Exhibit 16 - TU0009213-14, # 40 Exhibit 17 - TU0008976-77 (Redacted), # 41 Exhibit 17 - TU0008976-77, # 42 Exhibit 18 - TU0009198 (Redacted), # 43 Exhibit 18 - TU0009198, # 44 Exhibit MSJ (Redacted), # 45 Exhibit MSJ, # 46 Exhibit Opposition (Redacted), # 47 Exhibit Opposition, # 48 Exhibit Reply In Support of MSJ (Redacted), # 49 Exhibit Reply In Support of MSJ)(Newman, Stephen) (Filed on 4/5/2017) (Entered: 04/05/2017)
		* * *
05/01/2017	242	**ORDER by Magistrate Judge Jacqueline Scott Corley granting in part and denying in part 236**

Date Filed	#	Docket Text
		Administrative Motion to File Under Seal. (ahm, COURT STAFF) (Filed on 5/1/2017) (Entered: 05/01/2017)
		* * *
05/11/2017	249	TRIAL BRIEF *On Controlling Issues Of Law* by Sergio L. Ramirez. (Soumilas, John) (Filed on 5/11/2017) (Entered: 05/11/2017)
		* * *
05/11/2017	263	TRIAL BRIEF by Trans Union, LLC. (Newman, Stephen) (Filed on 5/11/2017) (Entered: 05/11/2017)
		* * *
05/17/2017	265	MOTION for Leave to File filed by Trans Union, LLC. (Attachments: # 1 Proposed Order Granting Defendant Trans Union LLC's Motion for Leave to File a Motion for Reconsideration of Class Decertification and Summary Judgment)(Newman, Stephen) (Filed on 5/17/2017) (Entered: 05/17/2017)
05/17/2017	266	MOTION for Summary Judgment filed by Trans Union, LLC. Responses due by

Date Filed	#	Docket Text
		5/31/2017. Replies due by 6/7/2017. (Attachments: # 1 Declaration of Stephen J. Newman, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Exhibit R, # 20 Exhibit S, # 21 Exhibit T, # 22 Exhibit U, # 23 Exhibit V, # 24 Exhibit W)(Newman, Stephen) (Filed on 5/17/2017) (Entered: 05/17/2017)
05/17/2017	267	REPLY (re 266 MOTION for Summary Judgment) filed by Trans Union, LLC. (Attachments: # 1 Declaration of Stephen J. Newman, # 2 Exhibit X, # 3 Exhibit Y, # 4 Exhibit Z)(Newman, Stephen) (Filed on 5/17/2017) (Entered: 05/17/2017)
		* * *
06/02/2017	276	**ORDER by Magistrate Judge Jacqueline Scott Corley denying 265 Motion for Leave to File a Motion**

Date Filed	#	Docket Text
		for Reconsideration. (ahm, COURT STAFF) (Filed on 6/2/2017) (Entered: 06/02/2017)
		* * *
06/12/2017	288	**Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Jury Trial (Day 1) began on 6/12/2017.**
06/13/2017	289	STIPULATION *Regarding Class Data* filed by Trans Union, LLC. (Newman, Stephen) (Filed on 6/13/2017) (Entered: 06/13/2017)
06/13/2017	290	**Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Jury Trial (Day 2) held on 6/13/2017.**
06/14/2017	291	**Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Jury Trial (Day 3) held on 6/14/2017.**
06/15/2017	292	Volume 1 of Trial Transcript of Proceedings, held on June 12,

Date Filed	#	Docket Text
		2017, before Judge Jacqueline Scott Corley. * * *
06/15/2017	293	Volume 2 of Trial Transcript of Proceedings, held on June 13, 2017, before Judge Jacqueline Scott Corley. * * *
06/15/2017	294	Volume 3 of Trial Transcript of Proceedings, held on June 14, 2017, before Judge Jacqueline Scott Corley. * * *
06/15/2017	295	MOTION for Judgment as a Matter of Law *or in the Alternative to Decertify the Class* filed by Trans Union, LLC. Motion Hearing set for 6/16/2017 08:15 AM in Courtroom D, 15th Floor, San Francisco before Magistrate Judge Jacqueline Scott Corley. Responses due by 6/29/2017. Replies due by 7/6/2017. (Newman, Stephen) (Filed on 6/15/2017) (Entered: 06/15/2017)
06/16/2017	296	**Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Jury Trial (Day 4) held on 6/16/2017.**

Date Filed	#	Docket Text
06/16/2017	297	Transcript of Jury Trial Proceedings, Volume 4, held on 6-16-2017, before Judge Jacqueline Scott Corley. * * *
* * *		
06/18/2017	298	Proposed Jury Instructions by Trans Union, LLC *to be Included in Final Charge to the Parties*. (Attachments: # 1 Defendant Trans Union LLC's Memorandum of Law in Support of Proposed Jury Instructions to be Included in Final Charge to the Parties) (Newman, Stephen) (Filed on 6/18/2017) (Entered: 06/18/2017)
* * *		
06/19/2017	301	Final Jury Instructions. (ahm, COURT STAFF) (Filed on 6/19/2017) (Entered: 06/19/2017)
06/19/2017	302	**Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Jury Trial (Day 5) held on 6/19/2017.**
* * *		

Date Filed	#	Docket Text
06/20/2017	304	**Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Jury Trial (Day 6) held on 6/20/2017.**
06/20/2017	305	JURY VERDICT. (ahm, COURT STAFF) (Filed on 6/20/2017) (Entered: 06/20/2017)
06/20/2017	306	VERDICT FORM PUNITIVE DAMAGES. (ahm, COURT STAFF) (Filed on 6/20/2017) (Entered: 06/20/2017)
* * *		
06/21/2017	309	**JUDGMENT. Signed by Magistrate Judge Jacqueline Scott Corley on 6/21/2017. (ahm, COURT STAFF) (Filed on 6/21/2017) (Entered: 06/21/2017)**
06/21/2017	310	Transcript of Jury Trial Proceedings, Volume 5, held on 6-19-2017, before Judge Jacqueline Scott Corley. * * *
06/21/2017	311	Transcript of Proceedings held on June 20, 2017, Volume 6 of Trial Transcript, before Judge Jacqueline Scott Corley.

Date Filed	#	Docket Text
		* * *
		* * *
07/19/2017	321	Renewed MOTION for Judgment as a Matter of Law *or, in the Alternative, Motion for a New Trial or, in the Alternative, Motion for Remittitur or, in the Alternative, Motion to Alter or Amend the Judgment; Memorandum of Points and Authorities in Support Thereof* filed by Trans Union, LLC. Motion Hearing set for 9/28/2017 09:00 AM in Courtroom F, 15th Floor, San Francisco before Magistrate Judge Jacqueline Scott Corley. Responses due by 8/18/2017. Replies due by 9/8/2017. (Attachments: # 1 Declaration of David Gilbert, # 2 Declaration of Jason S. Yoo, # 3 Exhibit A, # 4 Proposed Order) (Newman, Stephen) (Filed on 7/19/2017) Modified on 7/20/2017 (slhS, COURT STAFF). (Entered: 07/19/2017)
		* * *
08/18/2017	329	OPPOSITION/RESPONSE (re 321 Renewed MOTION for Judgment as a Matter of Law *or, in the Alternative, Motion for a*

Date Filed	#	Docket Text
		New Trial or, in the Alternative, Motion for Remittitur or, in the Alternative, Motion to Alter or Amend the Judgment) filed by Sergio L. Ramirez. (Soumilas, John) (Filed on 8/18/2017) (Entered: 08/18/2017)
		* * *
09/08/2017	333	REPLY (re 321 Renewed MOTION for Judgment as a Matter of Law *or, in the Alternative, Motion for a New Trial or, in the Alternative, Motion for Remittitur or, in the Alternative, Motion to Alter or Amend the Judgment) filed byTrans Union, LLC. (Newman, Stephen) (Filed on 9/8/2017) (Entered: 09/08/2017)*
		* * *
10/10/2017	338	Transcript of Proceedings held on 10/05/2017, before Magistrate Judge Jacqueline Scott Corley. * * *
		* * *
11/01/2017	342	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Trans Union, LLC. Appeal of Order on Motion to Certify Class 140 , Order on Motion for Miscellaneous Relief 209 , Order

Date Filed	#	Docket Text
		on Motion for Summary Judgment 233 , Jury Verdict 305 , Jury Verdict 306 , Judgment 309 , Motion Hearing 337 . (Appeal fee of $505 receipt number 0971-11845205 paid) (Attachments: # 1 Representation Statement) (Newman, Stephen) (Filed on 11/1/2017) Modified on 11/2/2017 (slhS, COURT STAFF). **(USCA Case No. 17-17244)** (Entered: 11/01/2017)
		* * *
11/07/2017	344	**ORDER by Magistrate Judge Jacqueline Scott Corley denying 321 Motion for Judgment as a Matter of Law; granting 327 Motion to Strike. (ahm, COURT STAFF) (Filed on 11/7/2017) (Entered: 11/07/2017)**
		* * *
11/16/2017	347	**AMENDED JUDGMENT. Signed by Magistrate Judge Jacqueline Scott Corley on 11/16/2017. (ahm, COURT STAFF) (Filed on 11/16/2017) (Entered: 11/16/2017)**
12/01/2017	350	AMENDED NOTICE OF APPEAL by Trans Union, LLC as to 140 Order on Motion to

Date Filed	#	Docket Text
		Certify Class, 344 Order on Motion for Judgment as a Matter of Law, Order on Motion to Strike, 209 Order on Motion for Miscellaneous Relief, 309 Judgment, 347 Judgment, 233 Order on Administrative Motion to File Under Seal,,, Order on Motion for Leave to File, 345 Order on Motion for Miscellaneous Relief . Appeal Record due by 1/2/2018. (Attachments: # 1 Representation Statement) (Newman, Stephen) (Filed on 12/1/2017) (Entered: 12/01/2017)
* * *		

Stipulation re Class Data (June 13, 2017)

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Sergio L. Ramirez and the Class, and Defendant Trans Union LLC, through their undersigned counsel of record as follows:

1. The following facts are stipulated and any of them may be read to the jury by either party and admitted into evidence during its case-in-chief.

   a. The class certified by the court contains 8,185 consumers.

   b. Out of 8,185 consumers in the class, Name Screen data was delivered to a potential credit grantor with respect to 1,853 consumers during the class period of January 1, 2011 through July 26, 2011.

   c. Out of the 1,853 consumers for whom Name Screen data was delivered to a potential credit grantor, 40 were delivered via the reseller ODE or one of its affiliates during the class period of January 1, 2011 through July 26, 2011.

2. The parties further stipulate that Exhibit B to what was pre-marked as Trial Exhibit 8 contains the names and addresses of the class members, as derived from Trans Union's business records (the "Class List"), and also the names of seven individuals who requested to the excluded. The Class List shall be deemed entered into evidence, but it shall not be taken into the jury room at any time.

3. The above facts were derived from searches of TransUnion LLC's electronic systems by Lynn

Romanowski (now Prindes) as set forth in her April 22, 2014, declaration.

4. Ms. Prindes shall not be required to appear and testify in Plaintiff's case-in-chief. To the extent Ms. Prindes is called during Defendant's case-in-chief, nothing in this stipulation shall limit the scope of her cross-examination by Plaintiff.

5. Nothing in this stipulation waives, and each party expressly preserves, all arguments and positions with respect to the appropriateness or inappropriateness of class certification, the proper composition of the class, whether class members who did not receive class notice should be excluded fromt eh class, and any and all other matters relating to class certification and decertification.

FRANCIS & MAILMAN, P.C.	STROOCK & STROOCK & LAVAN LLP
/s/James A. Francis	*/s/Stephen J. Newman*
***	***

Excerpts from TransUnion General Announcement No. 26 (Aug. 13, 2002)

* * *

Important Model Update!

We're pleased to announce that we now have a Master Reason Code Table available! This is a sequential file that we can download to you which contains the Algorithm ID, the Algorithm Name, the Reason Number and the Reason Text. We will announce when the table has been updated so that you will always have the latest copy. Most importantly, integrating this table into your software will mean that you can support **all of our models!**

To obtain a copy of the table, please contact your ASR.

OFAC Advisor

OFAC Advisor is an add-on product that identifies a name as possibly being involved with individuals and entities that are prohibited by the U.S. Treasury Department from doing business in or with the United States. Name elements from the customer's request are used as input to the system to be matched against records for individuals on Thomson Financial Publishing's FACFile database. Output is delivered in the form of unparsed messages that contain varying information about the matches: source; entity name, title and type; address; embargoed country with which subject is affiliated; industry standard identifiers, if applicable; and SSN, date of birth, and passport number, if available. Customers will use OFAC Advisor as a means toward complying with the USA PATRIOT Act of 2001 and OFAC Regulations,

basically requiring that they check the U.S. Treasury Department's OFAC file to verify that they are not conducting business with or on behalf of an individual or entity that is sanctioned under OFAC laws.

Test files for OFAC Advisor will be available August 28, and the product will go into production on September 18.

The FFR version of OFAC Advisor is only supported in TU40 and ARPT 3.1. It is also available in the Print Image Format. OFAC Advisor is available as an *add-on* to the Credit Report, Total Id and the Acquire products.

Appendix A contains the technical details for the FFR version of OFAC Advisor and the test files that can be accessed starting August 28.

LOOK by Keyword

We will install an enhancement to LOOK in our September release enabling subscribers to request it on a transactional basis. Currently this is done by overriding a default in our subscriber set up, which has resulted in subscribers receiving LOOK when they did not want the product if their software was inadvertently requesting it.

The change will mean that if a subscriber is not activated for LOOK there is no way they can get it. Therefore, if you are presently requesting LOOK on a transactional basis, please check with your TransUnion Sales Associate to ensure that your subscriber code is set up so that you will continue to get it on demand. **There are no software changes associated with this enhancement.**

* * *

Appendix A - OFAC Advisor TU40 Segments

FFI

1. OFAC Advisor is not available by request in the subscriber's FFI.
2. No new FFI segments are needed for this add-on product.
3. If OFAC Advisor is requested in the subscriber's RA01 segment, it will be ignored *unless* the subscriber is not authorized for the product.
4. Name data from the subscriber's NM01 segment for the *primary* and *secondary,* if applicable, name will be used as input to the OFAC Advisor system. Name data from the *file* will not be used as input to the OFAC Advisor system.

FFR

1. No new TU40 FFR segments are needed for OFAC Advisor.
2. The OFAC Advisor add-on product will be delivered in the following segments:

   The AO01 segment will be returned for *Hit* (record found by the OF AC Advisor system), *Clear,* (no record found), and *Unavailable* conditions. Below is the AO0I segment as it relates to this product:

Add-on Status (AO01) Segment				Total length: 17 bytes
Field	**Displace-ment**	**Length**	**Type**	**Description**
Segment Type	1	4	A/N	Value is **AO01**.
Segment Length	5	3	N	Value is **017**.
Product Code	8	5	A/N	Value is 06800.
Product Status	13	2	A/N	Specifies whether the product is available. Possible values are: **02** Requested product not available **03** Subscriber code not authorized for requested product **04** Default product delivered
Search Status	15	3	A/N	Specifies the search status. Possible values are: **O01** OFAC Advisor Clear **O02** OFAC Advisor Hit **O03** OFAC Advisor Unavailable

The MT01 segment will only be returned for *Hit* conditions. Below is the MT01 segment as it relates to this product:

Message Text (MT01) Segment				Total length: 171 bytes
Field	**Displace-ment**	**Length**	**Type**	**Description**
Segment Type	1	4	A/N	Value is **MT01**.
Segment Length	5	3	N	Value is **171**.
Message Code	8	6	A/N	Space-filled.
Actual Message Length	14	3	N	Indicates the OFAC Advisor message length (in number of characters). If more than one segment is required, this value is the sum of the characters in all the segments.
Current Segment Number	17	1	N	Identifies the position (or sequence number) of the current MT01 segment. If the OFAC Advisor message text requires more than one segment, this value allows the segments to appear in the correct order. For example, if two MT01 segments are returned, the first segment has a value of **1** in this field and the second MT01 segment has a value of **2**.
Total Segment Number	18	1	N	Specifies the total number of MT01 segments returned to hold this OFAC Advisor message.
Threshold Number	19	3	A/N	Space-filled.
Message Text	22	150	A/N	Contains the OFAC Advisor message text.

Appendix A- OFAC Advisor ARPT Segments

ARPT 3.1 FFI

No changes need to be made to the ARPT 3.1 FFI.

Unlike HAWK, which has 4-byte codes that represent the various HAWK messages, OFAC Advisor is only available in the form of a message. Subscribers do not have the options to receive the OFAC Advisor product

in the form of codes, messages, or both. This is consistent with the way the product works in TU40.

OFAC Advisor is not available by request in the FFI.

ARPT 3.1 FFR

OFAC Advisor will be returned in two segments in the ARPT 3.1 FFR:

- *GP segment, Displacement 10, Length 1.* Currently Filler, this field will be renamed OF AC Advisor Status and will indicate the status of the OFAC Advisor product (Hit, Clear, or Unavailable).
- *HM segment, Displacement 12, Length 150.* Currently only used to hold the message text associated with the HAWK code, this field will contain the record found on the OFAC Advisor (FACFile) database. Multiple HM segments may be returned if the record does not fit into the 150-byte field or if multiple records were found.

More details regarding OFAC Advisor in each of these segments follow.

GP Segment

Displacement 10 of the GP segment will contain a one-byte code indicating the status of the OFAC Advisor product. The following codes may be returned:

- **1** - OFAC Advisor Clear (no record found)
- **2** - OFAC Advisor Hit (one or more records found)
- **3** - OFAC Advisor Unavailable

If the value in this field is a 2, at least one HM segment will be returned with an OFAC Advisor record in it.

HM Segment

The OFAC Advisor record(s) will be returned in the Message Text field of the HM segment. Note that OFAC Advisor HM segments will be distinguished from HAWK HM segments by the Message Code field—the former will contain the text "OFAC."

Below are the specs for the HM segment for OF AC Advisor:

HAWK MESSAGE SEGMENT (HM) TOTAL LENGTH: 161 BYTES

FIELD	DISPLACEMENT	LENGTH	TYPE	REMARKS
SEGMENT TYPE	1	2	A	CONTAINS THE CHARACTERS **HM**.
HAWK MESSAGE CODE	3	4	A/N	CONTAINS THE CHARACTERS **OFAC**.
ACTUAL MESSAGE LENGTH	7	3	N	INDICATES THE OFAC MESSAGE LENGTH (IN NUMBER OF CHARACTERS). IF MORE THAN ONE SEGMENT IS REQUIRED, THIS VALUE IS THE SUM OF THE CHARACTERS IN ALL SEGMENTS.
CURRENT SEGMENT NUMBER	10	1	N	IDENTIFIES THE POSITION (OR SEQUENCE NUMBER) OF THE CURRENT HM SEGMENT FOR THE MESSAGE. IF THE OFAC ADVISOR MESSAGE TEXT REQUIRES MORE THAN ONE SEGMENT, THIS VALUE ALLOWS THE SEGMENTS TO APPEAR IN THE CORRECT ORDER. FOR EXAMPLE, IF TWO HM SEGMENTS ARE RETURNED, THE FIRST SEGMENT HAS A VALUE OF **1** IN THIS FIELD AND THE SECOND HM SEGMENT HAS A VALUE OF **2**.
TOTAL SEGMENT NUMBER	11	1	N	SPECIFIES THE TOTAL NUMBER OF HM SEGMENTS RETURNED TO HOLD THIS OFAC ADVISOR MESSAGE.
MESSAGE TEXT	12	150	A/N	CONTAINS THE OFAC ADVISOR MESSAGE TEXT ASSOCIATED WITH THE HIT.

Appendix A - OFAC Advisor ARPT Segments - continued

If one OFAC Advisor record cannot fit into one HM segment, two HM segments will be returned for one record.

If there were multiple hits on the OFAC Advisor (FACFile) database, multiple records will be returned, one for each hit. Each record will be returned in its own HM segment or set of HM segments, if applicable.

Test files for OFAC Advisor

1. ABDULLAH, MOHAMMAD M
80 RITZ COVE DR
DANA POINT, CA 92629

2 ACEVEDO, FRANCISCO J
2904 PARAMOUNT BV
PARAMOUNT CA 90723

3 ALVAREZ, JOSE J
366101110
117 HAMILTON
STERLING, VA 20165

4 CASTRO, SANDRA L
376521041
7545 WELLINGTON, APT 3A
ST LOUIS, MO 63105

5 CRUZ, MARIA J
439863567
111 BUSH
TRUSSVILLE, AL 35173

6 DIAZ, ROBERTO
2124 HIGHLAND AV
CINCINNATI, OH 45219

11 HERNANDEZ, MARIA A
195447257
4430 STANLEY
DOWNERS GROVE, IL 60515

12 JIMENEZ, JOSE LOUIS
6819 HWY 90, APT 730
KATY, TX 77494

13 MOHAMED, KHALID K
305442529
1029 44TH
LONG ISLAND, NY 11101

14 RIVERA, JOSE M
024460473
4662 JUPITER
GARLAND, TX 75044

15 VENTURA, DAVID J
336625524
8409 MEDLOCK, APT 514
FORT WORTH, TX 76120

7 FERNANDES, MARIA
M
418847722
191 POB 191
BERNARDSTON, MA
01337

8 GARCIA, FERNANDO
553589352
357 WINDMILL RD
UVALDE, TX 78802

9 GILBERT, JOSEPH
145586249
1721 MELROSE
CHULA VISTA, CA
91911

10 GONZALEZ, MARIA J
074329634
420 ROYALTY, APT 52
FOUNTAIN, CO 80817

Letter from TransUnion to S. Cortez re Results of Dispute (May 10, 2015)

SANDRA JEAN CORTEZ

* * *

Our investigation of the dispute you submitted is now complete. The results are listed below and a new copy of your credit report is enclosed.

If our investigation has not resolved your dispute, you may add a 100-word statement to your report. If you provide a consumer statement that contains medical information related to service providers or medical procedures, then you expressly consent to TransUnion including this information in every credit report we issue about you.

If there has been a change to your credit history resulting from our investigation, or if you add .a consumer statement, you may request that TransUnion send an updated report to those who received your report within the last two years for employment purposes, or within the last one year for any other purpose.

If interested, you may also request a description of how the investigation was conducted along with the name, address and telephone number of anyone we contacted for information.

Thank you for helping ensure the accuracy of your credit Information.

TransUnion Credit Report for S. Cortez
(June 3, 2005)

Credit bureau: TU
Deal #
Applicant: Cortez, Sandra

3710190482470100000000W TRANSUNION CREDIT REPORT

<FOR>	<SUB NAME>	<MKT SUB>	<INFILE>	<DATE>	<TIME>
(I) A DE881 4343	AN/JOHN ELWA	12 SV	2/82	06/03/05	14:11 CT

<SUBJECT>
CORTEZ, SANDRA JEAN

<ALSO KNOWN AS>
SAPHILOFF, SANDRA
RUTECKI, SANDRA JEAN

<CURRENT ADDRESS>
* * *

<FORMER ADDRESS>
* * *

<CURRENT EMPLOYER AND ADDRESS>
ARROW GRAPHICS INC

<SSN>

<BIRTH DATE>
5/44

<TELEPHONE>
344-1475

<DATE RPTD>
11/03
10/03

<RPTD>
5/05

SPECIAL MESSAGES

****HIGH RISK FRAUD ALERT: CLEAR FOR ALL SEARCHES PERFORMED***

**OFAC NAME SCREEN ALERT - INPUT NAME MATCHES NAME ON THE OFAC DATABASE:

UST 03 CORTES QUINTERO, SANDRA C/O UNIDAS S.A. CEDULA NO. 66827003 (COL OMBIA) POB: CALI, VALLE, COLOMBIA CALI, COLOMBIA Passport no. 668 27003 (CO) AFF SDNT DOB: 06/21/1971 OriginalSource: OFAC POB: CA LI, VALLE, COLOMBIA CEDULA NO: 66827003 (COLOMBIA

UST 03 CORTES QUINTERO, SANDRA C/O CONSTRUCCIONES PROGRESO DEL PUERTO S.A. CEDULA NO: 66827003 (COLOMBIA) POB: CALI VALLE, COLOMBIA PUERTO TEJADA, COLOMBIA Passport no. 66827003 (CO) AFF: SDNT DOB: 06/2l/1971 OriginalSource: OFAC POB: CALI, VALLE, C

UST 03 CORTES QUINTERO, SANDRA C/O COMPANIA DE FOMENTO MERCANTIL S.A. CEDULA NO: 66827003 (COLOMBIA) POB: CALI, VALLE, COLUMBIA CALI, COLOMBIA Passport no. 66827003 (CO) AFF: SDNT DOB: 06/21/1971 OriginalSource: OFAC POB: CALI, VALLE, COLOMBIA CEDULA

UST 03 CORTES QUINTERO, SANDRA C/O CREDISA S.A. CEDULA NO: 66827003 (COLOMBIA) POB: CALI, VALLE, COLOMBIA CALI, COLOMBIA Passport no. 66827003 (CO) AFF: SDNT DOB: 06/21/1971 OriginalSource: OFAC POB: CALI, VALLE, COLOMBIA CEDULA NO: 66827003 (COLOMBI***

MODEL PROFILE

FICO AUTO 04 SCORE +721: 010, 011, 030, 003

* * *

OFAC Advisor Amendment to Reseller Service Agreement (June 30, 2010)

WHEREAS, Open Dealer Exchange ("Reseller") is in the business of obtaining consumer reports from third party sources and providing credit reporting services to its customers ("Customers"); and

WHEREAS, Trans Union LLC ("Trans Union") and Reseller have entered into a Reseller Service Agreement ("Agreement") dated [handwritten: 06/30/10]; under which Reseller is authorized to resell Trans Union consumer credit reports, or information therefrom, ("Consumer Reports") to Customers who have a permissible purpose in accordance with the Fair Credit Reporting Act (15 USC §1681 et seq.) including, without limitation, all amendments thereto; and

WHEREAS, TransUnion agrees to make available as an add-on to Consumer Reports (including as an exclusion criteria on an input prescreen list, or an append to a prescreened list), an indicator whether the consumer's name appears on the United States Department of Treasury Office of Foreign Asset Control File ("OFAC File"). The service is referred to as OFAC Advisor; and

WHEREAS, Reseller desires to resell OFAC Advisor under the terms of the Agreement including, but not limited to, this Amendment.

NOW, THEREFORE, It is mutually agreed by and between the Trans Union and Reseller as follows:

1. Prior to OFAC Advisor being provided to a Customer, Reseller obtain from each such

Customer a written amendment signed by such Customer which contains the following provision:

> "In the event Subscriber obtains Trans Union's OFAC Advisor services in conjunction with a consumer report, Subscriber shall be solely responsible for taking any action that may be required by federal law as a result of a match to the OFAC File, and shall not deny or otherwise take any adverse action against any consumer based solely on Trans Union's OFAC Advisor services."

2. In further consideration of Trans Union making OFAC Advisor available to such Customers, Reseller shall pay to Trans Union the following fee: [redacted], Trans Union shall have no obligation to collect any account owing from Customers. Moreover, Reseller shall pay such fee to Trans Union in accordance with all other terms set forth in the Agreement.
3. TRANS UNION MAKES NO WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO OFAC ADVISOR SERVICES, FURNISHED UNDER THE AGREEMENT INCLUDING, BUT NOT LIMITED TO THIS AMENDMENT, WHETHER TO RESELLER OR TO CUSTOMER(S).
4. In addition To any and all other termination rights of Trans Union under the Agreement, TransUnion reserves the right, at Trans Union's

sole option, to immediately suspend its performance, in whole or in part, under this Agreement, or immediately terminate this Agreement, or both, upon written notice to Reseller if, in good faith, Trans Union determines that any product, process, or both, including, without limitation, any data, or other material, as well as any intellectual property rights embodied by any or all of the foregoing (whether licensed to, owned by, or otherwise controlled by, Trans Union), and necessary for Trans Union to provide services to Reseller under the Agreement, is/are enjoined, likely to be enjoined (in Trans Union's counsel's opinion), or the licenses thereto is/are otherwise terminated by the licensing entity.

5. The recitals set forth above are an integral part of this Amendment and are hereby incorporated into this Amendment. Except as expressly revised and amended by this Amendment, the Agreement is in all other respects ratified, confirmed, and continued in full force and effect in accordance with the original contract and its attachments and prior amendments, if any.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Amendment to be executed by their duly authorized representatives as of the last date and year written below. The parties hereto agree that a facsimile transmission of this fully executed Amendment shall constitute an original and legally binding document.

Open Dealer Exchange	Trans Union LLC
By:[handwritten:signature]	By: Cheryl A. Sackett
* * *	* * *
[handwritten: June 29, 2010]	[handwritten: June 30, 2010]

Letter from OFAC to TransUnion re Concerns re Interdiction Products (Oct. 27, 2010)

FAC No. GN-492817
Denise A. Norgle
Vice President
TransUnion LLC

* * *

Dear Ms. Norgle:

Since our meeting with you in July 2007 and subsequent correspondence of May 27, 2008, the Office of Foreign Assets Control ("OFAC") continues to hear from credit bureau clients and individual customers who have been adversely impacted by screening products related to OFAC targets that are associated with consumer credit reports. While OFAC appreciates your firm's attempts to provide tools to help ensure that persons on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List") do not access the U.S. financial system, it is obviously important that such tools provide accurate information in an understandable manner. We remain concerned the name-matching services "Interdiction Products") used by credit bureaus to inform clients about potential dealings with persons on the SDN List may be creating unnecessary confusion. An Interdiction Product that does not include rudimentary checks to avoid false positive reporting can create more confusion than clarity and cause ham to innocent customers. This is particularly worrisome when Interdiction Products are disseminated broadly in conjunction with credit reports.

In light of the recent appellate court decision regarding credit bureaus' obligations under the Fair

Credit Reporting Act, 15 U.S.C. §§ 1681-1681x, to ensure the accuracy of the information they provide as part of a consumer credit report,[1] including information generated by Interdiction Products, we would appreciate the opportunity to review the steps you have taken—or plan to take—with regard to Interdiction Product information that you disseminate to clients. We are particularly interested in procedures or policies you have established to mitigate the impact of false positives on credit applications.

We look forward to working with you to advance those goals and to your timely response. If you have any questions, please do not hesitate to contact Dennis P. Wood, Assistant Director, Sanctions Compliance & Evaluation, at dennis.wood@do.treas.gov or (202) 622-1646.

Sincerely,

[handwritten: signature]
Adam J. Szubin
Director
Office of Foreign Assets Control

[1] *Cortez v. Trans Union LLC*, 617 F.3d 688 (3d Cir. 2010).

Letter from TransUnion to OFAC in Response to Letter re Concerns re Interdiction Products (Feb. 7, 2011)

Adam J. Szubin
Director, Office of Foreign Asset Control
Department of Treasury

Re: Response to Inquity

Dear Director Szubin:

This letter is Trans Union LLC's response to your letter dated October 27, 2010 in which you express concern that since our meetings and correspondence in 2007 and 2008 regarding TransUnion's OFAC Name Screen service, your office continues to receive communications from credit bureau clients and individual consumers who have been impacted by OFAC screening products associated with consumer credit reports. I appreciate your invitation to respond to that concern. Like you, TransUnion recognizes the importance of balancing the important goal of blocking access to the US financial system by persons on the SDN list, against the equally important goal of minimizing the potential for inconvenience or adverse impact to an innocent consumer.

As we discussed in our 2007 meeting and as outlined in our 2008 correspondence, TransUnion designed our OFAC Name Screen service based on customer input, published guidance from various agencies, and extensive consultation with our software vendor, Accuity Inc., who we believe to be the single largest provider of OFAC search services in the

United States.[1] Our solution was designed to screen an input name supplied by a financial institution against the SDN list published by your agency to identify possible matches. Our design was premised on the published guidance that it is the financial institution's responsibility to identify *possible* matches to the SDN list, then to compare the full SDN entry identified as a potential match against all of the information they have on the customer with whom they are doinq business, in order to make the determination whether their customer is the individual on the OFAC file.[2] To meet the needs of the

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[1] For further information on Accuity, please see http://www.accuitysolutions.comlenlAbout-Accuity/

[2] See for example guidance from the FAQ "How do I determine if I have a valid OFAC match?" that appeared on your website in 2008: "Now that you've established that the hit is against OFAC's SON list ... you must *evaluate the quality* of the hit. *Compare the name in your transactions with the name on the SDN list...* Compare the complete SON entry with all of the information you have on the matching name of your account holder. ... Are you missing a lot of this information for the name of your account holder? If yes, go back and get more information and then compare your complete information against the SON entry. ... Are there a number of similarities or exact matches?" (emphasis added] Today, the FDIC's DSC Risk Management Manual of Examination Policies, states at 8.1-50 that, "An effective OFAC program should include ... [w]ritten policies and procedures for screening transactions and new customers to identify *possible* OFAC matches;" [emphasis added] and at 8.1-49, 'When an institution identifies an entity that is an exact match, *or has many similarities to* a subject listed on the SON and Blocked Persons List, the institution should contact OFAC Compliance." [emphasis added] Similarly, the Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual repeatedly refers to testing whether a bank's interdiction software will identify "a potential hit" and

wide variety of customers and the wide variety of their transactions that must be screened, the TransUnion OFAC Name Screen service was designed to be delivered as a companion to a consumer report or as a stand-alone search.[3]

In providing our OFAC Name Screen service, TransUnion relies on Accuity software to format the SDN file in a manner that enables high volume, sub-second searches. Accuity's software, like virtually all financial services software, is designed to identify possible matches by accommodating a certain level of spelling variations (for example, Mohammad and Muhammad are considered possible matches).[4] By the

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what policies are in place when a potential hit is identified. http:l/www.ffiec.govlbsa aml infobaseldocumentslBSA AML Man 2010.pdf

[3] While the search results of the OFAC Name Screen search may be delivered with a consumer report for the convenience of a customer, those results never become part of any consumer's credit file at Trans Union.

[4] This approach is consistent with the FFIEC BSA/AMA Examination Manual references to the requirement that screening criteria identify name variations and misspellings: "For example, in a high-risk area with a high-volume of transactions, the bank's interdiction software should be able to identify close name derivations for review. The SON list attempts to provide name derivations; however, the list may not include all derivations. More sophisticated interdiction software may be able to catch variations of an SDN's name not included on the SON list. Low-risk banks or areas and those with low volumes of transactions may decide to manually filter for OFAC compliance. Decisions to use interdiction software and the degree of sensitivity of that software should be based on a bank's assessment of its risk and the volume of its transactions." TransUnion's OFAC Name Screen services are typically used in

very nature of the service being a *name* screen, Accuity's solution can yield a certain degree of false positives. TransUnion, Accuity and our customers all recognize, as you do, that failure to include "rudimentary checks" to avoid false positive reporting can harm consumers, needlessly delay transactions, and drive up our customers' costs.[5] TransUnion's OFAC Name Screen service for years has undertaken more than such "rudimentary checks" by, inter alia, eliminating matches to "single name" aliases found on the SON list (such as Hassan or Harun), and rejecting records that match only on first or middle initial in combination with matching last name and instead requiring that the input name provided by the user must match to at least two of the names (e.g., first name and maternal last name, or middle name and last name) in an entry on the SON list. TransUnion continues to works with Accuity to further reduce the number of false positives and to customize their application for the TransUnion Name Screen service. TransUnion is in the process of implementing a new refinement to exclude matches referred to by Accuity as "synonym" matches, such as matching the name Bob to Robert. An Accuity software enhancement

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areas with high volumes of transactions, such as credit card application processing.

[5] Notwithstanding their desire to reduce false positives, several TransUnion customers have communicated to us feedback that certain of their auditors and examiners have expressed an expectation that more, not fewer, transactions should be flagged as *possible* matches to the SON file. Some financial institutions have expressly informed us (or Accuity) that any program that identifies only exact name matches to the SDN file will not satisfy their regulators.

requested by TransUnion is scheduled to be released by Accuity in the 3rd quarter of this year, that will position TransUnion to implement further matching enhancements, such as the comparison of date{s) of birth (when present).

In addition to these ongoing efforts to reduce false positives, TransUnion has taken, and continues to take, steps designed to mitigate the impact of such false positives on consumers. For example:

- TransUnion's OFAC Name Screen service returns the entire SDN record associated with any possible match, to allow the financial institution to conduct a full comparison to the information supplied by the applicant, in accordance with the Department of Treasury's guidance. We agree with you that interdiction services must provide accurate and understandable information, and the actual SDN record is the most accurate and understandable information available.
- TransUnion contracts have always prohibited our customers from taking any adverse action on the basis of a TransUnion OFAC Name Screen search. Recently, Trans Union made additional changes to customer-facing materials to emphasize that any match is only a "potential match" and to remind customers of their responsibility to take steps to ascertain whether the consumer is the person on the SDN file, rather than to simply decline an application.
- TransUnion Consumer Relations training initiatives continue so that our operators remain familiar with our OFAC Name Screen service and can respond appropriately to callers' questions. We

also maintain a process to address consumer complaints about false positives, under which we can block the return of an OFAC Name Screen potential match upon receipt of a copy of a government issued form of identification or other information that establishes that the consumer is not the individual on the SDN list.

- In response to the *Cortez v. TransUnion* decision, TransUnion initiated a practice under which a consumer obtaining his consumer report is notified if we would consider his name to be a potential match to the SDN file. That notification is accompanied by instructions on how the consumer can obtain further information from TransUnion about our OFAC Name Screen service, and how to request TransUnion block the return of a potential match message on future transactions. This practice allows a consumer to know of a potential OFAC Name Screen match before it happens, and to take steps to prevent it.

TransUnion is committed to the support of our nation's security goals and our customers' compliance obligations in a manner that is accurate, reliable and fair to consumers. We believe our OFAC Name Screen service reflects our responsible approach to this goal. Fewer than 0.5% of TransUnion OFAC Name Screen searches today result in a potential match to the SDN file. We expect that number will continue to edge downward as we continue our efforts to reduce false positives through enhancements to match logic and increased transparency, as we increase consumer awareness of potential matches and offer consumers a means to further help us suppress false positives. The balance of TransUnion OFAC Name Screen searches

(i.e., the 99.5% that do not result in a possible match) enable financial institutions to proceed with their transactions seamlessly while still meeting their compliance obligations.

I hope you find this letter responsive to your inquiry. TransUnion takes very seriously our role in the economic welfare of both our customers and consumers, and providing reliable information to enable our customers to make sound decisions is a critical element of this role. The very nature of the information available through the SDN list and the direction our customers are receiving from their examiners and auditors mandates some degree of false positive results. We recognize, as you do, that a high false positive rate does not serve anyone's purpose, and we have taken and continue to take steps to reduce the rate of false positives and to provide support to consumers when false positives occur. We welcome the opportunity to engage in further discussion with you about the guidance available to financial institutions and their examiners and auditors, to help ensure that all participants in the system are aligned with respect to the goals of blocking financial transactions by SDNs. If you have any questions about any of the information supplied in this response, please do not hesitate to contact me.

Very Truly Yours,

[handwritten: signature]

Denise A. Norgle

TransUnion Internal Email re Accuity Changes (Jan. 10, 2011)

From: Loy, John

Sent: Thursday, February 10, 2011 9:49 AM

To: Keating, Eric; Skopets, Ilia; Lytle, Robert; Strong, Julie

Cc: Stiltner, Michael; PDL_WBT_SUPT; Roethel, Mark; Smith, Harry; Munger, Gregory; Chan, Alan; Raja, Subbu; O'Connell, Michael

Subject: OFAC DB - No Synonyms Anymore

CRS Team,

Since you are watching the OFAC hit-rate very closely on your CRS on-line and print Disclosures, you too should be aware of a change that went in last night. Accuity, our OFAC vendor, changed their delivery to no longer include synonym names. For the past 3 weeks, we've been averaging 0.4% hit-rate for the DWS Disclosures and 0.6% hit-rate for the print Disclosures. We will continue to monitor to see what affect the new/'no-synonym' version of OFAC has on our hit-rates for CRS Disclosures. . .

CRS/OFAC STATISTIC CATEGORY	DAILY AVERAGE	TOTAL	Thu 1/27	Fri 1/28	Sat 1/29	Sun 1/30	Mon 1/31	Tue 2/1	Wed 2/2	Thu 2/3	Fri 2/4	Sat 2/5	Sun 2/6	Mon 2/7	Tue 2/8	Wed 2/9
DWS OFAC Lookups	35,080	771,763	39,088	31,188	21,481	22,111	38,178	40,071	41,382	37,206	33,183	29,183	24,257	46,278	45,694	42,369
DWS OFAC Hits	140	3,076	185	120	99	71	192	165	150	141	135	122	80	182	179	177
DWS OFAC Hit Rate	0.4%	0.4%	0.5%	0.4%	0.5%	0.3%	0.5%	0.4%	0.4%	0.4%	0.4%	0.4%	0.3%	0.4%	0.4%	0.4%
Print OFAC Lookups	11,695	245,587	13,549	8,668	3,053	1,267	23,777	14,851	18,863	9,323	8,233	3,048	1,139	14,398	14,826	16,591
Print OFAC Hits (AKA OFAC Letters Mailed)	70	1,468	67	75	12	3	109	114	99	85	81	23	5	97	90	88
Print OFAC Hit Rate	0.6%	0.6%	0.5%	0.9%	0.4%	0.2%	0.5%	0.8%	0.5%	0.9%	1.0%	0.8%	0.4%	0.7%	0.6%	0.5%
OFAC Disputes	0	10	0	0	0	0	0	0	0	2	2	0	0	4	0	1

John

From: Loy, John

Sent: Thursday, February 10, 2011 9:22 AM

To: Chan, Alan; Raja, Subbu

Cc: Stiltner, Michael W; PDL_WBT_SUPT; Roethel, Mark R.; Smith, Harry A; Munger, Gregory J

Subject: FW: Production Implementation of removal of Synonym Names

Importance: High

Alan/Subbu,

Yesterday afternoon, Accuity asked us to inspect the "extractsummary.txt" file for a line that says "No Synonyms". Could you do that for us and report back? Accuity has indicated that they have new processing which delivers an adjusted OFAC file for Trans Union that doesn't involve synonyms. Here's an excerpt of the message they sent Mike O'Connell and what they're asking us to do now (full text of their email is embedded deeper in the email trail below)–

> We have already placed the new file out there. Can you please have your team go and open the ffplus file and look in the "extractsummary.txt" file. In the extract summary, they should see a line that says "No Synonyms". If they do see that, then we are good to go and they can continue to use the old credentials. If they don't see that, then we will need to issue you new credentials to access the new file going forward.

Ultimately, we need your assistance in reviewing the processing results of this latest file and confirm that it is indeed operating with "No Synonyms" and

that no ill-effects have occurred due to their adjusted delivery mechanism.

Thanks,

John

From: Roethel, Mark R

Sent: Wednesday, February 09, 2011 4:04 PM

To: Loy, John

Subject: FW: Production Implementation of removal of Synonym Names

Importance: High

From: O'Connell, Michael D

Sent: Wednesday, February 09, 2011 4:07 PM

To: Roethel, Mark R

Subject: FW: Production Implementation of removal of Synonym Names

Importance: High

Please see below.

Michael O'Connell
VP Product Development & Management
TransUnion
120 South Riverside
Chicago, IL 60606
Tel: 312 466-****
www.transunion.com/business

From: Dwyer, Daniel
[mailto:******@accuitysolutions.com]

Sent: Wednesday, February 09, 2011 3:53 PM

To: O'Connell, Michael D

Cc: Support, Accuity

Subject: RE: Production Implementation of removal of Synonym Names

Importance: High

Mike-

Important follow up on this last e-mail. We had to create a new folder on the FTP server to place the no synonym file in for TransUnion. We need to ask your IT folks to take a look at the file to make sure your old password credentials allow you to access the new folder.

We have already placed the new file out there. Can you please have your team go and open the ffplus file and look in the "extractsummary.txt" file. In the extract summary, they should see a line that says "No Synonyms".

If they do see that, then we are good to go and they can continue to use the old credentials. If they don't see that, then we will need to issue you new credentials to access the new file going forward.

After your team takes a look, please come back to us and let us know. Thanks.

Dan

From: Dwyer, Daniel

Sent: Wednesday, February 09, 2011 3:35 PM

To: O'Connell, Michael D

Subject: RE: Production Implementation of removal of Synonym Names

Mike-

Just met with the Fulfillment team: Sorry for the confusion, but we were sending the file both

through e-mail attachment and FTP. So you are already setup for FTP. The new file (w/o synonyms) will be placed on the server today for your access. All future updates will be delivered w/o synonyms via FTP.

The e-mail delivery process will be discontinued.

Let me know if you have any questions on the above.

Dan

Daniel Dwyer
Global Account Manager
Accuity
4709 Golf Road
Skokie, IL 60076
USA
t: + 1 847 *** ****
m: + 1 917 *** ****
f: +1 847 *** ****
e: *****@AccuitySolutions.com
www.AccuirySolutions.com

From: O'Connell, Michael D [mailto:*****@transunion.com]

Sent: Wednesday, February 09, 2011 11:26 AM

To: Dwyer, Daniel

Subject: RE: Production Implementation of removal of Synonym Names

I am told by our IT group that we already use the FTP pull method for file updates. Are you seeing something to the contrary on this?

Michael O'Connell
VP Product Development & Management
TransUnion
120 South Riverside
Chicago, IL 60606
Tel: 312 466-****
www.transunion.com/business

From: Dwyer, Daniel
[malito:*****@accuitySolutions.com]

Sent: Tuesday, February 08, 2011 11:21 AM

To: O'Connell, Michael D

Subject: RE: Production Implementation of removal of Synonym Names

Hi Mike-

I was just about to contact you on this because I got a note on it this morning. To accommodate the no synonym request we had to setup an additional production job to pull the data. In order to automate this production and delivery of the data and to reduce any risk of errors with a manual process - I've been asked to see if we can switch your delivery method to FTP (Pull). I think your team currently gets the data via an e-mail attachment or web download.

I've attached the FTP delivery form. Can you please check with your IT team and see if this would be ok for them (typically IT prefers FTP to other methods anyway).

If FTP is approved, please have the form filled out and you can e-mail back to me and we will fulfill asap. If FTP is not going to work, let me know and we will go back to the fulfillment team to discuss a work around. Thanks and sorry for the delay on this.

Dan

Daniel Dwyer
Global Account Manager
Accuity
4709 Golf Road
Skokie, IL 60076
USA
t: + 1 847 *** ****
m: + 1 917 *** ****
f: +1 847 *** ****
e: *****@AccuitySolutions.com
www.AccuirySolutions.com

From: O'Connell, Michael D [mailto:*****@transunion.com]

Sent: Tuesday, February 08, 2011 10:35 AM

To: Dwyer, Daniel

Subject: FW: Production Implementation of removal of Synonym Names

Dan,

Can you confirm we have begun to receive the file refresh without synonyms and will be configured this way going forward?

Thanks

Mike

Michael O'Connell
VP Product Development & Management
TransUnion
120 South Riverside
Chicago, IL 60606
Tel: 312 466-****
www.transunion.com/business

From: Michael D O'Connell

Sent: Monday, January 31, 2011 8:42 AM

To: Dwyer, Daniel

Cc: Powers, Tony J

Subject: Production Implementation of removal of Synonym Names

Dan,

Per our discussion, TransUnion would like to have all synonym names removed from the regular OFAC update files going forward. We would like an initial replacement file sent this week to reflect the removed names as well.

Please notify me when you have shipped the replacement file.

Thanks for accommodating this criteria for us.

Mike

Michael O'Connell
VP Product Development & Management
TransUnion
120 South Riverside
Chicago, IL 60606
Tel: 312 466-****
www.transunion.com/business

TransUnion Credit Report for S. Ramirez
(Feb. 27, 2011)

<FOR>	<SUB NAME>	<MKT SUB>	<INFILE>	<DATE>	<TIME>
(A) 02158 26	DUBLIN ACQUISITION GR	06 CH	05/95	02/27/11	21:00:08

<SUBJECT>	<SSN>	<BIRTH DATE>
RAMIREZ, SERGIO L.	***-**-4070	04/76

<CURRENT ADDRESS>	<DATE RPTD>
* * *	07/08
<FORMER ADDRESS>	
* * *	11/06

<CURRENT EMPLOYER AND ADDRESS>	* * * * * *	<RPTD> * * *
BT PAINTING CO		05/03
<FORMER EMPLOYER AND ADDRESS>		
BOLAR CELING		03/03

SPECIAL MESSAGES

***OFAC ADVISOR ALERT INPUT NAME MATCHES NAME ON THE OFAC DATABASE: UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/O ADMINISTRADORA DE INMUEBLES VIDA, S.A. DE C.V. TIJUANA,

MEXICO AFF: SDNTK DOB: 11/22/1951 OriginalSource:***

OFAC ADVISOR ALERT - INPUT NAME MATCHES NAME ON THE OFAC DATABASE: OFAC OriginalID: 7176

OFAC ADVISOR ALERT - INPUT NAME MATCHES NAME ON THE OFAC DATABASE: UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/O DISTRIBUIDORA IMPERIAL DE BAJA CALIFORNIA, S.A. DE C.V. TIJUANA, MEXICO AFF: SDNTK DOB: 11/22/1951 Origina

OFAC ADVISOR ALERT - INPUT NAME MATCHES NAME ON THE OFAC DATABASE: lSource: OFAC OriginalID: 7176 P ID; 13561

OFAC ADVISOR ALERT - INPUT NAME MATCHES NAME ON THE OFAC DATABASE: UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/O FARMACIA VIDA SUPREMA, S.A. DE C.V. TIJUANA, MEXICO AFF: SDNTK DOB: 11/22/1951 OriginalSource; OFAC Origin

OFAC ADVISOR ALERT - INPUT NAME MATCHES NAME ON THE OFAC DATABASE: alID: 7176 P ID: 13561

OFAC ADVISOR ALERT - INPUT NAME MATCHES NAME ON THE OFAC DATABASE: UST 03 RAMIREZ RIVERA, SERGIO ALBERTO CEDULA NO: 16694220 (COLOMBIA) POB: CALI, COLOMBIA CALI, COLOMBIA Passport no. AF771317 AFF: SDNT DOB: 01/14/196

OFAC ADVISOR ALERT - INPUT NAME MATCHES NAME ON THE OFAC DATABASE: 4 OriginalSource: OFAC OriginalID: 10438 POB: CALI, COLOMBIA Passportissuedcountry: COLOM BIA CEDULA NO: 16694220 (COLOMBIA)

* * *

Dublin Acquisition Group, Inc. OFAC Verification Results for S. Ramirez (Feb. 27, 2011)

Customer Information
Sergio Ramirez [Redacted] SS# [Redacted]

OFAC Verification Results	
Date	02/27/2011 06:52:11
Status	Complete
OFAC Detail	
No match found	

Credit Application for L. Villegas (Feb. 27, 2011)

(See foldout next page)

AW FORM NO. 7505-1 (REV. 2/09) © 2009 The Reynolds and Reynolds Company TO ORDER: www.reysource.com; 1-800-344-0956; fax 1-800-531-9055 Pg. 1/11

CREDIT APPLICATION

IMPORTANT: READ THESE DIRECTIONS BEFORE COMPLETING THIS APPLICATION. (Purchase / Lease)

Check appropriate box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A and C.

☐ If you are married and live in a community property state, complete all Sections providing information in Section B about your spouse. Your spouse should not sign as "Co-applicant."

☒ If this is an application for joint credit with another person, complete all Sections providing information in Section B about the co-applicant.

NOTE: APPLICANT, IF MARRIED, MAY APPLY FOR A SEPARATE ACCOUNT.

We intend to apply for joint credit. Applicant Initials Co-Applicant Initials

E-MAIL ADDRESS: chicalis58@yahoo.com

MOBILE PHONE: 650-483-7087

SELLER: DUBLIN NISSN | STOCK NO. | DATE: 2/27/11 | AMOUNT REQUESTED $

SECTION A. Information Regarding Applicant

LAST NAME (PRINT)	FIRST	INITIAL	BIRTHDATE	DRIVER'S LIC. NO.	☐ Married ☐ Unmarried ☐ Separated — Do not complete if this is an application for individual credit and you do not reside in a community property state.
Villegas	Liseth		6/15/80	B9107208	

SOCIAL SECURITY NO.: 609-09-4080 | AGES OF DEPENDENTS:

ADDRESS	CITY	STATE	ZIP	HOME PHONE	HOW LONG?	LIVED IN COMMUNITY?
36910 Bolina Ter	Fremont	CA	94536	(510) 795-7441	3 YRS. MOS.	YRS. MOS.
PREVIOUS ADDRESSES (TO COVER 5 YEARS RESIDENCE) 1518 Oxford St #8	Redwood City	CA	94061		4 YRS. MOS.	YRS. MOS.
	CITY	STATE	ZIP		HOW LONG? YRS. MOS.	LIVED IN COMMUNITY? YRS. MOS.

OCCUPATION OR RANK	PRESENT EMPLOYER	ADDRESS	CITY	STATE	ZIP	PHONE	HOW LONG?
Office Manager	Sierra Ventures	2884 Sand Hill Rd #100	Menlo Park	CA	94025	(650) 854-1000	7 YRS. 6 MOS.
PREVIOUS EMPLOYMENT (TO COVER 5 YEAR HISTORY)		ADDRESS	CITY	STATE	ZIP	PHONE	HOW LONG? YRS. MOS.
		ADDRESS	CITY	STATE	ZIP	PHONE	HOW LONG? YRS. MOS.

NEAREST RELATIVE NOT LIVING WITH APPLICANT	ADDRESS	CITY	STATE	ZIP	PHONE	RELATIONSHIP
Humberto Villegas	19 Greenwood Ln.	Redwood City	CA	94061	(650) 368-1437	Father

INCOME:

Applicant's gross monthly income from employment ..... $ 4750.00

Alimony, child support or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐ Amount $ ____

Amount of other monthly income and source(s) ..... $ ____

TOTAL MONTHLY INCOME $ 4750.00

SECTION B. Information Regarding Co-Applicant or Spouse (for community property states) (Use separate sheets if necessary.)

LAST NAME (PRINT)	FIRST	INITIAL	BIRTHDATE	DRIVER'S LIC. NO.	☐ Married ☐ Unmarried ☐ Separated — Do not complete if this is an application for individual credit and you do not reside in a community property state.
Ramirez	Sergio		4/10/76	B5115934	

SOCIAL SECURITY NO.: 623-10-4070 | RELATIONSHIP TO APPLICANT: Husband | AGES OF DEPENDENTS:

ADDRESS	CITY	STATE	ZIP	PHONE	HOW LONG?	LIVED IN COMMUNITY?
36910 Bolina Ter, Fremont	CA	94536		(510) 795-7441	3 YRS. MOS.	YRS. MOS.
PREVIOUS ADDRESSES (TO COVER 5 YEARS RESIDENCE) 1518 Oxford St #8	Redwood City	94061			4 YRS. MOS.	YRS. MOS.
	CITY	STATE	ZIP		HOW LONG? YRS. MOS.	LIVED IN COMMUNITY? YRS. MOS.

OCCUPATION OR RANK	PRESENT EMPLOYER	ADDRESS	CITY	STATE	ZIP	PHONE	HOW LONG?
Painter	Burdick Painting	705	Nutman St,	CA		(408) 567-1330	6 YRS. MOS.
PREVIOUS EMPLOYMENT (TO COVER 5 YEAR HISTORY)		ADDRESS	CITY	STATE	ZIP	PHONE	HOW LONG? YRS. MOS.
		ADDRESS	CITY	STATE	ZIP	PHONE	HOW LONG? YRS. MOS.

NEAREST RELATIVE NOT LIVING WITH APPLICANT	ADDRESS	CITY	STATE	ZIP	PHONE	RELATIONSHIP
Lidia Ramirez	3 Flower St,	Redwood City	CA	94063	(650) 743 9378	Mother

INCOME:

Joint Applicant's gross monthly income from employment ..... $ 4160

Alimony, child support or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐ Amount $ ____

Amount of other monthly income and source(s) ..... $ ____

TOTAL MONTHLY INCOME $ 4160

SECTION C. Asset and Debt Information: List All Debts including Alimony, Child Support, Separate Maintenance. (Use a Separate Page If Necessary.)

If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Spouse (for community property states). Please mark Applicant-related information with an "A". If Section B was not completed, only give information about the Applicant in this Section.)

LANDLORD OR MORTGAGE HOLDER	ADDRESS	ACCOUNT NO.	MORTGAGE BALANCE	PYMNT. OR RENT
OWN ☒ Bank of America RENT ☐			$	$ 2230.00
DATE HOME PURCHASED	AGE OF HOME	PRICE PAID FOR HOME / MARKET VALUE	2nd MORTGAGE AMOUNT	PAYMENT
		$	$	$

TYPE OF CREDIT	COMPANY NAME OF ALL OBLIGATIONS	ACCOUNT NO.	☐ OPEN ☐ CLOSED	ADDRESS	CITY	STATE	ZIP	BALANCE	HIGH	MONTHLY PYMTS OR DATE CLOSED
			☐ OPEN ☐ CLOSED	ADDRESS	CITY	STATE	ZIP	$	$	$
			☐ OPEN ☐ CLOSED	ADDRESS	CITY	STATE	ZIP	$	$	$
			☐ OPEN ☐ CLOSED	ADDRESS	CITY	STATE	ZIP	$	$	$

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OCCUPATION OR RANK	PRESENT EMPLOYER	ADDRESS	CITY	STATE	ZIP	PHONE	HOW LONG?
painter	~~[redacted]~~ Burdick Painting	705 Nutman St,		CA		(408) 567-1330	6 YRS. MOS.
PREVIOUS EMPLOYMENT (TO COVER 5 YEAR HISTORY)		ADDRESS	CITY	STATE	ZIP	PHONE	HOW LONG? YRS. MOS.
		ADDRESS	CITY	STATE	ZIP	PHONE	HOW LONG? YRS. MOS.
NEAREST RELATIVE NOT LIVING WITH APPLICANT		ADDRESS	CITY	STATE	ZIP	PHONE	RELATIONSHIP
Lidia Ramirez		~~[redacted]~~ 3 Flower St,	Redwood City	CA	94063	(650) 743 9378	Mother

INCOME:

Joint Applicant's gross monthly income from employment ..... $ 4160

Alimony, child support or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐ Amount $ _____

Amount of other monthly income and source(s) ..... $ _____

TOTAL MONTHLY INCOME $ 4160

SECTION C. Asset and Debt Information: List All Debts Including Alimony, Child Support, Separate Maintenance. (Use a Separate Page If Necessary.)
(If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Spouse (for community property states). Please mark Applicant-related information with an 'A'. If Section B was not completed, only give information about the Applicant in this Section.)

LANDLORD OR MORTGAGE HOLDER	ADDRESS	ACCOUNT NO.	MORTGAGE BALANCE	PYMNT. OR RENT
OWN ☒ RENT ☐ Bank of America			$	$2230.00
DATE HOME PURCHASED	AGE OF HOME	PRICE PAID FOR HOME	MARKET VALUE	2nd MORTGAGE AMOUNT / PAYMENT
			$	$ / $

TYPE OF CREDIT	COMPANY NAME OF ALL OBLIGATIONS	ACCOUNT NO.		ADDRESS	CITY	STATE	ZIP	BALANCE	HIGH	MONTHLY PYMTS OR DATE CLOSED
			☐ OPEN ☐ CLOSED					$	$	$
			☐ OPEN ☐ CLOSED					$	$	$
			☐ OPEN ☐ CLOSED					$	$	$
			☐ OPEN ☐ CLOSED					$	$	$
PRESENT VEHICLE FINANCED BY / LEASED BY:		ACCOUNT NO.		ADDRESS	CITY	STATE	ZIP			$
PRESENT VEHICLE FINANCED BY / LEASED BY:		ACCOUNT NO.		ADDRESS	CITY	STATE	ZIP			$
BANK REFERENCE		ACCOUNT NO.		BRANCH / ADDRESS		☐ CHECKING ☐ SAVINGS				BALANCE $
BANK REFERENCE		ACCOUNT NO.		BRANCH / ADDRESS		☐ CHECKING ☐ SAVINGS				BALANCE $

HAVE YOU EVER HAD ANY PROPERTY REPOSSESSED?	DO YOU HAVE ANY LAW SUITS PENDING AGAINST YOU?	HAVE YOU EVER FILED BANKRUPTCY OR IS A BANKRUPTCY PROCEEDING IN PROGRESS OR EXPECTED?	MILITARY RESERVE?
☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO ☐ ACTIVE ☐ INACTIVE

PERSONAL FRIENDS KNOWN OVER ONE YEAR	ADDRESS	CITY	STATE	ZIP	PHONE
1. Jackie Cervantes			Newark, CA		(650) 483-47
2. Jose Garnica			Riverbank, CA		(209) 606-81

INSURANCE — IF YOU WISH TO APPLY FOR VEHICLE INSURANCE IN CONNECTION WITH THIS CREDIT APPLICATION, COMPLETE THE FOLLOWING:

Notice: No person is required as a condition pursuant to financing the purchase of a motor vehicle to purchase insurance through a particular insurance company, agent or broker.

PREVIOUS INSURANCE CO. OR AGENT (NAME AND ADDRESS)	PHONE	WHERE WILL VEHICLE BE GARAGED?	POLICY NO.
	( )		

Has your insurance ever been canceled by any company? ☐ YES ☐ NO	IF YES, WHY?	NO. OF INSURANCE LOSSES IN PAST 5 YEARS	TOTAL AMOUNT OF LOSSES
			$

You agree that we and any assignee of the financing contract or lease may monitor and record telephone calls regarding your account to assure the quality of our service or for other reasons. You agree that we and our assignees may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we and our assignees may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you. You (1) make the above representations, which are certified correct, for the purpose of securing credit; (2) authorize us, affiliated entities, and financial institutions to whom we submit your application (hereinafter "Financial Institutions") to obtain consumer credit reports and to gather employment history as necessary and appropriate to determine your creditworthiness; (3) understand that we or the Financial Institutions will retain this application whether or not it is approved, and that it is your responsibility to update changes of name, address or employment.

You are notified pursuant to the Fair Credit Reporting Act, that your application may be submitted to the financial institutions named below or to other Financial Institutions.

FINANCIAL INSTITUTION(S) AND ADDRESS(ES)

HOUSEHOLD FINANCE CO.
P.O. BOX 17902
SAN DIEGO, CA 92177
(800) 794-6310

CPS, INC.
2 ADA, SUITE 100
IRVINE, CA 92618

WFS FINANCIAL, INC.
P.O. BOX 19733
IRVINE, CA 92713-9752

WEST AMERICA BANK
P.O. BOX 5909
NOVATO, CA 94948

GECAL
P.O. BOX 310
BARRINGTON, IL 60011

BANK OF AMERICA
P.O. BOX 14040
FREONT, CA 94539

FIRESIDE THRIFT CO.
22519 FOOTHILL BLVD
HAYWARD, CA 94541

WELLS FARGO BANK, N.A.
1350 MONTEGO
WALNUT CREEK, CA 94598

DOWNEY SAVINGS AND LOAN ASSN.
P.O. BOX 6020
NEWPORT BEACH, CA 92658

CHASE MANHATTAN BANK
P.O. BOX 5210
NEW HYDE PARK, NY 11042

AHF. CORP.
P.O. BOX 5025
SAN RAMON, CA 94583

ONYX ACCEPTANCE CORP.
8001 IRVINE CENTER DR
IRVINE, CA 92618

FIRST CITY FUNDING CORP.
P.O. BOX 560583
DALLAS, TX 75356-0583

BANK OF THE WEST
1001 GALAXY WAY
WALNUT CREEK, CA 94596

BAY VIEW CREDIT
1001 GALAXY WAY
CONCORD, CA 94524

PURCHASER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS CREDIT APPLICATION.

X _____
APPLICANT'S SIGNATURE

CO-APPLICANT

X _____
CO-APPLICANT'S SIGNATURE

IF MARRIED, YOU MAY APPLY FOR CREDIT SEPARATELY AS AN INDIVIDUAL.

Community Property Notice for Married Applicants: Please provide information about your spouse requested in Section B, even if your spouse is not a co-applicant. Your spouse does not have to be a co-applicant unless he/she wants to be a co-applicant.

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Rev. January 2011

FACTS	WHAT DOES DUBLIN NISSAN DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and income ■ account balances and payment history ■ credit history and employment information When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons **DUBLIN NISSAN** chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does DUBLIN NISSAN share?	Can you limit this sharing?
For our everyday business purposes– such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes– to offer our products and services to you	Yes	No
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes– Information about your transactions and experiences	No	We don't share
For our affiliates' everyday business purposes– Information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For nonaffiliates to market to you	No	We don't share

Questions?	Call **(925) 452-8000**

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Who we are	
Who is providing this notice?	**DUBLIN NISSAN**

What we do	
How does DUBLIN NISSAN protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does DUBLIN NISSAN collect my personal information?	We collect your personal information, for example, when you ■ apply for financing ■ give us your income information or provide employment information ■ provide account information or give us your contact information We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes–information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ **DUBLIN NISSAN** *has no affiliates.*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ **DUBLIN NISSAN** *does not share with nonaffiliates so they can market to you.*
Joint Marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ **DUBLIN NISSAN** *doesn't jointly market.*

Other important information

I/WE ACKNOWLEDGE THAT I/WE HAVE RECEIVED A COPY OF THIS NOTICE.

Lisseth Villegas Print Customer Name	Lisseth Villegas Customer Signature	2/27/11 Date
Sergio Ramirez Print Customer Name	Sergio Ramirez Customer Signature	2/27/11 Date

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Letter from TransUnion to S. Ramirez with Requested Credit Report (Feb. 28, 2011)

SERGIO L. RAMIREZ

* * *

Enclosed is the TransUnion Personal Credit Report that you requested. As a trusted leader in the consumer credit information industry, TransUnion takes the accuracy of your credit information very seriously. We are committed to providing the complete and reliable credit information that you need to participate in everyday transactions and purchases.

If you believe an item of information to be incomplete or inaccurate, please alert us immediately. We will investigate the data and notify you of the results of our investigation.

To make it easier to request an investigation, you can now submit your request on line, **24 hours a day, 7 days a week.** You must have an active email address to use the on line service. Please note that your email address will only be used for communicating with you regarding your request and the results of our investigation. Your email address will not be shared with any non-TransUnion entities.

To submit an online request for investigation:

Step 1. Go to the TransUnion online investigation service at http://transunion.com/disputeonline

Step 2. Follow the instructions provided by the web site.

Once submitted, you will receive online confirmation of your request. You will also be notified by email when we complete our investigation and your

results will be available online. You can check the status of you r investigation online by logging into your account.

Thank you for helping ensure the accuracy of your credit information.

TransUnion Consumer Relations

For frequently asked questions about your credit report, please visit

http://transunion.com/consumerfaqs.

* * *

-Begin Credit Report-

Personal Information

Name: SERGIO L. RAMIREZ	SSN: [Redacted]
	Date of Birth: [Redacted]
You have been on our files since 05/1995	Telephone: [Redacted]

CURRENT ADDRESS	PREVIOUS ADDRESS
Address: [redacted]	Address: * * *
Date Reported: 07/2008	Date Reported: 11/2006
	Address: * * *

EMPLOYMENT DATA REPORTED

Employer Name:	BT PAINTING CO	Position:
Date Reported:	05/2003	Hired:
Employer Name:	BOLAR CELING	Position:
Date Reported:	03/2003	Hired:
Employer Name:	VALLEY BUILDING	Position: PAINTER
Location:	WOODSIDE, CA	Hired:
Date Reported:	10/1998	

* * *

CREDIT REPORT MESSAGES

Your credit report contains the following messages.

PROMOTIONAL OPT-OUT: This file has been opted out of promotional lists supplied by TransUnion.

(Note: This statement is set to expire in 06/2012.)

The opt out on your file will remain in effect until the expiration date specified above, unless you request it to be made permanent. To permanently opt out of promotional lists provided by TransUnion, you must send us a signed 'Notice of Election' form, which can be obtained by writing us or calling us at 800-916-8800 and speaking with a representative.

-End of Credit Report-

* * *

Letter from TransUnion to S. Ramirez re OFAC Database (Mar. 1, 2011)

SERGIO L RAMIREZ

* * *

Regarding: OFAC (Office of Foreign Assets Control) Database

Thank you for contacting TransUnion. Our goal is to maintain complete and accurate information on consumer credit reports.

Our records show that you recently requested a disclosure of your TransUnion credit report. That report has been mailed to you separately. As a courtesy to you, we also want to make you aware that the name that appears on your TransUnion credit file "SERGIO L RAMIREZ" is considered a potential match to information listed on the United States Department of Treasury's Office of Foreign Asset Control ("OFAC") Database.

The OFAC Database contains a list of individuals and entities that are prohibited by the U.S. Department of Treasury from doing business in or with the United States. Financial institutions are required to check customers' names against the OFAC Database, and if a potential name match is found, to verify whether their potential customer is the person on the OFAC Database. For this reason, some financial institutions may ask for your date of birth, or they may ask to see a copy of a government-issued form of identification, such as a Driver's License, Social Security card, passport, or birth certificate. Some financial institutions will search names against this database themselves, or they may ask another

company, such as TransUnion, to do so on their behalf. We want you to know that this information may be provided to such authorized parties.

The OFAC record that is considered a potential match to the name on your credit file is:

UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/O ADMINISTRADORA DE INMUEBLES VIDA, S.A. DE C.V. TIJUANA, MEXICO AFF: SDNTK DOB: 11/22/1951 OriginalSource: OFAC OriginalID: 7176

UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/O DISTRIBUIDORA IMPERIAL DE BAJA CALIFORNIA, S.A. DE C.V. TIJUANA, MEXICO AFF: SDNTK DOB: 11/22/1951 OriginalSource: OFAC OriginalID: 7176 P_ID: 13561

UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/O FARMACIA VIDA SUPREMA, S.A. DE C.V. TIJUANA, MEXICO AFF: SDNTK DOB: 11/22/1951 OriginalSource: OFAC OriginalID: 7176 P_ID: 13561

UST 03 RAMIREZ RIVERA, SERGIO ALBERTO CEDULA NO: 16694220 (COLOMBIA) POB: CALI, COLOMBIA CALI, COLOMBIA Passport no. AF771317 AFF: SDNT DOB: 01/14/1964 OriginalSource: OFAC OriginalID: 10438 POB: CALI, COLOMBIA Passportissuedcountry: COLOMBIA CEDULA NO: 16694220 (COLOMBIA)

For more details regarding the OFAC Database, please visit:

http://www.ustreas.gov/offices/enforcement/ofac/faq/index.shtml

If you have additional questions or concerns, you can contact TransUnion at 1-855-525-5176 or via regular mail at: TransUnion LLC, P.O. Box 800 Woodlyn, PA 19084. When contacting our office, please provide your current file number 234206417.

Letter from S. Ramirez re OFAC List Dispute
(Mar. 16, 2011)

[handwritten: Pleas get me off the ofac list. I try to buy a car but got denied because they said I was in the OFAC list.]

[handwritten: Fille # 234206417]

[handwritten: signature]

Letter from TransUnion to S. Ramirez in Response to OFAC List Dispute (Mar. 22, 2011)

SERGIO L RAMIREZ

* * *

Thank you for contacting Transunion. Our goal is to maintain complete and accurate information on consumer credit reports. We have provided the information below in response to your request.

Re: Office of Foreign Assets Control (OFAC) Name Screen Alert

OFAC Name Screen Alert is an optional add-on service that alerts creditors or potential creditors that a consumer's name possibly matches a name on the list of individuals that are prohibited by the U.S. Department of Treasury from doing business in or with the United States. Creditors who receive an OFAC Name Screen Alert regarding a consumer are advised to perform due diligence and verify whether the consumer is the individual on the U.S. Department of Treasury's list. Creditors are contractually prohibited from treating the alert as a reason for declination or adverse action.

In response to your request, we have removed your name from the OFAC Name Screen Alert list.

If you have any additional questions or concerns, please contact TransUnion at the address shown below, or visit us on the web at www.transunion.com for general information. When contacting our office, please provide your current file number 234206417.

TransUnion Internal Record of S. Ramirez
OFAC Dispute Response Letter (Mar. 22, 2011)

Information For Consumers

Received On:	Tuesday, March 22, 2011
Via:	Mail
Initiated Because Of:	Consumer
Printed On:	Tuesday, March 22, 2011
Print Language:	English
Paragraphs Added:	#001 Formal Letter Opening Paragraph
	#410 OFAC Name Screen Alert
	#002 Formal Letter Closing Paragraph
Mailed To Consumer At:	Sergio L. Ramirez

Information For Internal Use Only

Created On:	Tuesday, March 22, 2011
At:	7:41:00 am
By:	Melissa Teears (C4187)
At:	Crum Lynne, PA

TransUnion Record of Contact with S. Ramirez (2011)

Comments for 234206417

02/28/2011	11:00 PM by JACQUELINE D'SOUZA (C5059) at Consumer Relations G
	Consumer hung up he has an ofac alert
02/28/2011	11:00 PM by Unknown (C5062) at Corporate
	con states there is an OFAC alert and needs to speak to a supervisor .... so trans to supervisor ....
02/28/2011	11:00 PM by SAMEER THORAT (C7482) at Consumer Relations G
	Esc call:-cons called in stating his name is in the OFAC list ... adv him will send a report and if your name is in the list you will get a letter regarding OFAC .....
03/01/2011	11:00 PM by Ad-hoc Process (CRS9APPL) at Crum Lynne
	Activity - 003: OFAC hits - 4: UST 03 RAMIREZ AGUIRRE. SERGIO HUMBERTO C/O ADMINISTRADORA DE INMUEBLES VIDA, S.A. DE C.V. TIJUANA. MEXICO AFF: SDNTK DOB: 11/22/1951 OriginalSource: OFAC Original ID: 7176
03/21/2011	11:00 PM by AUGUSTUS GELEPLAY (C5247) at Crum Lynne
	Disputed OFAC on Activity 003.

TransUnion OFAC Hit Analysis (2011)

Agenda

- OFAC Disclosure/Dispute Enhancements Project Key Goals and Objectives
- Execution Approach
- Current State Product Hit Analysis
- Logic Change Recommendations and Estimated Impact

OFAC Disclosure/Dispute Enhancements Project Scope

Key Goals and Objectives:

1. Change the language displayed in the OFAC alert response to "potential" hit when name match occurs
2. Add OFAC check to the Consumer Disclosure fulfillment process and dispute processes
3. ***Tighten the OFAC matching rules to reduce the return of false positive results***
4. Automate the process that adds consumers who dispute OFAC result to the OFAC *Name-Based Exclusion* rules file
5. Develop a more restrictive method to block a consumer from OFAC Name Screen processing to ensure that the targeted consumer is being excluded

Execution Approach

Effort was separated into 2 tests:

1. CRS Consumer Disclosure Print OFAC Hit Analysis
2. OCS Name Screen Add On Hit Analysis

Both tests were performed to:

1. Understand the current state Accuity OFAC hit results

- Hit results separated into Potential candidates versus False Positives

2. Identify patterned reasons for False Positive hits
3. Recommend TransUnion post-Accuity matching logic to further reduce False Positive hits
4. Approximate the OFAC hit rate and false positive rate after implementation of recommended matching rule changes

Current State Hit Analysis

	Production Statistics		Test Statistics	
Application	OFAC Hit Rate	% OFAC Hits that return only Potential Candidates	% OFAC Hits that return some Potential Candidates & some False Positives	% OFAC Hits that return only False Positives
CRS Print Report	0.33%	16.67%	10.0%	73.33.0%
OCS Credit Report	0.62%	40.0%	3.33%	56.67%

1- Hit Rate based for Consumer Disclosure Print OFAC hits from 2/10/11-6/29/11

2- Hit Rate for Credit Report Inquires with Add-On OFAC hits from 2/10/11-2/23/11

Logic Change Recommendations and Estimated Impact

Option 1:

Add Post-Accuity matching Logic to disqualify a consumer if at least one Name Element is non-matching (First to First, Middle to Middle, Last to Last, Maternal to Maternal)

Application	Option	Estimated Production Statistics	Estimated Test Statistics		
		OFAC Hit Rate	% OFAC Hits that return only Potential Candidates	% OFAC Hits that return some Potential Candidates & some False Positives	% OFAC Hits that return only False Positives
CRS Print Report	#1	0.09%	~100%	~0%	~0%
OCS Credit Report	#1	0.27%	~100%	~0%	~0%

Logic Changes that are not Recommended and Justification

1. ***Incorporate OCS Name Reversal Logic***
   Justification:
   –No Impact on sampled OCS transactions
   –All sampled CRS OFAC Hits that were OCS Name Reversal were to an OFAC Weak AKA Name (4.5%)
2. ***Incorporate Post-Accuity Disqualification logic to not allow OFAC Weak AKA Name hits***
   Justification:
   –No Impact on sampled OCS transactions
   –All sampled CRS OFAC Hits to an OFAC Weak AKA Name would be removed by Option 1 (13.6%)
3. ***Incorporate Post-Accuity Disqualification DOB logic***
   Justification
   –No patterned Post-Accuity DOB logic would remove only False Positives

TransUnion Additional OFAC Hit Analysis (2011)

AGENDA

Initial Request (July 2011):

1. Tighten the OFAC matching rules to reduce the return of false positive results

Additional Requests:

1. Obtain current OFAC hit rates
2. Quantify the percentage of DOB present in input
3. Quantify the percentage of DOB formats present in current OFAC file
4. Quantify the percentage of OFAC hits that would be disqualified by using:
   a. DOB > 10 years only
   b. Name Matching only
   c. DOB > 10 years and Name Matching
5. Provide examples of poorly matching Accuity Names
6. Provide high-level Requirements

OFAC Hit Analysis-

Post Legal Review (July 26, 2011)

After meeting with Legal, the original Current State Hit Analysis was revised to additionally consider OFAC Hits as False Positive when the Birth Dates were more than 10 years different.

	Production Statistics	Test Statistics		
Application	OFAC Hit Rate	% OFAC Hits that return only Potential Candidates	% OFAC Hits that return some Potential Candidates & some False Positives	% OFAC Hits that return only False Positives
CRS Print Report	0.33%[1]	6.67%	10.0%	83.33%
OCS Credit Report	0.62%[2]	23.33%	0%	76.67%

1- Hit Rate for Consumer Disclosure Print OFAC hits from 2/10/11-6/29/11

2- Hit rate for Credit Report Inquires with Add-On OFAC hits from 2/10/11-2/23/11

Logic Change Recommendation and Estimated Impact - Post Legal Review (July 26, 2011)

Option #1A: Add Post-Accuity matching logic to disqualify a consumer if at least one of the following conditions are true:

- ☐ The CCYY portion of the Birth Dates are different by more than 10 years
- ☐ At least one Name Element is non-matching (First to First, Middle to Middle, Last to Last, or Maternal to Maternal).

Option #1B: Add Post-Accuity matching logic to disqualify a consumer if at least one of the following conditions are true:

- ☐ The CCYY portion of the Birth Dates are different by more than 10 years
- ☐ At least one Name Element is non-matching (First to First, Middle to Middle, Last to Last, or Maternal to Maternal) and the Names are not an OCS Name Reversal.

		Estimated Production Statistics (Name Logic Change Only)	Estimated Production Statistics (Name & DOB Logic Changes)	Estimated Test Statistics (Name & DOB Logic Changes)		
Application	Option	OFAC Hit Rate	OFAC Hit Rate	% OFAC Hits that return only Potential Candidates	% OFAC Hits that return some Potential Candidates & some False Positives	% OFAC Hits that return only False Positives
CRS Print Report	#1A	0.09%	0.04%	~100%	~0%	~0%
CRS Print Report	#1B	N/A	0.05%	~100%	~0%	~0%
OCS Credit Report	#1A & #1B	0.27%	0.14%	~100%	~0%	~0%

OFAC Hit Rate

	CRS Mailed Disclosures			Disclosure Web Service			OCS Credit Reports	
	2/2011	7/2011	7/2012	2/2011	7/2011	7/2012	2/10/2011 to 2/28/2011	7/2012
Names Checked for OFAC	321,556	338,073	194,780	1,049,818	902,721	1,071,377		2,700,617
OFAC Names Found (Hits)	1,723	1,577	1,101	3,599	3,228	3,318		17,557
% of OFAC Hits	0.54%	0.47%	0.57%	0.34%	0.36%	0.31%	0.62%	0.65%

FFI Input v. OFAC DOB Statistics

Production Stats OCS Hits from 3 days of Feb 2011		Analysis Stats Sample of 33 OCS OFAC Hits from Feb 2011	
Input DOB present	64.2%	OFAC DOB present	51.5%
		OFAC DOB not present	9.1%
Input DOB not present	35.8%	OFAC DOB present	30.3%
		OFAC DOB not present	0%
		Inconclusive	9.1%

OFAC DOB Statistics

DOB stats from the Sept 19, 2012 OFAC Specially Designated Nationals (SON) file:

- OFAC SDN file contains 3 different SDN Types: Individual, Vessel and Other
- Accuity only searches and returns OFAC Hit(s) when SDN Type is an 'Individual'

- DOB information is only present on SDN Type 'Individual'

	Breakdown of the SDN (Specially Designated Nationals) File	Quantities	% of all SDN Types	% of only 'Individuals'	DOB Examples
1.0	Subjects	5,278	100%		
1.1	Subject Type = '-0-' (no DOBs present)	2,454	46.49%		
1.2	Subject Type = 'Vessels' (no DOBs present)	249	4.72%		
1.3	**Subject Type = 'Individuals'**	2,575	48.79%	100%	
1.3.1	'Individuals' with no DOB present	302	5.72%	11.73%	
1.3.2	'Individuals' with DOB present	2,273	43.07%	88.27%	
1.3.2.1	DOB format: DOB^DD^Mmm^CCYY; or DOB^DD^Mmm^CCYY.	1,896	35.92%	73.63%	DOB 01 Apr 1963; DOB 19 Jun 1977.
1.3.2.2	DOB format: DOB^CCYY; or DOB^CCYY.	305	5.78%	11.84%	DOB 1950; or DOB 1944.
1.3.2.3	DOB format: DOB^circa^CCYY; or DOB^circa^CCYY.	65	1.23%	2.52%	DOB circa 1937; or DOB circa 1959.
1.3.2.4	DOB format: DOB^Mmm^CCYY; or DOB^Mmm^CCYY.	6	0.11%	0.23%	DOB Aug 1977; or DOB Oct 1920.
1.3.2.5	DOB format: DOB^Circa^DD^Mmm^CCYY;	1	0.02%	0.04%	DOB circa 07 Jul 1969;

^ represents a space

DOB Match Examples

Source of DOB	Actual DOB (Reformatted for example purposes)	Month vs. Month	Day vs. Day	Year vs. Year	DOB>10 Yrs
Input	01/15/1986				
OFAC	08/02/1958	No	No	28 yrs	Yes
Input	09/23/1983				
OFAC	09/11/1973	Yes	No	10 yrs	No
OFAC	09/30/1962	Yes	No	21 yrs	Yes
Input	06/13/1980				
OFAC	11/19/1976	No	No	4 yrs	No

Matching OFAC Names for Potential Candidates

Source of Name	First Name	Middle Name	Last Name	Maternal Name	Observations
Input	Jose		Salazar		OFAC Name more enriched (Middle present)
OFAC	Jose	Leonel	Salazar		
Input	Raul		Sanchez		OFAC Name more enriched (Maternal present)
OFAC	Raul		Sanchez	Aceves	
Input	Fernando		Lopez		OFAC Name more enriched (Middle & Maternal present)
OFAC	Fernando	Alberto	Lopez	Sandoval	
Input	Juan	C	Ramirez		OFAC Name more enriched (fuller Middle & Maternal present)
OFAC	Juan	Carlos	Ramirez	Abadia	

Matching OFAC Names for Potential False Positives

Source of Name	First Name	Middle Name	Last Name	Maternal Name	Observations
Input	Elizabeth	Diaz	Lopez		First-First is non-matching
OFAC	Mateo		Diaz	Lopez	
Input	Paula		Lopez	Rodriguez	First-First is non-matching
OFAC	Cecilia		Lopez	Rodriguez	
OFAC	Walter		Lopez	Rodriguez	
OFAC	Jorge	Octavio	Lopez	Rodriguez	
OFAC	Sergio		Rodriguez	Lopez	
Input	Jose	Amparo	Diaz		Mid-Mid is non-matching
OFAC	Jose	Ricuarte	Diaz	Herrera	
Input	Luis	A	Hernandez	Reyes	Mat-Mat is non-matching
OFAC	Luis	Antonio	Hernandez	Zea	
Input	Roberto	E	Varas	Jimenez	Mat-Last is matching, but Last-Mat is non-matching
OFAC	Roberto		Jimenez	Naranjo	
Input	Carlos		Olan	Gonzalez	Mat-Last is matching, but Last-Mid is non-matching
OFAC	Carlos	Alfonso	Gonzalez		
OFAC	Carlos	Enrique	Gonzalez	Hoyos	

Impact of Proposed Rule Changes

Rule	OFAC Hit Rate	% only Potential Candidates	% some Potential Candidates	% only False Positives	Notes
OCS Production	0.62%	23.33%	0%	76.67%	
DOB>10 Yrs	0.37%	38.89%	0%	61.11%	Change only removes false positives
Name Rule from #1A [1] (from Page 4)	0.25%	58.33%	0%	41.67%	Change only removes false positives
Name Rule #1A and DOB>10 Yrs	0.14%	100%	0%	0%	Change only removes false positives
Name Rule from #1B [1] (from Page 4)	0.25%	58.33%	0%	41.67%	Change only removes false positives
Name Rule #1B and DOB>10 Yrs	0.14%	100%	0%	0%	Change only removes false positives

1 Assumes single-character Middle and First Names are used during post-Accuity matching.

Requirements (Draft Version)

When Accuity has returned an OFAC Potential Candidate, the following two matching rules should be used to check for OFAC Potential False Positives. If either the DOB and/or the Name are considered not sufficiently matching, the OFAC file should not returned.

DOB > 10 Year Rule

- When an Input DOB and an OFAC DOB are both present, and the CCYY portion of the DOBs are greater than 10 years different, the DOBs are considered not sufficiently matching.

Name Rule

- The full Input Name fields and the full OFAC Name fields are compared to each by using the ***Full Name Cross Matching Scoring Profile*** from the Match Matrix. The match results are then used to determine if a profile row is satisfied in the ***Full Name Match Eligibility Profile.*** If a row is not satisfied then the Names are considered not sufficiently matching.
- From the CPA Match Matrix Definitions documentation:

Profile Row #	# of Name Elements in the Name with the Fewest Name Elements	# of Exact & Partial Matching Name Elements	Required Minimum # of Exact Matching Name Elements
1	4	4	1
2	3	3	1
3	2	2	1

TransUnion Table of OFAC Activity
(Disputes and Calls Received) (2011)

(See foldout next page)

OFAC ACTIVITY (Disputes and Calls Received) YTD														
	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Totals	Averages
# of Calls to OFAC Info Line	30	281	211	185	139	140	191	51	77	553	98	62	2,018	168
# of Names Checked for OFAC*	549,920	1,361,734	1,616,111	1,443,822	1,326,254	1,187,542	1,240,794	1,326,792	1,056,267	1,112,100	1,137,989	1,178,187	10,052,969	1,211,459
# of OFAC Hits*	2398	5322	5011	3918	3213	2939	4805	5119	4536	3966	4105	3890	49,222	4,102
# of Consumer Disputes of OFAC Alert	1	52	55	54	28	32	47	28	15	59	17	12	400	33
Percent of OFAC Hits	0.4%	0.4%	0.3%	0.3%	0.2%	0.2%	0.4%	0.4%	0.4%	0.4%	0.4%	0.3%		0.3%
Percent of Disputes to Hits	0.0%	1.0%	1.1%	1.4%	0.9%	1.1%	1.0%	0.5%	0.3%	1.5%	0.4%	0.3%		0.8%

Top Five States Consumer Calls Originate	
California	19%
Puerto Rico	18%
Texas	10%
New York	9%
Florida	8%

Comparisons to Original Projections			
	Projection	Actual	Variance
Hit Rate	0.25%	0.35%	0.10%
Dispute Rate	33.0%	0.8%	-32.2%

*Includes both Mailed and Online Disclosure Requests

Source Data: CRS2 Monthly OFAC Activity Report, CCSS 2011 OFAC Telephone Report (IVR data recd from AT&T)

OFAC ACTIVITY (Disputes and Calls Received) YTD														
	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Totals	Averages
# of Calls to OFAC Info Line	52	87	84	57	71	66	54	53	58	65	66	39	752	69
# of Names Checked for OFAC*	1,556,243	1,329,065	1,414,219	1,295,116	1,259,115	1,225,758	1,266,157	1,303,896	1,157,361	1,199,195	1,115,035	1,051,449	10,649,564	1,264,384
# of OFAC Hits*	5025	4573	5382	4718	4883	4495	4419	4645	4143	4452	4301	4330	55,966	4,614
# of Consumer Disputes of OFAC Alert	6	13	30	11	15	14	4	12	9	5	9	6	134	11
Percent of OFAC Hits	0.3%	0.3%	0.4%	0.4%	0.4%	0.4%	0.3%	0.4%	0.4%	0.4%	0.4%	0.4%		0.4%
Percent of Disputes to Hits	0.1%	0.3%	0.6%	0.2%	0.3%	0.3%	0.1%	0.3%	0.2%	0.1%	0.2%	0.1%		0.2%

Top Five States Consumer Calls Originate	
California	24%
Puerto Rico	22%
Texas	10%
New York	8%
Illinois	7%

Comparisons to Original Projections			
	Projection	Actual	Variance
Hit Rate	0.25%	0.36%	0.11%
Dispute Rate	33.0%	0.2%	-32.8%

*Includes both Mailad and Online Disclosure Requests

Source Data: CRS2 Monthly OFAC Activity Report, CCSS 2011 OFAC Telephone Report (IVR data read from AT&T)

Experian Credit Report for S. Ramirez (2011)

Sergio Ramirez	DOB: [Redacted]	E: Bolar Ceiling RPTD: 12-02 I
RPTD: 08-08 to 01-10 U 03X		E: BT Painting Co Modesto, CA RPTD: 08-02 I

* * *

Ramirez Sergio

Permissible Purpose Code: T-00

Dealer Name: Dublin Acquisition Group Inc.

* * *

MESSAGES

0084 SSN Matches

1202 Name Does Not Match OFAC/PLC List

* * *

TransUnion Response to First Set of Interrogatories (N.D. Cal. Aug. 20, 2012)

Pursuant to Federal Rule of Civil Procedure 33, defendant Trans Union LLC ("Trans Union") hereby responds and objects to Plaintiff's First Set of Interrogatories (the "Interrogatories") propounded by plaintiff Sergio L. Ramirez ("Plaintiff") as follows:

GENERAL OBJECTIONS

1. Trans Union objects to the Interrogatories to the extent that they seek to impose burdens on Trans Union that are inconsistent with, or in addition to, Trans Union's discovery obligations pursuant to the Federal Rules of Civil Procedure and the Local Rules of this Court. Trans Union will respond consistent with its discovery obligations pursuant to the Federal Rules of Civil Procedure and the Local Rules of this Court.

2. Trans Union objects to the Interrogatories to the extent that they seek to impose on Trans Union the obligation to identify facts that are not known to Trans Union or Trans Union's personnel. Trans Union will not undertake to ascertain facts that are not reasonably within Trans Union's knowledge and control.

3. Trans Union objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine or any other privilege or immunity. Trans Union will not provide information that is subject to any such privilege or protection.

4. Trans Union objects to the Interrogatories to the extent that they seek confidential, proprietary business information that belongs to Trans Union.

5. Trans Union objects to the Interrogatories to the extent that they are not limited to a time period relevant or even proximate to the events at issue in this action.

6. Trans Union objects to the Interrogatories to the extent that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action.

7. Trans Union objects to the Interrogatories to the extent that they are vague and ambiguous.

8. Trans Union objects to the Interrogatories to the extent that they are overbroad, unduly burdensome and harassing.

9. Trans Union objects to the Interrogatories to the extent they are improper prior to class certification.

10. Any information produced by Trans Union in response to the Interrogatories is subject to all objections as to competence, relevance, materiality and admissibility, as well as to any other objections on any grounds that would require the exclusion thereof if such information were offered into evidence, and Trans Union expressly reserves all such objections and such grounds.

11. Trans Union incorporates these general objections into each Response herein as if fully set forth. Without waiving any of the foregoing objections, all of which are incorporated by reference in the

Responses below, Trans Union specifically responds to the Interrogatories as follows:

SPECIFIC RESPONSES

INTERROGATORY NO. 1:

State the number of natural persons in the State of California to whom Defendant has sent the type of letter substantially similar in form to the one Plaintiff received from Defendant's Woodlyn, Pennsylvania facility dated March 1, 2011, "Regarding: OFAC (Office of Foreign Assets Control) Database (produced as Ramirez 7 in this matter) from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 1:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; and (iii) it seeks confidential, proprietary business information that belongs to Trans Union. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Approximately 1,701.

INTERROGATORY NO. 2:

Identify by name and address the persons who comprise your response to Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 2:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business

information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification.

INTERROGATORY NO. 3:

State the number of natural persons in the United States to whom Defendant has sent the type of letter substantially similar in form to the one Plaintiff received from Defendant's Woodlyn, Pennsylvania facility dated March 1, 2011, "Regarding: OFAC (Office of Foreign Assets Control) Database (produced as Ramirez 7 in this matter) from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 3:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; and (iii) it seeks confidential, proprietary business information that belongs to Trans Union. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Approximately 9,128.

INTERROGATORY NO. 4:

Identify by name and address the persons who comprise your response to Interrogatory No. 3.

RESPONSE TO INTERROGATORY NO. 4:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business

information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification.

INTERROGATORY NO. 5:

State the number of natural persons in the State of California who had a consumer report sold about them by Trans Union, which included any OF AC record, and to whom Defendant subsequently sent a file disclosure substantially similar in form to the February 28, 2011 file disclosure from Defendant to Plaintiff, (produced as Ramirez 1-6 in this matter) from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 5:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; and (iii) it seeks confidential, proprietary business information that belongs to Trans Union. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Trans Union is unable to generate this information through an electronic query of its database systems. In order to generate the information requested by this Interrogatory (if it is possible to do so at all), Trans Union would have to manually compare its records with respect to every single consumer in California for whom a consumer report was sold against its records regarding consumers in California to whom Trans Union sent a file disclosure on a later date. Any manual search will not only be excessively burdensome and expensive, but the results of any such analysis cannot be

guaranteed because of changes in the database and potential differences in inquiry input between the report and disclosure. Trans Union objects to this Interrogatory on that further basis.

INTERROGATORY NO. 6:

Identify by name and address the persons who comprise your response to Interrogatory No. 5.

RESPONSE TO INTERROGATORY NO. 6:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Trans Union is unable to generate this information through an electronic query of its database systems. In order to generate the information requested by this Interrogatory (if it is possible to do so at all), Trans Union would have to manually compare its records with respect to every single consumer in California for whom a consumer report was sold against its records regarding consumers in California to whom Trans Union sent a file disclosure on a later date. Any manual search will not only be excessively burdensome and expensive, but the results of any such analysis cannot be guaranteed because of changes in the database and potential differences in inquiry input

between the report and disclosure. Trans Union objects to this Interrogatory on that further basis.

INTERROGATORY NO. 7:

State the number of natural persons in the United States who had a consumer report sold about them by Trans Union, which included any OF AC record, and to whom Defendant subsequently sent a file disclosure substantially similar in form to the February 28, 2011 file disclosure from Defendant to Plaintiff, (produced as Ramirez 1-6 in this matter) from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 7:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; and (iii) it seeks confidential, proprietary business information that belongs to Trans Union. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Trans Union is unable to generate this information through an electronic query of its database systems. In order to generate the information requested by this Interrogatory (if it is possible to do so at all), Trans Union would have to manually compare its records with respect to every single consumer in the United States for whom a consumer report was sold against its records regarding consumers in the United States to whom Trans Union sent a file disclosure on a later date Any manual search will not only be excessively burdensome and expensive, but the results of any such analysis cannot be guaranteed because of changes in the database and potential differences in inquiry input

between the report and disclosure. Trans Union objects to this Interrogatory on that further basis.

INTERROGATORY NO. 8:

Identify by name and address the persons who comprise your response to Interrogatory No. 7.

RESPONSE TO INTERROGATORY NO. 8:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Trans Union is unable to generate this information through an electronic query of its database systems. In order to generate the information requested by this Interrogatory (if it is possible to do so at all), Trans Union would have to manually compare its records with respect to every single consumer in the United States for whom a consumer report was sold against its records regarding consumers in the United States to whom Trans Union sent a file disclosure on a later date. Any manual search will not only be excessively burdensome and expensive, but the results of any such analysis cannot be guaranteed because of changes in the database and potential differences in inquiry input between the report and disclosure. Trans Union objects to this Interrogatory on that further basis.

INTERROGATORY NO. 9:

State the number of natural persons in the State of California with the first name "Sergio" and the last name "Ramirez" who had a consumer report sold about them by Trans Union which included an OF AC record substantially similar in form to that OF AC record that Trans Union placed upon Plaintiff's consumer report sold to Dublin Nissan on February 27, 2011 from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 9:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks confidential, proprietary business information that belongs to Trans Union; and (iv) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Trans Union is unable to generate this information through an electronic query of its database systems because such database systems require more information than a consumer's first and last name to identify a file. Nor can such information be obtained from a manual search of Trans Union's records. Trans Union further objects to this Interrogatory on that basis.

INTERROGATORY NO. 10:

Identify by name and address the persons who comprise your response to Interrogatory No. 9.

RESPONSE TO INTERROGATORY NO. 10:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and

ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Trans Union is unable to generate this information through an electronic query of its database systems because such database systems require more information than a consumer's first and last name to identify a file. Nor can such information be obtained from a manual search of Trans Union's records. Trans Union further objects to this Interrogatory on that basis.

INTERROGATORY NO. 11:

State the number of natural persons in the United with the first name "Sergio" and the last name "Ramirez" who had a consumer report sold about them by Trans Union which included an OFAC record substantially similar in form to that OFAC record that Trans Union placed upon Plaintiff's consumer report sold to Dublin Nissan on February 27, 2011 from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 11:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks confidential, proprietary business information that belongs to Trans Union; and (iv) it is an improper request prior to class

certification. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Trans Union is unable to generate this information through an electronic query of its database systems because such database systems require more information than a consumer's first and last name to identify a file. Nor can such information be obtained from a manual search of Trans Union's records. Trans Union further objects to this Interrogatory on that basis.

INTERROGATORY NO. 12:

Identify by name and address the persons who comprise your response to Interrogatory No. 11.

RESPONSE TO INTERROGATORY NO. 12:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Trans Union is unable to generate this information through an electronic query of its database systems because such database systems require more information than a consumer's first and last name to identify a file. Nor can such information be obtained from a manual search of Trans Union's records. Trans Union further objects to this Interrogatory on that basis.

INTERROGATORY NO. 13:

State the number of natural persons in the State of California who have made a dispute to Trans Union regarding an erroneous inclusion on an OF AC record on their consumer report from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 13:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action because no reinvestigation or dispute claim is asserted; and (iv) it seeks confidential, proprietary business information that belongs to Trans Union. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Approximately 84.

INTERROGATORY NO. 14:

State the number of natural persons in the United States who have made a dispute to Trans Union regarding an erroneous inclusion on an OFAC record from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 14:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action because no reinvestigation or dispute claim is asserted; and

(iv) it seeks confidential, proprietary business information that belongs to Trans Union. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Approximately 493.

INTERROGATORY NO. 15:

Identify every communication and every person who, within the previous five years contacted you to question or dispute the erroneous inclusion on an OF AC alert on their consumer report.

RESPONSE TO INTERROGATORY NO. 15:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action because no reinvestigation or dispute claim is asserted; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; and (vi) it is an improper request prior to class certification.

INTERROGATORY NO. 16:

Identify every person who recommended any change or actually assisted in implementing any change to your reporting and/or disclosure practices as a result of *Cortez v. Trans Union, LLC,* 617 F.3d 688 (3d Cir. 2010), from August 2010 through the present.

RESPONSE TO INTERROGATORY NO. 16:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and

ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it is not limited to a time period relevant or even proximate to the events at issue in this action; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) it is an improper request prior to class certification; and (vi) it seeks information that is protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Numerous Trans Union personnel were involved with implementing changes after the *Cortez v. Trans Union, LLC*, 617 F.3d 688 (3d Cir. 2010), decision and it would be unduly burdensome to identify all such personnel. These people include, without limitation, Sean Walker, Michael O'Connell, Colleen Gill, Denise Briddell, Steven Katz and Bharat Acharya.

INTERROGATORY NO. 17:

Identify the person at your company with the highest degree of responsibility or oversight for the OAFC Name Screen, including how it is to be reported to third parties and/or disclosed to consumers.

RESPONSE TO INTERROGATORY NO. 17:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it is not limited to a time period relevant or even proximate to the events at issue in this action; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) it is an improper request prior to class certification;

and (vi) it seeks information that is protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine.

Dated: August 20, 2012

STROOCK & STROOCK & LAVAN LLP

* * *

By: /s/Jeffrey B. Bell

* * *

OFAC Specially Designated Nationals and Blocked Persons List (Dec. 12, 2012)

ALPHABETICAL LISTING OF SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS ("SON List"):

This publication of Treasury's Office of Foreign Assets Control ("OFAC") is designed as a reference tool providing actual notice of actions by OFAC with respect to Specially Designated Nationals and other persons (which term includes both individuals and entities) whose property is blocked, to assist the public in complying with the various sanctions programs administered by OFAC. The latest changes to the SON List may appear here prior to their publication in the Federal Register, and it is intended that users rely on changes indicated in this document. Such changes reflect official actions of OFAC, and will be reflected as soon as practicable in the Federal Register under the index heading "Foreign Assets Control." New Federal Register notices with regard to Specially Designated Nationals or blocked persons may be published at any time. Users are advised to check the Federal Register and this electronic publication routinely for additional names or other changes to the SDN List.

2ND ACADEMY OF NATURAL SCIENCES (a.k.a. ACADEMY OF NATURAL SCIENCES; a.k.a. CHA YON KWAHAK-WON, a.k.a. CHE 2 CHA YON KWAHAK-WON. a.k.a. KUKPANG KWAHAK-WON. a.k.a. NATIONAL DEFENSE ACADEMY. a.k.a SANSRI a.k.a. SECOND ACADEMY OF NATURAL SCIENCES. a.k.a. SECOND ACADEMY OF NATURAL SCIENCES

RESEARCH INSTITUTE), Pyongyang, Korea, North [NPWMD].

3MG (a.k.a. MIZAN MACHINE MANUFACTURING CROUP) PO Box 16595-365 Tehran, Iran [NPWMD] [IFSR].

7 KARNFS Avenida Ciudad de Cali, No. 15A-91, Local A06-07 Bogota Colombia Matricula Mercantil No 1978075 (Colombia) [SDNTK].

7TH OF TIR (a.k.a 7TH OF TIR COMPLEX, a.k.a. 7TH OF TIR INDUSTRIAL COMPLEX; a.k.a. 7TH Of' TIR INDUSTRIES a.k.a. 7TH OF TIR INDUSTRIES OF ISFAHAN/ESFAHAN; a.k.a. MOJTAMAE SANATE HAFTOME TIR; a.k.a. SANAYE HAFTOME TIR a.k.a. SEVENTH OF TIR), Mobarakeh Road Km 45, Isfahan Iran; P.O. Box 81465-478, Isfahan, Iran [NPWMD] [IFSR]

7TH Of TIR COMPLEX (a.k.a. 7TH OF TIR; a.k.a. 7TH OF TIR INDUSTRIAL COMPLEX; a.k.a. 7TH OF TIR INDUSTRIES; a.k.a. 7TH OF TIR INDUSTRIES Of ISFAHAN/ESFAHAN; a.k.a. MOJTAMAE SANATE HAFTOME TIR; a.k.a. SANAYE HAFTOME TIR, a.k.a. SEVENTH OF TIR), Mobarakeh Road Km 45, Isfahan, Iran; P.O. Box 81465-478, Isfahan, Iran [NPWMD] [IFSR].

7TH OF TIR INDUSTRIAL COMPLEX (a.k.a. 7TH OF TIR; a.k.a. 7TH OF TIR COMPLEX; a.k.a. 7TH OF TIR INDUSTRIES; a.k.a. 7TH OF TIR INDUSTRIES OF ISFAHAN/ESFAHAN; a.k.a. MOJTAMAE SANATE HAFTOME TIR; a.k.a. SANAYE HAFTOME TIR; a.k.a. SEVENTH OF TIR), Mobarakeh Road KM 45, Isfahan, Iran; P.O. Box 81465-478, Isfahan, Iran [NPWMD] [IFSR]

7TH OF TIR INDUSTRIES (a.k.a. 7TH OF TIR; a.k.a. 7TH OF TIR COMPLEX; a.k.a. 7TH OF TIR INDUSTRIAL COMPLEX; a.k.a. 7TH OF TIR INDUSTRIES OF ISFAHAN/ESFAHAN; a.k.a. MOJTAMAE SANATE HAFTOME TIR; a.k.a. SANAYE HAFTOME TIR: a.k.a. SEVENTH OF TIR) Mobarakeh Road Km 45, Isfahan, Iran: P.O. Box 81465-478, Isfahan, Iran [NPWMD] [IFSR].

7TH OF TIR INDUSTRIES OF ISFAHAN/ESFAHAN (a.k.a. 7TH OF TIR; a.k.a. 7TH OF TIR COMPLEX; a.k.a. 7TH OF TIR INDUSTRIAL COMPLEX; a.k.a. 7TH OF TIR INDUSTRIES; a.k.a. MOJTAMAE SANATE HAFTOME TIR; a.k.a. SANA YE HAFTOME TIR; a.k.a. SEVENTH OF TIR), Mobarakeh Road Km 45, Isfahan, Iran; P.O. Box 81465-478. Isfahan, Iran [NPWMD] [IFSR].

8TH IMAM INDUSTRIES GROUP (a.k.a. CRUISE MISSILE INDUSTRY GROUP; a.k.a. CRUISE SYSTEMS INDUSTRY GROUP; a.k.a. NAVAL DEFENCE MISSILE INDUSTRY GROUP; a.k.a. SAMEN AL-A'EMMEH INDUSTRIES GROUP), Tehran, Iran [NPWMD] [IFSR].

17 NOVEMBER (a.k.a. EPANASTATIKI ORGANOSI 17 NOEMVRI; a.k.a. REVOLUTIONARY ORGANIZATION 17 NOVEMBER) [FTO] [SDGT].

32 COUNTY SOVEREIGNTY COMMITTEE (a.k.a. 32 COUNTY SOVEREIGNTY MOVEMENT: a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION; a.k.a. REAL IRA a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a.

REAL OGLAIGH NA HEIREANN; a.k.a. RIRA) [FTO] [SDGT].

32 COUNTY SOVEREIGNTY MOVEMENT (a.k.a. 32 COUNTY SOVEREIGNTY COMMITTEE a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION a.k.a. REAL IRA a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a. REAL OGLAIGH NA HEIREANN; a.k.a. RlRA) [FTO][SDGT]

101 DAYS CAMPAIGN a.k.a. CHARITY COALITION; a.k.a. COALITION OF GOOD; a.k.a. ETELAF AL-KHAIR; a.k.a. ETILAFU EL-KHAIR; a.k.a. I'TILAF AL-KHAIR, a.k.a. I'TILAF AL-KHAYR; a.k.a. UNION OF GOOD), P.O. Box 136301, Jeddah 21313, Saudi Arabia [SDGT]

2000 DOSE E.U. (a.k.a. DOMA EM), Calle 31 No. 1-34, Cali, Colombia; NIT # 805015749-3 (Colombia) [SDNT].

2000-DODGE S.L., Calle Gran Via 80, Madrid, Madrid Spain, C.I.F. B83149955 (Spain) [SDNT].

2904977 CANADA, INC. (a.k.a. CARIBE SOL; a.k.a. HAVANTUR CANADA INC.), 818 rue Sherbrooke East, Montreal, Quebec H2L 1K3, Canada [CUBA].

A A TRADING FZCO, P.O. Box 37089, Dubai, United Arab Emirates [SDNTK].

A K DIFUSION S.A. PUBLICIDAD Y MERCADEO, Calle 28N No. 6BN-54. Cali, Colombia; NIT # 900015699-8 (Colombia) [SDNT]

A K EDUCAL S.A. EDUCACION CON CALIDAD, Calle 28N No. 6BN-54 Cali, Colombia; NIT # 900015704-7 (Colombia) [SDNT].

A RAHMAN, Mohamad Iqbal (a.k.a. ABDUL RAHMAN, Mohamad Iqbal; a.k.a. ABDURRAHMAN Abu Jibril; a.k.a. ABDURRAHMAN Mohamad Iqbal; a.k.a. MUQTI, Fihiruddin; a.k.a. MUQTI, Fikiruddin; a.k.a RAHMAN, Mohamad Iqbal; a.k.a. "ABU JIBRIL"), Jalan Nakula, Komplek Witana Harja III, Blok C 106-107, Pamulang, Tangerang, Indonesia; DOB 17 Aug 1957; alt. DOB 17 Aug 1958; POB Korleko-Lombok Timur, Indonesia; alt. POB Tirpas-Selong Village, East Lombok, Indonesia; nationality Indonesia; National ID No, 3603251708570001 (individual) [SDGT].

A YA LA CASCAJERA S.A. (a.k.a COMERCIALIZADORA INTERNACIONAL ASFAL TOS Y AGREGADOS LAS CASCAJERA S.A.) Calle 100 No. 8A-49, Trr. B. Oficina 505, Bogota, Colombia; NIT# 900155202-1 (Colombia) [SDNT].

AA ABDUSSALAM, Ahmid (a.k.a. 'ABD-AL-SALAM, Hmeid; a.k.a. 'ABO-AL-SALAM, Humayd; a.k.a. ABDUL HADI ABDUL SALAM, Ahmid Abdussalam; a.k.a. ABDUSSALAM, Abdulhadi; a.k.a. ABDUSSALAM, Ahmid; a.k.a. "ABDULHADI" a.k.a. "HUMAYD"); DOB 30 Dec 1965, Passport 55555 (Libya) (individual) [LIBYA2].

A.I.C. COMPREHENSIVE RESEARCH INSTITUTE (a.k.a. A.I.C. SOGO KENKYUSHO; a.k.a. ALEPH a.k.a. AUM SHINRIKYO; a.k.a. AUM SUPREME TRUTH) [FTO] [SDGT].

A.I.C SOGO KENKYUSHO (a.k.a. A.I.C. COMPREHENSIVE RESEARCH INSTITUTE;

a.k.a. ALEPH; a.k.a. AUM SHINRIKYO; a.k.a. AUM SUPREME TRUTH) [FTO] [SDGT].

A.T.E. INTERNATIONAL LTD (a.k.a RWR INTERNATIONAL COMMODITIES) 3 Mandeville Place, London, Urnted Kingdom [IRAQ2]

A.W.A. ENGINEERING LIMITED, 3 Mandeville Place. London, United Kingdom [IRAO2].

ABAROA DIAZ, Victor Manuel, c/o TIENDA MARINA ABAROA La Paz, Baja California Sur, Mexico; C. Antonio Navarro S/N, Col. Centro, La Paz, Baja California Sur 23000, Mexico; DOB 30 May 1955; POB La Paz, Baja California Sur, Mexico; nationality Mexico; citizen Mexico; R.F.C. AADV550530UQ0 (Mexico), C.U.R.P. AADV550530HBSBZC00 (Mexico) (individual) [SDNTK]

ABAROA FOX MARINE (a.k.a. MATERIALE Y REFACCIONES ABAROA; a.k.a. TIENDA MARINA ABAROA) Abasolo S/N Col. El Manglito La Paz, Baja California Sur 23060, Mexico; Leona Vicario 1000 El Alvaro Obregon, Benito Juarez Cabo San Lucas Baja California Sur 23469 Mexico; R.F.C. AADV55053OUQO (Mexico) [SDNTK].

ABAROA PRECIADO Aristoteles (a.k.a ABAROA PRECIADO, Aristoteles Alejandro), La Paz, Baja California Sur, Mexico; DOB 29 Sep 1981; POB La Paz, Baja California Sur, Mexico nationality Mexico. citizen Mexico; C.U.R.P. AAPA810929HBSBRR19 (Mexico) (individual) [SDNTK].

ARAROA PRECIADO, Aristoteles Alejandro (a.k.a ABAROA PRECIADO, Aristoteles), La Paz, Baja California Sur, Mexico; DOB 29 Sep 1981 POB La Paz, Baja California Sur, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. AAPA810929HBSBRR19 (Mexico) (iindividual) [SDNTK].

ABAROA PRECIADO, Rosa Yolanda Nabila, Ave. Mariano Abasolo S/N Barr La Paz, Baja California Sur 23060, Mexico; DOB 19 May 1985; POB Baja California Sur, Mexico; nationality Mexico, citizen Mexico; Passport 05070005312 (Mexico), C.U.R.P. AAPR850519MBSBRS00 (Mexico) (individual) [SDNTK]

ABAROA PRECIADO, Victor Hussein, C Antonio Navarro S/N, La Paz, Baja California Sur 23000, Mexico; DOB 23 Jun 1978; POB La Paz, Baja California Sur, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. AAPV780623HBSBRC09 (Mexico) (individual) [SDNTK].

Guadalajara, Jalisco, Mexico, Tlajomulco de Zuniga, Paseo de los Bosquez 115, El Palomar, Jalisco, Mexico; Benito Juarez. Valentin Gomez Farias 120A, Puerto Vallarta, Jalisco, Mexico; Puerta de Hierro 5594, Colonia Puerta de Hierro, Zapopan, Jalisco, Mexico; Donato Guerra 227, Colonia Centro, Guadalajara, Jalisco, Mexico; San Aristeo 2323, Colonia Popular, Guadalajara. Jalisco, Mexico: Acueducto 2200, Casa 2, Zapopan, Jalisco, Mexico; Avenida Pinos 330-2, Zapopan, Jalisco, Mexico: Marina Heights Tower Penthouse 4902, Dubai Marina, Dubai, United Arab Emirates; c/o DESARROLLOS INMOBILIARIOS CITADEL, SA DE C.V. c/o DESARROLLOS

TURISTICOS FORTIA, S.A. DE C.V., c/o SCUADRA FORTIA, S.A. DE C.V. c/o UNION ABARROTERO DE JALISCO S.C. DE R.L. DE C.V., c/o EL PALOMAR CAR WASH, S.A. DE C.V., c/o FORTIA BAJA SUR, S.A. DE C.V., c/o GEOFARMA S.A. DE C.V. c/o GRUPO COMERCIAL SAN BLAS, S.A. DE C.V., c/o GRUPO FY F MEDICAL INTERNACIONAL DE EQUIPOS; c/o PROMOCIONES CITADEL, S.A. DE C.V., c/o PUNTO FARMACEUTICO S.A. DE C.V., c/o DESARROLLO ARQUITECTONICO FORTIA, S.A. DE C.V., DOB 09 May 1973; alt DOB 10 May 1973; POB Guadalajara, Jalisco, Mexico; Passport 01140311083 (Mexico); alt Passport 6140103492 (Mexico); alt. Passport 96340014324 (Mexico) (individual) [SDNTK].

FERNANDEZ LUNA, Tiberio, c/o DISTRIBUIDORA DE DROGAS CONDOR S.A., Bogota, Colombia; c/o COPSERVIR LTDA, Bogota, Colombia; c/o LABORATORIOS BLANCO PHARMA DE COLOMBIA SA, Bogota, Colombia; DOB 03 Nov 1960; Cedula No. 93286690 (Colombia), Passport AE956843 (Colombia) (individual) [SDNTJ]

FERNANDEZ MONTERO, Marco Jose, c/o INVERSIONES EL PROGRESO S.A., Cartagena. Colombia. c/o INVERSIONES LAMARC S.A., Cartagena, Colombia; c/o ARAWAK HOLDING B.V., Amsterdam, Netherlands, c/o AURIGA INTERLEXUS S.L., Marbella, Malaga. Spain, c/o GENERAL DE OBRAS Y ALQUILERES S.A., Marbella, Malaga, Spain, c/o HORMAC PLANNING S.L., Marbella, Malaga, Spain, c/o QUANTICA PROJECT S.L., Marbella, Malaga, Spain; c/o TRACKING INNOVATIONS S.L.,

Marbella, Malaga, Spain; c/o UNDER PAR REAL ESTATE S.L., Marbella, Malaga, Spain; Calle Marques Del Duero 7G-3C San Pedro De Alcantara, Marbella, Malaga, Spain; Calle Sierra Do Cazorla, Residencial La Cascada, Bloque 1, Bajos 1B, Marbella, Malaga, Spain; Calle Chamberi 7, Montellano, Becerril De La Sierra, Madrid 28490, Spain; DOB 21 Dec 1970; POB Madrid, Spain; Passport AC 018964 (Spain); D.N.I. 07497033-E (Spain) (individual) [SDNT].

FERNAPLAST, Km 12-5 Ruta Al Atlantico, Apto. A, Zona 18, Guatemala City, Guatemala; Registration ID 188919A (Guatemala) [SDNTK].

FER'SEG S.A., 2 Calle 6AVE, Barrio El Centro San Pedro Sula. Cortes. Honduras; Registration ID 160766 (Panama) [SDNTK].

FERTILISA LTDA. (a.k.a. FERTILIZANTES LIQUIDOS DE LA SABANA LTDA.), Calle 98 Bis No. 57-66, Bogota, Colombia; Calle 98 Bis No. 71A-66, Bogota, Colombia; Via Siberia-Cota Km. 6, Vereda Rozo, Finca Ancon, Cota, Cundinamarca, Colombia; NIT# 860536101-7 (Columbia) [SDNTK].

FERTILIZANTES LIQUIDOS DE LA SABANA LTDA. (a.k.a. FERTILISA LTDA.), Calle 98 Bis No. 57-66, Bogota, Colombia; Calle 98 Bis No. 71A-66, Bogota, Colombia; Via Siberia-Cota Km. 6, Vereda Rozo, Finca Ancon, Cota, Cundinamarca, Colombia; NIT# 860536101-7 (Columbia) [SDNTK].

FETHI. A.lie (a.k.a. MNASRI, Fethi Ben Rebai Ben Absha; a.k.a. "ABU OMAR"; a.k.a. "AMOR"), Via Toscana n.46, Bologna, Italy; Via di Saliceto

n.51/9, Bologna, Italy DOB 06 Mar 1969; POB Baja, Tunisia; Passport L497470 issued 03 Jun 1997 expires 02 Jun 2002 (individual) [SDGT].

FETT AR, Rach1d (a.k.a. "AMINE DEL BELGIO" a.k.a "DJAFFAR") Via degli Apuli n.5, Milan, Italy; DOB 16 Apr 1969; POB Boulogin, Algeria (individual) [SDGT].

FIDUSER LTDA., Calle 12A No. 27-72, Bogota, Colombia; NIT# 830013160-8 (Colombia) [SDNT].

FIESTA STEREO 91.5 F.M. (a.k.a. PRISMA STEREO 89.5 F.M; a.k.a. SONAR F.M. E.U DIETER MURRLE), Calle 15 Norte No. 6N-34 of. 1003, Cali, Colombia; Calle 43A No. 1-29 Urb. Sta. Maria del Palmar, Palmira, Colombia; NIT# 805006273-1 (Colombia) [SDNT].

FIFTEENTH OCEAN GMBH & CO. KG, Schottweg 5, Hamburg 22087, Germany; c/o Islamic Republic of Iran Shipping Lines (IRISL), No. 37, Aseman Tower, Sayyade Shirazee Square, Pasdaran Ave., P.O. Box 19395-1311, Tehran. Iran; Website www.irisl.net; Email Address smd@irisl.net; Business Registration Document# HRA104175 (Germany) issued 12 Jul 2006; Telephone: 00982120100488; Fax: 00982120100486 [NPWMD] [IFSR].

FIFTH OCEAN ADMINISTRATION GMBH, Schottweg 5, Hamburg 22087. Germany; Business Registration Document# HRB94315 (Germany) issued 21 Jul 2005 [NPWMD] [IFSR].

FIFTH OCEAN GMBH & CO. KG. Schottweg 5, Hamburg 22087. Germany c/o Hafiz Darya Shipping Co, No 60, Ehteshamiyeh Square, 7th

Neyestan Street. Pasdaran A.venue, Tehran, Iran, Website www.hdsl1nes.com; Email Address ,nfo@hdslines.com, Business Registration Document # HRA 102599 (Germany) issued 19 Sep 2005; Telephone: 00494070383392 Telephone: 00982126 I 00733. Fax: 00982120100734 [NPWMD] [IFSR].

FIGAL ARRANZ, Antonio Agustin; DOB 02 Dec 1972; POB Baracaldo, Vizcaya Province, Spain; D. N. I. 20. 172.692 (Spain); Member ETA (individual) [SDGTJ].

FIGUERO GOMEZ, HASSEIN EDUARDO (a.k.a. FERNANDO GOMEZ, Ernesto: a.k.a. FIGUEROA, Edward), Las Cortas 2935, Barajas Villasenor, Guadalajara, Jaliso, Mexico; Tlajomulco de Zuniga, Paseo de los Bosquez 115, El Palomar, Jalisco, Mexico; Benito Juarez, Valentin Gomez Farias 120A, Puerto Vallarta, Jaliso, Mexico; Puerta de Hierro 5594, Colonia Puerta de Hierro, Zapopan, Jalisco, Mexico; Donato Guerra 227, Colonia Centro, Guadalajara, Jalisco, Mexico; San Aristeo 2323, Colonia Popular, Guadalajara, Jalisco, Mexico; Acueducto 2200, Casa 2, Zapopan, Jalisco, Mexico; Avenida Pinos 330-2, Zapopan, Jalisco, Mexico; Marina Heights Tower Penthouse 4902, Dubai Marina, Dubai, United Arab Emirates; c/o DESARROLLOS INMOBILIARIOS CITADEL, S.A. DE C.V.; c/o DESAROLLOS TURISTICOS FORTIA, S.A. DE C.V.; c/o SCUADRA FORTIA, S.A. DE C.V.; c/o UNION ABARROTERO DE JALISCO S.C. DE R.L. DE C.V.; c/o EL PALOMAR CAR WASH, S.A. DE C.V., c/o

FORTIA BAJA SUR, S.A. DE C.V., GEOFARMA S.A. DE C.V.; c/o GRUPO COMERCIAL SAN BLAS, S.A. DE C.V.; c/o GRUPO F Y F MEDICAL INTERNACIONAL DE EQUIPOS; c/o PROMOCIONES CITADEL, S.A. DE C.V.; c/o PUNTO FARMACEUTICO S.A. DE C.V.; c/o DESARROLLO ARQUITECTONICO FORTIA, S.A. DE C.V.; DOB 09 May 1973; alt. DOB 10 May 1973; POB Guadalajara, Jalisco, Mexico; Passport 001140311083 (Mexico); alt. Passport 6140103492 (Mexico); alt. Passport 96340014324 (Mexico); alt. Passport 96340014324 (Mexico) (individual) [SDNTK].

FIGUEROA DE BRUSATIN. Dacier, c/o W, HERRERA Y CIA. S EN C. Cali. Colombia; c/o INVERSIONES EL GRAN CRISOL LTDA., Cali. Colombia; DOB 07 Nov 1930: Cedula No. 29076093 (Colombia) (individual) [SDNT].

FIGUEROA GOMEZ, Hassein Eduardo (a.k.a. FERNANDEZ GOMEZ, Ernesto: a.k.a. FIGUERO GOMEZ, Hassein Eduardo: a.k.a. FIGUEROA, Edward), Las Cortes 2935. Barajas Villasenor, Guadalajara, Jalisco, Mexico; Tlajomulco de Zuniga, Paseo de las Bosquez 115, El Palomar, Jalisco. Mexico; Benito Juarez, Valentin Gomez Farias 120A, Puerto Vallarta, Jalisco, Mexico: Puerta de Hierro 5594, Colonia Puerta de Hierro, Zapopan, Jalisco, Mexico; Donato Guerra 227, Colonia Centro, Guadalajara. Jalisco. Mexico San Aristeo 2323. Colonia Popular, Guadalajara, Jalisco, Mexico: Acueducto 2200, Casa 2, Zapopan. Jalisco, Mexico: Avenida Pinos 330-2, Zapopan. Jalisco. Mexico; Marina Heights Tower

Penthouse 4902, Dubai Marina, Dubai, United Arab Emirates; c/o DESARROLLOS INMOBILIARIOS CITADEL. S.A. DE C.V., c/o DESARROLLOS TURISTICOS FORTIA, S.A. DE C.V., c/o SCUADRA FORTIA, S.A. DE C.V., c/o UNION ABARROTERO DE JALISCO S.C. DE R.L. DE C.V., c/o EL PALOMAR CAR WASH, S.A. DE C.V., c/o FORTIA BAJA SUR, S.A. DE C.V., c/o GEOFARMA S.A. DE C.V., c/o GRUPO COMERCIAL SAN BLAS, S.A. DE C.V., c/o GRUPO F Y F MEDICAL INTERNACIONAL DE EOUIPOS; c/o PROMOCIONES CITADEL, S.A. DE C.V., c/o PUNTO FARMACEUTICO S.A. DE C.V., c/o DESARROLLO ARQUITECTONICO FORTIA, S.A. DE C.V., DOB 09 May 1973; alt. DOB 10 May 1973; POB Guadalajara, Jalisco, Mexico; Passport 01140311083 (Mexico); alt. Passport 6140103492 (Mexico); alt. Passport 96340014324 (Mexico) (individual) [SDNTK].

FIGUEROA SALAZAR, Amilcar Jesus (a.k.a. 'TINO"); DOB 10 Jul 1954. POB El Pilar, Sucre State, Venezuela; Cedula No. 3946770 (Venezuela); Passport 31-2006 (Venezuela); Alternate President to the Latin American Parliament (Individual) [SDNTK].

FIGUEROA VASQUZ, Ezio Benjamin, Avenida Pinos 330-2, Zapopan, Jalisco, Mexico; Colima No 319-B, Col Roma, Zapopan, Jalisco, Mexico; Calle Colonias 269, Guadalajara, Jalisco, Mexico; Caile Abedules 507-5, Guadalajara. Jalisco, Mexico; Fraccionamiento El Palomar, Paseo el Palomar 132, Zapopan, Jalisco, Mexico; 2200 Acueducto, Casa 2, Zapopan. Jalisco, Mexico; Colinas de San

Javier, Paseo Loma Ancha 3547, Zapopan, Jalisco, Mexico; Blvd Puerta de Hierro No 6094, Zapopan, Jalisco, Mexico; Paseo de las Lomas No 43, Lomas de Colli, Zapopan, Jalisco, Mexico; Paseo de los Heroes 108-104, Tijuana, Baja California, Mexico; Ave Tamaulipas 103 9, Mexico City, Distrito Federal, Mexico; Jojutla 65, Mexico City, Distrito Federal, Mexico; Victoria 86 Interior 106, Mexico City, Distrito Federal, Mexico; Calle Arbol 4508, Col Chapalita, Guadalajara, Jalisco, Mexico; 6094 Fraccionamiento Puerta, Boulevard Puerta de Hierro, Guadalajara, Jalisco, Mexico; Avenida Vallarta 6503, Ciudad Granja, Guadalajara, Jalisco, Mexico; Donato Guerra 227, Colonia Centro, Guadalajara, Jalisco, Mexico; San Aristeo 2323, Colonia Popular, Guadalajara, Jalisco, Mexico; Las Cortes 2935, Barajas Villasenor, Guadalajara, Jalisco, Mexico; 2a Secc, Paseo Loma Ancha Colonias de San Javier, Zapopan, Jalisco, Mexico; Ave Lopez de Legaspi 2439, Colonia Lopez, Guadalajara, Jalisco, Mexico; c/o DISPOSITIVOS INDUSTRIALIES DINAMICOS, S.A. DE C.V.; c/o SCUADRA FORTIA, S.A. DE C.V.; c/o TECNOLOGIA OPTIMA CORPORATIVA S. DE R.L. DE C.V. c/o DISTRIBUIDORA LIFE, S.A.; c/o EL PALOMAR CAR WASH, S.A. DE C.V.;

* * *

932. Damascus. Syria; Abu Ramana Street, Rawda, Damascus. Syria; Damascus Duty Free, Damascus International Airport, Damascus,

Syria; Dara'a Duty Free, Naseeb Border Center, Dara'a, Syria; Aleppo Duty Free, Aleppo International Airport, Aleppo. Syria, Jdaideh Duty Free Complex, Jdaideh Yaboos, Damascus, Syria; Bab el Hawa Border Center, Aleppo, Syria: Lattakia Port, Lattakia, Syria; Tartous Port, Tartous, Syria; Website www.ramakdutyfree.net; Email Address dam.d.free@net.sy [SYRIA].

RAMAK DUTY FREE SHOP LTD (a.k.a. RAMAK; a.k.a. RAMAK DUTY FREE; a.k.a. RAMAK DUTY FREE SHOPS - SYRIA: a.k.a. RAMAK DUTY FREE SHOPS LTD.; a.k.a. RAMAK FIRM FOR FREE TRADE ZONES), Free Zone Area. Jamarek, PO Box 932, Damascus, Syria; Al Rawda Street, PO Box 932; Damascus, Syria: Abu Ramana Street, Rawda, Damascus, Syria: Damascus Duty Free, Damascus International Airport, Damascus, Syria: Dara'a Duty Free. Naseeb Border Center, Dara'a, Syria; Aleppo Duty Free, Aleppo International Airport, Aleppo, Syria; Jdaideh Duty Free Complex, Jdaiedeh Yaboos, Damascus, Syria; Bab el Hawa Border Center, Aleppo, Syria; Lattakia Port, Lattakia, Syria; Tartous Port, Tartous, Syria; Website www.ramakdutyfree.net; Email Address dam.d.free@net.sy [SYRIA].

RAMAK DUTY FREE SHOPS - SYRIA (a.k.a. RAMAK; a.k.a. RAMAK DUTY FREE; a.k.a. RAMAK DUTY FREE SHOP LTD; a.k.a. RAMAK DUTY FREE SHOPS LTD.; a.k.a. RAMAK FIRM FOR FREE TRADE ZONES), Free Zone Area, Jamarek, PO Box 932, Damascus, Syria, Al Rawda Street, PO Box 932, Damascus, Syria; Abu

Ramana Street, Rawda, Damascus, Syria; Damascus Duty Free, Damascus International Airport, Damascus, Syria, Dara'a Duty Free. Naseeb Border Center, Dara'a, Syria, Aleppo Duty Free, Aleppo International Airport, Aleppo, Syria; Jdaideh Duty Free Complex, Jdaiedeh Yaboos, Damascus, Syria; Bab el Hawa Border Center, Aleppo, Syria; Lattakia Port, Lattakia, Syria; Tartous Port, Tartous, Syria; Website www.ramakdutyfree.net; Email Address dam.d.free@net.sy [SYRIA].

RAMAK DUTY FREE SHOPS LTD. (a.k.a. RAMAK; a.k.a. RAMAK DUTY FREE; a.k.a. RAMAK DUTY FREE SHOP LTD a k.a. RAMAK DUTY FREE SHOPS - SYRIA a.k.a. RAMAK FIRM FOR FREE TRADE ZONES), Free Zone Area, Jamarek, PO Box 932, Damascus, Syria, Al Rawda Street, PO Box 932, Damascus, Syria; Abu Ramana Street, Rawda, Damascus, Syria; Damascus Duty Free, Damascus International Airport, Damascus, Syria, Dara'a Duty Free. Naseeb Border Center, Dara'a, Syria, Aleppo Duty Free, Aleppo International Airport, Aleppo, Syria; Jdaideh Duty Free Complex, Jdaiedeh Yaboos, Damascus, Syria; Bab el Hawa Border Center, Aleppo, Syria; Lattakia Port, Lattakia, Syria; Tartous Port, Tartous, Syria; Website www.ramakdutyfree.net; Email Address dam.d.free@net.sy [SYRIA].

RAMAK FIRM FOR FREE TRADE ZONES (a.k.a. RAMAK; a.k.a. RAMAK DUTY FREE; a.k.a. RAMAK DUTY FREE SHOP LTD.; a.k.a. RAMAK DUTY FREE SHOPS - SYRIA; a.k.a.

RAMAK DUTY FREE SHOPS LTD.). Free Zone Area, Jamarek, PO Box 932, Damascus, Syria, Al Rawda Street, PO Box 932, Damascus, Syria; Abu Ramana Street, Rawda, Damascus, Syria; Damascus Duty Free, Damascus International Airport, Damascus, Syria, Dara'a Duty Free. Naseeb Border Center, Dara'a, Syria, Aleppo Duty Free, Aleppo International Airport, Aleppo, Syria; Jdaideh Duty Free Complex, Jdaiedeh Yaboos, Damascus, Syria; Bab el Hawa Border Center, Aleppo, Syria; Lattakia Port, Lattakia, Syria; Tartous Port, Tartous, Syria; Website www.ramakdutyfree.net; Email Address dam.d.free@net.sy [SYRIA].

RAMAL S.A., Diagonal 127A No. 17-34 Piso 5, Bogota. Colombia; NIT# 800142109-5 (Colombia) [SDNT].

RAMCHARAM. Leebert (a.k.a. MARSHALL, Donovan; a.k.a. RAMCHARAN, Leebert; a.k.a. RAMCHARAN, Liebert) DOB 28 Dec 1959; POB Jamaica (individual) [SDNTK].

RAMCHARAN BROTHERS LTD., Rose hall Main Road, Rosehall, Jamaica [SDNTK].

RAMCHARAN LTD., Rosehall Main Road, Rosehall, Jamaica [SDNTK].

RAMCHARAN. Leebert (a.k.a. MARSHALL, Donovan; a.k.a. RAMCHARAM, Leebert; a.k.a. RAMCHARAN, Liebert) DOB 28 Dec 1959; POB Jamaica (individual) [SDNTK].

RAMCHARAN, Liebert (a.k.a. MARSHALL, Donovan; a.k.a. RAMCHARAM. Leebert: a.k.a. RAMCHARAN, Leebert). DOB 28 Dec 1959; POB Jamaica (individual) [SDNTK].

RAMIREZ ABADIA Y CIA. S.C.S ., Avenida Estacion No. 5BN-73 of. 207, Cali, Colombia; NIT# 800117676-4 (Colombia) [SDNT].

RAMIREZ ABADIA. Juan Carlos, Calle 6A No. 34-65, Cali, Colombia. c/o DISDROGAS LTDA., Yumbo, Valle, Colombia. c/o RAMIREZ ABADIA Y CIA. S.C.S., Cali, Colombia. DOB 16 Feb 1963; Cedula No. 16684736 (Colombia); Passport AD127327 (Colombia) (individual) [SDNT].

RAMIREZ AGUIRRE, Sergio Humberto, c/o Farmacia Vida Suprema, S.A. DE C.V., Tijuana, Baja California, Mexico; c/o Distribuidora Imperial De Baja California, S.A. de C.V., Tijuana, Baja California, Mexico; c/o Administradora De Inmuebles Vida, S.A. de C.V., Tijuana, Baja California, Mexico; DOB 22 Nov 1951 (individual) [SDNTK].

RAMIREZ BONILLA, Gloria Ines, c/o C.I. STONES AND BYPRODUCTS TRADING S.A., Bogota, Colombia; c/o C.I. AGROINGUSTRIAL DE MATERIAS PRIMAS ORGANICAS LTDA, Bogota, Colombia; c/o JUAN SEBASTIAN Y CAMILA ANDREA JIMENEZ RAMIREZ Y CIA S.C.S., Bogota, Colombia; DOB 28 Jan 1969; citizen Colombia; Cedula No. 65552011 (Colombia) (individual) [SDNTK].

RAMIREZ BUITRAGO, Luis Eduardo, c/o INCOES LTDA., Cali, Colombia (individual) [SDNT].

RAMIREZ BUITRAGO, Placido, c/o COMERCIALIZADORA INTERNACIONAL VALLE DE ORO S.A., Cali, Colombia; DOB 16 Nov 1950; Cedula No. 10219387 (Colombia) (individual) [SDNT].

RAMIREZ CORTES, Delia Nhora (a.k.a. Ramirez Cortes, Delia Nora), c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o VIAJES MERCURIO LTDA., Cali, Colombia; c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogota, Colombia; c/o INMOBILARIA BOLIVAR LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia; INVERSIONES HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o COMPANIA ADMINISTRADORA DE VIVIENDA S.A., Cali, Colombia; DOB 20 Jan 1959; Cedula No. 38943729 (Colombia) (individual) [SDNT].

RAMIREZ CORTES, Delia Nora (a.k.a. RAMIREZ CORTES, Delia Nhora), c/o c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o VIAJES MERCURIO LTDA., Cali, Colombia; c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogota, Colombia; c/o INMOBILARIA BOLIVAR LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o SOCOVALLE LTDA., Cali,

Colombia; INVERSIONES HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o COMPANIA ADMINISTRADORA DE VIVIENDA S.A., Cali, Colombia; DOB 20 Jan 1959; Cedula No. 38943729 (Colombia) (individual) [SDNT].

RAMIREZ DUQUE, Carlos Manuel, c/o AGROESPINAL S.A., Medellin, Colombia; c/o AGROGANADERA LOS SANTOS S.A., Medellin, Colombia; c/o ASES DE COMPETENCIA Y CIA, S.A., Medellin, Colombia. c/o GRUPO FALCON S.A, Medellin, Colombia: c/o HIERROS DE JERUSALEM S.A., Medellin. Colombia; c/o TAXI AEREO ANTIOQUENO S.A., Medellin. Colombia; Calle 50 No. 65-42 Of. 205. Medellin. Colombia; DOB 14 Dec 1947: Cedula No. 8281944 (Colombia) (individual) [SDNT].

RAMIREZ ESCUDERO. Pedro Emilio, Calle 6A No. 48-36, Cali, Colombia: c/o GALAPAGOS S.A., Cali. Colombia; Cedula No. 16820602 (Colombia) (individual) [SDNT].

RAMIREZ GARCIA. Hernan Felipe, c/o CONSULTORIAS FINANCIERAS S.A., Cali, Colombia; Calle 7 No. 51-37. Cali, Colombia; DOB 09 Jun 1969: POB Cali. Colombia: Cedula No. 16772586 (Colombia); Passport AI848476 (Colombia) (individual) [SDNT].

RAMIREZ LENIS, Jhon Jairo, Carrera 4C No. 34- 27. Cali. Colombia. DOB 19 Jul 1966; Cedula No. 79395056 (Colombia) (individual) [SDNT].

RAMIREZ M., Oscar, c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Bogota, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o

RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (individual) [SDNT].

RAMIREZ NUNEZ. James Alberto c/o ANDINA DE CONSTRUCCIONES S.A.. Cali. Colombia; c/o GRACADAL S.A., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES COSMOVALLE LTDA., Cali, Colombia; c/o DISMERCOOP, Cali, Colombia; c/o INTERAMERICA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o INVERSIONES MONDRAGON Y CIA S.C.S., Cali; Colombia; c/o SERVICIOS FARMACEUTICOS SERVIFAR S.A., Cali, Colombia. Carrera 5 No. 24-63, Cali, Colombia. DOB 21 Apr 1962; Cedula No. 16691796 (Colombia) (individual) [SDNT].

RAMIREZ SANCHEZ, Alben, c/o INCOES LTDA., Cali, Colombia (individual) [SDNT].

RAMIREZ SUARES Luis Carlos (a.k.a. RAMIREZ SUAREZ, Luis Carlos), c/o DROGAS LA. REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; D0B 15 May 1952; Cedula No. 19164938 (Colombia) (individual) [SDNT].

RAMIREZ SUAREZ, Luis Carlos (a.k.a. RAMIREZ SUARES, Luis Carlos), c/o DROGAS LA. REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; D0B 15 May 1952; Cedula No. 19164938 (Colombia) (individual) [SDNT].

RAMIREZ TREVINO, Mario (a.k.a. RAMIREZ TREVINO, Mario Armando), Tamaulipas, Mexico; Reynosa, Tamaulipas, Mexico; DOB 05

Mar 1962; POB Mexico; nationality Mexico; citizen Mexico (indivual) [SDNTK].

RAMIREZ TREVINO, Mario Armando (a.k.a. RAMIREZ TREVINO, Mario), Tamaulipas, Mexico; Reynosa, Tamaulipas, Mexico; DOB 05 Mar 1962; POB Mexico; nationality Mexico; citizen Mexico (individual) [SDNTK].

* * *

WEHBE. Bilal Mohsen, a.k.a. WEHBI, Bilal Mohsem. a.k.a. WEHBI, Bilal Mohsen). Avenida Jose Maria de Brito 929, Centro, Foz Do lguacu, Parana State, Brazil; DOB 07 Jan 1967. Passport CZ74340 (Brazil) alt. Passport 0083628 (Lebanon); Identification Number 77688048 (Brazil); Shaykh (individual) [SDGT].

WIN, Aung (a.k.a HAW, Aik, a.k.a. HEIN, Aung, a.k.a. HO, Aik, a.k.a. HO, Chun Ting; a.k.a. HO, Chung Ting, a.k.a. HO, Hsiao, a.k.a. HOE, Aik; a.k.a. TE, Ho Chun, a.k.a. TIEN, Ho Chun; a.k.a. "AIK HAW"; a.k.a. "HO CHUN TING" a.k.a. "HSIO HO") c/o HONG PANG ELECTRONIC INDUSTRY CO., LTD., Yangon, Burma; c/o HONG PANG GEMS & JEWELLERY COMPANY LIMITED, Mandalay, Burma; c/o HONG PANG GENERAL TRADING COMPANY, LIMITED, Kyaington, Burma; c/o HONG PANG LIVESTOCK DEVELOPMENT COMPANY LIMITED, Burma; c/o HONG PANG MINING COMPANY LIMITED, Yangon, Burma; c/o HONG PANG TEXTILE COMF'ANY LIMITED, Yangon, Burma; do TET KHAM (S) PTE. LTD., Singapore, c/o TET KHAM CONSTRUCTION COMPANY LIMITED, Mandalay, Burma, c/o

TET KHAM GEMS CO., LTD., Yangon, Burma, No 7 Oo Yim Road Kamayut TSP, Rangoon, Burma; 7, Corner of lnya Road and Oo Yin street, Kamayut Township, Rangoon, Burma; The Anchorage, Alexandra Road, Apt. 370G, Cowry Building (Lobby 2, Singapore; 89 15th Street, Lanmadaw Township, Rangoon, Burma; 11 Ngu Shwe Wah Road, Between 64th and 65th Streets, Chan Mya Thar Zan Township, Mandalay, Burma; DOB 18 Jul 1965, Passport A043850 (Burma): National ID No. 029430 (Burma); alt. National ID No. 176089 (Burma) alt. National ID No. 272851 (Singapore) alt. National ID No. 000016 (Burma) (individual) [SDNTK].

WIN, Kyaw, DOB 03 Jan 1944; nationality Burma; citizen Burma; Lieutenant-General; Chief of Bureau of Special Operation 2; Member, State Peace and Development Council (individual) [BURMA].

WIN, Nyan; DOB 22 Jan 1953, nationality Burma; citizen Burma; Major General; Minister of Foreign Affairs (individual) [BURMA].

WIN, Soe; DOB 10 May 1947, nationality Burma; citizen Burma; Lieutenant-General; Prime Minister; Member, State Peace and Development Council (individual) [BURMA].

WISMOTOS FUENTE DE ORO, Carrera 14 No. 9-19, Fuente de Oro, Meta, Colombia;· Matricula Mercantil No 00118075 (Colombia) [SDNTK].

WISMOTOS S.A. (a.k.a. CIA COMERCIALIZADORA DE MOTOCICLETAS Y REPUESTOS S.A.), Calle 14 No 13-29, Granada, Meta, Colombia; Calle 35 No. 27-63, Villaviciencio, Colombia;

Carrera 6 No. 7-17, San Martin, Meta. Colombia; NIT # 900069501-0 (Colombia) [SDNTK].

WISSER Gerhard, DOB 02 Jul 1939; POB Lohne, Germany; nationality Germany; Passport 3139001443 (Germany) (individual) [NPWMD] [IFSR].

WITTHAYA, Ngamthiralert (a.k.a. HATSADIN, Phonsakunphaisan; a.k.a. LAO Ssu, a.k.a. RUNGRIT, Thianphichet, a.k.a. WANG, Ssu; a.k.a WANG, Wen Chou, a.k.a. "LAO SSU"), Burma; DOB 01 Jan 1960; Passport P403726 (Thailand); National ID No. 3570700443258 (Thailand) (individual) [SDNTK].

WOKING SHIPPING INVESTMENTS LIMITED, 143/1 Tower Road, SLM1604, Sliema, Malta; Business Registration Document # C39912 issued 2006, Telephone: 0035621317171; Fax: 0035621317172 [NPWMD] [IFSR].

WONG, Kam Kong (a.k.a. CHAN, Shu Sang; a.k.a. CHAN, Shu sang; a.k.a. CHEN, Bing Shen; a.k.a. CHEN, Bingshem, a.k.a. CHEN, Shu Sheng; a.k.a. CHEN, Shusheng, a.k.a. DU, Yu Rong; a.k.a. DU, Yurong; a.k.a. HU, Chi Shu; a.k.a. CHU, Chishu; a.k.a. HUANG, Man Chi. a.k.a. HUANG, Manchi, a.k.a. WONG, Kamkong, a.k.a. WONG. Moon Chi, a.k,a WONG, Moonchi, a k,a, WONG. Mun Chi, a.k.a WONG, Munchi, a.k.a. WU, Chai Su, a.k.a. WU, Chaisu, a.k.a. ZHANG, Jiang Ping a.k.a ZHANG. Jiangping, a.k.a. "CHI BANG"), Hong Kong, China; DOB 18 Mar 1961, alt. DOB 21 Apr 1945, alt. DOB 25 Jan 1947, alt DOB 08 Feb 1955. alt. DOB 03 Aug 1958. alt. DOB 08 Aug 1958, POB China, nationality China,

citizen China, alt. citizen Cambodia; Passport 611657479 (China); alt. Passport 2355009C (China); National ID No. D489833(9) (Hong Kong); British National Overseas Passport 750200421 (United Kingdom) (individual) [SDNTK].

WONG, Kamkong (a.k,a. CHAN, Shu Sang; a.k.a. CHAN, Shusang; a.k.a. CHEN, Bing Shen; a.k.a. CHEN, Bingshen. a.k.a. CHEN, Shu Sheng, a.k.a. CHEN, Shusheng a.k.a. DU, Yu Rong; a.k.a. DU, Yurong; a.k.a. HU, Chi Shu; a,k.a. HU, Chishu; a.k,a. HUANG, Man Chi; a.k.a. HUANG, Manchi; a.k.a. WONG, Kam Kong; a.k.a. WONG, Moon Chi, a.k.a. WONG, Moonchi, a.k.a. WONG, Mun Chi, a.k.a. WONG, Munchi; a.k.a. WU, Chai Su; a.k.a. WU, Chaisu; a,k.a. ZHANG, Jiang Ping; a.k.a. ZHANG, Jiangping: a.k.a. "CHI BANG"), Hong Kong, China; DOB 18 Mar 1961, alt. DOB 21 Apr 1945, alt. DOB 25 Jan 1947, alt. DOB 08 Feb 1955; alt. DOB 03 Aug 1958: alt. DOB 08 Aug 1958; POB China; nationality China, citizen China, alt. citizen Cambodia; Passport 611657479 (China). alt. Passport 2355009C (China); National ID No. D489833(9) (Hong Kong); British National Overseas Passport 750200421 (United Kingdom) (individual) [SDNTK].

WONG, Moon Chi (a.k.a CHAN, Shu Sang; a.k.a. CHAN, Shusang; a.k.a. CHEN, Bing Shen; a.k.a. CHEN, Bingshen; a.k.a. CHEN, Shu Sheng; a.k.a. CHEN, Shusheng; a.k.a. DU, Yu Rong; a.k.a DU, Yurong; a.k.a. HU, Chi Shu; a.k.a. HU, Chishu; a.k,a. HUANG, Man Chi; a.k.a. HUANG, Manchi; a.k.a WONG, Kam Kong; a.k.a. WONG,

Kamkong; a.k.a. WONG, Moonchi; a.k.a. WONG, Mun Chi; a k,a. WONG, Munchi; a.k.a WU, Chai Su; a.k.a. WU Chaisu; a.k.a. ZHANG, Jiang Ping; a.k.a. ZHANG Jiangping; a.k.a. "CHI BANG"), Hong Kong, China; DOB 18 Mar 1961, alt. DOB 21 Apr 1945, alt. DOB 25 Jan 1947, alt. DOB 08 Feb 1955; alt. DOB 03 Aug 1958: alt. DOB 08 Aug 1958; POB China; nationality China, citizen China, alt. citizen Cambodia; Passport 611657479 (China). alt. Passport 2355009C (China); National ID No. D489833(9) (Hong Kong); British National Overseas Passport 750200421 (United Kingdom) (individual) [SDNTK].

WONG, Moonchi (a.k.a. CHAN, Shu Sang; a.k.a. CHAN, Shusang; a.ka. CHEN, Bing Shen; a.k.a. CHEN, Bingshen; a.k.a. CHEN, Shu Seng; a.k.a. CHEN, Shusheng; a.k.a. DU, Yu Rong; a.k.a. DU, Yurong; a.k.a. HU, Chi Shu; a.k.a. HU, Chishu; a.k.a. HUANG, Man Chi; a.k.a. HUANG, Manchi; a.k.a WONG, Kam Kong; a.k.a WONG, Kamkong; a.k.a. WONG, Moon Chi; a.k.a. WONG, Mun Chi; a.k.a. WONG, Munchi; a.k.a. WU, Chai Su; a.k.a. WU, Chaisu; a.k.a ZHANG, Jiang Ping; a.k.a. ZHANG, Jiangping, a.k.a. "CHI BANG"). Hong Kong, China; DOB 18 Mar 1961, alt. DOB 21 Apr 1945, alt. DOB 25 Jan 1947, alt. DOB 08 Feb 1955; alt. DOB 03 Aug 1958: alt. DOB 08 Aug 1958; POB China; nationality China, citizen China, alt. citizen Cambodia; Passport 611657479 (China). alt. Passport 2355009C (China); National ID No. D489833(9) (Hong Kong); British National Overseas Passport 750200421 (United Kingdom) (individual) [SDNTK].

WONG, Mun Chi (a.k.a CHAN, Shu Sang; a.k.a. CHAN, Shusang; a.k.a. CHEN, Bing Shen;

* * *

Excerpts of Robert Lytle Deposition
(Dec. 13, 2012)

* * *

[5] THE VIDEOGRAPHER: Okay. Will the court reporter please swear in the witness.

THE COURT REPORTER: Can you raise your right hand, please.

(Whereupon, the witness was duly sworn.)

THE VIDEOGRAPHER: Please proceed.

TRANS UNION, LLC - ROBERT LYTLE 30(b)(6), called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SOUMILAS:

Q. Mr. Lytle, good morning.

A. Good morning.

Q. We met off the record just a moment ago. My name is John Soumilas. I represent the plaintiff, Sergio L. Ramirez, in a lawsuit that he's brought in the Northern District of California against who I understand is your employer, Trans Union, LLC.

I'm here today to take the deposition of Trans Union. So one correction I wish to make from the get-go is that this is the deposition of Trans Union, LLC. We did not ask for you personally,

[6] Mr. Lytle. And my understanding is that you are being produced pursuant to a 30(b)(6) notice to speak for Trans Union, LLC, today.

* * *

[10] Q. Now, Mr. Lytle, in order for me to get a better sense of what areas you might be best suited to give testimony to, I want to begin by getting some information about you personally.

Am I correct that you are employed by Trans Union, LLC?

A. Yes.

Q. Do you have a title there?

A. Yes, I do.

Q. What is it, please?

A. Senior director, consumer relations technology.

Q. And how long have you had that title?

A. Approximately two-and-a-half years.

Q. What do you do as the senior director of consumer relations technology?

A. I manage a department of IT workers.

Q. Where is your office?

[11] A. In Chicago.

Q. What address, please?

A. 555 West Adams Street, Chicago, Illinois 60661.

Q. How many people do you supervise in that department?

A. I'd like to ask you to be more specific. We have full-time employees and contractors.

Q. Well, total among full-time employees and contractors, how many people do you supervise as the senior director?

A. Would you accept an approximate number?

Q. Sure.

A. Okay. Approximately 40.

* * *

[12] Q. How many years total for Trans Union?

A. Nine-and-one-half years.

* * *

[18] Q. Approximately how long did you hold that position?

A. Approximately two years.

Q. And any other positions in the international division as you called it?

A. Director.

Q. When did you become the director approximately?

A. I'd like to ask you to clarify. I did not become the director, but my title was director.

Q. Okay. When did you become the title of director?

A. Approximately -- I don't recall the exact year, but I imagine it would be in 2005 or 2006.

Q. And you said you had that title, but you weren't actually the director of that division?

A. No, sir.

Q. No, you didn't say that or, no, you weren't the director?

A. I was not the director. The director implies a different position than what I held.

Q. Okay. So what were the responsibilities of the position that you held?

A. To manage an IT staff of software

* * *

[23] Q. All right. So we're talking about the circumstance where the consumer contacts Trans Union and says I would like to see what you all have on file about me?

A. Yes.

Q. And you assist in the systems to deliver that information to consumers?

[24] A. Yes.

Q. And you also said consumers might have other inquiries such as they wish to have security freezes placed on files?

A. Yes.

Q. And what is that?

A. A file freeze is a compliance service we offer to in effect prevent a credit file from being delivered to an inquiry subscriber without the consumer's explicit consent.

Q. Okay. What other communications, if any, with consumers does your -- strike the question.

What other systems do you work on that relate to communications between Trans Union and consumers other than what you've testified to about already?

A. That is the primary system.

Q. And I take it you supervise people who have the technical know-how as to how these communications are made by Trans Union to consumers, correct?

A. Yes.

Q. So if some consumer wanted to make that request over the internet, you would know how that

* * *

[56] Q. Now, with respect to the staffers that you spoke with, when did you have those conversations?

A. Yesterday.

Q. With all three staffers?

A. The conversation with Ms. Wolkey was on Tuesday.

Q. Well, let's start with Ms. Wolkey then since she came first. What did you discuss with her?

A. I discussed her pulling specific statistics from our database related to OFAC disputes.

Q. And what specific statistics were you looking for?

MR. NEWMAN: I'm going to object to that [57] question on the grounds that it invades attorney work product.

You can describe the general nature of the work, but because there was analysis that was done at our direction, you cannot provide the specifics.

THE WITNESS: Okay.

MR. SOUMILAS: Well, that's an improper objection. It's either privileged, in which case you can instruct him not to answer, or it's not privileged because he's having a conversation with a non attorney and I want to know what the conversation was.

MR. NEWMAN: Well, it's a work product objection. To the extent there is analysis that's done at

my direction, it's work product. It doesn't matter whether I'm present for the conversation. He can describe the nature of the work. I don't think that's a problem.

BY MR. SOUMILAS:

Q. What did you ask Ms. Wolkey to get you?

A. I asked her to get me data.

Q. About what?

A. About OFAC disputes.

Q. Did she get it for you?

[58] A. Yes, she did.

Q. Did she get it to you on Tuesday when you spoke with her?

A. Yes, she did.

Q. And how did she get it to you? Was it an e-mail, AN spreadsheet? How did she get back to you?

A. I received a spreadsheet.

* * *

Q. Are we talking about a request from you to Ms. Wolkey to determine how many consumers disputed some OFAC information on their file disclosures?

A. Yes.

* * *

[60] Q. How many consumers disputed OFAC messages on their disclosures to Trans Union?

MR. NEWMAN: Objection. The question is vague, but if you can answer the question, you can answer that question.

THE WITNESS: I don't have exact figures.

BY MR. SOUMILAS:

Q. Do you have an approximation without guessing?

A. I have an approximation that is somewhere in the 500 range.

Q. 500 disputes or people?

[61] A. 500. This is why I said approximation. I have not vetted the numbers to understand if they were on the same people or different people. We found approximately in that range of dispute statistics.

* * *

[70] approximately August of 2010, we were notified by our legal department of the needs to start disclosing the OFAC information to consumers as the result of a settlement of a court case or resolution of a court case.

The project started around the fall of 2010, I believe it was September, where associates from various parts of Trans Union were brought together to design the solution for the disclosure of such data.

The project was broken into multiple phases. The first phase launched around the end of January 2011 when we started delivering to consumers the OFAC information in the form of a separate cover letter along with their credit file disclosure when they requested a disclosure and when the consumer information was found to be a possible match.

The second phase of the project went live around the end of June 2011 -- excuse me. If I can go back. At the end of January 2011, we also introduced the ability for a consumer to dispute such information through a

specific mechanism in [70] our consumer relations system. The consumer did not dispute the information, the consumer requested that dispute of Trans Union and Trans Union operators performed the dispute activity.

The second phase of the project at the end of June 2011, we introduced an improved dispute function into the consumer relations system. The third phase of the project occurred at the end of July 2011 which was to switch from sending the consumer a separate cover letter -- excuse me -- separate envelope letter and instead started to deliver the information along with the credit report itself in the same envelope for print disclosures.

And a subsequent phase in September of 2011 resulted in us being able to deliver that consumer information through our on line channel through the web site when they requested their file disclosure and there was OFAC information associated with that file, we delivered it through the web channel.

* * *

[76] Q. I'll represent to you, Mr. Lytle, that this is Trans Union's responses to the plaintiff's first set of interrogatories. Those are certain questions that we ask in the course of litigation.

Have you seen this document before?

A. I have seen at least portions of this document. I don't recollect that I have seen every page of the document.

[77] Q. I'll direct your attention to Page 10 o f the document. It references interrogatories by number, so we are looking at number 14.

A. Yes.

Q. Which asks for the number of natural persons in the United States who have made a dispute to Trans Union regarding an erroneous inclusion of an OFAC record from February 9, 2010, through the present.

Do you see that?

A. Yes.

Q. And do you see that the answer after several objections is approximately 493?

A. Yes.

* * *

[78] And could you identify this document?

A. I can't speak officially, but this seems

[79] to be a reseller credit report for Mr. Ramirez.

Q. Have you seen these sort of documents before?

A. In this particular format, no, but I am generally aware of the data that is presented here.

Q. I'm not talking about the data. I'm talking about the format of a document being printed out for a third party such as a car dealership in this particular format.

Are you -- have you seen these type of documents before?

A. I want to be very clear. So particular in type are distinguishable, so this particular format I have never seen before.

* * *

[80] Q. I would like to next pass to you a document that we will call Lytle 4 for purposes of today's proceedings.

* * *

Q. I will represent for the record this is a

document we produced to Trans Union. We've marked it Ramirez 1 through 6. It's a double sided document.

Do you have that?

A. Yes, I do.

Q. Are you familiar with the particular form of this document?

A. Yes, I am.

[81] Q. And what is Lytle 4?

A. This appears to be a printed credit report that would have been sent through our print vendor through the mail and delivered to the consumer requesting the file disclosure.

Q. So this falls into the category of one of those communications that your department oversees between Trans Union and a particular consumer, correct?

A. Yes, it does.

Q. And this is the document we've also called a personal credit report?

A. Yes.

Q. In fact, the cover letter right on the first page says enclosed is the Trans Union credit -- personal credit report you requested, right?

A. Yes.

Q. That's standard language, if you will, when Trans Union makes this type of a communication to a consumer?

A. I believe it is. I rarely look at the front cover page.

Q. And how about the report itself? Is that in the standard format of how Trans Union was [82] making these type of communications to consumers in the February 2011 timeframe?

A. Yes, on the print channel.

Q. So the print channel means that someone is printing it out and putting it in an envelope and mailing it to the consumer, correct?

* * *

Q. Let's go to Lytle 5.

* * *

[83] BY MR. SOUMILAS:

Q. I will represent that what we've marked as Lytle 5 is a one-page document that we've marked Ramirez 7.

Could you identify that document, sir?

A. Yes. This appears to be the letter that was sent from the period prior to the end of July 2011 to consumers with an OFAC possible match when they received their file disclosure.

Q. So we talked about the chronology of the OFAC project previously, correct?

A. Yes.

Q. And you told me that the letter came into circulation January 2011?

A. Approximately, yes.

Q. That's when Trans Union first started sending this form of letter to consumers?

A. Yes. To clarify, this is the first time our IT systems produced the data that the print vendor would have translated into the letter.

Q. Prior to that, what happened?

MR. NEWMAN: Objection, vague.

BY MR. SOUMILAS:

Q. Do you understand the question?

[84] A. I'm not certain I do.

Q. Was there any other letter or any other communication to consumers prior to January of 2011 to inform them that there was any OFAC information in their file?

A. I'm not aware of any communication.

Q. And this letter had about, if I understand, about a six- or seven-month lifespan.

Is that fair to say?

A. Yes.

* * *

[92] Q. Could we agree that Trans Union is a consumer reporting agency?

MR. NEWMAN: Objection, calls for a legal conclusion, but you can answer the question.

THE WITNESS: We typically term ourselves a consumer reporting agency.

* * *

[93] Q. How about a credit bureau?

A. Yes, I have -- I have used that term.

* * *

[94] Q. Does Trans Union consider itself regulated by the Fair Credit Reporting Act?

MR. NEWMAN: Objection, calls for a legal conclusion.

You can answer.

THE WITNESS: I believe we are regulated by that Act.

BY MR. SOUMILAS:

* * *

Q. Do you understand that Trans Union sells credit reports?

A. Yes.

* * *

[95] Q. And you would agree with me that Trans Union sells credit reports as part of its business to all of these types of third parties, correct?

A. Yes.

* * *

[98] Q. When we look at Lytle 3 in front of you, it's a document that on the top says Trans Union credit report.

Do you see that?

A. Yes.

Q. And you'd agree with me that it appears to be a credit report for Sergio L. Ramirez on the top left-hand side?

A. Appears to be.

* * *

[102] Q. Okay. What do you think the information is under special messages within Lytle 3?

MR. NEWMAN: Objection to foundation, outside [103] the scope of the notice.

Go ahead.

THE WITNESS: This data appears to be data that was queried from our third-party OFAC data store which is provided by a third party to us and then delivered along with Trans Union's delivery of the credit report.

BY MR. SOUMILAS:

Q. So Trans Union delivered the credit report? You would agree with that?

A. Yes.

* * *

[107] Q. Now, without reference to any particular document, I know we got stuck with a document and we will return to that later, but could you tell me what is your understanding of how this OFAC add on gets communicated by Trans Union to someone who wants to buy that product such as a bank or a creditor?

A. Could you be more clear on communicated?

Q. Yes. How does it leave Trans Union's computers and get to a third party who is interested in buying that product?

A. That's a technical question. The technical answer is customers maintain network communications to Trans Union. They make a product request with or without certain add on flags and then the product is delivered over the same network to their

premises and then they perform whatever tasks they want to with that or they are allowed to with that particular product.

Q. And I know you are a computer guy, but let's try to explain it for the record in layman's terms.

A. Okay.

[108] Q. Am I correct that these requests are made through a computer these days?

A. Yes.

Q. So a customer would plug in certain information about a consumer and request a credit report or some other type of product about that consumer?

A. Yes.

Q. And is it typically the case that the information which the customer would plug into the computer include the consumers's first name and last name?

A. Yes, it would.

Q. How about a middle name?

A. Sometimes.

Q. Does Trans Union request a middle name?

A. We allow the provision of the middle name. We do not require the middle name for most products.

Q. But there's a field there and it's available. You would expect that the customer plug it in, correct?

A. If the customer knows that information, yes.

[109] Q. How about address? Does Trans Union require an address?

A. We typically desire an address. An address product by product, there are some that do not require the address.

Q. Does the computer also have a field for Social Security number?

A. It does.

Q. And does Trans Union request that?

A. We do request that.

Q. And how about the consumers's date of birth? Is there a field that the customer could put that in?

A. Yes.

Q. And does Trans Union request that as well?

A. We request that. Again, we do not require that for most products.

* * *

[112] Q. And when we have this request for a credit [113] report and the add on OFAC product, would all the information come in a single integrated report?

A. That is typical. Product by product, there may be options to deliver things in different ways, but by and large, yes.

* * *

[131] Q. Does Trans Union obtain its information concerning its OFAC product from the U.S. government?

MR. NEWMAN: Objection, foundation.

Go ahead.

THE WITNESS: We obtain the database from a third party.

BY MR. SOUMILAS:

Q. Who is that third party?

[132] A. That third party is the Accuity Corporation. Maybe not the legal name.

Q. The Accuity company is not the U.S. government to your knowledge, correct?

A. It is not the U.S. government to my knowledge.

Q. It's not the U.S. Department of the Treasury, correct?

A. Correct.

Q. Why does Trans Union obtain its OFAC information from a private business instead of the U.S. government directly?

A. The technical constraints around gathering that data from the U.S. government are seen as greater. Working with a third party, we can receive the same data and receive it in a package in a method that makes it suitable for us to deliver to our customers.

* * *

[133] Q. Yes. Is Trans Union's source of OFAC information a private company called Accuity?

A. To the best of my knowledge, that is the source. I may not be qualified to define the word source. Technically, that is correct.

Q. Does it get its information from anyplace else? Does Trans Union get its information from anyplace else other than Accuity?

A. For the purpose of OFAC I presume?

Q. Yes, for the purpose of OFAC.

A. I am not aware of any other source.

* * *

[171] Q. Does Trans Union take steps to assure that whatever data it gathers about a particular credit applicant is substantively identical to the data that reaches the bank or the ultimate user of the report?

A. I don't know that I can answer that from the customer side. I do know that we have quality control processes to ensure that what is on the database is what appears on the screen or appears in the data transmission.

[172] Q. So you have quality control measures to make sure that the data that Trans Union gathers is the data that the customer is going to see, not some partial version of that data or truncated version of the data, correct?

A. We aim to ensure that the data as it's leaving the Trans Union data center, if you will, is correct, but depending on the type of customer, there may be other modifications down the line. The example of the reseller you bought up is very present in this. And a reseller by contract may, in fact, modify the data within certain parameters of which I'm not specific. You know, I am not aware of the specific rules.

BY MR. SOUMILAS:

Q. Based on the name matching logic as you understand it --

A. Yes.

Q. -- and referring for a moment back to the OFAC list documents that we've marked here as Lytle 6 and 7 --

A. Yes.

Q. -- would you expect an applicant whose first name is Sergio and last name is Ramirez to [173] return a hit to the person that we see within L y t l e 6 at Page 359 of the OFAC list, middle column, Ramirez Aguirre, Sergio Humberto?

MR. NEWMAN: Objection.

Go ahead.

THE WITNESS: On the face, provision of Sergio and Ramirez, unofficially, this is Accuity's, it is a product issue, I would expect this to return a hit.

BY MR. SOUMILAS:

Q. To return a hit?

A. I would expect this to return this data.

Q. And when you say this data, it would be a hit to Ramirez Aguirre, Sergio Humberto?

A. Yes.

Q. And would you also expect the first name Sergio, last name Ramirez to return a hit to the -- for the periods of time before July 2012 when the name Ramirez Rivera, Sergio Humberto was on the list --

MR. NEWMAN: Objection.

BY MR. SOUMILAS:

Q. -- as we see in Lytle 7? Would you expect that also to have been a hit?

[174] A. If I understand your question correctly, Exhibit 7 shows an item that was removed on 7/24.

Q. Correct.

A. And your question was prior to 7/24?

Q. Exactly, sir. Prior to 7/24, would you expect the name matching logic for Sergio Ramirez to return a hit to the name Ramirez Rivera, Sergio Humberto as we see it on Page 66 of Lytle 7?

A. Without speaking for Accuity's matching logic itself, I would expect both of these to be hits.

* * *

[182] Q. Look at the document that you told me you are familiar with that we marked as Lytle 4. That is the disclosure, file disclosure that Trans Union [183] would send to a consumer.

You are familiar with that one, right?

A. Yes.

Q. And if you could please look within that document to the number that's marked as Ramirez 4. It's the regular inquiries section.

Do you see that?

A. Yes.

Q. You'll notice it has two entries circled for Dublin Acquisitions G Via ODE/Dublin Nissan.

Do you see that?

A. Yes.

Q. Do you know what that means?

A. I do not know what that means.

Q. But your department --

A. Let me make sure I understand your question.

Do I know which part? This is what we call the subscriber full name on the credit disclosure. I'm not certain if that answers your question. The question is what does it mean.

Q. You are familiar with these documents, right? You see these documents like Lytle 4 every day?

[184] A. Certainly.

Q. This is the area that you work in?

A. Yes.

Q. Communications from Trans Union to consumers, correct?

A. Yes.

Q. Now, do you know what regular inquiries means?

A. Yes.

Q. What is that?

A. Regular inquiries are inquiries that are typically performed by a customer with permissible purpose and are marked on the credit report as an inquiry that is visible to other retrievers of that credit data, other customers.

Q. It's a little hard to read, but I think it reads: "The following companies have received your credit report."

Does that sound right?

A. Yes.

Q. So that tells us that Mr. Ramirez's credit report was received by Dublin Acquisitions G Via ODE/Dublin Nissan?

A. Yes.

* * *

[192] Q. Could you tell from anything that you reviewed in connection with preparing to give testimony in this case what the Trans Union credit

report along with an OFAC alert record about the plaintiff, Sergio Ramirez, to Dublin Nissan in February of 2011?

MR. NEWMAN: Same objections.

THE WITNESS: Exhibit 3 is the item that you mentioned that I did review and I can tell from that or I can assess from that that the consumer report was delivered to the Dublin Acquisition Group. I cannot specifically identify whether it was Dublin Nissan without more inspection.

* * *

[240] BY MR. SOUMILAS:

Q. Now, you told me that in preparing the report that goes out to third parties, Trans Union queries the Accuity library that it houses with a name and then whatever the hits are, they are delivered to a third party without any alteration.

Do you recall that testimony?

A. I do.

[241] Q. With respect to this letter, Lytle 5, is that same process used or is there any other process or alteration to the data?

A. There is no intended alteration other than formatting to the data. The mechanism is different to query the database. It uses the same algorithms, but we come through a different technical path.

Q. You would expect the exact same result as the data that would go on a third party report, correct?

A. If the database and the match logic were the same. So this would be a factor of -- as an example, in the case of this particular inquiry on the 27th and then

a subsequent disclosure I believe on the 3rd of March, I believe that's what I saw here, the database would need to be in sync on both sides and it should be. I'm not aware that there was a database update between those two intervening times.

Q. So I understand that if the database changes, the result might change, correct?

A. Yes.

Q. But if the database is the same, then the [242] result should be the same?

A. That is correct.

Q. Because the logic would be the same, correct, the matching logic?

A. The matching logic should be the same.

Q. The input data of the name would be the same as if you were searching for a third party, correct?

A. That is true.

Q. And no other criteria would be used just as in a search for a third party. All the criteria such as date of birth, Social Security number, passport number.

A. Right. Not to my knowledge. Again, I can speak effectively about how we query the database, we meaning the consumer relations that produce this letter.

* * *

[243] BY MR. SOUMILAS:

Q. It would just simply know whether the Accuity company returned a hit or multiple hits, correct?

A. True.

* * *

[249] Q. As far as the communication that we see here by Trans Union to the plaintiff, Mr. Ramirez, in Lytle 5, this form letter --

A. Yes.

Q. -- is there anything unusual or out of the ordinary about this letter?

MR. NEWMAN: Objection, vague and ambiguous.

THE WITNESS: Could you be specific on out of the ordinary?

[250] BY MR. SOUMILAS:

Q. Yes. Is this the standard form letter that Trans Union used during the time period that you identified, I think it was January 2011 until July of 2011, to notify people that according to its criteria, they are considered a potential match to the OFAC list?

A. This appears to be the standard letter that we would have sent during that time.

* * *

Q. Right. And with respect to the file disclosure that Mr. Ramirez received at the end of February of 2011, that's Lytle 4, sir --

A. Yes.

Q. -- is that also a document in the standard form that Trans Union would have been using at the [251] time?

A. This is the standard form.

Q. And even for people like Mr. Ramirez who would be considered a potential match to the OFAC list, Lytle 4 wouldn't say anything about OFAC, correct?

MR. NEWMAN: Objection. The document speaks for itself.

BY MR. SOUMILAS:

Q. Sorry. Was that correct?

A. That is correct during that time period.

Q. And just to be clear, Lytle 4 is the personal credit report that we also said is called a file disclosure at Trans Union, correct?

A. Yes.

* * *

[264] Q. So what happens here during the second call at 11:00 p.m. on February 28th, 2011?

A. It appears that the consumer discusses with the agent that they have an OFAC alert and wishes to speak to a supervisor.

Q. Is he transferred to a supervisor?

A. The comment indicates that. It would seem likely that he was.

* * *

[266] Q. And when a call like this by a consumer goes to a supervisor, what are they supposed to do?

A. I think they -- I'm not wholly qualified to answer all about the policies, but their policy would be to take the consumer and successfully complete their requested transaction.

Q. Did anybody -- well, what do you think the supervisor did according to these notes?

A. According to this note, this supervisor caused the CRS system to generate a consumer disclosure. That consumer disclosure, if it had an OFAC

designation, would have then gone out at this period of time with the letter, very likely the letters that are submitted here as exhibits.

Q. And would you expect that to be the standard procedure at the time that the supervisor would say, fine, you will get a disclosure and if you are on the OFAC list according to our matching criteria, you will also get the letter?

A. Yes.

Q. And would anything else be communicated or t hat we will send you a report and if your name is [267] on the list, you will also get a letter regarding OFAC?

A. The -- my understanding of the policy is that is exactly what would have happened.

Q. So the supervisor followed the policy at the time, correct?

A. That is what I believe to be true.

Q. And then we have an entry from March 1st.

Do you see that?

A. Yes.

Q. Who makes that entry?

A. That is the system generated entry indicated by ad hoc process.

Q. So the computer on its own does that?

A. Yes.

Q. This is a consumer relations computer?

A. Yes.

Q. Why does it do that?

A. This is the way that we indicate that there is OFAC on -- at this time, that we will be sending an OFAC letter. The technical process is the process of disclosure and then scrub the disclosure file against the OFAC Accuity process and generate the list of potential matches and then

[268] send them both to the print vendor.

Q. And there's some -- it says this is at Crum Lynne.

Is that Crum Lynne, Pennsylvania?

A. That is at Crum Lynne, Pennsylvania. That is a database designation that you wouldn't see in today's system. Today's system would say at Chicago, but at that time, the only options for us in the comments were either consumer relations global, I believe consumer relations fraud, and Crum Lynne. There was not a Chicago designation, but the computer runs in Chicago.

Q. Did the communications about OFAC at the time concerning the disclosure and this letter get sent to consumers from Pennsylvania?

A. I can't answer specifically at the time where things were sent from. My understanding is that all letters coming from the print vendor have the same return address and that appears to be Chester, Pennsylvania, in Exhibit 4.

* * *

[269] Q. Now, the entry on March 1st within Lytle 10 talks about OFAC hits - 4. Do you see that?

A. Yes.

Q. What does that reference?

A. That would represent the number of rows or number of records that came back from the -- our call to the OFAC database or OFAC system through Accuity.

* * *

[271] Q. Now, let's look at the last entry on this page. That's from March 21st, 2011.

A. Yes.

Q. Who generated that entry?

A. Either the system or Augustus Geleplay in this case. I believe this is actually system [272] generated when the agent clicks on the dispute OFAC button.

Q. Did something happen on March 21st, 2011, to cause the system or Augustus Geleplay to create this entry?

A. I can assess that -- I would need to inspect the record more fully.

At this point, this indicates that the consumer contacted consumer relations and we were successful in removing or placing a hold on their OFAC data delivery on future products.

Q. So when you say placing a hold, that means that any delivery of an OFAC message for this particular consumer after March 21st, 2011, would not show any type of a hit?

A. True.

Q. How long has Trans Union had that capability to put that type of a hold, as you put it?

A. We have had that capability for some time prior to 2011. It was a human manual process. The consumer relations systems implemented that ability

at the beginning of 2011. That was the phase one of the OFAC project we discussed.

* * *

[283] Q. Am I correct that prior to January 2011, Trans Union did not communicate with consumers about any OFAC association with their names at all in any form?

MR. NEWMAN: Objection, vague.

THE WITNESS: That is a very broad question. I am not aware of any communications we had with consumers prior to the implementation of this project.

BY MR. SOUMILAS:

Q. I will ask you an even broader one. Between the time that the OFAC product was rolled out in September of 2002 and the time of this letter, Lytle 5 was rolled out in January [284] 2011, are you aware of any communication in any written form, letter, internet, e-mail, anything where Trans Union would provide any information to consumers about any OFAC information in their files?

MR. NEWMAN: Objection, vague.

THE WITNESS: It is not my responsibility to understand communications to consumers, however, I am not aware of any communications that we had.

BY MR. SOUMILAS:

Q. Well, okay, but you testified that it is your area of responsibility to oversee communications with consumers --

A. Right.

Q. -- concerning -- we went through that today, right?

A. We did.

Q. And other than the letter that first was rolled out in January of 2011, you are not aware of any other communications of consumers prior to that date?

A. True.

* * *

Excerpts of Brent Newman Deposition
(Dec. 14, 2012)

* * *

[5] THE COURT REPORTER: Can you raise your right hand, please.

(Whereupon, the witness was duly sworn.)

ACCUITY, INC. - BRENT NEWMAN, 30(b)(6), called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SOUMILAS:

Q. Mr. Newman, my name is John Soumilas. We met off the record just a moment ago. I represent a plaintiff, Sergio L. Ramirez, in a lawsuit that he has brought against Trans Union, LLC, in the Northern District of California. I am here today because my firm served a subpoena on Accuity, Inc., as a third party in this case, that is to say some [6] business that might have some information relevant to Mr. Ramirez's lawsuit, and my understanding is that you are being produced today to speak on behalf of Accuity.

Do you understand that?

A. Yes, I do.

Q. Have you ever given testimony on behalf of Accuity before today, Mr. Newman?

A. No.

Q. And have you ever given testimony under oath in any other capacity?

A. No.

Q. The rules of today are very similar to the rules of court. So you took an oath that requires you to tell the whole truth just as if we were in front of a judge and jury today.

Do you understand that?

A. I do.

* * *

Q. And who is your employer, Mr. Newman?

A. Accuity, Inc.

Q. How long have you worked for Accuity, Inc.?

A. Since May of 2000.

Q. What is your current position, please?

A. Executive vice president.

Q. Could you please describe in summary form what your basic duties and responsibilities are as executive vice president?

A. I'm responsible for the product management, product development, professional services groups for our risk and compliance [9] business lines.

Q. How long have you been the executive vice president of Accuity, Inc.?

A. Since January 2011 approximately.

Q. What was your position at Accuity prior to January 2011?

A. I was managing director of the product and data groups.

Q. And for how long did you hold that position?

A. Since 2005.

Q. And you said you began at Accuity in 2000 approximately. What other positions have you held at Accuity?

A. I was hired as director of the global product data group in 2000 and held that position until 2005.

Q. Where is your office currently, sir?

A. In Skokie, Illinois.

Q. Have you always worked there for Accuity at the Skokie, Illinois, facility?

A. I have.

Q. Is that on Golf Road?

[10] A. It is.

Q. In your current position as executive vice president, do you have any responsibilities for overseeing any product or service at Accuity relating to the Office of Foreign Asset Control or OFAC list data?

A. I do.

Q. And what is that?

A. I'm responsible for managing our software filter and our OFAC data products and solutions that we provide to our customers.

Q. Now, are OFAC data products different from what you called solutions?

A. They are synonymous.

Q. Is there more than one OFAC product that Accuity provides to its customers?

A. There is.

Q. How many are there?

A. There are two primary OFAC data products.

Q. And what do you call them at Accuity?

A. Our OFAC data product, it's sometimes referred to as FAC File and it's run through our FAC filter software.

Q. Did you say FAC File?

[11] A. FAC File and FAC File Plus.

Q. So that would be spelled F-A-C and then File?

A. Yes.

Q. So the FAC File is one product, the OFAC FAC File?

A. Correct.

Q. What's the other one?

A. The other one is called our OFAC Enhancements List.

Q. And those are you said the two primary OFAC files that Accuity sells to its customers?

A. Two primary OFAC data products that Accuity sells to its customers.

Q. Thank you for correcting.

What is the difference between the OFAC FAC File and the OFAC Enhancement List?

A. We -- the Enhancement List, when OFAC provides information about sanctioned countries that U.S. citizens and corporations are not allowed to do business with, they do not provide fully comprehensive information. For instance, OFAC will say you can't do business with anybody in Cuba, and they will list certain individuals and [12] organizations that is not fully comprehensive.

The primary thing that we do in enhancing those files is we provide banking information and bank code information that isn't part of the designated information in the file. So we will provide information about Cuban banks and their bank codes to our sister (sic) clients in ensuring that when payment transactions that -- primarily banks and financial services. Payment transactions that they are making or receiving come through their banking systems, that the bank code information further will identify a Cuban financial institution that may not be specifically listed by the Office of Foreign Assets Control, but fall within the stated sanctions of the Office of Foreign Assets Control.

Q. So is it accurate to say that the enhancement list builds on the government's OFAC list and provides certain supplemental information that your clients might find useful?

A. That's correct.

Q. And how about the OFAC FAC File? What is that product?

A. That is the list of sanction entities by [13] the Office of Foreign Assets Control and a file that is formatted to be read through our software filters and in an effective and efficient manner.

Q. Now, does the OFAC FAC File product substantively supplement or change the data from the OFAC list or is it simply a reformatting of the exact same data that the government provides on the OFAC list?

A. It's a reformatting of that data.

Q. And you said it makes it more efficient to read?

A. So it can be read by a software filter engine that we provide.

* * *

[14] Q. Does Accuity sell either of these two OFAC products to Trans Union, LLC?

A. We do.

Q. Which one?

A. The FAC Filter, what we call the FAC [15] Filter which is the software filter and the FAC File.

Q. I take it Accuity sells the same OFAC products to other clients as well?

A. We do.

Q. Does Accuity sell it to other consumer reporting agencies such as Experian or Equifax?

A. Not that I'm aware of, no. I do not believe so.

Q. Do you know for how long Accuity has been selling the FAC Filter and FAC File products to Trans Union?

A. I believe the original contract was signed in 2002.

Q. And is it ongoing today, through today?

A. It is.

Q. So approximately for the last ten years?

A. Correct.

* * *

[28] Q. So in addition to the documents we say we'd like testimony on your, meaning Accuity's policies and procedures for providing any OFAC alerts

or OFAC related information to Trans Union from January 2011 to the present. Do you see that?

A. I do.

Q. Are you prepared to give testimony in that area today?

A. In general, yes.

Q. And the final area is your, again Accuity's, matching criteria for identifying matches or possible matches to the OFAC list for Trans Union.

Do you see that?

A. I do.

[29] Q. And are you prepared to give testimony in that area?

A. I am.

* * *

Q. All right. Now, I take it Accuity knows that Trans Union is a consumer reporting agency or credit report agency as its sometimes called?

A. Yes.

Q. Accuity is aware that when it's -- is Accuity aware that Trans Union prepares credit reports for creditors and other banking institutions in connection with applications for credit?

A. In general.

Q. Does Accuity have an understanding that Trans Union places OFAC information as an add to its credit report?

* * *

THE WITNESS: Our understanding is that they [30] use our solutions to assist in identity verification

and determining if -- or assisting their customers in complying with OFAC related regulations.

* * *

So let's break it down. Accuity sells

certain products to Trans Union, correct?

A. Correct.

Q. Accuity understands that Trans Union is going to use those products in its own business, correct?

A. Correct.

Q. And you understand that Trans Union's business in general is to sell credit reports to [31] banks and other businesses that are eligible to receive credit reports?

A. Amongst other services they provide.

Q. Yes. And is it also Accuity's understanding that the OFAC information that Accuity supplies to Trans Union is used as an add on product or service to a Trans Union credit report sold to a third party such as --

* * *

THE WITNESS: We understand they are reusing it to customers and we understand the business they are in. We -- I'm not extremely familiar nor is Accuity in all the products and ways in which they may use it, that is, like all of our customers, that is determined by our customers in terms of how they use it.

* * *

[34] Q. Let's talk a little bit about the process of how it is that Accuity makes available to Trans Union the FAC Filter and FAC File, okay?

A. Okay.

Q. Just describe in your own terms how that's done.

A. Well, the FAC Filter was supplied to them [35] as part of the original contract in 2002 and they then take that software filter and incorporate it, as we would say, behind their own firewalls and then we provide them the OFAC file in this FAC File format and as the -- as OFAC updates and amends that file, we provide them an updated file for each update and amendment to the OFAC list in a -- what we call an FTP pull, file transfer protocol, where we actually put it out onto a -- essentially a web server and they can come and pull it.

* * *

[37] Q. So when the government makes one of these updates of adding a terrorist or deleting someone from the list for whatever their reasons are, does Accuity make a corresponding update to its OFAC product to account for those government updates?

A. We do.

Q. And then I take it those updates are provided to customers such as Trans Union who use the FAC File?

A. Correct.

Q. How frequently is an updated FAC File provided to Trans Union?

A. Each time it is amended by the Office of Foreign Assets Control.

* * *

[38] Q. Now, do I understand, sir, that the -- there is a charge by Accuity to Trans Union for use of the FAC File?

A. That is correct.

* * *

[42] Q. Yeah. If I understood you correctly, you said Accuity bills Trans Union once per year, correct?

A. Correct.

Q. And whether -- and what the volume and cost per item screened information that we see on Page 8 of Newman 5, those are also annual figures, correct?

A. Yes.

Q. So if over the course of a year, Trans Union uses the Accuity screen for, let's say, exactly 500,000 transactions, then the price is going to be one-and-half pennies per transaction for that year?

MR. RAETHER: Objection to form.

BY MR. SOUMILAS:

Q. Did I understand that correctly?

[43] A. Yes.

Q. And the chart that we have here goes up to as many as over 10 million transactions per year?

A. Correct.

Q. And when the volume reaches over 10 million transactions per year, the price gets reduced to a tenth of a penny per transaction?

MR. RAETHER: Objection to form.

THE WITNESS: That is correct.

* * *

[50] Q. Is it your understanding that once a delivery of that product, the OFAC product and filter is made to Trans Union, that it's up to Trans Union to house it and maintain it?

A. Correct.

Q. Do you know where they actually maintain it?

A. No, I don't.

Q. You understand it to be in their possession?

A. I do.

Q. And their control?

A. Yes.

Q. Have you had any input from Trans Union on how to have the product operate in terms of its searching logic?

A. We have.

Q. You have had guidance from Trans Union in [51] that regard?

A. I wouldn't call it guidance. We've had discussions with them on some of the methodology for the filter.

Q. And when were those discussions?

A. They were to the best of my recollection, fall of 2010.

Q. Were there discussions at any other time besides the fall of 2010 timeframe?

A. Not that I'm aware of.

Q. What was the purpose of those discussions?

A. To discuss with them the use of rules in the filter methodology.

Q. I'm sorry. Did you say rules?

A. That's correct.

Q. What did you mean by that?

A. The software filter allows for the creation of rules to assist our clients in the disposition of the filter results or the match, per se.

Q. Could you explain what that means in layman's terms?

A. Yes. So you might have -- when the input data is introduced to the filter, it attempts to [52] determine whether there is a potential match to the OFAC list and then it presents those filter results, those potential matches.

Rules allow our customers who are then responsible for looking at those matches and determining whether or not the match is actually a designated per the OFAC list, rules allows them to -- help them make that disposition decision.

* * *

[53] Q. Did the Accuity OFAC Filter and OFAC File products have the ability to set these rules prior to the fall of 2010?

MR. RAETHER: Objection to form.

[54] THE WITNESS: It does. The client determines those rules creations and makes those rules creations.

* * *

What was the purpose of the fall 2010 discussions with Trans Union in connection with the use of these rules?

A. That would allow them to make more informed dispositions of matches that are produced from the filter.

Q. Were the rules something that Trans Union had to act on and do something?

[55] A. Yes.

Q. What would they need to do? A. They would need to create those rules within the software.

* * *

[56] Q. The Accuity product has the ability, if you will, built into it for any given customer to create a rule and use it as they see fit; is that correct?

A. Yes.

Q. And it had that ability prior to the fall of 2010, correct?

A. Correct.

* * *

[60] Q. What is the stop descriptor, please?

A. Our filter creates match phrases for each SDN on the OFAC list and that is, in fact, what the filter uses to determine whether the name on the OFAC list will match against those match phrases.

So typically, it's first name, last name is a stop descriptor in any order, doesn't matter, first initial, last name. It might be if there is a passport number in the OFAC list for an individual, we would create a stop descriptor with that exact passport number, so that when an input string is presented to the filter and that input string said B. Newman instead of Brent Newman, the stop descriptor B. Newman would be

what would match. If it said Newman, Brent, it would match.

* * *

[67] Q. Accuity makes the technology available, so that customers such as Trans Union could create their own rules concerning the OFAC product?

A. Correct.

Q. Do you know what rules Trans Union may or may not have implemented in its use of the OFAC product?

A. No, I don't.

* * *

[70] Q. So is it accurate to say that a user of the OFAC Filter such as Trans Union could input a name to determine whether there are any potential matches to the OFAC list?

A. Yes.

* * *

Q. What other data does Accuity's OFAC Filter allow to be inputted in connection with a search for a potential match?

MR. RAETHER: Objection to form.

[71]THE WITNESS: A name, an address, personally identifiable information.

BY MR. SOUMILAS:

Q. Such as what?

A. Passport number.

Q. Date of birth?

A. Social Security, date of birth.

Q. So maybe you could walk me through the -- how the product actually works.

Let's say I'm a customer and I have the OFAC Filter and FAC File and I want to check whether someone is on the OFAC list and I have that person's first, middle, and last name.

You're following my example so far?

A. Uh-huh.

Q. Yes, sir?

A. Yes, I am.

Q. And would the OFAC Filter permit me to type in first, middle, and last name?

MR. RAETHER: Objection to form.

THE WITNESS: Yes.

* * *

[72] Q. Do I type the name all in one line or are there particular fields designated for first name, middle name, last name?

MR. RAETHER: Objection to form.

MR. NEWMAN: Objection to foundation.

THE WITNESS: Usually it's a comma delimited, so it would be first name, comma, middle, name, comma, last name or first name -- you could do first name, space, middle name, space, last name, space.

BY MR. SOUMILAS:

Q. If you could just walk us through by using a name, how would a user who is properly using Accuity's OFAC Filter type in certain name information to begin a search?

MR. RAETHER: Objection to form.

MR. NEWMAN: Objection, incomplete hypothetical.

THE WITNESS: They could type in Brent, space, Newman; Brent, comma, Newman.

[73] BY MR. SOUMILAS:

Q. Could a user of Accuity's OFAC Filter type in the name Ramirez, comma, Sergio, comma, middle initial L?

MR. NEWMAN: Objection.

MR. RAETHER: Objection, form.

THE WITNESS: I believe they can, yeah.

BY MR. SOUMILAS:

Q. Now, if they have a full middle name

could they type in the full middle name?

MR. RAETHER: Objection, form.

MR. NEWMAN: Objection.

THE WITNESS: I believe so, yes.

BY MR. SOUMILAS:

Q. Will the product take all of the name data put into the query into account in looking for potential matches?

MR. RAETHER: Objection, form.

THE WITNESS: It will take the input string that's presented to it and determine whether or not there are stop descriptor that are created that matches that input.

BY MR. SOUMILAS:

Q. You called it the input screen?

[74] A. Well, the input data.

Q. Could the input data include a date of birth?

A. It could.

(Whereupon, a discussion was had off the record.)

BY MR. SOUMILAS:

Q. Let's try it again.

Could the input data include a date of birth?

A. It could.

Q. And how would that work?

A. I believe it's put in as month, day, year.

Q. And what would be the use of that date of birth in relation to the search?

MR. RAETHER: Objection, form.

THE WITNESS: It would only be used -- it really isn't used because it would only be used if date of birth were a stop descriptor which it isn't. It wouldn't be used pre match. It's used post match to make a disposition decision.

BY MR. SOUMILAS:

Q. Could you explain what that means?

A. Just by looking at this record?

[75] Q. Sure. Let's use this record as an example.

A. So the first potential match that is returned, you'll notice in the second line on the very right-hand side, DOB 11/22/1951.

Q. Yes, sir.

A. Again, this potential OFAC, this OFAC potential match, the OFAC list for this match included a date of birth of 11/22/1951.

Q. I understand.

A. The match, potential match was created by inputting the name Sergio Ramirez. So this is what OFAC has for this actual record. It didn't -- it doesn't match on the date of birth, but it provides all the information that OFAC has provided for them to make that disposition decision more informed.

So you could look at then the date of birth of 11/22/1951 and potentially make a more informed dispositioning decision as to whether or not that match is a true OFAC SDN.

* * *

[80] Q. Let's drill down a little more particularly on Newman 3 which is a document that [81] was produced by Accuity in this matter in response to a subpoena.

Do I understand, sir, that this document shows four potential matches?

A. Yes.

Q. And these are four potential matches to the OFAC list?

A. Yes. It's actually two individuals. The first three are actually one individual with three different addresses on the OFAC list.

Q. We will get to that in just a moment. Are these four potential matches returned in response to a query of the name Sergio Ramirez?

A. Yes.

Q. Would these four potential matches be returned by Accuity's filter every time the first name Sergio and the last name Ramirez is typed into the input data for that filter?

MR. RAETHER: Objection to form.

THE WITNESS: Yes.

* * *

[82] Q. Okay. What if the name Sergio Rivera were inputted into the filter? Would you get any of these same potential matches that we see on Newman 3 returned?

A. Yes, I believe so.

Q. Which one?

A. The fourth one.

* * *

[86] Q. What other input names could return any of the potential OFAC match records, any of the four that we see here in Newman 3? Actually, just list all the possible names that you think that according to Accuity's logic would return any of these as potential matches.

A. I believe it would be in any order or in

any sequence --

Q. In any order --

A. No. I am telling you how it would work.

Q. Oh, I'm sorry. Go ahead.

A. In any order or in any sequence, S. Ramirez, Sergio Ramirez, Sergio Ramirez Aguirre, and Ramirez Aguirre.

* * *

[87] Q. Let's pin this down because it's important.

The first option you gave me is Sergio Ramirez, correct?

A. Correct.

Q. So it could be typed in Sergio Ramirez or Ramirez Sergio; is that correct?

A. Correct.

Q. The second option you gave me is S. Ramirez, correct?

A. Correct.

Q. And that could be typed in S. Ramirez or Ramirez S, correct?

A. Or it could be S. Humberto Ramirez Aguirre. Those two names would be flagged.

Q. It could also be S. Humberto Ramirez?

A. Yeah. It would catch in the string -- it [88] would catch -- if S. Ramirez was in that string in any order, it would catch it.

Q. The next one I believe you gave me is Sergio Ramirez Aguirre, correct?

A. Correct.

Q. And that name would return a potential match even if it was in a different sequence such as Aguirre Sergio Ramirez, correct?

A. Correct.

Q. Or if it was in the sequence Ramirez Sergio Aguirre, correct?

A. Correct.

Q. Or if it was in the sequence Aguirre Ramirez Sergio, correct?

A. Correct.

Q. And then you said Ramirez Aguirre would also return a potential match, correct?

A. Correct.

Q. And so would Aguirre Ramirez, correct?

A. Correct.

Q. And so would any longer name which had any of those names input within the name, so you gave the example of S. Humberto Ramirez?

A. Correct.

[89] Q. What if it was S. Michael Ramirez? Would that return a potential match as well?

A. It would.

Q. What if it was any other name other than Michael as the middle name?

A. It would still return that match because S. Ramirez is part of the string.

Q. All right. As far as you know, is that how the matching logic worked in the February of 2011 timeframe?

MR. RAETHER: Objection, form.

THE WITNESS: Yes.

BY MR. SOUMILAS:

Q. As far as you know is that how the matching logic would still operate today?

A. Yes.

* * *

[91] Q. Now, does the filter have any limitation as to the number of different potential matches that it could find?

A. Not sure I understand your question.

Q. So here the name Sergio Ramirez returned four potential matches we said, correct?

A. Uh-huh.

Q. That's a yes, sir?

A. Correct.

Q. And that related to two individuals who we believe to have been on the OFAC list at the time, a Ramirez Rivera and a Ramirez Aguirre, correct?

A. Correct.

Q. Are there searches that could result in [92] more hits than this, 10 hits, 20 hits, 30 hits?

MR. RAETHER: Objection, form.

THE WITNESS: It's a possibility.

* * *

[93] Q. Mr. Newman, returning to Newman 3 for a moment. We have talked about the various names that could result in a potential match to any of these entries on the OFAC list. Just a couple of follow-up questions. You might want to reference that document.

You told me, for example, that the letter "S" with any middle name in Ramirez would return a potential match for one of these individuals, correct?

A. Correct.

Q. Would it return a match for both of these individuals? And by that I mean the Ramirez Aguirre and the Ramirez Rivera individuals.

A. It was the letter "S" and?

Q. Ramirez.

[94] A. Yes, I believe it would.

* * *

[98] Q. Now, this name matching logic using the stop descriptors, has it essentially been the same for the last ten years?

A. Yes.

* * *

OFAC Changes to List of Specially Designated Nationals and Blocked Persons List in 2012

This publication of Treasury's Office of Foreign Assets Control ("OFAC") is designed as a reference tool providing actual notice of actions by OFAC with respect to Specially Designated Nationals and other entities whose property is blocked, to assist the public in complying with the various sanctions programs administered by OFAC. The latest changes may appear here prior to their publication in the Federal Register, and it is intended that users rely on changes indicated in this document that post-date the most recent Federal Register publication with respect to a particular sanctions program in the appendices to chapter V of Title 31, Code of Federal Regulations. Such changes reflect official actions of OFAC, and will be reflected as soon as practicable in the Federal Register under the index heading "Foreign Assets Control." New Federal Register notices with regard to Specially Designated Nationals or blocked entities may be published at any time. Users are advised to check the Federal Register and this electronic publication routinely for additional names or other changes to the listings. Entities and individuals on the list are occasionally licensed by OFAC to transact business with U.S. persons in anticipation of removal from the list or because of foreign policy considerations in unique circumstances. Licensing in anticipation of official Federal Register publication of a notice of removal based on the unblocking of an entity's or individual's property is reflected in this publication by removal from the list. Current information on licenses issued with regard to Specially Designated Nationals and other blocked persons may be obtained or verified

by calling OFAC licensing at 202/622-2480. The following changes have occurred with respect to the Office of Foreign Assets Control Listing of Specially Designated Nationals and Blocked Persons since January 1, 2012:

01/05/12

The following [SDGT] entries have been added to OFAC's SDN list:

AL-QA'IDA KURDlSH BATTALIONS (a.k.a. KURDISTAN BATTALION OF ISLAMIC STATE IN IRAQ; ak.a. KURDISTAN BRIGADE OF AL-QUAEDA IN IRAQ a.k.a. KURDISTAN BRIGADES; a.k.a. "QKB"), Iran; Iraq [SDGT]

AQKB (a.k.a. AL-QA'IDA KURDISH BATTALIONS; A.k.a. KURDISTAN BATTALION OF ISLAMIC STATE IN IRAQ; a.k.a. KURDISTAN BRIGADE OF AL-QAEDA IN IRAQ; a.k.a. KURDISTAN BRIGADES), Iran; Iraq [SDGT]

KURDISTAN BATTALION OF ISLAMIC STATE IN IRAQ (a.k.a. AL-QA-IDA KURDISH BATTALIONS; a.k.a. KURDISTAN BRIGADE OF AL-QAEDA IN IRAQ; a.k.a. KURDISTAN BRIGADES; a.k.a. "AQKB"), Iran; Iraq [SDGT]

KURDISTAN BRIGADE OF AL-QAEDA IN IRAQ (a.k.a. AL-QA'IDA KURDISH BATTALIONS; a.k.a. KURDISTAN BATTALION OF ISLAMIC STATE IN IRAQ; a.k.a. KURDISTAN BRIGADES; a.k.a. "AQKB") Iran; Iraq [SDGT]

KURDISTAN BRIGADES (a.k.a. AL-QA'IDA KURDISH BATTALIONS; a.k.a. KURDISTAN BATTALION OF ISLAMIC STATE IN IRAQ;

a.k.a. KURDISTAN BRIGADE OF AL-QAEDA IN IRAQ; a.k.a. "AQKB"), Iran; Iraq [SDGT]

01/10/12

The following [SDNTK] entries have been added to OFAC's SDN list:

ALVAREZ ZEPEDA, Oscar, Avenida Francisco Solis No. 30-B, Colonia Vicente Lombardo Toledano, Culiacan, Sinaloa C.P. 80010, Mexico; Boulevard Universitanos No. 789. Local 4, Colonia Villa Universidad. Culiacan, Sinaloa C.P. 80010, Mexico; Localidad San Jose del Barranco S/N. Badiraguato, Sinaloa C.P. 80500, Mexico; DOB 15 Sep 1979; POB Badiraguato, Sinaloa. Mexico; C.U.R.P. AAZO790915HSLLPS09 (Mexico) R.F.C. AAZO790915AL6 (Mexico) (individual) [SDNTK]

TORRES HOYOS. Carlos Mario, Calle 48D No. 99-35, Medellin, Colombia DOB 11 Aug 1976; POB Caucasia Antioquia. Colombia; Cedula No. 71763915 (Colombia) (individual) [SDNTK]

VALDEZ BENITES, Joel, Avenida Mar Baltico No. 944, Colonia Lombardo Toledano, Culiacan, Sinaloa C.P. 80010, Mexico; DOB 20 Apr 1972; POB Badiraguato, Sinaloa, Mexico; C.U.R.P. VABJ720420HSLLNLOO (Mexico); Passport G04809091 (Mexico) (individual) [SDNTK]

01/10/12

The following [SDNT] entries have been removed from OFAC's SDN list:

ABADIA BASTIDAS, Carmen Alicia (a.k.a. ABADIA DE RAMIREZ, Carmen Alicia), c/o DISDROGAS LTDA., Yumbo, Valle, Colombia; c/o RAMIREZ

ABADIA Y CIA. S.C.S., Cali, Colombia; Calle 9 No. 39-65, Cali, Colombia; DOB 15 Jul 1934; POB Palmira, Valle, Colombia; Cedula No. 29021074 (Colombia) (individual) [SDNT]

ABADIA DE RAMIREZ, Carmen Alicia (a.k.a. ABADIA BASTIDAS, Carmen Alicia), c/o DISDROGAS LTDA., Yumbo, Valle, Colombia; c/o RAMIREZ ABADIA Y CIA. S.C S., Cali, Colombia; Calle 9 No. 39-65, Cali, Colombia; DOB 15 Jul 1934; POB Palmira, Valle, Colombia; Cedula No. 29021074 (Colombia) (individual) [SDNT]

ALM INVESTMENT FLORIDA, INC., 780 NW 42nd Avenue, Suite 516, Miami, FL 33126; 780 NW Le Jeune Rd, Suite 516, Miami, FL 33126; 9100 South Dadeland Boulevard. Suite 912, Miami, Fl 33156: US FEIN 65-0336852 (United States) [SDNT]

ARMANDO JAAR Y CIA. S.C.S., Carrera 74 No. 76-150, Barranquilla. Colombia; NIT# 890114337-6 (Colombia) [SDNT]

BRUNELLO LTD., Grand Cayman, Cayman Islands; Nine Island Avenue, Unit 1411, Miami Beach, FL; CR No. 68557 (Cayman Islands) [SDNT]

CW SALMAN PARTNERS, 1401 Brickell Avenue, Miami, FL 33131; US FEIN 65- 0111089 (United States) [SDNT]

CARLOS SAIEH Y CIA. S.C.S, Carrera 74 No. 76 - 150, Barranquilla, Atlantico. Colombia; NIT # 800180437-8 (Colombia) [SDNT]

CIPE INVESTMENTS CORPORATION, Panama City Panama; CR No. 197910/22096/0051

(Panama); RUC # 2209651197910 (Panama) [SDNT]

CONASA SA (a.k.a. CONSTRUCTORA ALTAVISTA INTERNACIONAL S.A.) Calle 77 B No. 57- 141, Ofc. 917, Barranquilla, Colombia; NIT # 802019866-4 (Colombia) [SDNT]

CONSTRUCTORA ALTAVISTA INTERNACIONAL S.A. (a.k.a. CONASA S.A.), Calle 77 B No. 57 - 141, Ofc. 917, Barranquilla, Colombia; NIT # 802019866-4 (Colombia) [SDNT]

CONFECCIONES LORD S.A., Carrera 74 No. 76 - 150. Barranquilla. Atlantico, Colombia; NIT # 890101890-1 (Colombia) [SDNT]

ELIZABETH OVERSEAS INC., Panama City, Panama; C.R. No. 194798/21722 (Panama); RUC # 2172202194798 (Panama) [SDNT]

ESCALONA, Victor Julio, c/o C A V J CORPORATION LTDA., Bogota, Colombia; c/o C.A.V.J. CORPORATION, Barquisimeto, Lara, Venezuela; c/o VOL PHARMACYA LTDA., Cucuta, Colombia; C.I.N. 7353289 (Venezuela): Passport A0229910 (Venezuela) (individual) [SDNT]

FINANZA.S DEL NORTE LTDA. (a.k.a. FINANZAS DEL NORTE LUIS SAIEH Y CIA, S.C.A.), Calle 77 B No. 57 - 141, Ofc. 917, Barranquilla, Colombia; NIT # 890108715-2 (Colombia) [SDNT]

FINANZAS DEL NORTE LUIS SAIEH Y CIA, S.C.A. (f.k.a. FINANZAS DEL NORTE LTDA.), Calle 77 B No. 57 - 141, Ofc. 917, Barranquilla, Colombia; NIT # 890108715-2 (Colombia) [SDNT]

GAVIRIA PRICE, Juan Pablo. Carrera 4 No. 11- 33 Ofc. 710, Cali, Colombia; c/o CRIADERO LA

LUISA E.U., Cali, Colombia; DOB 09 Jul 1960; POB Cali, Valle, Colombia; Cedula No. 16639081 (Colombia); Passport 16639081 (Colombia) (individual) [SDNT]

GIL RODRIGUEZ, Ana Maria, c/o AMPARO R. De GIL Y CIA, S.C.S., Cali, Colombia; c/o DROBLAM S.A., Cali, Colombia; DOB 24 Aug 1978; Cedula No. 67020296 (Colombia); Passport 67020296 (Colombia) (individual) (SDNT)

GIL RODRIGUEZ. Angela Maria, c/o AMPARO R. DE GIL Y CIA, S.C.S., Cali, Colombia; c/o DROBLAM S.A., Cali, Colombia; c/o AQUILEA S.A., Cali, Colombia; DOB 21 Feb 1980; Cedula No. 52721666 (Colombia); Passport 52721666 (Colombia) (individual) [SDNT]

* * *

ARANGO MADRIGAL, Hernan Dario, c/o CULTIVAR S.A., Fuente de Oro, Meta, Colombia; c/o INVARA S.C.S., Bogota, Colombia; c/o PANOS Y SEDAS LTDA., Bogota, Colombia; Carrera 31 No. 74A-16, Bogota, Colombia; DOB 20 Mar 1952: POB Yarumal, Antioquia, Colombia; Cedula No. 19186993 (Colombia) (individual) [SDNTK].

VELEZ MURILLO, Uberney, c/o CULTIVAR S.A., Fuente de Oro, Meta, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL ORIENTE LTDA., Granada, Meta, Colombia; Carrera 39B No. 24-21 Casa 9, Villavicencio, Colombia; DOB 05 Sep 1962, POB Fuentedeoro, Meta, Colombia; Cedula No. 86030095 (Colombia) (individual) [SDNTK].

CRIADERO EL TAMBO LTDA., Carrera 13 No. 17-55, Bogota, Colombia; NIT # 900016185-9 (Colombia) [SDNTK].

TEXTILES MODA NOVA LTDA., Carrera 13 No. 17-55 piso 2, Bogota, Colombia; NIT # 830072066-5 (Colombia) [SDNTK].

PANOS Y SEDAS LTDA. (a.k.a. TELARAMA A Y S), Carrera 9 No. 12-61, Bogota, Colombia; NIT # 830070893-0 (Colombia) [SDNTK].

TELARAMA A Y S (a.k.a. PANOS Y SEDAS LTDA.), Carrera 9 No. 12-61, Bogota, Colombia; NIT # 830070893-0 (Colombia) [SDNTK].

JESSEL Y CIA. S. EN C., Km. 3.5 Autop. Medellin Via Siberia Costado Sur Terminal Terrestre de Carga Bloque 4 Bod. 32, Cota, Cundinamarca, Colombia; NIT # 860522569-9 (Colombia) [SDNTK].

INVARA S.C.S., Carrera 9A No. 12-61 p. 4, Bogota Colombia; NIT # 800162357-0 (Colombia) [SDNTK].

DISCO S.A., Km. 3.5 Autop. Medellin Via Siberia Costado Sur Terminal Terrestre de Carga Bloque 4 Bod. 32, Cota, Cundinamarca, Colombia; NIT # 860517880-9 (Colombia) [SDNTK].

CULTIVAR S.A., Carrera 14 No. 9-04, Fuente de Oro. Meta, Colombia; NIT # 822007334-9 (Colombia) [SDNTK].

COLPRETINAS LTDA. (a.k.a. CP TEXTILES), Carrera 13 No. 17-55, Bogota, Colombia; NIT # 830034149-6 (Colombia) [SDNTK].

CP TEXTILES (a.k.a. COLPRETINAS LTDA.), Carrera 13 No. 17-55, Bogota, Colombia; NIT # 830034149-6 (Colombia) [SDNTK].

BERNAL BERNAL, Lina Maria, c/o T PLUS S.A.S., Cota, Cundinamarca, Colombia; DOB 01 Jul 1984; Cedula No. 52818850 (Colombia) (individual) [SDNTK].

T PLUS S.A.S., Km. 3.5 Autop. Medellin Via Siberia Costado Sur Terminal, Terrestre de Carga Bloque 4 Bod. 32, Cota, Cundinamarca, Colombia; NIT # 900345355-5 (Colombia) [SDNTK].

07/24/12

The following [SDNT] entries have been removed:

CLAVIJO GARCIA, Hector Augusto, c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; DOB 15 Dec 1958; Cedula No. 16613930 (Colombia) (individual) [SDNT].

ZAMBRANO MADRONERO, Carmen Alicia, c/o COSMEPOP, Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o CREDISOL, Bogota, Colombia; c/o DROMARCA Y CIA S.C.S., Bogota, Colombia; c/o FARMACOOP, Bogota, Colombia; c/o GLAJAN S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; DOB 18 Nov 1967; Cedula No. 30738265 (Colombia); Passport 30738265 (individual) [SDNT].

CA VJ CORPORATION LTDA. Calle 166 No. 38-50, Bogota. Colombia; NIT # 830101426-9 (Colombia) [SDNT].

CA VJ. CORPORATION. Avenida 20 (detras del Country Club), Edificio Drcenca Barquisimeto, Lara, Venezuela; Calle 18, Zona Industrial 1, lntercomunal de Cabudare Barquisimeto, Lara, Venezuela; Calle 14, Zona Industrial 1, lntercomunal de Cabudare Barquisimeto, Lara, Venezuela; RIF # J-30460672-9 (Venezuela) [SDNT].

VOL PHARMACYA LTDA. (a.k.a. VOL PHARMACIA LTDA.), Calle 12 No. 8-34/36, Cucuta, Colombia; NIT # 807005617-4 (Colombia) [SDNT].

VOL PHARMACIA LTDA. (a.k.a. VOL PHARMACYA LTDA.). Calle 12 No. 8-34/36, Cucuta, Colombia; NIT # 807005617-4 (Colombia) [SDNT].

TORRES MORENO, Marisol, c/o PROVIDA E.U., Cali, Colombia; DOB 10 May 1969; Cedula No. 31992583 (Colombia), Passport 31992583 (Colombia) (individual) [SDNT].

GALLEGO RAMOS. Luis Alfredo, Calle 83 No. 14-130, Cali, Colombia: c/o INTERCONTINENTAL DE AVIACION S.A., Bogota, Colombia; c/o AEROVIAS ATLANTICO LTDA., Bogota Colombia, c/o AEROCOMERCIAL ALAS DE COLOMBIA LTDA., Bogota. Colombia. c/o GREEN ISLAND S.A., Bogota, Colombia: DOB 07 Aug 1954; POB Cali, Colombia: Cedula No. 16585721 (Colombia); Passport AF783512 (Colombia); alt. Passport AE187469 (Colombia); alt. Passport 16585721 (Colombia) (individual) [SDNT].

RESTREPO CLAVIJO, Carlos Umberto (a.k.a. RESTREPO CLAVIJO, Carlos Huberto; a.k.a. RESTREPO CLAVIJO Carlos Humberto), Calle 8

No. 4-47, Cartago, Valle, Colombia; Cedula No. 16205322 (Colombia) (individual) [SDNT].

RESTREPO CLAVIJO, Carlos Huberto (a.k.a. RESTREPO CLAVIJO, Carlos Humberto; a.k.a. RESTREPO CLAVIJO, Carlos Umberto), Calle 8 No. 4-47, Cartago, Valle, Colombia; Cedula No. 16205322 (Colombia) (individual) [SDNT].

RESTREPO CLAVIJO, Carlos Humberto (a.k.a. RESTREPO CLAVIJO, Carlos Huberto; a.k.a. RESTREPO CLAVIJO, Carlos Umberto), Calle 8 No. 4-47, Cartago, Valle, Colombia; Cedula No. 16205322 (Colombia) (individual) [SDNT].

SANDOVAL SALAZAR, Ricardo, c/o AGROPECUARIA LINDARAJA S.A., Cali., Colombia; c/o TARRITOS S.A., Cali, Colombia; Cedlua No. 16683550 (Colombia) (individual) [SDNT].

RAMIREZ RIVERA, Sergio Alberto, Cali, Colombia; DOB 14 Jan 1964; POB Cali, Colombia; Cedula No. 16694220 (Colombia); Passport AF771317 (Colombia) (individual) [SDNT].

OSPINA PRADA, Mano del Carmen, c/o INVERSIONES INMOBILIARIA QUILICHAO S.A. Y CIA S.C.A, Cali, Colombia; c/o MIRACANA INMOBILIARIA QUILCHAO S.A. & CIA S.C.A., Cali, Colombia; Calle 98 No. 9-41, Apt. 1102, Bogota, Colombia; DOB 04 Jul 1953; POB San Luis, Tolima, Colombia; nationality Colombia; citizen Colombia; Cedula No. 41700627 (Colombia); Passport AH715906 (Colombia); alt. Passport AH456850 (Colombia) (individual) [SDNT].

DOMINGUEZ VELEZ, Jorge Enrique (a.k.a. "EL ONLI") c/o ERA DE LUZ LTDA. LIBRERIA CAFÉ, Cali, Colombia; DOB 09 Aug 1968; Cedula No. 16767305 (Colombia) (individual) [SDNT].

"EL ONLI" (a.k.a. DOMINGUEZ VELEZ, Jorge Enrique), c/o ERA DE LUZ LTDA. LIBRERIA CAFE, Cali, Colombia; DOB 09 Aug 1968; Cedula No. 16767305 (Colombia) (individual) [SDNT].

ERA DE LUZ LTDA. LIBRERIA CAFE, Calle 16 No. 100-98, Cali, Colombia, NIT # 805015908-8 (Colombia) [SDNT].

08/01/12

The following [TCO] entries have been added to OFAC's SDN list:

CATERINO. Mario; DOB 14 Jun 1957; POB Casal di Principe, Italy (individual) [TCO].

DELL'AQUILA. Giuseppe (a.k.a. "PEPPE 'O CIUCCIO") DOB 20 Mar 1962; POB Giugliano, Campania Italy (individual) [TCO].

DI MAURO, Paolo; DOB 19 Oct 1952; POB Naples, Italy (individual) [TCO].

IOVINE. Antonio (a.k.a "O'NINNO"); DOB 20 Sep 1964; POB San Cipriano d'Aversa, Italy (individual) [TCO].

ZAGARIA, Michele (a.k.a. "CAPASTORTA"; a.k.a. "CAPOSTORTA"; a.k.a. "ISS", a.k.a. "MANERA" a.k.a. "ZIO"); DOB 21 May 1958; POB San Cipriano d'Aversa, Italy (individual) [TCO].

"CAPOSTORTA" (a.k.a. ZAGARIA, Michele; a.k.a. "CAPASTORTA"; a.k.a. "ISS"; a.k.a. "MANERA";

a.k a. "ZIO"); DOB 21 May 1958; POB San Cipriano d'Aversa, Italy (individual) [TCO].

"ISS" (a.k.a. ZAGARIA, Michele, a.k.a. "CAPASTORTA"; a.k.a. "CAPOSTORTA"; a.k.a. "MANERA"; a.k.a. "ZIO"); DOB 21 May 1958; POB San Cipriano d'Aversa, Italy (individual) [TCO]

"MANERA" (a.k.a. ZAGARIA, Michele; a.k.a. "CAPASTORTA"; a.k.a. "CAPOSTORTA"; a.k.a. "ISS" a.k.a. "ZIO"): DOB 21 May 1958; POB San Cipriano d'Aversa, Italy (individual) [TCO].

O'NINNO" (a.k.a. IOVINE, Antonio); DOB 20 Sep 1964; POB San Cipriano d'Aversa, Italy (individual) [TCO].

"PEPPE 'O CIUCCIO" (a.k.a. DELL'AQUILA, Giuseppe); DOB 20 Mar 1962; POB Giugliano, Campania, Italy (individual) [TCO].

"ZIO" (a.k.a. ZAGARIA, Michele; a.k.a. "CAPASTORTA", a.k.a. "CAPOSTORTA"; a.k.a. "ISS" a.k.a. "MANERA"); DOB 21 May 1958; POB San Cipriano d'Aversa, Italy (individual) [TCO].

08/07/12

The following [SDGT] entries have been added to OFAC's SDN list:

AL-HARBI, Abu Abdalla (a.k.a. AL-HARBI, Abu Suliman; a.k.a AL-HARBI, Mansur; a.k.a. AL-MAKY, Abu Muslem; a.k.a. ALSBHUA, Azam A.R., a.k.a. ALSBHUA, Azam Abdullah Razeeq Al Mouled; a.k.a AL-SUBHI, Azzam; a.k.a. AL-SUBHI, Azzam Abdullah Zureik Al-Maulid), Afghanistan; Pakistan; DOB 12 Apr 1976; POB Al Baraka, Saudi Arabia; nationality Saudi Arabia;

Passport C389664 issued 15 Sep 2000 expires 15 Sep 2005 (individual) [SDGT].

AL_HARBI, Abu Suliman (a.k.a. Al-HARBI, Abu Abdalla; a.k.a. AL-HARBI, Mansur; a.k.a. AL-MAKY, Abu Muslem; a.k.a ALSBHUA, Azam A.R.; a.k.a. ALSBHUA, Azam Abdullah Razeeq Al Mouled; a.k.a AL-SUBHI, Azzam; a.k.a. AL-SUBHI, Azzam Abdullah Zureik Al-Maulid), Afghanistan; Pakistan; DOB 12 Apr 1976; POB Al Baraka, Saudi Arabia; nationality Saudi Arabia; Passport C389664 issued 15 Sep 2000 expires 15 Sep 2005 (individual) [SDGT].

Affidavit of Piyush Bhatia (Feb. 19, 2013)

PIYUSH BHATIA, being duly sworn, deposes and says:

1. I am Director of Information Security and Risk Management for Dealertrack, Inc. I make this affidavit based on my personal knowledge and I am fully familiar with the facts and processes stated herein.

2. Dealertrack is a Web-based ASP provider of on-demand software and data solutions for the U.S. auto finance industry. It operates as an independent service provider to auto dealers and financing sources to facilitate the communications process between these entities to enable customer financing of auto purchases or leases at dealerships. Among the ways Dealertrack helps in this process is by enabling auto dealers who are under contract with consumer reporting agencies to use Dealertrack's secure Web portal to access consumer reports from those consumer reporting agencies on customers where the dealer has a permissible purpose to do so. In this regard, Dealertrack provides a secure and neutral communications channel for consumer reports to be obtained by dealers directly from consumer reporting agencies through our platform. Dealertrack also provides other products to dealers including a compliance products that provides dealers with tools to comply with certain federal and state laws and regulations including the requirement that customers be checked against the U.S. Treasury Department Office of Foreign Asset Control's ("OFAC") List of Specially Designated Nationals' and Blocked Persons ("SDN List") which is a continually-updated list of

persons with interests adverse to the United States and with whom auto dealers and other U.S. persons are prohibited from doing business.

3. On or about February 27, 2011 at approximately 5:52pm WDT, one of our dealer clients, Dublin Nissan located in Dublin, CA, accessed the Trans Union ("TU") consumer report of the plaintiff, Sergio Ramirez, using Dealertrack as the requesting and transmission platform to obtain the consumer report from TU. Normal authorized Dealertrack dealer user log-in and access procedures were used by the dealer to access this report. A copy of the TU consumer report on Mr. Ramirez is attached as Exhibit A. In performing this service, Dealertrack was not a reseller of the TU consumer report but only provided the delivery mechanism for the report and Dealertrack does not and did not edit or change any of the report's content. The information printed from the Dealertrack secure Website is the full and exact information sent by TU.

4. The TU consumer report indicated on page one that there is an "OFAC Advisor Alert" and that the "input name matches name on the OFAC database." This information was provided directly to the dealer by TU. Dealertrack played no role in the content of the consumer report or the OFAC Advisory Alert contained thereon. We served only as the delivery channel for the dealer to receive the consumer report from TU. Deatertrack keeps its systems and software connecting to TU systems up-to-date for any changes required by TU from time to time.

5. The dealer also used Dealertrack to access a consumer report from Experian. A copy of the

Experian report is attached as Exhibit B. The Experian report states under the category "MESSAGES" at the bottom of page 1 that "Name does not match OFAC/PLC List."

6. The dealer as a subscriber to Dealertrack's Compliance product also ran an OFAC using a function in our Compliance product that allows the subscribing dealer to check a customer's name against names on the SDN List. A copy of the response to this request is attached as Exhibit C. It states at the bottom under "OFAC Verification Results" and "OFAC Detail" that "No match found."

IN WITNESS WHEREOF, I have executed this Affidavit on this the 19th day of February, 2013.

[handwritten: signature]

Piyush Bhatia

* * *

Excerpts from Transcript of Hearing on Motion to Dismiss (Mar. 13, 2013)

* * *

[18] HOW MANY AMONG THOSE 9,000 THEY ACTUALLY SOLD A THIRD-PARTY REPORT FOR.

SO, IN OUR POINT OF VIEW, IF YOU READ -- I DON'T THINK THIS IS THE ONLY WAY TO DO IT, AND I DON'T WANT TO FORECLOSE ANY ARGUMENT THAT WE MIGHT BE ABLE TO MAKE TO CERTIFY A DIFFERENT CLASS, YOUR HONOR. BUT ONE OF THE ARGUMENTS WE'D LIKE TO MAKE IS EXACTLY THE ARGUMENT THAT WAS MADE IN THE THIRD CIRCUIT *CORTEZ* CASE, WHICH IS YOU SOLD A THIRD-PARTY REPORT ABOUT THE PLAINTIFF, AND THEN SHE ASKED FOR HER FILE, AND YOU DIDN'T TELL HER ANYTHING ABOUT OFAC. SO NOW WE KNOW ABOUT THE GROUP OF 9,000 WHERE THEY ASKED FOR THEIR FILE, AND THEY WEREN'T TOLD ANYTHING ABOUT OFAC IN THEIR FILE, BUT WE DON'T KNOW FOR SURE WHETHER EVERY SINGLE ONE OF THOSE PERSONS HAD A REPORT SOLD ABOUT THEM.

THE COURT: ALL RIGHT. SO I GUESS THE QUESTION IS YOUR OPPOSITION SAID YOU SORT OF HAD TO COMPARE THE FILE OF CONSUMER REPORTS SOLD TO THE DISCLOSURES, BUT IT WAS ACTUALLY THE OTHER WAY AROUND. YOU START WITH 9,000 -- ARE YOU TELLING ME YOU CAN'T -- IT'S NOT ELECTRONIC? WAS A CONSUMER REPORT EVER SOLD?

MR. NEWMAN: THIS IS THE ISSUE, AND MR. LYTLE ACTUALLY TESTIFIED QUITE A BIT ABOUT THIS DURING HIS DEPOSITION.

SO, DURING THE PERIOD INITIALLY AFTER *CORTEZ*, TRANS UNION DID NOT HAVE THE ABILITY TO BASICALLY CREATE A [19] COMBINED DISCLOSURE, WHICH IS WHY THE CREDIT REPORT -- THE CREDIT INFORMATION WENT OUT IN ONE PACKAGE. AND THEN THERE IS THIS ADD-ON LETTER THAT WENT OUT. SO WE'VE IDENTIFIED HOW MANY PEOPLE ARE IN THIS SITUATION WHERE, INSTEAD OF GETTING THE INFORMATION IN ONE PACKAGE, THEY GOT IT IN TWO. THAT'S THE (G) CLAIM. YOU KNOW, IS THAT A WILLFUL VIOLATION OF THE STATUTE TO GIVE THE DISCLOSURE IN TWO PACKAGES INSTEAD OF ONE THAT ARE SENT, BASICALLY, CONTEMPORANEOUSLY?

SO THE QUESTION, OF THOSE 9,000, HOW MANY HAD REPORTS SOLD ON THEM? THAT REQUIRES A COUPLE OF THINGS, AND THIS IS WHERE IT GETS TRICKY, NOT EVERYONE WHO BUYS A CREDIT REPORT ALSO BUYS THE OFAC ADD-ON. THERE ARE, YOU KNOW, MANY LENDERS WHO FOR WHATEVER REASON CONDUCT THEIR OWN PATRIOT ACT COMPLIANCE WORK. LIKE -- I DON'T KNOW STANDING HERE TODAY WHETHER CITIBANK BUYS OFAC FROM US OR NOT. I WOULD EXPECT A COMPANY LIKE CITIBANK PROBABLY WOULD NOT. I WOULD IMAGINE THEY HAVE THEIR OWN COMPLIANCE TEAM THAT DOES THAT.

IT'S MORE LIKELY IF YOU'RE A SMALL AUTO DEALERSHIP TO BUY OFAC, BECAUSE YOU DON'T HAVE -- YOU KNOW, BECAUSE YOU'RE A SMALL AUTO DEALER, YOU ARE NOT CITIBANK.

SO, WHAT NEEDS TO BE DONE IS YOU NEED TO GO BACK INTO THOSE 9,000 FILES. YOU NEED TO LOOK AND SEE WHETHER THERE WERE ANY INQUIRIES, YOU KNOW, DURING THAT TIME PERIOD. AND THEN YOU HAVE TO MANUALLY CHECK AGAINST THE SALES RECORDS TO SEE IF OFAC WAS SOLD AGAINST THAT 9,000.

[20] AND, SO, OUR POSITION, IT'S BURDENSOME TO FORCE US TO DO THAT, BECAUSE IT CAN'T BE DONE BY JUST PUSHING A BUTTON. SOMEONE IS GOING TO HAVE TO CHECK EACH OF THOSE 9,000 HISTORIES.

THE COURT: HOW LONG WILL THAT TAKE?

MR. NEWMAN: I DON'T KNOW HOW LONG IT WOULD TAKE --

THE COURT: HOW CAN YOU SAY IT'S BURDENSOME IF YOU DON'T KNOW HOW LONG IT WOULD TAKE?

MR. NEWMAN: IT CAN'T BE DONE BY THE PUSH OF A BUTTON. IT'S GOING TO TAKE A HUMAN BEING TO PULL THE 9,000 REPORTS, YOU KNOW, READ THEM, LOOK FOR THE INQUIRIES. AND THEN AGAINST -- AND THEN AGAINST THOSE, TO THEN GO INTO THE SALES DATA TO FIGURE OUT -- TO FIGURE THAT OUT.

AND MR. LYTLE DID TESTIFY THAT IT WAS A BURDENSOME PROCESS. I DON'T KNOW HOW

LONG IT TAKES ONE PERSON TO DO IT. IF YOUR HONOR WANTS US TO GET A TIME ESTIMATE, A SPECIFIC TIME ESTIMATE, WE'LL GET THAT.

THE COURT: I THINK IT'S TOO LATE. YOU ARE SAYING IT'S BURDENSOME. YOU CAN'T SAY IT'S BURDENSOME UNLESS YOU KNOW HOW LONG IT WOULD TAKE. THAT'S HOW YOU WEIGH IT AND YOU FIGURE OUT IT'S BURDENSOME. I UNDERSTAND IT CAN'T BE DONE INSTANTANEOUSLY; YOU CAN'T JUST RUN A REPORT. BUT JUST BECAUSE YOU CAN'T JUST RUN A REPORT DOESN'T MEAN IT'S DISPROPORTIONATE.

IT IS KIND OF CRITICAL INFORMATION. IT GOES TO THE HEART OF THE CLASS. I MEAN, IT'S TRYING TO FIGURE OUT, [21] ACTUALLY, WHO IS SIMILARLY SITUATED TO MR. RAMIREZ, RIGHT, WHO HAD THE SAME SITUATION. SO IT IS IMPORTANT.

SO I DON'T -- I MEAN, HOW CAN I SAY IT'S BURDENSOME WHEN I DON'T KNOW? I UNDERSTAND SOMEONE HAS TO SIT THERE WITH A LIST. IT'S NINE THOUSAND, NOT NINE MILLION PEOPLE.

ALL RIGHT. LET'S SEE.

THEN THERE WAS INTERROGATORIES WITH RESPECT TO THE FIRST NAME SERGIO, LAST NAME RAMIREZ. WHAT ARE YOU TRYING TO GET AT HERE?

MR. SOUMILAS: YOUR HONOR, WE HAVE THESE INTERROGATORIES, THEN WE SERVED A FOLLOW-UP SET OF INTERROGATORIES THAT

ARE ALSO ATTACHED HERE, AND MORE SPECIFIC, AFTER WE FOUND OUT EXACTLY ALL OF THE POSSIBLE NAME VARIATIONS THAT WOULD RETURN ONE OR TWO OF THESE OFAC RECORDS.

WHAT WE ARE TRYING TO GET AT HERE IS THE ACCURACY CLAIM. THIS IS THE FIRST PART OF THE CLAIM WHERE THE REPORT IS PREPARED IN THE FIRST INSTANCE, THE DEFENDANT, TRANS UNION, MUST FOLLOW PROCEDURES TO ASSURE THAT THE INFORMATION IN THE REPORT ACTUALLY PERTAINS TO THE PERSON WHO IS THE SUBJECT OF THE REPORT.

WHAT WE'VE LEARNED IS THAT THERE IS EXTREMELY LOOSE MATCHING CRITERIA THAT THEY USE TO PLACE THESE ALERTS ON PEOPLE'S REPORTS, EVEN THOUGH IN PREVIOUS CONSENT ORDERS, FOR EXAMPLE, THEY SAID THEY WOULD USE AS MANY AS NINE ITEMS OF PERSONAL IDENTIFYING INFORMATION, INCLUDING SOCIAL SECURITY

* * *

Order re Joint Discovery Dispute Statement
(N.D. Cal. Mar. 13, 2013)

Now pending before the Court is the parties' Joint Statement Regarding a Discovery Dispute (Dkt. No. 66) wherein Plaintiff seeks to compel responses to written discovery and an order directing certain depositions to occur. Having carefully considered the parties' written submissions, and with the benefit of oral argument on March 13, 2013, the Court GRANTS Plaintiff's motion in part and DENIES is it in part.

DISCUSSION

A. Defendant's Request to Stay All Discovery

Defendant requests that the Court stay all discovery in this action pending disposition of the pending motions to dismiss and motion to disqualify counsel and for sanctions (Dkt. Nos. 51 & 52.) As the Court stated at oral argument, it intends to deny both motions. Accordingly, the motion to stay is denied.

B. Depositions

Plaintiff moves to compel four depositions – those of Michael O'Connell, Colleen Gill, and Bharat Acharya, and a Rule 30(b)(6) deposition. Federal Rule of Civil Procedure 30(a)(2)(A)(i) authorizes a party to take up to ten depositions as a matter of course. Plaintiff has taken six depositions and noticed a total of thirteen depositions. Defendant objects as Plaintiff has not sought leave of the court to exceed the ten deposition limit. The Court agrees. At oral argument, Plaintiff identified that the aforementioned four depositions have the highest priority. Accordingly, the parties shall work together to schedule these

depositions as soon as possible. To the extent Plaintiff believes he needs more than 10 depositions, he should seek leave from the Court pursuant to Rule 30.

C. Interrogatories

Plaintiff seeks additional responses regarding interrogatories 2, 4, 5-12, and 15. These interrogatories fall within two general categories: (1) those that seek discovery regarding numerosity, and (2) those that seek information regarding the identities of unnamed class members. Defendant objects to these interrogatories as overbroad and alleges that the interrogatories impermissibly seek certain consumer information, including names and addresses, which it cannot provide under Section 1681b of the FCRA and Section 1785.11 of the CCRAA.

With respect to the interrogatories regarding numerosity (nos. 5, 7, 9, and 11), the interrogatories seek total figures relevant to Plaintiff's proposed classes (*see* Dkt. No. 1, ¶¶ 79-81). Specifically, Plaintiff seeks information regarding the number of individuals for whom Defendant sold a consumer report which included an Office of Foreign Asset Control (OFAC) record in the United States or California, and to whom Defendant sent a file disclosure such as the one sent to Plaintiff on February 28, 2011 from February 9, 2010. (Dkt. No. 66-2, Interrogatories 5 & 7.) Plaintiff seeks similar information regarding individuals with the first name "Sergio" and the last name "Ramirez." (Dkt. No. 66-2, Interrogatories 9 & 11.) Defendant objects to providing this information as overly burdensome because it would have to manually compare the records regarding those consumers for whom a

consumer report was sold against its records regarding consumers to whom Defendant sent a file disclosure. Under the proportionality analysis called for by Federal Rule of Civil Procedure 26 the Court must weigh Plaintiff's need for this information against the burden on Defendant of providing this discovery. Here, although Defendant has asserted burden, it has not offered any evidence regarding the burden in terms of cost or hours; indeed, at oral argument Defendant conceded it did not know how long it would take to compile the requested information. Plaintiff, on the other hand, contends that this information is crucial to establishing numerosity and identifying those class members most similarly situated to Plaintiff. Given Plaintiff's need for this information and in the absence of evidence regarding any specific burden, the Court grants Plaintiff's request to compel responses to these interrogatories.

Interrogatory Nos. 2, 4, 6, 8, 10, and 12 seek information regarding absent class members. "While the putative class members have a legally protected interest in the privacy of their contact information and a reasonable expectation of privacy the [contact] information sought by Plaintiff is not particularly sensitive." *Artis v. Deere & Co.*, No. 10-5289, 2011 WL 2580621, at *4 (N.D. Cal. Jun. 29, 2011); *see also In re Autozone Wage & Hour Empl. Practices Litig.*, No. 10-md-02159 , 2011 U.S. Dist. LEXIS 132973, at *4-5 (N.D. Cal. Nov. 17, 2011) (finding that disclosure of names and addresses of putative class members was not such an invasion of privacy as to warrant an opt-out procedure). The Court is not persuaded by Defendant's argument that it is prohibited from

providing this information by Section 1681b of the FCRA and Section 1785.11 of the CCRAA as those provisions allow production of the information pursuant to a court order. Accordingly, Defendant shall provide names and addresses, but not telephone numbers, in response to these interrogatories. As discussed at oral argument, Plaintiff must obtain advance permission from the Court prior to sending any communication to the absent class members.

Although Plaintiff groups Interrogatory 15 with the foregoing, it appears to raise an additional issue. It seeks "every communication and every person who, within the previous five years contacted you to question or dispute the erroneous inclusion of an OFAC alter on their consumer report." (Dkt. No. 66-2.) Defendant objects to the Interrogatory as overbroad and failing to seek information relevant to this case as Plaintiff does not claim that Defendant failed to properly handle his request to remove OFAC information. Plaintiff asserts this information is relevant because these individuals interacted with Defendant in the same way as Plaintiff, and "presumably received the same form letters." As was highlighted at oral argument, there is a dispute as to what Plaintiff's experience with Defendant was and whether his experience was typical. The experiences of others who like Plaintiff complained about the OFAC alert may be relevant to class certification. Accordingly, Defendant shall respond to Interrogatory 15 as well.

D. Requests for the Production of Documents

Plaintiff seeks confirmation that Defendant has produced all documents (responsive to requests 18, 19, 22, 24, 26, and 27) concerning the policy and procedure changes that it made after the Third Circuit's decision in *Cortez v. Trans Union* concerning the communication of OFAC data to third parties and documents reflecting how this information was conveyed to subscribers. Defendant shall review its production and produce any additional responsive documents or confirm that it has produced all such documents. Defendant is not entitled to produce what it believes is "enough" for the purposes of class certification.

CONCLUSION

Based on the foregoing, Plaintiff's request to compel certain discovery is GRANTED in part and DENIED in part. The parties shall meet and confer to develop a schedule for production of the discovery ordered.

IT IS SO ORDERED.

Dated: March 13, 2013

[handwritten: signature]
JACQUELINE SCOTT CORLEY
United States Magistrate Judge

Trans Union Supplemental Responses to First Set of Interrogatories (July 18, 2013)

Pursuant to Federal Rule of Civil Procedure 33, defendant Trans Union LLC ("Trans Union") hereby supplements certain of its responses to the First Set of Interrogatories (the "Interrogatories") propounded by plaintiff Sergio L. Ramirez ("Plaintiff") as follows:

PRELIMINARY STATEMENT

Trans Union responds to the Interrogatories based upon the Court's Order re: Joint Discovery Dispute Statement dated March 13, 2013 (the "Order"), and the investigation conducted in the time available since service of the Interrogatories. As of the date of these responses, Trans Union has had an insufficient opportunity to review all documents, interview all personnel and otherwise obtain information that may prove relevant in this case, including, without limitation, through discovery of Plaintiff and/or third parties. As a consequence, these responses are based upon information now known to Trans Union and that Trans Union believes to be relevant to the subject matter covered by the Interrogatories. In the future, Trans Union may discover or acquire additional information, or may discover information currently in its possession, bearing upon the Interrogatories and these responses thereto. Without in any way obligating itself to do so, Trans Union reserves the right: (a) to make subsequent revisions, supplementation or amendment to these responses based upon any information, evidence, documents, facts and things that hereafter may be discovered, or the relevance of which may hereafter be discovered; and (b) to introduce or rely

upon additional or subsequently acquired or discovered evidence and information at trial or in any pretrial proceedings held herein. Any and all information set forth herein is provided subject to the Protective Order entered by the Court on September 4, 2012. Trans Union incorporates this Preliminary Statement into each response herein as if fully set forth.

GENERAL OBJECTIONS

1. Trans Union objects to the Interrogatories to the extent that they seek to impose burdens on Trans Union that are inconsistent with, or in addition to, Trans Union's discovery obligations pursuant to the Federal Rules of Civil Procedure and the Local Rules of this Court. Trans Union will respond consistent with its discovery obligations pursuant to the Federal Rules of Civil Procedure and the Local Rules of this Court.

2. Trans Union objects to the Interrogatories to the extent that they seek to impose on Trans Union the obligation to identify facts that are not known to Trans Union or Trans Union's personnel. Trans Union will not undertake to ascertain facts that are not reasonably within Trans Union's knowledge and control.

3. Trans Union objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine or any other privilege or immunity. Trans Union will not provide information that is subject to any such privilege or protection.

4. Trans Union objects to the Interrogatories to the extent that they seek confidential, proprietary business information that belongs to Trans Union.

5. Trans Union objects to the Interrogatories to the extent that they are not limited to a time period relevant or even proximate to the events at issue in this action.

6. Trans Union objects to the Interrogatories to the extent that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action.

7. Trans Union objects to the Interrogatories to the extent that they are vague and ambiguous.

8. Trans Union objects to the Interrogatories to the extent that they are overbroad, unduly burdensome and harassing.

9. Trans Union objects to the Interrogatories to the extent they are improper prior to class certification.

10. Any information produced by Trans Union in response to the Interrogatories is subject to all objections as to competence, relevance, materiality and admissibility, as well as to any other objections on any grounds that would require the exclusion thereof if such information were offered into evidence, and Trans Union expressly reserves all such objections and such grounds.

11. Figures presented in these responses are approximations based upon such data as is reasonably accessible as of the date of these responses. Trans Union has performed further analysis since August 2012, when the first responses were served. These

responses are intended to supersede those prior responses, and Plaintiff should not rely upon the prior responses. Trans Union believes that these responses are as complete as Trans Union can provide based upon reasonably accessible data. The responses also focus on the 2010 and 2011 calendar years, which was critical to allow the responses to be delivered in a reasonable amount of time. All addresses listed in these responses are last-known addresses based on Trans Union's records.

12. Trans Union incorporates these general objections into each response herein as if fully set forth. Without waiving any of the foregoing objections, all of which are incorporated by reference in the responses below, Trans Union specifically responds to the Interrogatories as follows:

SPECIFIC RESPONSES

INTERROGATORY NO.1:

State the number of natural persons in the State of California to whom Defendant has sent the type of letter substantially similar in form to the one Plaintiff received from Defendant's Woodlyn, Pennsylvania facility dated March 1, 2011, "Regarding: OFAC (Office of Foreign Assets Control) Database (produced as Ramirez 7 in this matter) from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 1:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; and (iii) it seeks confidential, proprietary business information that belongs to Trans Union.

Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Approximately 1,518, based on unique social security numbers. For purposes of this response, Trans Union analyzed only the population of consumers who requested a file disclosure and received the OF AC letter, as this was the only data that was reasonably accessible as of the date of this response. Although the Order does not require Trans Union to supplement this response, it appears that the number of unique consumers was overstated in the prior response because the prior response was based on data relating to the number of OF AC letters requested to be generated, and some consumers received the OF AC letter more than once.

INTERROGATORY NO. 2:

Identify by name and address the persons who comprise your response to Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 2:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union, pursuant to pp. 4-5 of the Order, responds to this Interrogatory as follows: See list attached hereto as Exhibit "A."

INTERROGATORY NO. 3:

State the number of natural persons in the United States to whom Defendant has sent the type of letter substantially similar in form to the one Plaintiff received from Defendant's Woodlyn, Pennsylvania facility dated March 1, 2011, "Regarding: OFAC (Office of Foreign Assets Control) Database (produced as Ramirez 7 in this matter) from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 3:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; and (iii) it seeks confidential, proprietary business information that belongs to Trans Union. Without waiving and subject to, these objections and the General Objections, Trans Union responds to this Interrogatory as follows: Approximately 8,192, based on unique social security numbers. For purposes of this response, Trans Union only analyzed the population of consumers who requested a file disclosure and received the OF AC letter, as this was the only data that was reasonably accessible as of the date of this response. Although the Order does not require Trans Union to supplement this response, it appears that the number of unique consumers was overstated in the prior response because the prior response was based on data relating to the number of OF AC letters requested to be generated, and some consumers received the OF AC letter more than once.

INTERROGATORY NO. 4:

Identify by name and address the persons who comprise your response to Interrogatory No. 3.

RESPONSE TO INTERROGATORY NO. 4:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union, pursuant to pp. 4-5 of the Order, responds to this Interrogatory as follows: see list attached hereto as Exhibit "B."

INTERROGATORY NO. 5:

State the number of natural persons in the State of California who had a consumer report sold about them by Trans Union, which included any OF AC record, and to whom Defendant subsequently sent a file disclosure substantially similar in form to the February 28, 2011 file disclosure from Defendant to Plaintiff, (produced as Ramirez 1-6 in this matter) from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 5:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; and (iii) it seeks confidential, proprietary business information that belongs to Trans Union. Without waiving and subject to, these objections and the General Objections, Trans Union, pursuant to pp. 2-3 of the Order, responds to this Interrogatory as

follows: Approximately 156, based on unique social security numbers. Trans Union arrived at this figure by determining how many individuals listed in the Response to Interrogatory No. **1** had an inquiry logged to a billing table, where OFAC data was requested and resulted in delivery of data.

INTERROGATORY NO. 6:

Identify by name and address the persons who comprise your response to Interrogatory No. 5.

RESPONSE TO INTERROGATORY NO. 6:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union, pursuant to pp. 3-4 of the Order, responds to this Interrogatory as follows: see list attached hereto as Exhibit "C."

INTERROGATORY NO. 7:

State the number of natural persons in the United States who had a consumer report sold about them by Trans Union, which included any OF AC record, and to whom Defendant subsequently sent a file disclosure substantially similar in form to the February 28, 2011 file disclosure from Defendant to Plaintiff, (produced

as Ramirez 1-6 in this matter) from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 7:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; and (iii) it seeks confidential, proprietary business information that belongs to Trans Union. Without waiving and subject to, these objections and the General Objections, Trans Union, pursuant to pp. 3-4 of the Order, responds to this Interrogatory as follows: Approximately 1,853, based on unique social security numbers. Trans Union arrived at this figure by determining how many individuals listed in the Response to Interrogatory No. 3 had an inquiry logged to a billing table, where OF AC data was requested and resulted in delivery of data.

INTERROGATORY NO. 8:

Identify by name and address the persons who comprise your response to Interrogatory No. 7.

RESPONSE TO INTERROGATORY NO. 8:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans

Union, pursuant to pp. 2-3 of the Order, responds to this Interrogatory as follows: see list attached hereto as Exhibit "D."

INTERROGATORY NO. 9:

State the number of natural persons in the State of California with the first name "Sergio" and the last name "Ramirez" who had a consumer report sold about them by Trans Union which included an OF AC record substantially similar in form to that OF AC record that Trans Union placed upon Plaintiff's consumer report sold to Dublin Nissan on February 27, 2011 from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 9:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks confidential, proprietary business information that belongs to Trans Union; and (iv) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union, pursuant to pp. 2-3 of the Order, responds to this Interrogatory as follows: None, except for Plaintiff in this litigation. For purposes of this response, Trans Union analyzed only the population of consumers who requested a file disclosure and received the OF AC letter, as this was the only data that was reasonably accessible as of the date of this response.

INTERROGATORY NO. 10:

Identify by name and address the persons who comprise your response to Interrogatory No. 9.

RESPONSE TO INTERROGATORY NO. 10:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union, pursuant to pp. 3-4 of the Order, responds to this Interrogatory as follows: None, except for Plaintiff in this litigation. For purposes of this response, Trans Union analyzed only the population of consumers who requested a file disclosure and received the OFAC letter, as this was the only data that was reasonably accessible as of the date of this response.

INTERROGATORY NO. 11:

State the number of natural persons in the United with the first name "Sergio" and the last name "Ramirez" who had a consumer report sold about them by Trans Union which included an OF AC record substantially similar in form to that OF AC record that Trans Union placed upon Plaintiff's consumer report sold to Dublin Nissan on February 27, 2011 from February 9, 2010 through the present.

RESPONSE TO INTERROGATORY NO. 11:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks confidential, proprietary

business information that belongs to Trans Union; and (iv) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union, pursuant to pp. 2-3 of the Order, responds to this Interrogatory as follows: None, except for Plaintiff in this litigation. For purposes of this response, Trans Union analyzed only the population of consumers who requested a file disclosure and received the OF AC letter, as this was the only data that was reasonably accessible as of the date of this response.

INTERROGATORY NO. 12:

Identify by name and address the persons who comprise your response to Interrogatory No. 11.

RESPONSE TO INTERROGATORY NO. 12:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) there is no permissible purpose for disclosure under 15 U.S.C. § 1681b; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union, pursuant to pp. 3-4 of the Order, responds to this Interrogatory as follows: None, except for Plaintiff in this litigation. For purposes of this response, Trans Union analyzed only the population of consumers who requested a file disclosure and received the OF AC letter, as this was the only data that was reasonably accessible as of the date of this response.

INTERROGATORY NO. 15:

Identify every communication and every person who, within the previous five years contacted you to question or dispute the erroneous inclusion on an OFAC alert on their consumer report.

RESPONSE TO INTERROGATORY NO. 15:

Trans Union objects to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action because no reinvestigation or dispute claim is asserted; (iv) it seeks confidential, proprietary business information that belongs to Trans Union; (v) it seeks information in which non-parties have a legitimate expectation and/or right of privacy; and (vi) it is an improper request prior to class certification. Without waiving and subject to, these objections and the General Objections, Trans Union, pursuant top. 4 of the Order, responds to this Interrogatory as follows: see list attached hereto as Exhibit "E." For purposes of this response, Trans Union analyzed only the population of consumers who requested a file disclosure and received the OFAC letter, as this was the only data that was reasonably accessible as of the date of this response. For each consumer who communicated a dispute to Trans Union, OF AC data was no longer returned following the communication.

Dated: July 18, 2013

STROOCK & STROOCK & LAVAN LLP

* * *

Excerpts from Michael O'Connell Deposition (Dec. 13, 2013)

[59] the information is correctly associated with the right consumer, correct?

A. To match to our files, to match to our consumer files.

Q. Right.

Meaning that what you're trying to do is you're trying to get the public record that actually belongs to that consumer on their actual credit report, correct?

A. Credit file.

Q. You are not trying to get somebody else's public record onto the wrong consumer's file, right?

A. Yes.

Q. Okay. What are you doing to ensure that you are providing name matches with respect to people that are actually on the list as opposed to simply producing false positives?

MR. NEWMAN: Objection. Argumentative. Misstates testimony.

Go ahead.

THE WITNESS: Leverage a software application design for regulatory purposes, the OFAC matching.

BY MR. GORSKI:

Q. So nuts and bolts, what are you doing to [60] ensure it other than name matching?

MR. NEWMAN: Objection. Vague.

THE WITNESS: Nothing.

BY MR. GORSKI:

Q. And you agree that name matching only would be inappropriate for every other piece of credit data that appears on a consumer's Trans Union credit report?

MR. NEWMAN: Objection.

THE WITNESS: Yes.

MR. NEWMAN: We've been going for about an hour. Should we take a break?

MR. GORSKI: Sure. Let's take a 5-10 minute break.

THE VIDEOGRAPHER: The time is now 10:06 a.m. We are now going off the record.

(A short break was taken.)

THE VIDEOGRAPHER: The time is now 10:18 a.m., and we are now back on the record.

* * *

[62] Q. Okay. Since the inception of the product, [63] has any data been presented to you that confirms that any of the name matches Trans Union has ever sold to a customer was actually a person on the OFAC list?

MR. NEWMAN: Objection.

THE WITNESS: No.

BY MR. GORSKI:

Q. So you've never been presented with any data that Trans Union has ever sold an OFAC add-on where the match was, in fact, a person on the OFAC list?

A. No.

MR. NEWMAN: Objection.

BY MR. GORSKI:

Q. Have you been presented with data since the inception of the product through the current date that shows that the matches that have been provided in connection with the sale of the product are false positives?

MR. NEWMAN: Objection. Argumentative.

Go ahead.

THE WITNESS: Not that I recall.

BY MR. GORSKI:

Q. Are you saylng you never seen any reports at all that memorializes that false positives are

* * *

[66] on a consumer that applies for a credit application.

BY MR. GORSKI:

Q. Even if they are on an OFAC list?

MR. NEWMAN: Objection.

Go ahead.

THE WITNESS: We wouldn't know.

BY MR. GORSKI:

Q. Well, you sell an OFAC add-on product, right?

A. Yes.

Q. Okay. So when the OFAC comes back with a match or a possible match, as you described it, what does Trans Union do to determine whether or not that person is actually the person on the OFAC list?

MR. NEWMAN: Objection. Argumentative.

Foundation. Go ahead.

THE WITNESS: That's not our role in the regulatory process.

BY MR. GORSKI:

Q. When you say that's not your role, Trans Union doesn't do anything?

MR. NEWMAN: Objection. Misstates testimony. Go ahead.

[67] **THE WITNESS**: Yes.

BY MR. GORSKI:

Q. So when a possible match is returned by Trans Union, Trans Union doesn't do anything on its own to consider whether or not that person is actually on the OFAC list or not and does nothing to prohibit the sale of that credit report in the future?

A. Yes.

Q. So as far as Trans Union is concerned, they could be selling a credit report about a person on the OFAC list. It doesn't matter to them.

MR. NEWMAN: Objection.

THE WITNESS: I didn't say that.

BY MR. GORSKI:

Q. Well, if it does matter, what are you doing to determine whether or not the person is actually on the OFAC list yourself?

MR. NEWMAN: Objection. Argumentative. Misstates testimony. Foundation.

THE WITNESS: There is nothing for us to do on that.

BY MR. GORSKI:

Q. Well, I guess what I'm saylng, again, does

* * *

[190] business needs. So we are reconsidering it ourselves, yes.

BY MR. GORSKI:

Q. So if I understand you correctly, Accuity does have a software product that is capable of doing multi-input matching, correct?

A. They do now.

Q. Right.

And they've had it for some time, correct?

A. I don't know how long they've had it.

Q. From my knowledge of prior depositions of Accuity, that product has been available for a couple years now?

MR. NEWMAN: Objection.

THE WITNESS: No.

BY MR. GORSKI:

Q. No?

A. No.

Q. Okay. What's your estimation of how long it's been available for?

A. We became aware of it this year.

Q. So sometime this year you became aware of it?

A. Yes.

Q. Okay. And you just said that there was -- [191] it wasn't feasible for you guys to use the new software that would have multi-level matching?

A. Yes.

Q. And what was the infeasibility of it?

A. It was a greater degree of fuzzy scoring matching functionality was one factor of why it wasn't appropriate for us to use.

Q. Give me that one more time. The degree of fuzzy matching --

A. The complexity of the --

Q. -- acceptable?

A. Correct.

Q. What does that mean in layman's term when the degree of fuzzy matching isn't acceptable?

A. They produced a software with a more complex matching criteria that we didn't feel was workable for us.

Q. When you say it's not workable, why wasn't it workable in layman's terms?

A. We didn't want to utilize all the aspects of that point scoring matching that they had which created also inconsistencies in the way clients would potentially experience those.

Q. Would it have lowered the number of false positives?

[192] A. No.

Q. You are saying it wouldn't lower the number of false positives at all?

A. No.

Q. Even though it was using multi-level matching?

A. Yes.

Q. So can you explain to me how is not trying to match for date of birth that appears on an OFAC list not improving false positives from occurring?

A. Because it's just one part of an overall matching program.

Q. Well, when you say that's "just one part," I guess I'm not following you. If you have a name match -- correct? -- and you also are able to then query whether the consumer's date of birth matches the date of birth on the OFAC list and that software is capable of making the determination that although there is a name match, their date of birth do not match, how is that not improving in terms of reducing false positives?

MR. NEWMAN: Objection. Incomplete hypothetical. Misstates testimony.

THE WITNESS: Because of the overall algorithm, matching algorithm and all the changes related to [193] the way they do their matching, it would not reduce the potential matches.

BY MR. GORSKI:

Q. So you are saying it just -- it's saying it can do something, but it's really not doing what it says it can do?

A. No, that's not what I said.

MR. NEWMAN: I do need a bathroom break, and I don't want to -- I know you have momentum here and you're sort of --

MR. GORSKI: Let's take a break. Let's take a five-minute break.

THE VIDEOGRAPHER: The time is 1:43 p.m., and we are now going off the record. This is the end of tape two.

(A short break was taken.)

THE VIDEOGRAPHER: The time is now 1:53 p.m. and we are now back on the record. This is the beginning of tape three.

MR. NEWMAN: The witness may have a clarification on an earlier question.

Is there something you feel you need to supplement?

THE WITNESS: It occurred it me after we moved past the a/k/a what else that potentially would be. [194] There are a/k/a's that are actually contained in the government list. So you've got a/k/a's that are actually a part of the government OFAC list. You've got aliases, whether you call them synonyms or a/k/a's that Accuity creates based on the government list, and then we have a/k/a's that are a part of our own credit file. The a/k/a they are referring to here is off the government, the government includes a/k/a as a part of that record, which the Accuity software may create the matching to.

BY MR. GORSKI:

Q. Okay. Speculating or you know?

A. I don't know for a fact, but I believe that that is what they are probably referring to here. But I don't know for a fact what they are referring to.

Q. So you are guessing?

A. I'm not -- little more than guessing. I believe that that is what this is, but I don't know for sure. Anyway, it just occurred to me so I asked if I should bring it up.

Q. Let me clarify. To the extent it's not a guess, what you mean is that this proposal would be to eliminate a name match with respect to matches [195] that are between the input data and an a/k/a that is on the OFAC list itself?

A. A weak a/k/a based on whatever --

Q. But you don't know what a weak a/k/a means?

A. I do not.

Q. Let's just try to wrap up the date of birth discussion we were having before we took a break, and we were talking about Acuity's next generation matching software that Trans Union has rejected at this point. And you were talking about how it was not going to improve a reduction -- it was not going to improve a reduction -- it was not going to result in a reduction of the hit rate.

A. Correct.

Q. Okay. And I was asking you to explain to me how it was that the use of multi-level matching was not going to reduce the hit rate, and could you give me that answer again?

A. To the extent of my knowledge of the OFAC software and the way it works and the way we looked at it, it did not -- because of the point scoring, it wasn't the same completely different matching from what the software does today. In aggregate, based on the complexity of the new point scoring [196] match algorithm, we did not feel it would provide us with a

consistent and definable explanation of how matches occur or reduce the hit rate based on how it's used. That's about as good as I can.

BY MR. GORSKI:

Q. Now, it seems to me that if you are going to go exact name match plus date of birth, you are going to reduce the rate. So these next -- are you saying that this new software that Accuity is using is not specifically doing an algorithm where it will engage in the exact name match followed by a secondary query to call anybody who doesn't match a date of birth?

A. Yeah, it's not --

Q. It's not --

A. -- simple as that.

Q. Okay. And as such, because it's your understanding it's not doing that, you've discarded it?

A. That, amongst other factors related to the software.

MR. GORSKI: Let's mark this as nine.

(Whereupon, O'CONNELL Deposition Exhibit 9 was marked for identification.)

Declaration of P. Turek in Support of Opposition to Motion for Class Certification (May 22, 2014)

I, PETER TUREK, hereby declare and state as follows ·

1. I am an employee of Trans Union LLC ("TransUnion"). I am an Automotive Vice President and have held this position for approximately 6 years. I have worked for TransUnion for approximately 26 years. I submit this Declaration in support of TransUnion's Opposition to Plaintiff's Motion for Class Certification (the "Opposition"). Except where based upon my review of records and documents regularly created and maintained in TransUmon's ordinary course of business, all of the matters set forth herein are of my own personal knowledge and, if called as a wimess, I could and would competently testify thereto.

2. I am familiar with TransUnion's and Open Dealer Exchange's ("ODE") obligations pursuant to TransUnion's agreement with ODE.

3. ODE, which purchases OFAC Name Screen data from TransUnion to resell to third-party end users, is required to confirm with its customers and otain written confirmation that no transaction will be denied and that no "adverse action" will be taken "against any consumer based solely on" potentially matching OFAC Name Screen data. Attached hereto as Exhibit A is a true and correct copy of the OFAC Advisor Amendment to Reseller Agreement between TransUnion and ODE, dated June 30, 2010.

4. In February 2011, after TransUnion sent potentially matching OFAC Name Screen data

regardmg plaintiff Sergio Rannrez ("Plaintiff") to ODE, TransUnion had no way to determine how the data would actually appear at the level of the third-party end user (here, the Dublin Nissan auto dealership). As stated above, resellers such as ODE and third-party end users have agreements describing their responsibilities which limit the use of the information they receive from TransUnion. Other than the allegations in the present litigation, I am not aware of any complaints or reports of instances after the *Cortez* appeals court ruling in 2010 ("*Cortez*") of TransUnion-furnished data being reported where the OFAC Name Screen output would advise of a "match" rather than a "potential match" when a potential match is found on a name m the OFAC database. I am in a position where such information would be brought to my attention.

5. I was provided by counsel with the Affidavit of Piyush Bhatia of Dealertrack, Inc. (the "Dealertrack Affidavit"), which attaches what Plaintiff claims to be TransUnion credit report (the "Nissan Credit Report"). A copy of the Dealertrack Affidavit is attached hereto as Exhibit B. Based on my review of TransUnion's records, I have no reason to believe that, post-*Cortez*, anyone other than the Dublin Nissan dealership on this occasion received TransUnion credit reports m the same format as the Nissan Credit Report.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this [handwritten: 23] day of April 2014, at Chicago, Illinois.

[handwritten: signature]
PETER TUREK

Excerpts from Transcript of Hearing on Motion for Class Certification (May 29, 2014)

[2] **THE CLERK:** We're calling Case No. C 12-632, Ramirez versus TransUnion.

Counsel, first in the courtroom, please state your appearances.

MR. SOUMILAS: Good morning, Your Honor. John Soumilas for the plaintiff, Mr. Ramirez. James Francis of my firm is also here with me today, representing the plaintiff.

THE COURT: Good morning.

MR. FRANCIS: Good morning, Your Honor.

MR. NEWMAN: Good morning, Your Honor. Stephen Newman for defendant TransUnion. With me is my colleague, Jason Yoo.

THE COURT: Good morning.

All right. So this is on for the motion for class certification. And my first question is, What is the definition of the class? Because it wasn't clear to me from your papers. There was some confusion, at least at my end, as to the dates.

MR. SOUMILAS: Your Honor, the class period for this class is from January 2011 until late July 2011. It --

THE COURT: For all three claims? Well, by "three," I mean there's the two disclosure and then there's the accuracy claim. And there's the federal and the state for each of those.

[3] **MR. SOUMILAS:** Precisely, Your Honor. So there are alternative claims -- not alternative, multiple claims for relief but the class is the same. The

national class is 8,192 people who received certain documentation from TransUnion; that is, Exhibits 13 and 14 to our motion for class certification.

THE COURT: Okay. So I am just going to stop you. The reason I asked you is, on page 1 of your motion it talks about the class receiving a letter from February 9, 2010, through the present.

MR. SOUMILAS: Your Honor, the reason why I believe the definition is as such is because there's a two-year statute of limitations that we tried to incorporate into the definition. But discovery has shown that these letters that form the basis of identifying who's in the class were between January 2011 and July 2011.

THE COURT: All right. So on your motion when you say you're seeking an order certifying class consisting of the following people, it should actually say who received a letter in the form similar to the letter Mr. Ramirez received from January whatever, 2011, through July 2011?

MR. SOUMILAS: I think, Your Honor, that is correct, and it's consistent with discovery. If I'm looking at the same page as Your Honor, we say received a similar letter to Mr. Ramirez from March 1, 2011. Uhm.

[4] **THE COURT:** No, says "from February 9, 2010, to the present."

You can see where my confusion came from.

MR. SOUMILAS: I do see that, Your Honor.

THE COURT: But I understood the substance of your motion to be that you were limiting it to the six-month period.

MR. SOUMILAS: That is an incorrect date, Your Honor, only insomuch as discovery has shown that this letter was provided between January 2011 and July 2011.

THE COURT: Okay. All right. So that's actually -- and that's the 8,000-plus class.

MR. SOUMILAS: Yes. And that is the national class of 8,192, 1,518 of which -- 1,518 of which are California residents.

THE COURT: Okay. All right. And then, as I also understand, then there are what I'll call three claims. There's the federal and then the state counterpart, which the first is the failure to disclose the complete file, the 1681g(a). And then its state counterpart, the 1681g(c), is the failure to provide the summary of rights. And then the third is the 1681e(b), the inaccurate reports. Those are the three claims that you're seeking to certify.

MR. SOUMILAS: That is correct, Your Honor, and that is for the same class.

THE COURT: The same class. All right.

* * *

Order Granting in Part and Denying in Part Plaintiff's Motion to Certify Class (N.D. Cal. July 24, 2014)

This lawsuit arises out of Defendant Trans Union, LLC's identification of Plaintiff Sergio L. Ramirez as potentially matching the name of a person on the United States government's list of terrorists, drug traffickers, and others with whom persons in the United States are prohibited from doing business. Plaintiff contends that Defendant, a credit reporting agency, violated federal and California fair credit reporting laws by failing to provide proper disclosures and to ensure "maximum possible accuracy" of its credit reports. Plaintiff seeks to recover statutory and punitive damages on behalf of himself and a putative nationwide class under federal law, and statutory punitive damages and injunctive relief under California law for a California sub-class. Now pending before the Court is Plaintiff's motion for class certification. (Dkt. No. 122.) Upon consideration of the parties' submissions and the arguments of counsel at the hearing held on May 29, 2014, as well as the parties' post-hearing written submissions, Plaintiff's class certification motion is GRANTED as to the federal claims and denied as to the state claims seeking punitive damages.

FACTUAL BACKGROUND

I. The OFAC List

The United States Treasury Department's Office of Foreign Assets Control ("OFAC") "administers and enforces economic trade sanctions based on U.S. foreign policy and national security goals against threats to national security, foreign policy or economy

of the United States." *Cortez v. Trans Union LLC*, 617 F.3d 688, 696 (3d Cir. 2010). OFAC directs those sanctions at, among others, "individuals thought to be terrorists, international narcotics traffickers, as well as persons involved in activities related to the proliferation of 'weapons of mass destruction.'" *Id.* (citation omitted). To this end, OFAC publishes a list of individuals, such as terrorists and narcotics traffickers, who persons in the United States are generally prohibited from doing business with, including the extension of credit ("the OFAC List"). *Id.* at 696, 702 (citations omitted). A failure to comply with the OFAC restrictions, that is, doing business with a person on the OFAC List, "may result in civil as well as criminal penalties." *Id.* at 702; *see also* 31 C.F.R. § 501 App. A, II (Types of Responses to Apparent Violations). To determine the appropriate response to an apparent violation, OFAC considers a number of factors. *See* 31 C.F.R. § 501 App. A, III (General Factors Affecting Administrative Action). Among these is "the existence, nature and adequacy of a [company's] risk-based OFAC compliance program at the time of the apparent violation." *Id.*, III (F).

II. Trans Union's OFAC Product

Trans Union is a consumer credit reporting agency that sells consumer credit reports to financial institutions, debt collectors, insurers, and others. To accommodate its customers' need to avoid doing business with persons on the OFAC List, Trans Union offers a product variously known as an "OFAC Advisor," "OFAC Alert," or "OFAC Name Screen" as an add-on to traditional credit reports. Trans Union does not maintain the OFAC List data itself; instead,

it contracts with a third party to provide the data. It then uses only the consumer's first and last name to search the OFAC List data, even if Trans Union possesses additional identifying information, such as birth date or address.

When the computerized search logic returns a name match, Trans Union automatically places an OFAC Alert on the consumer report provided to the customer without any further investigation or confirmation. Trans Union advises its customers, however, that it "shall not deny or otherwise take any adverse action against any consumer based solely on Trans Union's OFAC Advisor service." (Dkt. No. 119-42 (internal quotation marks omitted).) Indeed, Trans Union's OFAC terms of service provides:

> Client further certifies that in the event that a consumer's name matches a name contained in the information, it will contact the appropriate government agency for confirmation and instructions. Client understands that a "match" may or may not apply to the consumer whose eligibility is being considered by Client, and that in the event of a match, Client should not take any immediate adverse action in whole or in part until Client has made such further investigations as may be necessary (i.e., required by law) or appropriate (including consulting with its legal or other advisors regarding Client's legal obligations).

(Dkt. No. 119-21 at 42.)

III. Plaintiff's Trans Union OFAC Alert

Plaintiff Ramirez and his wife visited a Nissan dealership on February 27, 2011 to purchase on car on credit. They completed a credit application with each's name, address, social security number, and date of birth, among other identifying information. The dealer used the information to obtain a Trans Union consumer credit report for Plaintiff and his wife through a third-party vendor, Dealertrack. The report provided to the dealer included on the first page right underneath Plaintiff's identifying information the following:

SPECIAL MESSAGES

***OFAC ADVISOR ALERT—INPUT NAME MATCHES NAME ON THE OFAC DATABASE:

> UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/O ADMINISTRADORA DE INMUEBLES VIDA, S.A. DE C.V. TIJUANA, MEXICO AFF: SDNTK DOB: 11/22/1951
>
> Original Source:***

***OFAC ADVISOR ALERT—INPUT NAME MATCHES NAME ON THE OFAC DATABASE:

OFAC Original ID: 7176***

***OFAC ADVISOR ALERT—INPUT NAME MATCHES NAME ON THE OFAC DATABASE:

UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/O DISTRIBUIDORA IMPERIAL DE BAJA CALIFORNIA, S.A. DE C.V. TIJUANA, MEXICO AFF: SDNTK DOB: 11/22/1951 Origina:***

***OFAC ADVISOR ALERT—INPUT NAME MATCHES NAME ON THE OFAC DATABASE:

lSource: OFAC OriginaliD: 7176 P ID: 13561***

***OFAC ADVISOR ALERT—INPUT NAME MATCHES NAME ON THE OFAC DATABASE:

> UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/0 FARMACIA VIDA SUPREMA, S.A. DE C.V. TIJUANA, MEXICO AFF: SDNTK DOE: 11/22/1951 OriginalSource: OFAC
>
> Origin***
>
> ***OFAC ADVISOR ALERT—INPUT NAME MATCHES NAME ON THE OFAC DATABASE:

aliD: 7176 P ID: 13561***

***OFAC ADVISOR ALERT—INPUT NAME MATCHES NAME ON THE OFAC DATABASE:

> UST 03 RAMIREZ RIVERA, SERGIO ALBERTO CEDULA NO: 16694220 (COLOMBIA) FOB: CALI, COLOMBIA CALI, COLOMBIA Passport no- AF771317 AFF: SDNT DOB: 01/14/196***

***OFAC ADVISOR ALERT—INPUT NAME MATCHES NAME ON THE OFAC DA~~ASE:

> 4 OriginalSource: OFAC OriginaliD: 10438 POB: CALI, COLOMBIA Passportissuedcountry: COLOMBIA CEDULA NO: 16694220 (COLOMBIA)***

(Dkt. No. 110-10.) Plaintiff, who has a different birth date than the two individuals identified as a "match," is not on the OFAC List. Nonetheless, because of the Alert, the dealership recommended that Plaintiff and his wife purchase the car in her name alone since she qualified for the loan without her husband. They did so.

Plaintiff telephoned Trans Union the next day about the OFAC Alert. The Trans Union employee who spoke to Plaintiff told him that he did not have an OFAC Alert on his credit report.[1] At Plaintiff's request, Defendant mailed Plaintiff a copy of his consumer file (credit report), dated February 28, 2011. The file did not include any OFAC information. A few days later, however, Plaintiff received a letter from Defendant, dated March 1, 2011. The letter stated:

> Our records show that you recently requested a disclosure of your TransUnion credit report. That report has been mailed to you separately. As a courtesy to you, we also want to make you aware that the name that appears on your TransUnion credit file "SERGIO L. RAMERIZ" is considered a potential match to information listed on the United States Department of Treasury's Office of Foreign Asset Control ("OFAC") Database.

(Dkt. No. 110-24.) The letter went on to explain the OFAC List and to provide the same OFAC Alert information that was included in the report provided to the Nissan dealer. (*Id.*) The letter ended: "If you have any additional questions or concerns, you can contact TransUnion at 1-855-525-5176 or via regular mail at: [an address]." (*Id.*)

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[1] The deposition transcript portion cited by Plaintiff in support of this fact is not included in the record. *See* Dkt. No. 122 at 13:20 (citing Plaintiff's Dep. at 36:22-37:6.) This fact is not disputed, however, and, in any event, is not material to the Court's class certification ruling.

IV. Procedural History

Plaintiff subsequently filed this putative class action, bringing three causes of action under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq*., and three under its state counterpart, the California Consumer Credit Reporting Agencies Act ("CCRAA"), Cal. Civ. Code §§ 1785.1 *et seq*. Plaintiff alleges Defendant: (1) failed to disclose all of the information in each class member's file upon request, in violation of FCRA Section 1681g(a) and CCRAA Section 1785.10 (Dkt. No. 1 ¶¶ 90-96); (2) failed to provide class members with the required summary of their consumer rights, including their right to dispute inaccurate OFAC information in their files, in violation of FCRA Section 1681g(c) and CCRAA Section 1785.15(f) (*id.* ¶¶ 97-103); and (3) failed to follow reasonable procedures to assure maximum possible accuracy of the information concerning each class member when preparing his or her consumer report under FCRA section 1681e(b) and 1785.14(b) (*id.* ¶¶ 104-110). Plaintiff also alleges that Defendant's violations were willful within the meaning of 15 U.S.C. §1681n and Cal Civ. Code §1785.31. Plaintiff seeks statutory and punitive damages for the FCRA claims on behalf of himself and the FRCA class, and punitive damages and injunctive relief on behalf of himself and a California subclass.

This lawsuit is one of several filed against Trans Union arising from its OFAC Alert product. In *Cortez v. Trans Union, LLC*, 617 F.3d 688 (3rd Cir. 2010), the court affirmed a jury verdict finding that Trans Union violated the FCRA when it erroneously identified a consumer as a "match" to the OFAC List. Following

that decision, Trans Union modified its OFAC procedures; Plaintiff nonetheless contends that Trans Union's response during at least the proposed class period was inadequate. Plaintiff now moves for class certification.

LEGAL STANDARD

To succeed on his motion for class certification, Plaintiff must satisfy the threshold requirements of Federal Rule of Civil Procedure 23(a) as well as the requirements for certification under one of the subsections of Rule 23(b). *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012). Rule 23(a) provides that a case is appropriate for certification as a class action if

> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed.R.Civ.P. 23(a). "[A] party must not only be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, typicality of claims or defenses, and adequacy of representation, as required by Rule 23(a)," but "also satisfy through evidentiary proof at least one of the provisions of Rule 23(b). *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1432, 185 L. Ed. 2d 515 (2013) (internal quotation marks, citations, and emphasis

omitted). In this case, Plaintiff contends that the putative class satisfies Rule 23(b)(3), which requires the Court to find "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." "Before certifying a class, the trial court must conduct a rigorous analysis to determine whether the party seeking certification has met the prerequisites of Rule 23." *Mazza*, 666 F.3d at 588 (internal quotation marks omitted).

DISCUSSION

I. Plaintiff's Claims and the Proposed Classes

Plaintiff brings two types of claims under federal and California law. The first type, which this Order will refer to as "disclosure claims," is brought pursuant to the FCRA, 15 U.S.C. § 1681g(a) & (c) and the CCRAA, § 1785.10. Section 1681g(a) requires a credit reporting agency to "clearly and accurately" disclose to a consumer "[a]ll information in the consumer's file" upon a consumer's request, and 1681g(c) requires a summary of consumer rights to be provided with each consumer file disclosure. CCRAA § 1785.10 and § 1785.15(f) are analogous state statutes. Plaintiff also brings "reasonable procedures" claims under FCRA, 15 U.S.C. § 1681e(b) and CCRAA § 1785.14(b). Section 1681e(b) requires a consumer reporting agency to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates," while its California counterpart, section 1785.14(b), includes similar language. Plaintiff seeks

statutory damages of from $100 to $1000 and punitive damages for his FCRA claims, *see* 15 U.S.C. § 1681n(a)(1)(A), and statutory punitive damages and injunctive relief on the state claims. *See* Cal. Civil Code § 1785.31(a) & (b).[2]

Pursuant to his FCRA claims, Plaintiff asks to represent a nationwide class of individuals to whom Trans Union sent a letter similar to the March 1, 2011 letter Plaintiff received regarding the OFAC Alert. He also seeks to represent a California subclass under the California claims. Trans Union mailed such letters from January 2011 through July 26, 2011 to 8,192 persons, of whom approximately 1,500 reside in California. Plaintiff explains that this class definition is more narrow than that pled in his Complaint because discovery has disclosed "(i) that Trans Union did not include any OFAC information in its disclosures to consumers from August 2010 to January 2011, (ii) that Trans Union used a separate letter like the one Ramirez received between January 2011 and July 26, 2011, and (iii) Trans Union included OFAC data as part of the same document for disclosures that it sent out after July 26, 2011." (Dkt. No. 122 at 27-28). Because, according to Plaintiff, he is typical of the consumers who requested their files between January and June 2011, and Trans Union cannot readily identify the consumers who requested

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[2] Plaintiff does not actually specify which provision of section 1785.31 he seeks damages under; however, Plaintiff has described the CCRAA damages claims as "statutory 'punitive' damages of between $100 and $5,000 for each violation." (Dkt. No. 111 at 18:13-21.) Thus, the Court presumes that Plaintiff is seeking damages under section 1785.31(a)(2)(B).

their files between August 2010 and January 2011, Plaintiff has narrowed the proposed classes to "focus[]on the consumers who requested and were sent file disclosures and separate letters regarding OFAC information during the January 2011-July 26, 2011 period." (*Id.* at 22.)

II. The FCRA Claims

A. The FCRA Claims Satisfy Rule 23(a)

1. Numerosity

A putative class satisfies the numerosity requirement if "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). While it is undisputed that Trans Union sent letters similar to the March 1, 2011 letter Plaintiff received to over 8,000 consumers during the class period, Defendant attempts to redefine the class by narrowing it in various ways, such as considering only consumers who had Name Screen data delivered to a potential credit grantor, those who had reports sold by a Trans Union reseller, those who disputed their OFAC results, and the like. As explained below, the claims of Plaintiff's putative classes present common questions and need not be as limited as Defendant insists. As such, the Court finds that numerosity is met.

2. Commonality

The Court must also find that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "[C]ommonality requires that the class members' claims 'depend upon a common contention' such that 'determination of its truth or falsity will resolve an issue that is central to the validity of each

[claim] in one stroke.'" *Mazza*, 666 F.3d at 588-89 (quoting *Wal-Mart Stores Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011)). "The plaintiff must demonstrate the capacity of classwide proceedings to generate common answers to common questions of law or fact that are apt to drive the resolution of the litigation." *Id.* (internal quotation marks and citation omitted).

a. The FCRA disclosure claims

Plaintiff identifies the following as the common questions raised by his FCRA disclosure claims: "whether Trans Union violated the FCRA and CCRAA [1] by sending incomplete file disclosures and [2] by failing to include a summary of consumer rights and instructions on how to dispute inaccurate information when it disclosed the OFAC information to consumers during the class period." (Dkt. No. 122 at 21:16-20.) In other words, the common questions are whether Trans Union violated the FCRA during the class period by not identifying the OFAC Alert in a consumer's disclosed consumer file, but instead notifying the consumer of the OFAC Alert in a separate letter, and then again violated the FCRA by not explicitly stating in that separate letter how a consumer could dispute any inaccurate information.

Defendant contends that no common classwide conclusions are possible as to the disclosure claims because "[i]t cannot be determined on a common basis who in the proposed class read the main disclosure and the separate OFAC letter together as a single disclosure, and who did not." (Dkt. No. 128 at 31:6-8.) The Court is not persuaded that whether each class member read the letters at the same time, or two hours apart, or two days apart is legally significant. It

is Plaintiff's contention that even if the consumer read the file disclosure and separate letter at the same time, the failure to include the OFAC information in the disclosure of the file itself violated FCRA section 1681g(a). Plaintiff similarly contends that even if a class member read the file disclosure and letter together, the failure of the letter to include a summary of consumer rights still violates FCRA section 1681g(c). In any event, only "a single significant question of law or fact" is required to satisfy Rule 23(a)(2). *Stockwell v. City & Cnty. of San Francisco*, No. 12-15070, 2014 WL 1623736, at *3 (9th Cir. Apr. 24, 2014) (internal quotation marks omitted). "Where the circumstances of each particular class member vary but retain a common core of factual or legal issues with the rest of the class, commonality exists." *Parra v. Bashas', Inc.*, 536 F.3d 975, 978-79 (9th Cir. 2008); *see also Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) (finding commonality because class members all suffered the same injury as a result of receiving a debt collection letter at their place of employment without consent) (citing *Wal-Mart*, 131 S. Ct. at 2551). A significant common question on the 1681g(a) disclosure claim is whether Trans Union violated the law by not including the OFAC information in the file disclosure and instead disclosing the information in a separate letter. The section 1681g(c) claim poses a similar significant question: whether Trans Union was required to include a summary of rights in the separate OFAC letter. Commonality is satisfied for the disclosure claims.

b. The FCRA reasonable procedure claim

FCRA section 1681e(b) requires that "[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." Plaintiff identifies the common issues as "[1] whether Trans Union used or expected to use an OFAC alert with respect to each class member and [2] whether Trans Union used reasonable procedures to assure maximum possible accuracy of the OFAC information that it associated to class members through its name-only matching logic." (Dkt. No. 122 at 21:20-24.) Plaintiff challenges the uniform procedures by which OFAC alerts are created, alleging that the name-only matching procedure regularly results in inaccurate consumer reports.

A report is inaccurate for purposes of the FCRA if it is "patently incorrect or materially misleading." *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890-91 (9th Cir. 2010); *see also Cisneros v. U.D. Registry, Inc.*, 39 Cal. App. 4th 548, 579-80 (1995) ("Both CCRAA and FCRA require 'maximum possible' accuracy. This means that a report violates the statutes when it is misleading or incomplete, even if it is technically accurate.") (citations omitted). Information on a credit report is "materially misleading" if it is "misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions." *Carvalho*, 629 F.3d at 890 (quoting *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009)).

Trans Union maintains that whether the OFAC Alert was accurate as to each putative class member cannot be determined through common proof. Plaintiff counters that accuracy is a common question because "there is no evidence whatsoever that its OFAC alerts have ever been accurate." (Dkt. No. 125 at 13.) The question under 23(a)(2), however, is not the predominance of common questions, but rather whether there is at least one common question that will generate a common answer "apt to drive the resolution of the litigation." *Wal-Mart*, 131 S.Ct. at 1225 (internal quotation marks and citation omitted); *see also Wang*, 737 F.3d at 544 ("[s]o long as there is even a single common question, a would-be class can satisfy the commonality requirement of Rule 23(a)(2)."). Here, the question of whether using the name-only matching logic assures maximum accuracy is such a question. *See Acosta v. Trans Union LLC*, 243 F.R.D. 377, 384 (C.D. Cal. May 31, 2007) (common question of whether defendants maintained reasonable procedures to assure maximum accuracy satisfied commonality prerequisite); *Clark v. Experian Information Solutions, Inc.*, 2001 WL 1946329, at *2 (D. S.C. March 19, 2001) (holding that question of "[w]hat reasonable procedures, if any, have been set up by the Defendants to assure maximum accuracy of the information contained in the consumer report, including information regarding or related to bankruptcy" among other questions satisfied the commonality requirement of Rule 23(a)(2)). Rule 23(a)(2) is satisfied for the FCRA claims.

3. Typicality

"The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012) (internal quotation marks and citation omitted). "Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (internal quotation marks and citation omitted).

Plaintiff's disclosure claims pursuant to sections 1681g(a) and 1681g(c) are typical of the class. Plaintiff and the putative class all received a claim file disclosure that failed to include any OFAC information; instead, Plaintiff and each class member received a nearly identical separate form letter with the same OFAC notification ("As a courtesy to you, we also want to make you aware that" you are a "potential match" to information on the OFAC List) and the same language which Plaintiff contends fails to adequately notify the class member regarding a consumer's rights to dispute the information.

Defendant insists that Plaintiff's claims are not sufficiently typical because of a litany of unique facts involved with his claims:

(1) a reseller, and not Trans Union, provided the credit report to the Nissan Dealer,

(2) Plaintiff requested a copy of his file from Trans Union,

> (3) Plaintiff disputed the OFAC information connected to his file,
>
> (4) the Nissan Dealer breached its contractual obligation to determine whether a credit applicant is in fact on the OFAC List before refusing credit.
>
> (5) Plaintiff's wife was able to obtain the loan to purchase the car the same day in just her own name.

While these facts are potentially unique, they are not material to Plaintiff's claims. Plaintiff is not seeking any actual damages for what happened at the Nissan Dealer; indeed, Plaintiff would have the same claims even if he had never visited the Nissan Dealer or been denied credit. His disclosure claims are based on what was in—or more precisely, what was not in—the consumer file Trans Union disclosed to Plaintiff along with the separate letter. None of the above "unique facts" makes Plaintiff atypical for the reasonable procedures claim either. Again, Plaintiff, just as every other class member, received a file disclosure without any OFAC information and then a separate letter identifying himself as a "potential match" to a person on the OFAC List. And as Plaintiff is seeking statutory damages and not actual damages, whether he was actually denied credit or received inferior credit terms because of Trans Union's name-only matching logic is not at issue. The Court is also not persuaded that Plaintiff's Spanish surname, and in particular, the convention with maternal and paternal surnames, makes him atypical such that certification is inappropriate.

Trans Union also insists that it has unique defenses to Plaintiff's claims that make Plaintiff inappropriate to represent the class. First, it contends that Plaintiff made a misrepresentation on his Nissan Dealer credit application about never having had a vehicle repossessed. But Trans Union never explains how such fact, if proved, matters. The Court is not aware of any caselaw, and Trans Union has not cited any, that holds that a credit reporting agency is excused from compliance with the FCRA, and therefore immune from statutory damages, because a consumer would not have qualified for credit from a particular lender in any event.

Next, Trans Union contends that because the reseller that provided Plaintiff's Trans Union credit report to the Nissan Dealer failed to include the word "potential" to modify the notification of the name match Trans Union has a unique defense to Plaintiff's claim. Trans Union represents, and the Court accepts, that no credit report of any other class member during the class period identified the class member as a "match" rather than a "potential match." But, again, this unique fact does not matter. Plaintiff's contention is that identifying a consumer as a "potential match" runs afoul of the FCRA.

Trans Union's reliance on *Soutter v. Equifax Info. Servs., LLC*, 498 F. App'x 260, 264 (4th Cir. 2012), is misplaced. There the court found that the plaintiff's claim was not typical because there were "'meaningful differences'" between her claim and the class claims. Specifically, the process the defendant used to verify the allegedly inaccurate judgment reported on the plaintiff's credit report was different from the

processes employed to verify the judgments of many of the other class members. *Id.* at 265. Thus, resolution of whether the process used for the plaintiff's judgment was reasonable would not "advance the case" as to the absent class members. *Id.* Here, in contrast, the record shows that Trans Union utilized the exact same name-only matching logic to identify plaintiff and the class members as a "potential match" to a person on the OFAC List. If that process is reasonable, it is likely reasonable for all and vice versa. Further, in *Soutter*, the plaintiff's willfulness showing for damages depended on Plaintiff having sent two letters to the defendant, conduct not engaged in by all class members and thus made the plaintiff atypical. *Id.* Here, while Plaintiff did have a somewhat unique interaction with Trans Union, that experience is not the basis for his claim; rather, the willfulness comes from Defendant's conduct even after losing the *Cortez* case.

4. Adequacy

To determine whether Plaintiff "will fairly and adequately protect the interests of the class" under Rule 23(a)(4), the Court must ask: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Evon*, 688 F.3d at 1031 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

The Court finds no reason Plaintiff will be unable to "fairly and adequately protect the interests of the class" under Rule 23(a)(4) for purposes of the statutory damages claims. There is no conflict, nor any unique

aspect of Plaintiff's connection to the claims, that would be an impediment to his fairly representing the other class members. As explained with respect to typicality, Defendant's argument that Plaintiff's allegedly false statement on his credit application is irrelevant to the claims, as is the fact that Dublin Nissan viewed his credit report on an outdated form that failed to indicate he was a "potential" match, rather than a "match." Moreover, the Court already rejected Defendant's argument that its Rule 68 offer of judgment mooted Plaintiff's claim. (Dkt. Nos. 76 & 100.) Thus, the Court concludes that Plaintiff and his counsel are adequate for purposes of Rule 23(a)(4).

Based on the foregoing, the Court finds that Plaintiff's proposed FCRA class satisfies the prerequisites of Rule 23(a).

B. The FCRA Claims Satisfy Rule 23(b)(3)

Plaintiff must also meet one of the provisions of Rule 23(b) to succeed on his motion for class certification of the federal claims. *See* Fed. R. Civ. P. 23(b); *Berger v. Home Depot USA, Inc.*, 741 F.3d 1061, 1067 (9th Cir. 2014). Plaintiff maintains that he has satisfied Rule 23(b)(3): "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

1. Predominance

To meet the predominance requirement of Rule 23(b)(3), "the common questions must be a significant aspect of the case that can be resolved for all members of the class in a single adjudication." *Berger*, 741 F.3d

at 1068 (internal quotation marks and alterations omitted). Each of Plaintiff's claims must be analyzed separately. *Id.*

a. The FCRA disclosure claims

The same common questions the Court identified in its analysis of the Rule 23(a) commonality requirement predominate for purposes of Rule 23(b)(3): whether Trans Union violated the FCRA by not identifying a consumer's OFAC Alert in the consumer's disclosed consumer file, but instead in a separate letter, and then again violated the FCRA by not explicitly stating in that separate letter how a consumer could dispute any inaccurate information. This question and its answer are the same for each class member.

Defendant's emphasis on the *timing* of when a class member read the disclosure does not, at least on the present record, destroy commonality. As explained above, Plaintiff's contention is the same regardless of whether a class member read the claim file and the separate letter one right after the other, or vice versa, or several days apart. Plaintiff contends, rightly or wrongly, that under the FCRA Trans Union was required to include the OFAC information in the disclosed claims file.

Trans Union then turns to damages, or perhaps more precisely, injury, and contends that even though Plaintiff is seeking statutory damages for the disclosure claims individualized issues still predominate. In particular, it argues that whether Plaintiff or any class member was actually harmed by the failure to include the OFAC information in the claim file as opposed to the separate letter, or by the

separate letter's alleged failure to adequately inform the consumer of its right to dispute the OFAC information, is an individualized question that predominates. To support its argument, it cites evidence that the volume of OFAC reinvestigation requests was generally higher when the OFAC information was sent in a separate letter.

The Court agrees that whether a class member was actually injured by the purported nondisclosure is an individualized question. It is not, however, a question that predominates because it is not an element of the disclosure claims or statutory damages. Under the law of the Ninth Circuit, an FCRA claim for statutory damages "does not require a showing of actual harm when a plaintiff sues for willful violations." *Robins v. Spokeo, Inc.*, 742 F.3d 409, 412 (9th Cir. 2014). The court reasoned that when, as with the FCRA, "the statutory cause of action does not require proof of actual damages, a plaintiff can suffer a violation of the statutory right without suffering actual damages." *Id.* at 413; *see also* 15 U.S.C. § 1681n(a)(1)(A) ("Any person who willfully fails to comply with any requirement imposed [under the FCRA] with respect to any consumer is liable to that consumer in an amount equal to the sum of—any actual damages sustained by the consumer as a result of the failure *or damages of not less than $100 and not more than $1000*." (emphasis added); *Bateman v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, 719 (9th Cir. 2010) (holding that "irrespective of whether Bateman and all the potential class members can demonstrate actual harm resulting from a willful violation [of the Fair and Accurate Credit Transactions Act], they are entitled to statutory damages."); *Montgomery v. Wells Fargo*

Bank, C12-3895 TEH, 2012 WL 5497950, at *6 (N.D. Cal. Nov. 13, 2012) (citing *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) ("it is not necessary that a plaintiff allege actual damages in order to state a claim for relief under the FCRA," statutory damages under 15 U.S.C. § 1681n "are available regardless of whether a plaintiff can show actual damages."). With respect to Plaintiff's punitive damages claims under FCRA, the result is less clear. Whether the punitive damages can actually be tried as a class may depend on whether Plaintiff seeks to offer some evidence of actual injury to support punitive damages; at this point, however, Plaintiff appears not to intend to do so and under Ninth Circuit law he is not required to do so. *See Bateman*, 623 F.3d at 718 ("We further note that Congress provided for punitive damages in addition to any actual or statutory damages, see 15 U.S.C. § 1681n(a)(2)"). It is thus irrelevant to the FCRA disclosure claims whether Plaintiff or a class member was harmed by Trans Union's alleged failures.

b. The Section 1681e(b) reasonable procedure claim

Although a closer question than with the disclosure claims, the Court finds that common questions also predominate on Plaintiff's failure to use reasonable procedures claim. The overriding common question on this claim is whether Trans Union's name-only matching logic is a reasonable procedure to assure maximum possible accuracy.

Trans Union contends that the individual questions of whether the credit report of each class member was "accurate," and, if not, and Trans Union

failed to utilize reasonable procedures to ensure accuracy, whether Trans Union's conduct was "willful" predominate making class certification inappropriate. The Court disagrees.

1. Accuracy

To succeed on his 1681e(b) claim, Plaintiff must show that Trans Union prepared a report that contained inaccurate information. *Guimond v. Trans Union Credit Information Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995). His burden is to prove that the report contained "patently incorrect or materially misleading information." *Prianto v. Experian Information Solutions, Inc.*, 2014 WL 3381578, at *3 (N.D. Cal. July 10, 2014).

Trans Union argues that the question of whether the OFAC Alert for each class member was accurate is an individual question that renders certification inappropriate. The record before the Court does not support Trans Union's argument. Trans Union is unable to identify any instance in which a person it identified as a "potential match" was in fact a match. Indeed, it has not identified a single instance in which the birth date of the person on the OFAC List and the "potential match" matched, or even the address matched; in other words, in which there is something other than the person's name to suggest the person is on the OFAC List. This record supports a finding that not one of the members of the class is in fact on the OFAC List. *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d 1036 (9th Cir. 2012), is instructive. There, in an action under the Telephone Consumer Protection Act, the defendant argued that individual issues of class members having consented to be

contacted on their cellular phone—a defense to the claim—precluded a commonality finding. The Ninth Circuit disagreed: "[the defendant] did not show a single instance where express consent was given before the call was placed." *Id.* at 1042. Similarly, here, Trans Union has not identified a single class member whose personal information matches the OFAC List "potential match" in any way other than name. That means that the other information, birthdate, address, social security—to the extent available—does not match, thus supporting the inference that the consumer is not, in fact, the "potential match" on the OFAC List.

The cases cited by Trans Union do not persuade the Court otherwise. Although the circumstances in *Gomez v. Kroll Factual Data, Inc.*, No. 13-CV-0445, 2014 WL 1456530, at *3 (D. Colo. Apr. 14, 2014), are similar to those here, and the court reached a different conclusion, the decision does not explain the court's reasoning; instead, the court simply cited cases that are not from the Ninth Circuit in which the accuracy question involved individualized questions that predominated. *Id.* at 3. But even those cases do not hold that the issue of accuracy in a FCRA claim always defeats certification. *See, e.g.*, *Owner-Operator Independent Drivers Ass'n, Inc. v. USIS Commercial Services, Inc.*, 537 F.3d 1184, 1194 (10th Cir. 2008) ("whether a report is accurate *may* involve an individualized inquiry") (emphasis added). *Farmer v. Phillips Agency, Inc.*, 285 F.R.D. 688 (N.D. Ga. 2012), involved a challenge to inaccurate and incomplete criminal background reports prepared by the defendant. *Id.* at 690. The predominating individual inquiries for each consumer putative class member

included the source of the adverse records and an evaluation of the quality of that source. *Id.* at 702-03. Such inquiries are not required here. In *Harper v. Trans Union, LLC*, 2006 WL 3762035 (E.D. Pa. Dec. 20, 2006), the court held that the plaintiff would have to prove actual injury to succeed on his 1681e(b) claim. *Id.* at *9 ("I refuse to hold that a willful and/or negligent violation of the FCRA exposes CRAs to liability with no factual inquiry into whether the absent class members were injured by the violation."). As explained above, the Ninth Circuit has held otherwise. *See Robins*, 742 F.3d at 412-13.

The Court agrees with Trans Union that the question of accuracy in a section 1681e(b) claim may often present individualized questions that predominate over the common questions. In the circumstances of this case, and on this record, it does not.

2. Willfulness and statutory damages

Nor does the requirement that Plaintiff and the class prove Trans Union's violations were willful mean individualized questions predominate. Again, Trans Union relies on *Gomez*, which held that the willfulness inquiry requires an individualized inquiry without giving any reasoning other than to cite to two Fourth Circuit cases. *Gomez v. Kroll Factual Data, Inc.*, 2014 WL 1456530, at *4. In the first case, *Soutter*, the plaintiff's theory of willfulness rested on her having sent letters to the credit reporting agency—a unique factual circumstances not common to the class. *Soutter v. Equifax Info. Servs., LLC*, 498 Fed.Appx. 260, 265 (4th Cir. 2012). Here, in contrast, Plaintiff's

theory of willfulness is based on Trans Union's alleged failure to adequately modify their OFAC Alert procedures in response to the *Cortez* ruling.

In the second Fourth Circuit opinion, *Stillmock v. Weis Markets, Inc.*, 385 Fed Appx 267 (4th Cir. July 1, 2010), the court *reversed* the denial of class certification in a case seeking statutory damages under the Fair and Accurate Credit Transactions Act of 2003, which amended the FCRA to prohibit businesses from printing more than the last 5 digits of a consumer's credit card. *Id.* at 275. The district court had denied class certification on the ground that the question of what statutory damage (between $100 and $1000) to award each class member required an individualized inquiry that predominated. The Fourth Circuit rejected this reasoning and held that "where, as here, the qualitatively overarching issue by far is the liability issue of the defendant's willfulness, and the purported class members were exposed to the same risk of harm every time the defendant violated the statute in the identical manner, the individual statutory damages issues are insufficient to defeat class certification under Rule 23(b)(3)." *Id.* at 273. The same analysis—and result—apply here.

2. Superiority

Factors relevant to the superiority requirement include:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). "A consideration of these factors require the court to focus on the efficiency and economy elements of the class action so that cases allowed under subdivision (b)(3) are those that can be adjudicated most profitably on a representative basis." *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001) (internal citation omitted). A class action here would certainly achieve economies of time, effort and expense and promote uniformity. And there is not similar litigation already underway elsewhere that weighs against proceeding as a class here, nor any reason not to try a class action in this District.

With respect to the first factor, however, Defendant contends that class members with actual damages will be forced to abandon their high-value actual damages claims to pursue statutory damages as part of the class, while at same time noting that no evidence exists that any potential class member has suffered any actual damages. Given that Trans Union contends that no class member has suffered any large actual damages, and that any potential class member with significant damages could simply opt out of the class, Defendant's argument is unfounded. At the same time, Defendant asserts that because no other Plaintiffs have come forward with similar claims indicates that a class action is unnecessary. Surely, thousands of people need not attempt to bring suit or

join existing suits to demonstrate interest in their claims or the feasibility of a class action. Indeed, as Plaintiff notes, many class members might be unaware of their rights under the FCRA and CCRAA and/or unaware of the alleged violations. Even if the potential class members are aware of the alleged violations, many would probably have little interest or motivation to bring an individual suit if they had not experienced any actual damages.

Defendant also attempts to refute superiority on the ground that attorneys' fees for Plaintiff's claims are recoverable, and the economies of class action are therefore unnecessary. This objection is misplaced for two reasons. First, even if each class member were to bring a separate suit, the costs and fees of each separate action would exceed those of a class action. It is more efficient to adjudicate the claims as a class action rather than thousands of individual actions. Moreover, Rule 23(b) does not ask the Court to determine whether a class action is *necessary*, rather whether it is superior. The Court concludes that it is.

Finally, at oral argument Trans Union complained that granting class certification of statutory damages claims places unfair economic pressure on the defendant and forces the defendant to settle even if it believes it has a meritorious defense and the class was never actually harmed. Judge Wilkinson raised this concern in his concurrence in *Stillmock*, 385 Fed. Appx. at 281 ("[O]nce a class is certified, a statutory damages defendant faces a bet-the-company proposition and likely will settle rather than risk shareholder reaction to theoretical billions in exposure even if the company believes that the

claim lacks merit.") (internal quotation marks and citation omitted). The problem with Trans Union's argument, however is that it has effectively been rejected by the Ninth Circuit. In *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708 (9th Cir. 2010), the court held it was improper for a district court to find that a class action was not superior because the potential statutory damages class action award was so disproportionate to actual harm. *Id.* at 719. *Bateman* involved a related statute, the Fair and Accurate Credit Transactions Act ("FACTA"), which incorporates the FCRA statutory damages provision, *id.* at 711, so its reasoning applies equally to statutory damages under the FCRA; namely, that Congress is aware of the concern about potentially enormous liability of defendants in statutory damage class actions and has amended statutes to address such problems when it has the votes to do so. *Id.* at 720-21 (noting that Congress added a provision to the Truth In Lending Act ("TILA") to limited aggregate statutory damages). The Ninth Circuit held: "[i]n the absence of . . . affirmative steps to limit liability, we must assume that Congress intended FACTA's remedial scheme to operate as it was written." *Id.* at 722-23. The same is true for FCRA.

III. The California CCRAA Claims

Next, the Court must decide whether to certify the California subclass. For the same reasons Plaintiff has demonstrated that Rule 23(a) has been satisfied for the FCRA claims, it is satisfied for the CCRAA claims. The result is different, however, as to Rule 23(b)(3)'s predominance of common questions requirement. The California Court of Appeals has held that the CCRAA,

unlike the FCRA, requires a showing of actual harm even where, as here, the plaintiff is only seeking injunctive relief under section 1785.31(b) and statutory punitive damages under section 1785.31(a)(2)(b).[3] *See Trujillo v. First American Registry, Inc.*, 157 Cal. App. 4th 628, 637-38 (2008). The federal courts are bound by decisions of the California Court of Appeals on questions of California law "unless there is convincing evidence that the California Supreme Court would decide the matter differently." *Abdelfattah v. Carrington Mortgage Services LLC*, 2013 WL 5718463, at *3 (N.D. Cal. Oct. 21, 2013)(internal quotation marks and citation omitted) (following *Trujillo* and striking class allegations in CCRAA case, including claims under sections 1781(b) & (c), because the complaint failed to allege that the class was harmed).

Thus, to the extent Plaintiff is seeking certification of his state law claims pursuant to Rule 23(b)(3), as he must for the statutory punitive damages claim, individual issues will predominate. Each class member will have to demonstrate actual injury before being entitled to punitive damages. This inquiry will involve investigating whether the class member's credit report was disclosed to a lender and

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[3] *Trujillo's* holding applies equally to traditional punitive damages claims under section 17835.31(c): "reading subdivision (c) as superseding the actual damage requirement would take all teeth out of subdivision (a), absurdly breathing life into any CCRAA complaint seeking punitive damages, even those filed by uninjured plaintiffs—i.e., by anyone." 157 Cal. App. 4th at 638. Thus, the outcome would be the same even were Plaintiff to seek punitive damages under section (c) rather than subsection (a)(2)(B).

how the lender responded to the report; even if credit was denied, an inquiry will have to be made as to whether it was denied because of the OFAC Alert or for some other reason. Because Plaintiff does not even acknowledge the actual damages requirement of *Trujillo*, he does not offer any suggestion for how the actual damages issue can be addressed with common proof. The Court can think of none. Indeed, one reason Plaintiff seeks statutory FCRA damages is to avoid the requirement that each class member prove actual damages. Thus, the California claims will not be certified under 23(b)(3).

Plaintiff, however, also seeks certification of his CCRAA reasonable procedures claim for injunctive relief pursuant to Rule 23(b)(2).[4] Certification under that provision is appropriate if Rule 23(a) is satisfied (as it is here) and "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). There is no requirement that common questions predominate was with Rule 23(b)(3). Further, that the state monetary claims will not be certified pursuant to Rule 23(b)(3) does not mean that the claim for injunctive relief cannot be certified under Rule 23(b)(2). *See Ries v. Arizona Beverages USA LLC*,

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[4] Plaintiff concedes that he is not entitled to injunctive relief under his CCRAA disclosure claims because Trans Union has discontinued the practice upon which the claims are based; namely, it has discontinued disclosing the OFAC information in a separate letter rather than the consumer's file. (Dkt. No. 125 at 12.)

287 F.R.D. 523, 542 (N.D. Cal. 2012) (denying certification of monetary claims under Rule 23(b)(3) and granting certification of declaratory and injunctive relief claims under Rule 23(b)(2)).

There is, however, an issue as to Plaintiff's adequacy to represent the California subclass on and injunctive relief claim given the evidence in the record suggesting that the OFAC Alert was removed from his file. Plaintiff counters that he does have standing to pursue injunctive relief because Trans Union continues to use the name-only matching logic and thus the risk remains that the OFAC Alert will reappear. Plaintiff emphasizes that in the *Cortez* matter, the plaintiff likewise engaged Trans Union's dispute resolution process to have the OFAC alert removed from her file, but discovered that it was still there when she subsequently obtained another credit report. *Cortez*, 617 F.3d at 700.

To establish standing, a plaintiff must show that:

> (1) the plaintiff has suffered an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Robins, 742 F.3d at 412 (internal citations and quotation marks omitted). When seeking prospective injunctive relief, a plaintiff must show that he has suffered or is threatened with a "concrete and particularized" legal harm, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), coupled with "a

sufficient likelihood that he will again be wronged in a similar way." *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). The second prong requires a "real and immediate threat of repeated injury," which can be demonstrated through past wrongs. *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974). Finally, "[p]laintiffs need not demonstrate that there is a 'guarantee' that their injuries will be redressed by a favorable decision" but "only that a favorable decision is likely to redress" their injuries. *Graham v. Fed. Emergency Mgmt. Agency*, 149 F.3d 997, 1003 (9th Cir. 1998).

Here, Defendant contends that there is sufficient evidence in the record that the Plaintiff's Alert has been removed based on generalized evidence regarding what its process is when a dispute is received and the absence of evidence that the process was not followed for Plaintiff. Plaintiff, however, makes a compelling argument that because the name-only matching procedure is still utilized, he could again be subject to an OFAC Alert. While it is difficult to quantify this risk, the record presents a sufficient likelihood that Plaintiff will be harmed again in a similar way in light of the absence of any evidence in the record that shows that Trans Union took some sort of concrete step, beyond merely removing the flag from Plaintiff's file, which would preclude his file from again being flagged based on a name-only match. Accordingly, the Court will certify the reasonable procedure CCRAA claim for injunctive relief.

CONCLUSION

For the reasons explained above, the Court GRANTS Plaintiff's Motion to Certify (Dkt. No. 122)

in part. The Court certifies a class, defined as "all natural persons in the United States and its Territories to whom Trans Union sent a letter similar in form to the March 1, 2011 letter Trans Union sent to Plaintiff regarding "OFAC (Office of Foreign Assets Control) Database" from January 1, 2011-July 26, 2011" for Plaintiff's FCRA claims. The Court also certifies a California sub-class on Plaintiff's CCRAA reasonable procedure claim for injunctive relief. The Court appoints Plaintiff Sergio L. Ramirez as class representative, and appoints Plaintiff's counsel to serve as class counsel.

The parties shall appear for a further Case Management Conference on August 21, 2014 at 1:30p.m. in Courtroom F, 450 Golden Gate Ave., San Francisco, California. Counsel may contact Court Call at 1-888-882-6878 to make arrangements to appear by telephone.

IT IS SO ORDERED.

Dated: July 24, 2014

[handwritten: signature]
JACQUELINE SCOTT CORLEY
United States Magistrate Judge

Order Granting Motion to Stay Action
(N.D. Cal. June 22, 2015)

In this certified class action, Defendant Trans Union, LLC ("Defendant") moves to stay the case pending the United States Supreme Court's decision in *Spokeo, Inc. v. Robins*. (Dkt. No. 183.) Upon consideration of the parties' submissions and the arguments of counsel at the hearing held on June, 18 2015, Defendant's motion to stay is GRANTED.

BACKGROUND

On February 9, 2012, Plaintiff Sergio L. Ramirez filed this class action against Defendant TransUnion, bringing three causes of action under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq., and three under its state counterpart, the California Consumer Credit Reporting Agencies Act ("CCRAA"), Cal. Civ. Code §§ 1785.1 et seq. On July 24, 2014, the Court granted in part and denied in part Plaintiff's motion to certify class. (Dkt. No. 140.) The Court certified a damages and injunctive relief class under FCRA, but only certified an injunctive relief class under CCRAA. The Court declined to certify the CCRAA statutory damages class because California law holds that CCRAA claims require a plaintiff to show actual harm. *See Trujillo v. First American Registry, Inc.*, 157 Cal. App. 4th 628, 637-38 (2008). In contrast, certification under FCRA was appropriate because a FCRA "cause of action does not require proof of actual damages, a plaintiff can suffer a violation of the statutory right without suffering actual damages." (Dkt. No. 140 at 16:8-10 (quoting *Spokeo*, 742 F.3d 409, 413 (9th Cir. 2014), *cert. granted*, 82 U.S.L.W. 3689 (U.S. Apr. 27, 2015) (No. 13-1339)).)

Following distribution of notice to the class, the Supreme Court granted the petition for writ of certiorari in *Spokeo*. Defendant now moves to stay the action pending the Supreme Court's decision in *Spokeo*, asserting that the orderly course of justice and balance of hardships favor the imposition of a stay.

DISCUSSION

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). In deciding whether to grant a stay, a court may weigh the following: (1) the possible damage which may result from the granting of a stay; (2) the hardship or inequity which a party may suffer in being required to go forward; and (3) the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (internal citations and quotation omitted). However, "[o]nly in rare circumstances will a litigant in one case be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." *Landis*, 299 U.S. at 255. A district court's decision to grant or deny a *Landis* stay is a matter of discretion. *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007). The proponent of a stay has the burden of proving such a discretionary stay is justified. *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

Here, Defendant moves to stay the action pending the Supreme Court's review of the Ninth Circuit's decision in *Spokeo* upon which the Court squarely relied in granting class certification of the FCRA class. Given that the Supreme Court's decision in *Spokeo* may directly impact the Court's class certification ruling, the *Landis* factors weigh strongly in favor of staying this action pending the *Spokeo* decision. The possible prejudice to Plaintiff that will result from a stay is minimal, as the *Spokeo* decision will likely be issued within a year per the Supreme Court's customary practice. Further, as explained by Defendant, and not disputed by Plaintiff, Defendant has modified the conduct about which Plaintiff complains so there is no need to proceed with trial to obtain immediate injunctive relief and staunch the harm. Moreover, Defendant has agreed to bear the cost of further notice to the class advising them of the stay. In contrast to the lack of prejudice to Plaintiff and the class, in light of *Spokeo's* potential impact on the class certification order, Defendant faces the risk of unnecessary proceedings and expenses if the case is not stayed: given the current schedule, absent a stay this case will be resolved through either trial or summary judgment prior to the Supreme Court's ruling.

CONCLUSION

Defendant's motion to stay this action pending a decision in *Spokeo* is GRANTED. Plaintiff shall file a motion to lift the stay once the Supreme Court issues its decision.

This Order disposes of Docket No. 183.

IT IS SO ORDERED.

Dated: June 22, 2015

[handwritten: signature]
JACQUELINE SCOTT CORLEY
United States Magistrate Judge

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

JOINT APPENDIX
Volume II of III

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February 1, 2021

Petition for Writ of Certiorari Filed Sept. 2, 2020
Petition for Writ of Certiorari Granted Dec. 16, 2020

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The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following page in the appendix to the Petition for Certiorari:

Order Denying TransUnion's Motion to Decertify Class (N.D. Cal. Oct. 17, 2016)

This lawsuit arises out of Defendant Trans Union, LLC's identification of Plaintiff Sergio Ramirez as potentially being a person on the United States government's list of terrorists, drug traffickers, and others with whom Americans are prohibited from doing business. The Court previously certified a class action alleging three causes of action under the Fair Credit Reporting Act, and three under its state counterpart, the California Consumer Credit Reporting Agencies Act. *See Ramirez v. Trans Union, LLC*, 301 F.R.D. 408 (N.D. Cal. 2014). Following the United States Supreme Court's decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), Defendant filed the now pending motion to decertify the class. (Dkt. No. 198.) Upon consideration of the parties' submissions and oral argument on October 6, 2016, the motion is DENIED. Plaintiff suffered a concrete injury and therefore has standing to pursue all of his claims. Under binding Ninth Circuit precedent his standing is adequate for purposes of the class, and, in any event, in light of the specific circumstances alleged here the absent class members also suffered a concrete injury.

BACKGROUND

The Court discussed the factual background of this action at length in its class certification order and only briefly summarizes the relevant facts here. (Dkt. No. 140.)

The United States Treasury Department's Office of Foreign Assets Control ("OFAC") publishes a list of individuals, such as terrorists and narcotics

traffickers, who people in the United States are generally prohibited from doing business with, including the extension of credit ("the OFAC List"). (Dkt. No. 140 at 2.) Trans Union, a consumer credit reporting agency, offers a product known as "OFAC Advisor," "OFAC Alert," or "OFAC Name Screen" as an add-on to traditional credit reports. (*Id.*)

In February 2011, Plaintiff Sergio Ramirez and his wife visited a Nissan dealership to purchase a car on credit. They completed a credit application with each's name, address, social security number, and date of birth, among other identifying information. (Dkt. No. 140 at 3.) The dealer used the information to obtain a Trans Union consumer credit report for Plaintiff and his wife. Plaintiff's report advised the dealer: "OFAC ADVISOR ALERT - INPUT NAME MATCHES NAME ON THE OFAC DATABASE." (Dkt. No. 110-10.) As a result of this OFAC alert, Plaintiff was unable to obtain credit to purchase the car jointly with his wife; instead, his wife obtained the loan and purchased the car solely in her name. (Dkt. No. 128-14 at 22:13-24.) When Plaintiff telephoned Trans Union the next day about the OFAC Alert, an employee told Plaintiff that he did not have an OFAC Alert on his credit report.[1] At Plaintiff's request, Trans Union mailed Plaintiff a copy of his consumer file. The file, however, did not include any OFAC information. (Dkt. No. 110-23.) Trans Union mailed Plaintiff a

[1] The deposition transcript portion cited by Plaintiff in support of this fact is not included in the record. *See* Dkt. No. 122 at 13:20 (citing Plaintiff's Dep. at 36:22-37:6.) This fact is not disputed, however, and, in any event, is not material to the Court's class certification ruling.

separate letter "as a courtesy" regarding how his name served as a "potential match" to the OFAC database. (Dkt. No. 110-24.)

At that time, Trans Union's OFAC Alert service used only the consumer's first and last name to search the OFAC List data, even if Trans Union possessed additional identifying information, such as birth date or address. (Dkt. No. 140 at 2.) When the computerized search logic returns a name match, Trans Union automatically places an OFAC Alert on the consumer report provided to the customer without any further investigation or confirmation. (*Id.* at 3.)

Nearly a year after he learned of the OFAC Alert, Plaintiff filed this class action against Trans Union, bringing claims under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq., and its state counterpart, the California Consumer Credit Reporting Agencies Act ("CCRAA"), Cal. Civ. Code § 1785.1 et seq. (Dkt. No. 1.) These claims are divisible into two categories. The first are Plaintiff's "disclosure claims," which are brought pursuant to the FCRA, 15 U.S.C. § 1681g(a) & (c) and the CCRAA, § 1785.10. Section 1681g(a) requires a credit reporting agency to "clearly and accurately" disclose to a consumer "[a]ll information in the consumer's file" upon a consumer's request, and 1681g(c) requires a summary of consumer rights to be provided with each consumer file disclosure. CCRAA § 1785.10 and § 1785.15(f) are analogous state statutes. The second category involves Plaintiff's "reasonable procedures" claims under the FCRA, 15 U.S.C. § 1681e(b) and CCRAA § 1785.14(b). Section 1681e(b) requires a consumer reporting agency to "follow reasonable procedures to assure

maximum possible accuracy of the information concerning the individual about whom the report relates," while its California counterpart, section 1785.14(b), includes similar language.

In July 2014, the Court certified Plaintiff's FCRA claims for a class of "all natural persons in the United States and its Territories to whom Trans Union sent a letter similar in form to the March 1, 2011 letter Trans Union sent to Plaintiff regarding 'OFAC (Office of Foreign Assets Control) Database' from January 1, 2011 - July 26, 2011." (Dkt. No. 140.) The Court also certified a California sub-class on Plaintiff's CCRAA reasonable procedure claim for injunctive relief, but declined to certify a CCRAA subclass for damages.

A year later, the Court granted Defendant's motion to stay the case, pending the outcome of the Supreme Court's review of the Ninth Circuit's decision in *Robins v. Spokeo, Inc.*, 742 F.3d 409 (9th Cir. 2014) upon which this Court relied in granting class certification of the FCRA class. (Dkt. No. 184.) The Supreme Court decided *Spokeo* on May 16, 2016. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016). In light of that decision, this Court lifted the stay and issued an amended scheduling order. (Dkt. Nos. 195, 196.) Defendant then filed the now pending motion to decertify the class contending primarily that Plaintiff lacks Article III standing. (Dkt. No. 198.)

LEGAL STANDARD

An order certifying a class "may be altered or amended before final judgment." Fed. R. Civ. P. 23(c)(1). "In considering the appropriateness of decertification, the standard of review is the same as a motion for class certification: whether the Rule 23

requirements are met." *Ridgeway v. Wal-Mart Stores, Inc.*, 2016 WL 4529430, at *12 (N.D. Cal. Aug. 30, 2016). Parties should be able to rely on a certification order and "in the normal course of events it will not be altered except for good cause," such as "discovery of new facts or changes in the parties or in the substantive or procedural law." *O'Connor v. Boeing N. Am., Inc.*, 197 F.R.D. 404, 409-10 (C.D. Cal. 2000). "The party seeking decertification bears the burden of demonstrating that the elements of Rule 23 have not been established." *In re: Autozone, Inc.*, No. 3:10-MD-02159-CRB, 2016 WL 4208200, at *9 (N.D. Cal. Aug. 10, 2016) (internal citation omitted).

DISCUSSION

Defendant argues for decertification on two related grounds. First, in light of the Supreme Court's *Spokeo* decision, Plaintiff did not suffer a concrete injury and thus does not have standing; therefore the action must be dismissed for lack of subject matter jurisdiction. Second, and again in light of *Spokeo*, Defendant insists that each class member must have suffered a "concrete injury" and that such inquiry is an individual question that renders certification is improper for a variety of reasons.

I. Plaintiff's Standing

Article III standing consists of three "irreducible constitutional minimum" requirements: "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo*, 136 S. Ct. at 1547. "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally

protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id*. at 1548 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

In *Spokeo*, the plaintiff filed a class action complaint against a consumer reporting agency for alleged violations of Section 1681 of the FCRA. *Spokeo*, 136 S. Ct. at 1545-46. Specifically, the plaintiff alleged that Spokeo violated the FCRA by providing inaccurate information about him in a generated credit report, including that he is married, has children, has a job, is in his 50s, and is relatively affluent with a graduate degree. *Id*. at 1546. The district court dismissed the complaint for lack of standing, but the Ninth Circuit reversed, finding that the plaintiff had adequately alleged an injury in fact for the statutory violation. *Id*. On review, the Supreme Court vacated the decision because the Ninth Circuit's "standing analysis was incomplete"; although the Ninth Circuit found that the plaintiff had adequately alleged a "particularized" injury—i.e., violation of his statutory rights under the FCRA—the Ninth Circuit failed to consider whether that injury satisfied the "concreteness" requirement for an injury in fact. *Id*. at 1548 ("We have made it clear time and time again that an injury in fact must be both concrete and particularized."). To be "particularized," an injury "must affect the plaintiff in a personal and individual way," while "concreteness" requires an injury to be "'de facto'; that is, it must actually exist." *Id*. at 1548 (citation omitted). The Supreme Court noted, however, that "concrete" is "not . . . necessarily synonymous with 'tangible,'" and "intangible injuries can . . . be concrete." *Id*. at 1549. The Court remanded

the case to the Ninth Circuit to consider "whether the particular procedural violations alleged in [the] case entail a degree of risk sufficient to meet the concreteness requirement." *Id.* at 1550.

A. Plaintiff's Standing Under the Disclosure Claims

Under FCRA Section 1681g(a) a credit reporting agency must "clearly and accurately" disclose to a consumer "[a]ll information in the consumer's file" upon a consumer's request, and provide a summary of consumer rights to be provided with each consumer file disclosure. *See* § 1681g(c). Plaintiff contends that Trans Union violated Section 1681g of the FCRA by not identifying the OFAC Alert in his disclosed consumer file, but instead notifying him of the OFAC Alert in a separate letter, and again by not explicitly stating in that separate letter how a consumer could dispute any inaccurate information. Defendant urges that Plaintiff does not have standing to make these claims. Given that Plaintiff was alerted to the OFAC information in the separate letter, that he in fact contacted Defendant to dispute the information, and that the OFAC Alert was removed from his file, he did not suffer a concrete injury. Defendant thus labels the disclosure claims as purely procedural violations akin to the incorrect zip code violation discussed in *Spokeo*. *See Spokeo*, 136 S. Ct. at 1550 (noting that "not all inaccuracies cause harm or present any material risk of harm" as with "an incorrect zip code."). The Court disagrees.

Plaintiff did not receive any OFAC information when he requested a complete copy of his file; he thus was inaccurately notified that Defendant had not

identified him as matching a name on the OFAC list. The omission was material: the OFAC Alert—being identified as a potential terrorist or drug trafficker—is not even close to the innocuous zip code mentioned in *Spokeo*. And when Plaintiff did receive the OFAC information in a separate letter, it stated it was being provided "as a courtesy" and not that it was an amendment to the incomplete disclosure of his consumer file. Finally, the "courtesy" letter also did not include a disclosure as to how to dispute inaccurate information. These alleged violations created a risk that Plaintiff would be harmed in precisely the way Congress was attempting to prevent when it mandated what disclosures consumer credit reporting agencies must make to consumers: a risk that the consumer is not made aware of material inaccurate information in the consumer's file, nor aware of how to dispute the inclusion of the harmful information. Thus, these omissions entailed a degree of risk sufficient to satisfy Article III's concrete injury requirement. *See Spokeo*, 136 S. Ct. at 1550.

Defendant insists that because Plaintiff contacted Trans Union about the OFAC Alert notwithstanding the alleged disclosure violations he could not have suffered a concrete injury. What Defendant means, then, is that an FCRA case can never even get through the front door—that is, get past standing—unless and until a plaintiff suffers some tangible injury from nondisclosure of required information. Of course, at some point the plaintiff has to become aware of the omitted information, otherwise the plaintiff will never know that he has a claim. But, according to Defendant, if the consumer is able to avert the risk created by the nondisclosure once made aware of the consumer

reporting agency's error such that the consumer does not suffer a tangible injury, the consumer reporting agency is insulated from suit. *Spokeo* suggests no such thing. *See Spokeo*, 136 S. Ct. at 1549 (holding that "concrete" is not synonymous with tangible).

The recent post-*Spokeo* decision in *Larson v. Trans Union LLC*, No. 12-cv-05726-WHO, 2016 WL 4367253 (N.D. Cal. Aug. 11, 2016), is instructive. There the court considered whether a plaintiff had standing to bring a Section 1681g disclosure claim very similar to the claims brought here. The plaintiff argued that an OFAC disclosure indicating that the plaintiff was a "possible OFAC match" made in a separate letter from the credit report left the plaintiff uncertain and confused as to whether he had a right to dispute the OFAC match. *Id.* at *2. The court concluded that the plaintiff had standing to pursue an "informational injury" such as this under section 1681g(a). *Id.* at *3. In so concluding, the court noted that *Spokeo* implicitly recognized "informational injury" as sufficient to establish concrete injury. *Id.* (holding that the plaintiff's "claim is based on the sort of 'informational' injury that the *Spokeo* Court implicitly recognized . . . and that a number of other cases, from both before *Spokeo* and after, have found sufficient to support Article III standing.") (internal citations omitted). The court thus reasoned that the plaintiff's Section 1681g claim was based on "something more than a 'bare procedural violation'—such as the 'dissemination of an incorrect zip code'—that cannot 'cause harm or present any material risk of harm.'" *Id.* (citing *Spokeo*, 136 S. Ct. at 1549-50). The same reasoning applies here.

"[T]he violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified." *Spokeo*, 136 S. Ct. at 1549. The circumstances of the nondisclosure violations alleged here created a material risk of real harm and thus constitute an injury sufficient for constitutional standing purposes. Plaintiff therefore has standing to pursue his disclosure claims.

B. Plaintiff's Standing Under the Accuracy Claims

Defendant's standing argument with respect to the accuracy claims is meritless. The evidence supports a finding that Defendant's OFAC Alert on Plaintiff's credit file prevented him from receiving credit to purchase a car. Further, he testified that upon discovering that he had an OFAC alert on his file he was "concerned" and "scared" because he "was on the terrorist list." (Dkt. No. 128-14 at 21:24-22:2; 25:1-3.) If these facts do not constitute concrete injury the Court does not know what does. Further, an inaccurate OFAC Alert creates a material risk of real harm, such as the emotional distress a consumer may suffer upon learning that he or she has been identified as a potential match, or harm to employment or credit prospects. *See Larson*, 2016 WL 4367253 at *3. The concrete injury requirement is easily satisfied for the accuracy claims.

II. Class Member Standing

Defendant next argues that each class member must have suffered a concrete injury and that such an inquiry presents individual questions which render

certification inappropriate. The premise of Defendant's argument—that each class member must have suffered a concrete injury—is wrong. "In a class action, standing is satisfied if at least one named plaintiff meets the requirements." *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (en banc); *see also Lewis v. Casey*, 518 U.S. 343, 395 (1996) ("[Unnamed plaintiffs] need not make any individual showing of standing [in order to obtain relief], because the standing issue focuses on whether the plaintiff is properly before the court, not whether represented parties or absent class members are properly before the court.") (internal quotation marks and citation omitted); *Larson*, 2016 WL 4367253, at *4 ("Larson's showing of standing for himself is sufficient to establish standing for the class as a whole."). Remarkably, Defendant's briefs do not cite the Ninth Circuit's en banc *Bates* decision; instead, it argues that Plaintiff's standing is inadequate because under *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 594 (9th Cir. 2012), "[n]o class may be certified that contains members lacking Article III standing." (Dkt. Nos. 198 at 24; 202 at 14.) At oral argument Defendant suggested that because *Mazza* post-dates *Bates*, it overruled *Bates*. Not so.

"Only the en banc court can overturn a prior panel precedent." *United States v. Parker*, 651 F.3d 1180, 1184 (9th Cir. 2011), *abrogated on other grounds by United States v. Apel*, 134 S. Ct. 1144 (2014). While a three judge panel "may reexamine normally controlling circuit precedent" where "the reasoning or theory of prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening higher authority," *Miller v. Gammie*, 335

F.3d 889, 892-93 (9th Cir. 2003), *Mazza* does not identify any "clearly irreconcilable" intervening higher authority; indeed, *Mazza* does not even cite *Bates*, let alone provide analysis as to why *Bates* had been overruled. Moreover, even after *Mazza* the Ninth Circuit has continued to cite *Bates*' holding as good law. *See Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 865 (9th Cir. 2014); *see also Torres v. Mercer Canyons Inc.*, No. 15-35615, 2016 WL 4537378, at *8 n.6 (9th Cir. Aug. 31, 2016) (commenting that *Mazza* only signifies "that it must be possible that class members have suffered injury, not that they did suffer injury, or that they must prove such injury at the certification phase" and citing to *Bates*).

Spokeo did not alter the well-settled legal principle set forth in *Bates*; it nowhere addresses the question. Nor did the Supreme Court's decision in *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016). *Tyson* did not involve Article III standing requirements in class actions. Indeed, the *Tyson* Court expressly stated that it was not considering "whether a class may be certified if it contains members who were not injured and have no legal right to any damages." *Tyson*, 136 S. Ct. at 1049 (internal quotation marks omitted). The Court did not consider it because the petitioner conceded that the class could be certified even if class members were not injured. *Id.*

Finally, even if each class member was required to show concrete injury, it is satisfied here. Each class member was incorrectly identified as a potential OFAC match and each received the same allegedly inaccurate disclosures as did Plaintiff. Thus, regardless of whether the inaccurate credit report was

disseminated to a third party, the procedural violations alleged as to each class member "entail a degree of risk sufficient to meet the concreteness requirement." *Spokeo*, 136 S. Ct. at 1550.

CONCLUSION

Plaintiff has suffered a concrete and particularized injury with respect to his disclosure and accuracy claims and therefore has constitutional standing. Because under long-standing and binding Ninth Circuit precedent class action standing is satisfied if at least one named plaintiff meets standing requirements, the motion to decertify the class on the grounds that the standing inquiry creates individual questions as to each class member fails. Further, under the particular circumstances of the alleged violations here, each class member has suffered a concrete injury and thus has standing. The Court therefore DENIES Defendant's Motion to Decertify the Class.

This Order disposes of Docket Number 198.

IT IS SO ORDERED.

Dated: October 17, 2016

[handwritten: signature]
JACQUELINE SCOTT CORLEY
United States Magistrate Judge

Screenshot of OFAC Search Tool (Jan. 13, 2017)

(See foldout next page)

Sanctions List Search

This Sanctions List Search application ("Sanctions List Search") is designed to facilitate the use of the Specially Designated Nationals and Blocked Persons list ("SDN List") and all other sanctions lists administered by OFAC, including the Foreign Sanctions Evaders List, the List of Persons Identified as Blocked Solely Pursuant to E.O. 13599, the Non-SDN Iran Sanctions Act List, the Part 561 list, the Sectoral Sanctions Identifications List and the Non-SDN Palestinian Legislative Council List. Given the number of lists that now reside in the Sanctions List Search tool, it is strongly recommended that users pay close attention to the program codes associated with each returned record. These program codes indicate how a true hit on a returned value should be treated. The Sanctions List Search tool uses approximate string matching to identify possible matches between word or character strings as entered into Sanctions List Search, and any name or name component as it appears on the SDN List and/or the various other sanctions lists. Sanctions List Search has a slider-bar that may be used to set a threshold (i.e., a confidence rating) for the closeness of any potential match returned as a result of a user's search. Sanctions List Search will detect certain misspellings or other incorrectly entered text, and will return near, or proximate, matches, based on the confidence rating set by the user via the slider-bar. OFAC does not provide recommendations with regard to the appropriateness of any specific confidence rating. Sanctions List Search is one tool offered to assist users in utilizing the SDN List and/or the various other sanctions lists; use of Sanctions List Search is not a substitute for undertaking appropriate due diligence. The use of Sanctions List Search does not limit any criminal or civil liability for any act undertaken as a result of, or in reliance on, such use.

Download the SDN List

Visit The OFAC Website

Download the Consolidated Non-SDN List

Program Code Key

Lookup

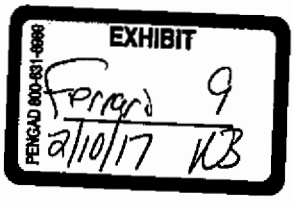
Type:	All	**Address:**	
Name:	Donald Trump	**City:**	
ID #:		**State/Province:***	NY
Program:	All 561List BALKANS BELARUS	**Country:**	All
		List:	All
Minimum Name Score:	50		Search Reset

Lookup Results: 3 Found

Name	Address	Type	Program(s)	List	Score ▼
SUDAN AIR	P.O. Box 253	Entity	SUDAN	SDN	54
GAZPROM PERERABOTKA	d.16 ul.Ostrovskogo	Entity	UKRAINE-EO13662	Non-SDN	51
Hamzat	Akharkho Street,11	Individual	SDGT	SDN	51

* U.S. states are abbreviated on the SDN and Non-SDN lists. To search for a specific U.S. state, please use the two letter U.S. Postal Service abbreviation.

SDN List last updated on: 1/12/2017 10:07:55 AM
Non-SDN List last updated on: 12/20/2016 12:33:02 PM



JA 312A

Order Denying TransUnion's Motion for Summary Judgment (N.D. Cal. Mar. 27, 2017)

Plaintiff contends that between January and July 2011 Trans Union violated three Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq., requirements: (1) that credit reporting agencies establish "reasonable procedures" to ensure the "maximum possible accuracy" of information provided about consumers under 15 U.S.C. §1681e(b); (2) that credit reporting agencies "clearly and accurately" disclose "all information in the consumers file at the time of [a] request" under § 1681g(a), and (3) that credit reporting agencies provide a statement of consumer rights with each such disclosure under § 1681g(c). Trans Union argues that summary judgment is appropriate on all of Plaintiff's claims because Plaintiff cannot establish that Trans Union willfully violated the FCRA. Because a reasonable jury could find otherwise, summary judgment is inappropriate. The Court declines to reconsider Trans Union's Article III standing arguments as the Court has considered—and rejected—these arguments in multiple previous orders.

A. Willful Violations under the FCRA

Plaintiff's FCRA claims are all premised on a "willful" violation. A willful violation entitles a consumer to statutory damages ranging from $100 to $1,000, as well as punitive damages, and attorney's fees and costs. See 15 U.S.C. § 1681n. A violation of the FCRA is willful if it is either knowing or reckless. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57 (2007). "[A] company subject to FCRA does not act in reckless disregard of it unless the action is not only a

violation under a reasonable reading of the statute's terms, but shows that the company ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless." *Id.* at 69. "That is, the defendant must have taken action involving 'an unjustifiably high risk of harm that is either known or so obvious that it should be known.'" *Bateman v. American Multi–Cinema*, 623 F.3d 708, 711 n.1 (9th Cir. 2010) (quoting *Safeco*, 551 U.S. at 68). Trans Union contends that its conduct was not willful as a matter of law and therefore it is entitled to summary judgment.

1. Clearly Established Law is not Required

Trans Union first insists that the FCRA willfulness analysis mirrors qualified immunity; that is, to get to a jury a plaintiff must show that the defendant's conduct violated "clearly established" law—provided by "controlling authority within the Circuit, or an overwhelming body of authority outside the Circuit." (Dkt. No. 218-5 at 28:10-13.) Not so.

First, in *Syed v. M-I, LLC*, 846 F.3d 1034 (9th Cir. 2017), opinion amended and superseded on denial of reh'g, No. 14-17186, ___ F.3d ___, 2017 WL 1050586 (9th Cir. Mar. 20, 2017), the Ninth Circuit considered a question of first impression under the FCRA. In ruling that the defendant's FCRA violation was willful as a matter of law, the court squarely rejected defendant's argument that its "interpretation of the statute [wa]s objectively reasonable in light of the dearth of guidance from federal appellate courts and administrative agencies. *Id.* at *8. Instead, the court held that "[a] lack of guidance [] does not itself render [defendant's] interpretation reasonable." *Id.*

"Notwithstanding that we are the first federal appellate court to construe Section 1681b(b)(2)(A), this is not a 'borderline case. An employer 'whose conduct is first examined under [a] section of the act should not receive a pass because the issue has never been decided." *Id.* at *9 (quoting *Cortez v. Trans Union, LLC*, 617 F.3d 688 (3d Cir. 2010)). It follows, then, that a plaintiff need not show that a defendant's conduct violated clearly established law to prove a willful violation of the FCRA.

Second, even apart from *Syed's* controlling holding, no court has held that a defendant can be found to have willfully violated the FCRA only when its conduct violates clearly established law. *Safeco* did not so hold; instead, after reviewing the FCRA statutory language at issue, the Supreme Court held that given the lack of prior authority interpreting the statute contrary to defendant Safeco's interpretation, and given the statute's ambiguity, Safeco's interpretation of the statute was not reckless as a matter of law. 551 U.S. at 70-71. In other words, an FCRA defendant's conduct cannot be willful if it involves an objectively reasonable interpretation of the statute *and* there is no prior authority to the contrary. Such a conclusion is a far cry from holding that the law must first be clearly established that the defendant's conduct violates the FCRA before it can be found willful. *See Heaton v. Soc. Fin., Inc.*, No. 14-CV-05191-TEH, 2015 WL 6744525, at *6 (N.D. Cal. Nov. 4, 2015) (rejecting defendants' contention "that if a statute is unclear and there is no precedential guidance as to what a valid interpretation may be, a violation may not be considered willful" as an overstatement of *Safeco's* holding). The cases Trans

Union relies on are similar to *Safeco*. For example, in *Redman v. RadioShack Corp*., 768 F.3d 622 (7th Cir. 2014), the court described the violation there as not "willful because it consisted of a permissible interpretation of an ambiguous statute" and there were no previous cases to alert the company of its erroneous interpretation. *Id*. at 639 (*citing Safeco*, 551 U.S. at 68).

2. The Section 1681g Disclosure Claims

Plaintiff makes two 1681g claims. First, that when Plaintiff requested his consumer file, that is, his credit report, Trans Union unlawfully failed to disclose that Plaintiff was identified as a potential OFAC match, even though that information was communicated to customers who asked for Plaintiff's credit report. (Dkt. No. 221-25.) Second, that when Trans Union did disclose to Plaintiff that he is identified as a potential match, Trans Union did not provide Plaintiff with a summary of rights as required by section 1681g(c). (Dkt. No 221-24.) Trans Union contends that no reasonable trier of fact could find that it willfully violated either FCRA provision.

a. 1681g(a) Claim

The FCRA, 15 U.S.C. § 1681g(a), provides in part that "[e]very consumer reporting agency shall, upon request, ... clearly and accurately disclose to the consumer: (1) *All* information in the consumer's file at the time of the request." (emphasis added). Trans Union argues that its conduct was not willful as a matter of law because the FCRA did not require Trans Union to disclose the OFAC Alert to a consumer and, even if it did apply, Trans Union did disclose the

information in compliance, or arguable compliance, with the FCRA.

i. The FCRA Applies to the OFAC Alert

Trans Union advances two arguments in support of its theory that the FCRA does not apply to OFAC information or its OFAC Alert product. Neither is availing.

First, Trans Union's interpretation of "consumer file" as not including information about a consumer having an OFAC Alert is not objectively reasonable for the reasons explained by the Third Circuit in *Cortez*. The FCRA defines "consumer file" as "all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored." 15 U.S.C. § 1681a(g). Trans Union argues that because the OFAC Alert information was not part of its own database, and was instead maintained by Accuity, it was not part of Plaintiff's "consumer file," or at least its interpretation of consumer file as not including information so maintained was not unreasonable. As the *Cortez* court explained, however, Trans Union's interpretation ignores that the FCRA expressly provides that a credit reporting agency has a duty of disclosure to a consumer of all "information on [a] consumer . . . regardless of how the information is stored." 617 F.3d at 711 (quoting 15 U.S.C. § 1681a(g)). Congress did not "intend[] to allow credit reporting companies to escape the disclosure requirement in § 1681a(g) by simply contracting with a third party to store and maintain information that would otherwise clearly be part of the consumer's file and is included in a consumer report."

Id. "Congress clearly intended the protections of the FCRA to apply to all information furnished or that might be furnished in a consumer report." *Id.* Thus, not only is Trans Union's interpretation of "consumer file" as not including OFAC information unreasonable, it was emphatically rejected by the Third Circuit in *Cortez* before the violation at issue in this lawsuit. *Id.* at 712 ("We hold that information relating to the OFAC alert is part of the consumer's 'file' as defined in the FCRA.").

Likewise, Trans Union's second argument that the OFAC information was not required to be disclosed because the OFAC Alert provided to its customers in a consumer report was somehow not part a consumer report is equally unreasonable. Congress unambiguously defined "consumer report" to include a "communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used in whole or in part for the purpose in establishing the consumer's eligibility for—(A) credit . . . to be used primarily for personal, family or household purposes." 15 U.S.C. § 1681a(d)(1). Trans Union insists that its OFAC Alert service is just part of "a routine PATRIOT Act identification verification" and should not be used for credit eligibility determinations. (Dkt. No. 218-5 at 30:24.) This interpretation of "consumer report" is objectively unreasonable and was squarely rejected by the *Cortez* court. "It is difficult to imagine an inquiry more central to a consumer's 'eligibility' for credit than whether federal law prohibits extending credit to that consumer in the first instance. The applicability of the

FCRA is not negated merely because the creditor/dealership could have used the OFAC Screen to comply with the USA PATRIOT Act, as well as deciding whether it was legal to extend credit to the consumer." *Cortez*, 617 F.3d at 707–08. Further, long before the alleged violation at issue here, OFAC regulations and the Treasury Department's website provided that OFAC information in a credit report is governed by the FCRA. *Cortez*, 617 F.3d at 722; "What Is This OFAC Information On My Credit Report," https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic," Questions 70, 71, (last visited March 27, 2017).

Trans Union's interpretation of "consumer file" and "consumer report" contradicts the plain language of the FCRA and at the time of the violation at issue here a federal court had told Trans Union that its interpretation was wrong.

ii. A Jury Could Find Trans Union Failed to Comply with the FCRA

Next, Trans Union contends that even if it was required to disclose the OFAC information to consumers upon their request for their consumer report, its disclosure of the OFAC information in a separate letter to the class members was an objectively reasonable interpretation of the FCRA disclosure requirements and thus not willful. Indeed, beginning in January 2011, if an individual contacted Trans Union to request a credit report and the individual's name had an OFAC Alert, Trans Union would mail the individual a copy of his credit report, and separately mail him a letter stating that his name was a potential match to the OFAC database. Trans

Union argues that this was all that was legally required was all that was technologically feasible during the class period as well.

Trans Union's interpretation of the disclosure requirement is not objectively reasonable. The FCRA is unambiguous: if a consumer requests, the credit reporting agency must "clearly and accurately" disclose to the consumer *all* information in the consumer file. *See* 15 U.S.C. § 1681g(a). Trans Union's second letter, however, did not "clearly" disclose that it was providing the consumer with information from the consumer's file; to the contrary, it disclaimed that it was doing so by prefacing its letter by stating that the information was being provided "as a courtesy to you" and not, rather, as required by law. (Dkt. No 221-24.) It thus created, at best, an ambiguity as to whether the information was in the consumer's file, and thus included on the consumer's credit report, even though Trans Union presented the information to its customers as part of a consumer's credit report. While *Cortez* did not address this issue, the lack of caselaw does not mean that Trans Union's violation cannot be willful. *See Syed*, 2017 WL 1050586, at *9 (finding that the plaintiff stated a claim for a willful violation of the FCRA even though the relevant legal issue presented an issue of first impression). A reasonable jury could find the violation willful.

b. 1681g(c) Claim

The record also supports a finding that Trans Union violated the FCRA's directive that a consumer reporting agency provide "with each written disclosure by the agency to the consumer" a summary of consumer rights. 15 U.S.C. § 1681g(c)(2). Assuming,

as Trans Union contends, that the second letter is such a disclosure, it did not contain the summary of consumer rights. Trans Union's argument that it was reasonable to interpret the statute as being satisfied with the summary being provided with the first disclosure (which did not include any OFAC information) is unreasonable, especially since the second letter did not in any way reference the first letter. Trans Union's insistence that it was not technological feasible to do anything more than it did is a question for the jury. The Court cannot conclude that no reasonable trier of fact could find that Trans Union willfully violated section 1681g(c).

3. Section 1681e(b) Reasonable Procedures Claim

The FCRA, Section 1681e(b), provides:

> Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

15 U.S.C. § 1682e(b). "Liability under § 1681e(b) is predicated on the reasonableness of the credit reporting agency's procedures in obtaining credit information." *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995). Plaintiff argues that Trans Union violated this section by using name-only matching to place on OFAC Alert in a consumer's file.

a. Maximum Possible Accuracy of Trans Union's OFAC Alert

Trans Union contends that no jury could find its use of name-only matching violates section 1681e(b) because it advised its customers that they must engage in human review to verify that the OFAC Alert was actually for someone on the OFAC list. The *Cortez* court, however, rejected a related version of this argument: "We are not persuaded that Trans Union's private contractual arrangements with its clients can alter the application of federal law, absent a statutory provision allowing that rather unique result." *Cortez*, 617 F.3d at 708 (rejecting Trans Union's reliance on language in its contractual agreements wherein "the creditor or subscriber agrees to be 'solely responsible for taking any action that may be required by federal law as a result of a match to the OFAC File, and shall not deny or otherwise take any adverse action against any consumer based solely on TransUnion's OFAC Advisor services.'").

Trans Union also contends that it cannot be found to have acted willfully because following *Cortez* it modified its OFAC Alert to state that an individual's name was a "potential match" rather than just a "match." Plaintiff counters that the addition of the word "potential" was not a procedure designed to "assure maximum possible accuracy" because three different Trans Union witnesses testified that there was no evidence that *any* Trans Union customer whose file contained an OFAC Alert was in fact an individual on the OFAC list. (Dkt. No. 221-8 at 62:25-63:6; Dkt. No. 221-15 at 67:6-15; Dkt. No. 221-19 at 37:9-13.) Under the FCRA, a credit report is

inaccurate or misleading if it is patently incorrect or "misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions." *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010) (internal citation omitted). A reasonable trier of fact could find that Trans Union's OFAC Alert was misleading given that the evidence supports a finding that none of the consumers flagged as a potential match were in fact a match; in other words, a jury could find that if Trans Union had used more information than just a matching name to flag a consumer—such as a matching birth date—none of the class members would be even a potential match. In addition, that Plaintiff's consumer report did not included the "potential" language supports an inference that Trans Union's procedure did not ensure maximum possible accuracy. (Dkt. No. 221-11.)

Trans Union's insistence that *Cortez* suggested that inclusion of the word "potential" could have defeated liability is not persuasive. *See Cortez*, 617 F.3d at 708-09. That is not how this Court reads *Cortez*. In response to Trans Union's argument that it merely identified Ms. Cortez as a "possible" match, the Third Circuit observed that, in fact, Trans Union identified her as a "match," not someone with a name similar to one on the OFAC list or as a possible match. *Id*. The Third Circuit did not suggest that identifying Ms. Cortez as a possible match would have been sufficient under the FCRA; to the contrary, in the following paragraph the court states that 1681e(b)'s "maximum possible accuracy" standard "requires more than merely allowing for the possibility of accuracy." *Id*. at 709.

Trans Union also insists that there was nothing more that it could have done to ensure the maximum possible accuracy of its OFAC Alert due to technological limitations. There is a material dispute of fact on this issue. Among other evidence, an Experian credit report for Mr. Ramirez during the class period states "NAME DOES NOT MATCH OFAC/PLC LIST." (Dkt. No. 221-22 at ¶ 5 and Ex. B.[1]) Further, that Trans Union removed the OFAC Alert of each class member who contacted Trans Union following receipt of the OFAC letter creates a dispute as to Trans Union's infeasibility argument. It is for the jury, not the Court, to weigh the reasonableness of Trans Union's procedures. *See Guimond*, 45 F.3d at 1333.

B. Trans Union's Other Arguments

The Court declines to consider Trans Union's other arguments in favor of summary judgment as these are a rehash of the same Article III standing arguments which the Court previously rejected.

CONCLUSION

For the reasons stated above, and at oral argument on March 22, 2017, Trans Union's motion for summary judgment is DENIED.

Trans Union's objections to Plaintiff's evidence are denied as moot. The Court did not rely on any of the objected to evidence in reaching its decision here. Likewise, Plaintiff's motion for leave to file a sur-reply is DENIED as moot as the Court did not rely on any

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[1] Although Trans Union objects to the Bhatia Affidavit, its objections relate to other portions of his declaration and not those cited here. (Dkt. No. 227-4 at 21.)

expert testimony in reaching its decision here. (Dkt. No. 230.)

This Order disposes of Docket Nos. 218, 221, and 227. The parties' related administrative motions to seal are DENIED WITHOUT PREJUDICE to Trans Union's submission of a narrowly tailored request for sealing that comports with Local Rule 79-5 and the requirements for sealing in the dispositive motion context. Trans Union shall file its renewed motion to seal by April 5, 2017.

IT IS SO ORDERED.

Dated: March 27, 2017

[handwritten: signature]
JACQUELINE SCOTT CORLEY
United States Magistrate Judge

Excerpts from Trial Transcript (June 12, 2017)

* * *

[115] Fortunately, the sale of the vehicle did go through and the Ramirez family got its car at the exact same time it would have, but for the inconvenience caused when the OFAC information appeared. But keep in mind, as Mr. Soumilas mentioned to you, that this is a class action.

Ladies and gentlemen, you need to see the entire scope here. You must see your way to a single answer for the entire class. And you have heard no discussion of any evidence, and you will see no evidence at this trial, that any other class member had a similar experience to Mr. Ramirez. Nor will you see any evidence at this trial that any transaction was denied because of the delivery of OFAC data. You will see no evidence of hardship to this class.

Yes, Mr. Ramirez's experience was unfortunate, but, nonetheless, fortunately unique. We are confident that you will conclude when all of the evidence is in that Mr. Ramirez's one experience does not prove that any of the people at TransUnion willfully violated the rights of the class as a whole. And you have just heard Mr. Soumilas agree that this is a question of whether there was a willful desire to disobey the law.

As will be explained to you later, the purpose of the Fair Credit Reporting Act is to require consumer reporting agencies, like TransUnion, to adopt reasonable procedures for meeting the needs of commerce. The evidence will show you, ladies and

* * *

[117] only contact with TransUnion was that when they asked for their own credit file, TransUnion let them know that they had a name like someone on the OFAC list and gave them the information that they needed to make sure that in the future they would not be flagged in future screening.

Think about how all of our email works. Many of us have email spam filters. If an email from someone you know gets temporary held or flagged because the computer is not sure what to do with that email, the system is not saying anything bad about it. It's simply saying more information might be needed. And it is possible for that email to be white listed to prevent future issues. One of many systems in modern life that functions like this.

And TransUnion has a system where, if a person does have a name that is similar to someone on the OFAC list, that person can contact TransUnion -- and the letter explains this -- and say: Hey, I'm not that person on the list. Here is a copy of my driver's license. Here is a copy of my Social. White list me. Just -- just make sure you notate my file so that there is not going to be a problem in the future.

And this system worked for Mr. Ramirez. He had one event on one day, one transaction. He got the car at the same time. And then with a simple handwritten note, he was able to get himself white listed against future flags. It worked very, very well.

* * *

[138] that verdict of no. But for now, our only request of you is that you listen carefully to all the evidence and that you accept our thanks and gratitude for sitting in judgment on this matter.

THE COURT: Thank you, Mr. Newman.

Ladies and gentlemen, I think what well do is take a brief 10-minute break and then we will resume with the first witness. Thank you.

As always, please do not discuss the case.

THE CLERK: All rise for the jury, please.

(Jury exits the courtroom at 1:35 p.m.)

THE COURT: Okay. 1:45 we'll resume.

(Whereupon there was a recess in the proceedings from 1:35 p.m. until 1:50 p.m.)

THE COURT: All right. Thank you, ladies and gentlemen.

Mr. Soumilas, you may call your first witness.

MR. SOUMILAS: We will call the class representative, Mr. Ramirez.

SERGIO RAMIREZ,

called as a witness for the Plaintiff herein, having been duly sworn, testified as follows:

THE WITNESS: Yes.

THE CLERK: Can you please state your name and then spell your last name for the record.

[139] **THE WITNESS:** Sergio Ramirez, R-A-M-I-R-E-Z.

THE CLERK: Thank you. You may be seated.

THE COURT: Ms. Brewer, may proceed.

DIRECT EXAMINATION

BY MS. BREWER

Q. Mr. Ramirez, I'm Carol Brewer. I'm one of the attorneys for the class. And I would like you to introduce yourself to the jury.

A. My name is Sergio Ramirez.

Q. And where do you live?

A. I live in --

THE COURT: Mr. Ramirez, can you please speak into the microphone? You can move the microphone.

A. I live in Redwood City, California.

BY MS. BREWER

Q. Is that a house or an apartment?

A. It's a house.

Q. A single-family house?

A. Yes, it is.

Q. Do you own your house or do you rent?

A. I own my house.

Q. Do you have a mortgage?

A. Yes, I do.

Q. Who lives there with you?

A. My wife and I, my three kids.

[140] **Q.** How old are your children and what are their names?

A. Juliana, she's 18 years old. Emily is 16 and a half. And I have a three-year old daughter Natalia.

Q. Does your wife work outside the home?

A. Yes, she does.

Q. What does she do?

A. She works for a start-up company called Machine Zone. She is an executive assistant.

Q. She's a sales assistant?

A. Yes.

Q. Is that -- is Machine Zone a high tech company?

A. It's a high tech company that makes, like, app for cell phones. Like, Game of War and stuff like that.

Q. And what do you do for work?

A. I'm a construction worker.

Q. What, in particular, do you do in construction?

A. I'm a painter, commercial painter.

Q. Where are you working now?

A. At the Apple campus in Cupertino, the spaceship building.

Q. Are you taking off work this week to be here at trial?

A. Yes, yes.

Q. Are you being paid while you're taking off to represent the class?

A. No.

Q. I want to turn your attention, Mr. Ramirez, to [141] February 27, 2011. That was a little more than six years ago. It was a Sunday. You and your wife had gone to Dublin Nissan to buy a car. Do you remember that?

A. Yes, I do.

Q. Do you remember what time of day you got to Dublin Nissan?

A. Like, 5:00 p.m. or so.

Q. Who was with you that day?

A. It was my wife and my father-in-law.

Q. Did you know what you were looking for when you got to the dealership?

A. Yeah. We had an idea what kind of car we wanted to purchase.

Q. What kind of car did you want to purchase?

A. It was a Nissan Maxima.

Q. Had you done any research or any negotiation before you got to the dealership?

A. Yes. My wife was doing some research online, so we kind of had an idea what we wanted. So when we show up to the dealership, we kind of know what we just want.

Q. Did you have any communications with anyone at the dealership before you got there?

A. Yes.

Q. What was that?

A. His name -- my wife was emailing back and forth the salesman, which his name is Clint Burns.

[142] **Q.** Was he a salesman at Nissan -- at Dublin Nissan?

A. Yes.

Q. Who did you meet with when you got to the dealership?

A. Clint Burns.

Q. This is the same guy that your wife had been emailing with?

A. Correct.

Q. What did you talk about when you got to the dealership?

A. Well, we just talked about -- my wife and him were talking about -- going back and forth about the prices and what kind of -- what color we wanted to get, as far as the color wise on the car, and negotiating prices still.

Q. How long did that take?

A. Oh, it took a couple hours. Like, maybe two or three hours or so.

Q. To get to a point where you had agreed on a color and a price --

A. Correct.

Q. -- and the model?

Did you get to a point where you did agree?

A. Yes, we did. We got to a point where we agreed on the price, the monthly payment, and the only next step was to check the credit.

Q. Were you still talking to Clint Burns by then?

A. Yes.

[143] **Q.** What happened next?

A. He went in, got the credit application.

Q. Is that a credit application for you and your wife both?

A. Correct, for me and my wife.

Q. You both filled out a credit application?

A. Yes, we did.

Q. Then what happened?

A. He went back. Because he was going back and forth to this other room. I don't know --

Q. This is Clint Burns?

A. Correct.

Q. The salesperson is going back and forth?

A. Yes.

Q. Okay.

A. He comes back stating that he couldn't sell me a car because I was on the OFAC list, which is a -- from what his words were a terrorist list.

Q. He told you you were on a terrorist list?

A. Correct.

Q. Did he show you a copy of your credit report?

A. Yes, he did.

Q. I would like you to turn your attention, please -- you've got binders in front of you, and if you would look at Tab No. 1. And look at the exhibit that's shined h behind Tab No. 1?

[144] **A.** Are these two the same?

Q. There is one that, I think, is 1 through 50 and the other is 51 through something else.

A. You want me to look at Tab No. 1?

Q. Tab No. 1.

A. Okay.

Q. Do you see a document under Tab No. 1?

A. Correct.

Q. And can you tell me what that is?

A. It's my credit report.

Q. Is this the credit report that you were shown at Dublin Nissan on February 27, 2011?

A. Correct.

MS. BREWER: Your Honor, we'd like to admit Exhibit 1 into evidence as the Class's Exhibit 1.

THE COURT: Any objection?

MR. NEWMAN: Object to the foundation of the admission, your Honor.

THE COURT: Mr. Ramirez, this is the report that you were shown that day some?

THE WITNESS: Correct.

THE COURT: All right. Objection overruled. Exhibit 1 admitted.

(Trial Exhibit 1 received in evidence)

[145] **BY MS. BREWER**

Q. Do you see your name on the credit report --

MS. BREWER: Oh, can we bring it up? Thank you. Mr. Reeser, could you crop the top section?

(Document displayed)

MS. BREWER: Okay. Thank you.

BY MS. BREWER

Q. Do you see your name on this credit report, Mr. Ramirez?

A. Yes, I do.

Q. Is that your address?

A. It was my previous address, but, yes, that's where I used to live before at that time.

Q. Do you see where it says SSN and there are some asterisks and it ends in 4070?

A. Yes.

Q. Is that the last four digits of your Social Security number?

A. Yes.

Q. Is that your employer -- was that your employer at the time?

A. Correct.

MS. BREWER: Mr. Reeser, could you focus on the next section down, please?

(Document displayed)

[146] **BY MS. BREWER**

Q. Mr. Ramirez, what do you see in that portion of credit report that the dealer showed you on February 27?

A. From what he told me, that my name matched the OFAC list, which is the names that are on that list. But none of those names actually match what my name is, my date of birth and last name and stuff like that. So none of those names are me, in other words.

Q. Do you see where it says "Input name matches name on the OFAC database"?

A. Yes.

Q. And so your testimony is those names are similar to yours, but none of them are you?

A. Correct.

Q. What happened next after the dealer showed you your credit report?

A. I asked if I can -- I just -- I was shocked. I didn't know what to do. I mean, this never happened to me

before. I asked if I can fix it. I asked if I can get a copy of this credit report.

He wouldn't give me a copy of it because he said he wasn't allowed to give me a copy of it. He wanted me to call TransUnion, see if I can try to fix it that way.

Q. Did he let you buy a car?

A. Eventually he said he can't sell me the car because --

[147] **Q.** He could not sell you the car?

A. Correct. He can't.

Q. Why?

A. Because they can't do business if I was on this OFAC list. They can't sell me a car.

Q. What was your reaction to hearing that you had your name on a terrorist watch list?

A. I was embarrassed. I was shocked. I was kind of scared at the time because I didn't know what's going to happen. I mean, if somebody tells you you're on a terrorist list, what are you going to do?

Q. Did you know what that meant?

A. I didn't know -- I didn't know what the list was all about until I went to the dealership and found out. All that was new to me.

Q. Did you -- did you ask the salesman to do anything about double checking or --

A. Yes. I asked him to double check and he just wouldn't. I mean, he just wanted to sell the car, so he obviously he knew that -- that was my right Social Security number, but he wouldn't double check. So

then he offered to put the name under my wife's -- put the car under my wife's name at the time.

Q. He offered to put the car under your wife's name instead of yours?

[148] **A.** Instead of mine, correct.

Q. Did your wife submit a credit application on her own behalf?

A. Yes, she did.

Q. And what happened then?

A. So they did another credit application. Took another hour. He went back in and obviously they agreed with selling her the car instead of me, putting it in her name.

Q. Was that an agreeable outcome for you?

A. Nope, it wasn't.

Q. Why not?

A. Because we usually -- me and my wife usually put everything together. We have been married for so many years, so everything we have, we have a joint account. We have our house together. Everything we have is under both of our names. So this is -- it's kind of a bummer. I couldn't put my name on it. I felt embarrassed. Felt dumb.

Q. Okay. So did you leave the dealership at that point?

A. Yes, we did.

Q. Did you have a car to drive home?

A. No, we didn't.

Q. Why not?

A. They didn't have the color my wife wanted to get, so we had to go back a couple days after.

Q. Oh, to get the --

[149] **A.** To -- they were supposed to deliver a car from another dealership.

Q. What did you do when you got home? Well, let's put it this way. That's Sunday night. The next day was Monday. Did you do anything else that night?

A. Sunday night I got home. I was just talking to my wife about it. I was, like, kind of -- didn't know what to do. I got home kind of late, so I couldn't research it at night when I got home. Had to work the next day. So when I got home from work, that's when I decided to do my research.

Q. What did you find?

MR. NEWMAN: Objection. Calls for hearsay.

THE COURT: Overruled.

BY MS. BREWER

Q. You can answer the question.

A. Can you repeat it again?

Q. What did you find when you did some research?

A. I found that the *Cortez* case, I did some research about it.

Q. What was the *Cortez* case?

A. Same thing happened to the lady that happened to me. She went to a dealership and got denied for credit because she was on the OFAC list.

MR. NEWMAN: Objection. Move to strike.

THE COURT: Well, I'm going to admit it.

[150] Ladies and gentlemen, this is being admitted as to what Mr. Ramirez understood and his state of mind at the time, not as to the truth of what was being asserted.

Go ahead.

BY MS. BREWER

Q. Did you do any other research?

A. Yes. I found the Treasury Department online.

Q. You found the telephone number for the Treasury Department?

A. Telephone number for the Treasury Department, so I called.

Q. You called the Treasury Department?

A. I called the Treasury Department. I left a message. The next day they gave me a call.

Q. What did the person at the Treasury Department tell you?

A. That they couldn't do anything about it; that I would need to call TransUnion to get me off the list.

Q. Did the person at the Treasury Department tell you that you were on the OFAC list?

A. No.

Q. Did you call TransUnion?

A. Yes, I did.

Q. Was that the next day, February 28th, as far as you remember?

A. Yes.

Q. What happened then?

[151] **A.** I spoke to this man and I told them that -- what happened to me; that I was considered to be on the OFAC list and to get me off. He told me that I was not on the OFAC list.

Q. Did you think everything was taken care of at that point?

A. In a way I had a sense of relief that I wasn't on the OFAC list. He said he was going to mail me my credit report stating that I was not on the list. So I got the letter in the mail, when -- a couple days after.

Q. Okay. I first want to ask you, was this just one phone call or was it more than one phone call?

A. It was more than one phone call.

Q. To TransUnion?

A. That I remember, yes.

Q. And why was it more than one phone call?

A. Because I was getting the runaround from them. They kept telling me I was not on the list, and I knew that I was, and I just kept -- there was this lady who was -- I forgot who it was. I don't know if it was a male or female. I couldn't understand her, her accent. She had a real strong Indian accent. So I was just getting the runaround from her. I remember once hanging up because I was so mad because I wasn't getting anywhere.

Q. So you felt you were getting the runaround because you -- the dealer had told you you were on the OFAC list, but the person at TransUnion was telling you you weren't --

[152] **A.** Correct.

Q. -- is that right?

A. Correct.

Q. Okay. So did you ever receive anything in the mail from TransUnion?

A. Yes. I got my copy of my credit report.

Q. In the mail?

A. Correct.

Q. I'd like you to look, Mr. Ramirez, at Exhibit 75 in the binders in front of you and see if you can identify that, please?

(Witness complied)

Q. Can you tell me what that is?

A. It is a copy of my credit report.

Q. Is this the copy of your credit report that TransUnion sent you in the mail and is dated February 28, 2011?

A. Yes, it is.

MS. BREWER: Your Honor, class counsel would like to introduce Exhibit 75 into evidence.

THE COURT: Any objection?

MR. NEWMAN: No objection.

THE COURT: 75 admitted.

(Trial Exhibit 75 received in evidence)

BY MS. BREWER

Q. Mr. Ramirez, I'd like you to take a moment and look [153] through Exhibit 75, which is your credit report, and tell me if there is any information in that report about OFAC at all?

(Witness complied)

A. No.

Q. Did you -- did you think the problem was solved then when you got your credit report?

A. Kind of. In a way I did, but in a way I wasn't because it didn't say that I was not -- I was off the OFAC list. So I was kind of confused whether I was on or not.

Q. Did TransUnion send you anything else?

A. Yes, they did. A couple days -- I think a day later.

Q. What did they send you?

A. Another letter.

Q. Another -- and this is a separate letter from the credit report?

A. Correct.

Q. Mr. Ramirez, I would like you to look at Exhibit 3, please, and see if you can tell me what that is.

(Witness complied)

A. It's a letter that I got from TransUnion.

Q. Is that a letter dated March 1st, 2011 from TransUnion?

A. Correct.

Q. And this is the letter that you got in the mail?

A. Yes.

MS. BREWER: Your Honor, the Class would like to

[154] introduce Exhibit 3 into evidence.

THE COURT: Any objection?

MR. NEWMAN: No objection, your Honor.

THE COURT: Exhibit 3 admitted.

(Trial Exhibit 3 received in evidence).

MS. BREWER: Ken, if you would pull that up, please?

If you could crop and highlight the top part?

(Document displayed)

BY MS. BREWER

Q. Mr. Ramirez, do you see the top part of this letter that says:

> "As a courtesy to you, we also want to make you aware that the name that appears on your TransUnion credit file 'Sergio L. Ramirez' is considered a potential match to information listed on the United States Department of Treasury's Office of Foreign Asset Control database."

Do you see that?

A. Yes, I do.

Q. What was your reaction to seeing that information?

A. I was shocked because from the first letter, maybe I thought it was -- they had already taken it off. But I didn't know what to do. It doesn't say whether -- how to fix it, where to call or -- it doesn't say anything how to dispute. The letter doesn't say anything about that.

Q. So you didn't know what to do?

[155] **A.** I didn't know what to do.

Q. Did you discuss this with your wife, about what you should do?

A. Yes, I did. I discussed it with her and she was -- she was also worried. We were planning -- we were planning a family trip to go to Mexico, the whole family, but we decided to cancel because of what happened here, because I was on the OFAC list. So we were -- in a way my daughters were all kind of bummed because we were not going to go to Mexico.

So then my wife said: You know what? Maybe you should look for a lawyer.

Q. Did you look for a lawyer?

A. Yes, I did.

Q. Did you contact a lawyer at that point?

A. Yes, I did.

Q. Mr. Ramirez, would you please look at Exhibit 54 in the binder in front of you?

(Witness complied.)

Q. Do you see it?

A. Yes.

Q. Can you tell me what that is?

A. It's another letter from TransUnion. 54, you said?

Q. 54?

A. Yes. Five four.

Q. Is that your personal -- is that the letter that you [156] wrote?

A. No.

Q. Okay. You would look at Exhibit 53?

(Brief pause.)

THE COURT: Ms. Brewer, if you want to step forward and look at the...

(Whereupon document was shown to the witness.)

BY MS. BREWER

Q. Okay. Would you look at Exhibit 54, please, and tell me what that is?

A. It's a letter I wrote to TransUnion.

Q. Does it have a date on it?

A. Yes. March 16th.

Q. March 16th --

A. -- 2011.

Q. 2011.

MS. BREWER: Your Honor, the Class would like to introduce Exhibit 54 into evidence.

MR. NEWMAN: No objection.

THE COURT: 54 admitted.

(Trial Exhibit 54 received in evidence).

BY MS. BREWER

Q. What does your letter say?

A. (As read)

"Please get me off the OFAC list. I tried to buy a [157] car and got denied because they said I was on the OFAC list."

And then it says a file number and my signature.

Q. Okay. Could you speak into the microphone a little more?

A. It says:

"Please get me off the OFAC list. I tried to buy a car, but got denied because they said I was in the OFAC list."

And it has a file number and my signature.

Q. How did you figure out how to send a dispute?

A. After I talked to the lawyer.

Q. You talked to a lawyer.

Mr. Newman said that the letter that TransUnion sent you explained how to fix the problem, but you said that it didn't tell you how to fix the problem, is that right?

A. Yes. That's the only reason why I called the lawyer in the first place, because I didn't know what to do.

Q. Would you have known how to dispute with TransUnion without contacting a lawyer?

A. No.

Q. Did you ever hear back from TransUnion after you disputed?

A. I think, yeah, I got a letter back from them.

Q. Okay. I'm going to ask you to look at Exhibit 53, please.

(Witness complied)

Q. Can you tell me what that is?

[158] A. It's a letter from TransUnion.

Q. What does it say?

A. It's supposed to say that the...

(Brief pause.)

A. That they took me off the OFAC list.

MS. BREWER: Your Honor, counsel would like to move for admission into evidence of Exhibit 53.

MR. NEWMAN: No objection.

THE COURT: 53 admitted.

(Trial Exhibit 53 received in evidence).

BY MS. BREWER

Q. Mr. Ramirez, how long have you lived in California?

A. All my life.

Q. How old were you when you came into this country?

A. Maybe, like, five months.

Q. Five months old? And you've lived in California since then?

A. Correct.

Q. You understand that this case is not just about you. You're here representing a certified class?

A. Correct.

Q. What does that mean to you?

A. Well, it means it's not just me. It's all the representatives that are -- that happened the same thing what happened to me.

[159] **Q.** Why did you want to represent a class in this case?

MR. NEWMAN: Objection. Relevance.

THE COURT: Overruled.

BY MS. BREWER

Q. You can answer.

A. Because I just don't want that to happen to anybody. I mean, it's embarrassing. I don't think it's right what they are doing. And I just don't -- I wouldn't -- I don't feel it's right, period.

Q. What do you think TransUnion did wrong here?

MR. NEWMAN: Objection.

THE COURT: Overruled.

A. Putting people on the OFAC list that shouldn't be on the OFAC list. And then, like, instead of you trying to fix it, you get the runaround. You don't know what to do. Just like what happened to me. They sent me letters, but didn't say how to fix it. And I just think it's wrong.

MS. BREWER: Thank you. I have no more questions.

THE COURT: All right. Any cross examination?

CROSS EXAMINATION

BY MR. NEWMAN

Q. Hello, Mr. Ramirez.

A. How is it going?

Q. Could we begin by speaking a little bit about the vehicle purchase? Your wife was the one who negotiated the purchase of

* * *

[166] **A** In time, I built up my credit, and I was able to purchase the house, correct.

Q Since the time we have been discussing, March of 2011, you haven't had any other issues with an OFAC flag, have you?

A No.

MR. NEWMAN: No further questions, Your Honor.

THE COURT: Ms. Brewer?

MS. BREWER: Just a very brief redirect.

Mr. Reeser, could you pull up exhibit 1 again, please? And the identifying part at the top.

(Document displayed.)

REDIRECT EXAMINATION

BY MS. BREWER

Q Mr. Ramirez, I'm looking at the credit report that the dealer showed you on February 27.

And do you see your name, that says "Sergio L. Ramirez" at the top?

A Correct.

Q Middle initial L.?

A Yes.

Q And, it didn't match any of the Sergio Ramirezes that were shown in the middle of the report, did it?

A No.

Q When you and your wife filled out the credit report at the dealership, your wife actually filled out all the information.

* * *

Excerpts from Trial Transcript (June 13, 2017)

* * *

[209] that was going to happen.

MR. LUCKMAN: Yes. If you could just --

THE COURT: I'll tell them she's one of those witnesses.

MR. LUCKMAN: -- indulge me in a reminder.

THE COURT: Absolutely.

MR. SOUMILAS: We agree.

MR. NEWMAN: Very good, your Honor.

THE COURT: If I forget to do any of these things, feel free to remind me.

(Whereupon there was a recess in the proceedings from 8:59 p.m. until 9:06 p.m.)

THE COURT: Good morning, ladies and gentlemen. Why while we had the delay we were able to use that time and so I expect that the evidence should come in quite smoothly today. So, Mr. Soumilas, would the plaintiff like to call your next witness.

MR. SOUMILAS: Thank you, your Honor. Yes. We are prepared now to call Hector Vale.

HECTOR VALE,

called as a witness for the Plaintiff herein, having been duly sworn, testified as follows:

THE WITNESS: Yes.

THE CLERK: Can you please state your name and spell [210] your last name for the record?

THE WITNESS: Hector Vale. Last name is Vale, V, as in Victor, A-L-E.

THE CLERK: Thank you. You may be seated.

THE COURT: Good morning, Mr. Vale.

THE WITNESS: Good morning.

DIRECT EXAMINATION

BY MR. SOUMILAS

Q. Good morning, Mr. Vale. Who do you work for, sir?

A. I work official Cox Automotive.

Q. Where is your office?

A. It's at 1111 Marcus Avenue, Lake Success, New York.

Q. Did you say New York?

A. Yes.

Q. What is Cox Automotive?

A. Cox Automotive is quite a few number of companies. One of them is the Cox Automotive industry, but they also own Cox Media, Cox Cable.

Q. What do you do for Cox Automotive?

A. I work for a company -- well, I actually work for Cox Automotive that was actually acquired by Dealertrack awhile back and I am Security Operations Manager.

Q. And what do you do in that capacity?

A. We do abnormal activity monitoring on our website for applications, credit applications that are being submitted on [211] behalf of consumers. We

monitor dealerships. We address subpoenas that we receive from our legal counsel.

Q. And when you say you "address subpoenas," would you please explain what that means?

A. So our counsel would receive a subpoena for a dealership that may have had fraudulent activity done within our website and we would, in essence, have to investigate that activity and provide evidence.

Q. And do subpoenas sometimes ask you to retrieve records that your company has?

A. Yeah. Credit applications, as well as financial submissions to lending institutions.

Q. Okay. Now, earlier, just a moment ago, you mentioned the Dealertrack acquisition, I think you called it; is that right?

A. That's correct.

Q. So what is Dealertrack?

A. Dealertrack is a web-based company that offers automotive software for on demand credit inquires, as well as applications. It provides a secure channel for communications with other parties.

Q. And would you just explain to the jury what the relationship is between Dealertrack and Cox Automotive, please?

A. So the relationship, meaning that they purchased Dealertrack.

Q. Got it. So before Cox Automotive purchased Dealertrack, [212] did you used to work for Dealertrack?

A. Yes.

Q. And were you working for Dealertrack in the 2011 time frame?

A. Yes.

Q. And what type of work were you doing for Dealertrack in that time frame?

A. Security Operations Manager.

Q. And the responsibility concerning subpoenas, did you also have that responsibility back then?

A. Yes. I was considered the custodian of records, and I worked alongside Piyush Bhatia.

Q. When you say "custodian of records," would you please explain what that means?

A. Sure. So the custodian of records would mean all the transactions that were processed through our website, storing that information.

Q. Okay. And you said you worked with someone, Mr. Bhatia.

A. That's correct.

Q. Okay. Do you understand -- well, let me ask you this. Did Dealertrack in that time frame of 2011 have any role in assisting car dealerships obtaining credit reports?

A. Yes. We provided a secure channel for the communications.

Q. All right. And was Dublin Nissan, here in California, one of the clients for whom you provided that type of a channel?

[213] **A.** Yes.

Q. And did the channel include information that came from the TransUnion credit bureau?

A. Yes.

Q. Would I be correct in saying that you -- well, let me not even put it that way. How did the channel work to communicate data from TransUnion to Dublin Nissan?

A. Sure. So a dealer internally gets on --

MS. ELLICE: Objection, your Honor. I'm going to make a foundational objection to this testimony.

THE COURT: Overruled.

BY MR. SOUMILAS

Q. That means you can answer it.

A. I'm sorry. Can you repeat the question again?

Q. Yes. Would you please explain what you said was the channel of communication, how it worked?

A. Okay. So the dealer would, in essence, provide credit bureau codes to us. We would upload them onto our website, which would allow them a secure channel to communicate with TransUnion.

Q. All right. So in layman's terms if a dealer like Dublin Nissan wanted a TransUnion credit report, would Dealertrack help them get it?

A. Dealertrack just provided the services. They would, in essence, provide us with the credit bureau codes and we would [214] load it on their Dealertrack I.D., which is unique per dealership.

So they would -- Dublin Nissan would have provided us those credentials in order to provide that secure channel of communication between TransUnion and the dealership.

Q. And then what happened once those credentials were properly input into your system?

A. The dealer would pull credit on a consumer and then the -- the transaction would then fetch the data from TransUnion and they would display it on the screen.

Q. Got it. Now, did Dealertrack also provide data to dealerships from other credit bureaus, such as Experian?

A. Yes.

Q. And was it through the same channel?

A. Yes.

Q. Are you aware with what OFAC screening is?

(Cell phone interruption.)

THE COURT: She's never done that before.

MR. SOUMILAS: Happens to all of us. Don't worry about it.

A. Yes, I am aware of what OFAC is.

BY MR. SOUMILAS

Q. And what is your understanding of what OFAC is?

MS. ELLICE: Objection, your Honor. Foundation, and relevance from this witness.

[215] **THE COURT:** I sustain that.

BY MR. SOUMILAS

Q. Okay. Did Dealertrack itself provide any reports through this channel to car dealerships, like Dublin Nissan?

A. Can you clarify?

Q. Yes. Does Dealertrack have its own OFAC screening service?

A. No.

Q. Does Dealertrack provide any type -- let me stop and ask you to look at some documents. You said you were the custodian of records at the time?

A. That's correct.

Q. And are you aware whether a subpoena for this case, the *Ramirez versus TransUnion* case, was served upon Dealertrack?

A. Yes.

Q. And are you aware whether records were retrieved from Dealertrack to provide to us in response to that subpoena?

A. Yes.

Q. And are you familiar with those records?

A. Yes.

Q. Were those records pulled in the regular course in which you would pull records to respond to subpoenas?

A. That's correct, yes.

Q. And does Dealertrack maintain these records in the regular course of its business?

[216] **A.** Yes.

Q. Okay. I would like to show you what's in the binder in front of you as -- actually, even before I get there, if you saw these records, would you be able to identify them?

A. Yes.

Q. All right. Let's start with what is Exhibit 1 in the binder in front of you, please. There are two binders and they should be labeled 1 through 50. So look at that one.

A. Sure.

Q. Look at Tab 1, please.

A. Tab 1.

Q. All right. So you're looking at the exhibit behind Tab 1 in the first binder?

A. Yes.

Q. And could you identify that document for the record, please?

A. Yes. It's a TransUnion credit report.

MS. ELLICE: Objection, your Honor. Move to strike the response.

THE COURT: Overruled. I will allow the next question.

BY MR. SOUMILAS

Q. And was this one of the documents that Dealertrack provided in response to the subpoena in this matter?

A. It is possible, yes.

[217] **Q.** Okay. And have you worked with someone in connection with this subpoena that was provided?

A. Yes.

Q. Who was that?

A. Piyush Bhatia.

Q. Are you aware whether Mr. Bhatia also assisted in preparing -- producing, excuse me, this document?

A. Am I aware if Piyush Bhatia produced this document?

Q. Yes.

A. I am not aware.

Q. Have you seen an affidavit by Mr. Bhatia that he said he was the person originally producing these documents?

MS. ELLICE: Objection, your Honor. Counsel is testifying as to the contents of the affidavit.

A. Yes.

THE COURT: Overruled.

A. Yes.

BY MR. SOUMILAS

Q. Yes, you have seen it?

A. Yes.

Q. Would it refresh -- do you remember what it says?

A. It was a subpoena related to the TransUnion credit report and the inquiry that was done by Dublin Nissan.

Q. Okay. And was this the TransUnion credit report that was produced in response to the subpoena?

[218] **A.** Yes.

Q. Okay. Now, when you talked about this channel --

MR. SOUMILAS: Actually, Mr. Reeser, would you put up Exhibit 1?

And would you flip to the second page?

Would you mind displaying the second page and then back to the first?

(Document displayed)

BY MR. SOUMILAS

Q. Okay. Is the document in front of you, Mr. Vale, a two-page document like the one just displayed to the jury?

A. Yes, it is.

Q. Okay. And is that the information that would have gone through the channel that you just testified about from Dealertrack to Dublin Nissan?

A. Yes.

Q. Now, when information goes through this channel, I take it it's a -- we're talking about a computer channel, correct?

A. That's correct.

Q. Does Dealertrack do anything to change TransUnion's information?

A. No, we do not.

Q. Does Dealertrack add any words to what TransUnion has on its reports?

A. No.

[219] **MS. ELLICE:** Objection, your Honor. Foundation.

THE COURT: Overruled.

BY MR. SOUMILAS

Q. What was the answer?

A. No.

Q. Does Dealertrack subtract any words from what TransUnion would have in its reports?

A. No.

Q. Does Dealertrack simply convey to the dealership what TransUnion provides?

A. That is correct.

Q. All right. Now, take a look, if you will, please, at Exhibit 20 in the binder in front of you?

A. I'm sorry. Exhibit?

Q. Twenty. Two zero.

(Witness complied)

A. I'm assuming 20 is going to be a little further down this document -- I mean, this binder.

MR. SOUMILAS: So could I help the witness, your Honor?

THE COURT: You may.

BY MR. SOUMILAS

Q. I think if you look for Tab 20...

(Document was shown to the witness.)

A. Tab 20. Okay, perfect.

[220] **Q.** You got it?

A. Yeah.

Q. So, Mr. Vale, let me know, please, when you get to the exhibit behind Tab 20 in the binder in front you.

A. Sure.

(Brief pause.)

A. So I am at Tab 20.

Q. And do you recognize this document?

A. Yes. This is an Experian credit report.

Q. And was this also part of the documentation that

Dealertrack provided in response to the subpoena in this lawsuit?

A. Yes, it is.

Q. And was this, also, documentation that Dealertrack sent to Dublin Nissan in connection with the Ramirez request?

A. Yes, it is.

Q. Okay.

MR. SOUMILAS: At this point we would like to move Exhibit 20 into evidence, your Honor.

MS. ELLICE: Objection, your Honor. Foundation.

THE COURT: Overruled. Overruled. Exhibit 20 admitted.

(Trial Exhibit 20 received in evidence).

MR. SOUMILAS: And let's display that to the jury.

(Document displayed)

[221] **BY MR. SOUMILAS**

Q. Is that a one-page document, Mr. Vale?

A. On the top right-hand side it says 8 of 11.

Q. Okay. So it says 8 of 11 on a document filed on the Pacer docket with this court. So that's a court filing document.

A. Got you. It is one page.

Q. And I want to direct your attention -- actually, I'm going to correct this. That's why I wanted to get my binder.

Would you look at the binder in front of you? Do you have two pages for that document?

A. Yes, I do.

MR. SOUMILAS: I'm sorry. Let's display the second page for the sake of completeness.

(Document displayed)

BY MR. SOUMILAS

Q. Would you agree with me that the end of the second page simply says "End Experian"?

A. That's correct.

Q. Okay. So there is nothing on the second page other than to indicate that's the end of the Experian report, correct?

A. That is correct.

Q. And if we flip back to the first page for a moment, I want to direct your attention to the very bottom of that page. Under "Messages," do you see that?

A. Yes, I do.

[222] **Q.** And do you see the code 1202?

A. Yes, I do.

Q. Would you please read to the jury what it says right after that code?

A. "Name does not match OFAC PLC list."

Q. "Does not match," correct?

A. "Does not match."

Q. And that's according to the Experian report?

A. That's correct.

Q. Now, does Dealertrack do anything to change data that it receives from Experian and conveys to Dublin Nissan?

A. No, it does not.

Q. Does it add any words or subtract any words?

A. No, it does not.

Q. And would you please, sir, take a look at the exhibit Behind Tab 21 in the binder in front of have? It's the very next document.

(Witness complied)

Q. Are you aware whether this document, Exhibit 21, was also provided in this case in response to the subpoena that we served on Dealertrack?

A. Yes, that is correct.

Q. And could you identify this document for the record?

A. This document is an OFAC report from the Dealertrack website.

[223] **MR. SOUMILAS:** Okay. At this point, your Honor, we would like to move Exhibit 21 into evidence.

MS. ELLICE: Your Honor, we just renew our objection as to foundation for these documents.

THE COURT: Okay. Overruled.

(Trial Exhibit 21 received in evidence)

MR. SOUMILAS: Let's please display this document for the jury.

(Document displayed)

BY MR. SOUMILAS

Q. And, Mr. Vale, you said this document is from Dealertrack's own website?

A. Yes.

Q. So this is not information that Dealertrack got from Experian or TransUnion. It's its own information?

A. It would have gotten it from one of the credit bureau providers and it would have been generated as a report on the Dealertrack.com website.

Q. Right. And do you know which of the credit bureau providers provided this third page?

A. No.

Q. Okay. Do you know whether it was the third national credit bureau, Equifax?

A. No, I do not.

Q. All right. And would you agree with me that the bottom of [224] this page also says "OFAC Detail, No Match Found"?

A. Yes, I agree.

Q. All right. I don't think I have anything further. Thank you very much.

CROSS EXAMINATION

BY MS. ELLICE

Q. Good morning, Mr. Vale.

A. Good morning.

Q. My name is Christine Ellice. I'm counsel for TransUnion, defendant in this case.

A. Hi.

Q. Now, Mr. Vale, you just testified on direct that you work at Cox Automotive, correct?

A. That is correct.

Q. And you are currently the Security Operations Manager there, is that right?

A. That is correct.

Q. And that's a position you've held since March, 2013?

A. I have been with the company for 13 years.

Q. But my question was a little bit different. You have been the Security Operations Manager at Cox Automotive since March of 2013, is that right?

A. That is correct.

Q. And prior to being the Security Operations Manager at Cox Automotive, you were an SAP security analyst at Dealertrack?

[225] **A.** That is correct. That -- go ahead. Sorry.

Q. And that was a position you held between March 2010 and March 2013, is that right?

A. That is correct.

Q. So meaning on the day that Dublin Nissan pulled this credit report through the Dealertrack website, you were employed as an SAP security analyst at Dealertrack, right?

A. So I played a number of roles at Dealertrack. And SAP Security Administrator was part of the security operations management portion. And I had a consultant that was reporting to me, as well as an employee on the SAP administration side.

So I was doing -- I was playing both roles, security operations, custodian of records, as well as SAP administrator.

Q. Now, in March -- between March 2010 to March 2013, you weren't responsible for overseeing any business negotiations between Dealertrack and car dealerships, were you?

A. No.

Q. And you weren't responsible for overseeing any negotiations between Dealertrack and credit reporting agencies, were you?

A. No.

Q. And just to be clear, Mr. Vale, when we're talking about security in the context of your job at Dealertrack, we're talking about the security of a company's IT network, is that right?

[226] **A.** Its security -- there's a number of roles within security. It could be a security risk, risk management, vulnerability testing, network security, security operations.

So at that time I was security operations in terms of looking after the security of dealerships within our website.

Q. But just to be clear when we talk about security, you're not talking about security in any kind of counter terrorism sense, right?

A. No.

Q. You're talking about the infrastructure security of a company's software system, operations, that kind of thing?

A. I'm referencing the course of business on our website and the abnormal activities that pertains to dealership activity. Network security was managed by the network team.

Q. Now, I want to talk a little bit about Dealertrack's business model. I think it's fair to say from your testimony on direct Dealertrack is a service provider; is that accurate?

A. Yes.

Q. And Dealertrack services the automotive industry?

A. Yes.

Q. And I understood your testimony to mean that Dealertrack provides on demand software services to car dealerships; is that fair?

A. Yes.

Q. And among the services Dealertrack provides to these car [227] dealerships, it provides a channel for dealers to obtain consumer reports?

A. That's correct.

Q. And was it your testimony that Dealertrack is providing a direct channel between car dealerships and credit reporting agencies?

A. That's correct.

Q. There is no intermediary involved in that chain?

A. No.

Q. So does Dealertrack have a contract with TransUnion?

A. Good question. I'm not sure.

Q. You don't know?

A. No.

Q. You haven't seen that in your capacity as custodian of records?

A. No.

Q. You haven't seen any licensing agreements between TransUnion and Dealertrack?

A. No.

Q. You haven't seen any reseller agreements between Dealertrack and TransUnion?

A. I know we're a credit bureau reseller. We are a credit bureau reseller. I don't know whether or not they have, as a credit bureau reseller, with the three providers a contract. That would be our legal team that would retain that [228] information.

Q. So it's your testimony that Dealertrack is a reseller?

A. Yes, we are.

Q. And from your understanding, there should be a contractual relationship between Dealertrack and the three credit reporting agencies, if they are a reseller?

A. Yes. I would assume so.

Q. But you don't have any of those contracts with you here today, do you?

A. No.

MS. ELLICE: Could we put Exhibit 1 up on the screen, please, Shoma?

(Document displayed)

BY MS. ELLICE

Q. Mr. Vale, you testified on direct about this document, Exhibit 1, which has been identified as Mr. Ramirez's credit report?

A. Correct.

Q. And I think you referred to it as the TransUnion credit report, is that right?

A. That's correct.

Q. When was the first time you saw Trial Exhibit 1?

A. Last week.

Q. You didn't see it at the time it was created?

A. No.

* * *

[286] witness, the class wishes to introduce some evidence by way of stipulation and judicial notice.

And, specifically, this is evidence relating to the *Sandra Cortez versus TransUnion* litigation that started in 2005. And, at this point, we wish to do three things.

First, to enter into evidence Trial Exhibit 4. That is a TransUnion credit report for Sandra Cortez to the Elway Subaru car dealership dated June 3, 2005. It's a three-page document at Trial -- Trial Exhibit 4, Your Honor.

THE COURT: All right. 4 is admitted.

(Trial Exhibit 4 received in evidence.)

MR. SOUMILAS: The next thing we wish to move into evidence is Trial Exhibit 5. It is a file disclosure or personal credit report that TransUnion

sent to Sandra Cortez along with a cover letter that is dated May 10th, 2005. And that's Trial Exhibit 5 here, Your Honor.

THE COURT: All right. That is also admitted.

(Trial Exhibit 5 received in evidence.)

MR. SOUMILAS: And the third item of business, Your Honor, is a stipulation concerning the *Cortez* litigation history that was filed at Docket 287 of this case.

And I believe we have an agreement that the Court could provide this information to the jury that's in Paragraph 1.

THE COURT: All right. So I'm going to read the stipulation. [287]

A stipulation are facts to which the parties have agreed. And so you're to consider them as proved. Again, to streamline the case, the parties have agreed that these facts that I'm going to read to you are true:

In October, 2005, plaintiff Sandra Cortez filed a lawsuit in the Federal Eastern District of Pennsylvania against TransUnion for violations of the Fair Credit Reporting Act, alleging that TransUnion confused Ms. Cortez's identity with the identity of someone with a similar name who was on the OFAC specially-designated nationals list; failed to correct problems with her credit report, and failed to disclose to her any information about OFAC in her file disclosure.

TransUnion defended the case on the grounds, among others, that its OFAC product was not governed by the Fair Credit Reporting Act, and, therefore, TransUnion did not include it in its

disclosures to consumers or allow consumers to dispute the OFAC information.

Ms. Cortez argued that the product was of governed by the Fair Credit Reporting Act, and the District Court agreed. The Court's ruling was the first ruling to so hold, that an OFAC product could be governed by the Fair Credit Reporting Act, if sold by a consumer reporting agency.

In April 2007, a jury found in favor of Ms. Cortez and against TransUnion. Based upon the Court's ruling, the jury found TransUnion liable for its failure to treat its OFAC [288] product as governed by the Fair Credit Reporting Act, including maintaining reasonable procedures for achieving maximum possible accuracy in consumer reports, disclosing OFAC information to consumers, and for disputing OFAC information. An Appellate Court upheld the jury's verdict in August 2010.

Ms. Cortez has been fully paid on her claim, and she is not part of the class or any other aspect of this litigation. You are only to consider this information about the *Cortez* case as background for understanding events prior to the January 1 through January 26, 2011 class period here.

All right. Are you ready for your next witness?

MR. SOUMILAS: Thank you, Your Honor. Yes, we are. Our next witness is Colleen Gill.

COLLEEN GILL, PLAINTIFF'S WITNESS, SWORN

THE CLERK: Please say your name and then spell your last name for the record.

THE WITNESS: Sure. Colleen Gill, and the last name is spelled G-I-L-L.

THE COURT: Ladies and gentlemen, Ms. Gill is one of those witnesses I told you about just yesterday, one of the witnesses that was on both parties' witness list. So, in order to avoid Ms. Gill having to come back again for the defendants' presentation of their case, both sides are going to use Ms. Gill for their direct and their cross-examination at the same time.

[289] All right. You may proceed.

MR. SOUMILAS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SOUMILAS:

Q Ms. Gill, good morning.

A Good morning.

Q Where is your home, ma'am?

A I live outside of Chicago in a suburb by the name of Park Ridge.

Q Okay. And, do I understand that you were previously employed by TransUnion?

A Yes.

Q You are not --

A I was --

Q I'm sorry. Please answer.

A Yes, I was employed at TransUnion for 26 years.

Q Thank you. But, presently, you are not employed by TransUnion?

A No. Presently, I'm not employed by TransUnion.

Q What do you do now?

A I am a self-employed project consultant. So right now I'm focusing on healthcare consulting.

Q All right. I want to talk a little bit about your time with TransUnion. When did you start there?

A In November of 1984.

[290] **Q** And when did you stop working for TransUnion?

A I left in November of 2010.

Q So if my math is right, 26 years with the company?

A Yes. It was shortly after my 26th anniversary, I left.

Q Could you tell us a little bit about the type of work you did at TransUnion over all those years?

A Sure. When I first started at TransUnion, I was in a data acquisition role. And in that role, our focus was to load data to the TransUnion database.

After a few years, I moved into a product management role, where we were focusing on developing new products to meet our customers' needs.

Q What was the highest title you held at TransUnion?

A The highest title would have been a director, and it was my title when I left in November of 2010.

Q Would you please explain to us, director of what?

A Director of product development and management. It had a different name when I left, but that is basically what it was. Product development and management.

Q And when you say "products," at TransUnion, am I correct that products are information?

A Yes.

Q So it's the selling of information on credit reports, typically, correct?

A Um, well, it is information products or data products. [291] And there are credit reports which would be governed by FCRA. And then there were also a set of solutions that weren't governed by the FCRA.

Q Okay. I want to just start with some basic information about the company, since you worked for them for so long. And we'll get more specific to the products at issue in this case.

But, do you recognize TransUnion as one of the big three credit reporting agencies in this country?

A Yes. I would recognize TransUnion as one of the big three.

Q And, what are the other two?

A Experian and Equifax.

Q Now, I believe the jury has also heard the term "credit bureau." Is that same thing? Is it synonymous?

A Yes. I would say so.

Q And, you said that one of the things that TransUnion sells is credit reports. Correct?

A Correct. One of the things they sell is credit reports.

Q Now, you made a distinction between sales of products that you said were governed by the FCRA and those that are not. Correct?

A That's correct.

Q So, when you say "the FCRA," we're talking about the federal law, the Fair Credit Reporting Act?

A That's correct.

[292] **Q** Okay. So there's a set of informational products that TransUnion considers to be governed by the Fair Credit Reporting Act?

A That's correct.

Q And TransUnion knows that act because it is the primary law that governs that part of its business. Correct?

A That's correct.

Q You have heard of the standard of assuring maximum possible accuracy on the information on credit reports. Correct?

A I'm sorry. Could you repeat that, please?

Q Yes. Of course.

With respect to credit reports, with your years at TransUnion, did you hear of the standard of assuring the maximum possible accuracy of the information on the credit reports?

MR. LUCKMAN: Your Honor, object to the form. This is a partial statement.

THE COURT: I'll allow her to answer that.

THE WITNESS: Yes. TransUnion's goal was to always provide the most accurate information possible to people that were purchasing their products.

BY MR. SOUMILAS:

Q All right. You would agree with me that the people purchasing TransUnion's credit reports have an expectation that [293] they are purchasing accurate information from TransUnion?

A Yes. That would be correct.

Q And is it your understanding also that consumers wish to have accurate information sold to banks or whoever they might be doing business with?

A Yes. That's correct.

Q All right. Now, am I correct that when we are talking about the credit report side of the business, credit reports are furnished by TransUnion to banks. Correct?

A Yes.

Q And what other types of TransUnion customers typically purchase credit reports?

A Insurance companies would be another example.

Q Okay. Any other type of companies that you know?

A Other financial services providers, not just banks.

Q Credit card companies?

A Right.

Q Mortgage companies?

A Right.

Q People who extend credit for car loans?

A Correct.

Q Okay. And am I correct that credit reports at TransUnion have several types of information generally on them?

A Yes. There's a couple of different sections of data included on a credit report.

[294] **Q** So that's what I'd like to discuss next. Just to outline the types of data that you would typically see on a TransUnion credit report.

Would personal information about the consumer be one of those sections?

A Yes. Personal information is included in the credit report.

Q Thank you. And when we say "personal information," what type of information are we talking about?

A Name, address, Social Security number.

Q Date of birth, when it's available?

A Yes.

Q Prior address, when it's available?

A Yes, prior address.

Q And when we talk about names, if TransUnion were furnished, by one of its suppliers, first, middle, and last name of a consumer, it would maintain that, typically?

A. Clarify what you mean by "maintain it."

Q Keep it in its database from where it would sell credit reports.

A I'm a little confused by that question.

Do you mean would we keep a record of the information that was sent to us to request a credit report?

Q Hmm, no. I'm sorry. Let me try to clarify the question.

A Thank you.

[295] **Q** Do I understand that TransUnion gathers information from various sources to keep in its credit reporting database?

A Yes.

Q So --

A We have data contributors that contribute data which makes up the TransUnion database.

Q So we can use me as an example. If one of my banks were a data contributor to TransUnion, would TransUnion get information about me?

A If you had an open account with them, yes.

Q Sure. So let's say I had an open account, and the bank had my street address and my Social Security number and my date of birth.

Would that be the type of information that TransUnion would gather from that contributor?

A I think you are asking me about data contribution guidelines, and that really wasn't my area of expertise.

There's something called the metro format, which all three credit bureaus require when data is contributed. And I don't know, off the top of my head, what data fields would be included. I'm sure it was -- you know, the identifying information and then the information about the trade or the account.

Q Okay. Fine.

MR. LUCKMAN: Your Honor, excuse me. Before -- before [296] he asks another question, our feed died on the --

THE COURT: Oh, your realtime?

MR. LUCKMAN: Yes.

THE COURT: Okay.

MR. LUCKMAN: And because of my hearing, I would like to have that.

THE COURT: All right. Are you having trouble --

MR. LUCKMAN: I'm hearing fine.

(A pause in the proceedings)

BY MR. SOUMILAS:

Q Okay. So I think we were speaking about generally the collection of personal identifying information as one type of information that goes on a credit report. Do you recall that?

A Yes.

Q And you may not know every data field, but you think generally TransUnion would collect name, street address, Social Security number, date of birth?

A Once again, I feel a little uncomfortable with this, because you're really asking about data acquisition formats, and that really wasn't my area of expertise when I left.

Q Okay. Fine. Let's talk about things that you learned through the years working for the company.

Is another area of information that goes in credit reports public records that might be associated with particular consumers?

[297] **A** Yes. Or public records included on credit reports.

(Reporter interruption) **T**

HE WITNESS: There are public records included on credit records, that's correct.

BY MR. SOUMILAS:

Q And when we say "public records," would you explain to the jury what that is?

A A public record, an example would be a bankruptcy.

Q All right. So, also, if a consumer has maybe a tax lien, would that be in that part of the credit report as well?

A I -- I believe if tax liens are collected, they're displayed on a credit report, as well.

Q All right. So when you say "public records," is it, generally speaking, government records that might be filed with some government agency or courthouse?

MR. LUCKMAN: Objection, Your Honor. It is vague, and she's already demonstrated it is not her area. We are going to have another witness who will know this later.

THE COURT: Overruled.

You can answer it if you can.

THE WITNESS: I'm -- I believe they are court records. I'm not really familiar, though, with the process of collecting them.

BY MR. SOUMILAS:

Q Okay. That's fine. Let's go to the next area that would [298] typically be in a TransUnion credit report.

Are you familiar with trade lines?

A Yes, I am.

Q Okay. And would you explain to the jury what trade lines are?

A "Trade lines" is an industry term for an account with a credit granter.

Q So, if I have a credit card with, I don't know, name your bank, Bank of America, and Bank of America supplied that information to TransUnion, it would show up on a credit report about me?

A If the account was open, in all likelihood, it would appear on your credit report.

Q And what other types of accounts might show up as trade lines?

A A mortgage or an installment loan.

Q Okay. So, you were in the courtroom just now, Ms. Gill, when we read the stipulation about the *Cortez* litigation. Correct?

A Yes.

Q I would like to direct your attention to an exhibit that was admitted into evidence right before that stipulation, which is No. 4 in the binder in front of you.

If you could please flip to Tab 4 and look at the document immediately behind it.

[299] (Request complied with by the Witness)

Q Are you there?

A Yes, I'm here.

Q All right.

MR. SOUMILAS: Mr. Reeser, would you mind putting Exhibit 4 up for the jury?

(Document displayed)

BY MR. SOUMILAS:

Q And, focusing on the top section of the report, underneath the name "APPLICANT, SANDRA CORTEZ," do you see what it reads after a long sequence of numbers (Indicating)?

(Witness examines document)

A So, just to make sure I'm following you, are we talking about underneath the section where it says "TRANSUNION CREDIT REPORT"?

Q I'm sorry.

MR. SOMILAS: So what we have up on the screen right now needs to be adjusted. Let's go a little higher, please.

BY MR. SOUMILAS:

Q And I'll help you with a pointer as to what I'm pointing to.

A Okay. Thank you.

(Document displayed)

Q So right there at the top (Indicating), under the name "SANDRA CORTEZ," we have the heading "TRANSUNION CREDIT [300] REPORT." Do you see that?

A Yes, I do.

MR. SOMILAS: And now let's focus on a little further down, where you were before, Mr. Reeser. So, blow up that section, but all the way down to "SPECIAL MESSAGES," if you would.

(Document displayed)

BY MR. SOUMILAS:

Q So right underneath the heading "TRANSUNION CREDIT REPORT," we see things like "SANDRA JEAN CORTEZ," and then there's an address there, in Highland Ranch, Colorado, a date of birth on the right-hand side, where I'm pointing now.

Do you see that?

A Yes.

Q There's a Social Security number, but it is blocked out for privacy purposes in this litigation. My question is: Is this the type of personal identifying information that you testified about just a few moments ago?

A Yes.

This would be the identifying information on a credit report.

Q Got it.

MR. SOUMILAS: And now I want to go underneath the "MODEL PROFILE" section, have that section and the trades blown up for the jury, please.

(Document displayed)

[301] **BY MR. SOUMILAS:**

Q And, Ms. Gill, would you agree with me that, under the model profile, that's typically where we see the credit score?

A Yes, that's correct.

Q So that would be right there where I'm pointing now at "721"?

A Yes.

Q And then immediately underneath that, it says "TRADES." Do you see that?

A Yes, I do.

Q And is that the type of information that you identified just a moment ago as "trade lines"?

A Yes. Or accounts.

Q Okay. So, the first one we see there appears to be some, like, Discover credit card? Is that what it is?

A Yes. That is a revolving card.

Q All right. Thank you for explaining that.

Now, are you aware that, at some point along your years at TransUnion, TransUnion also decided that it was going to communicate or furnish information about OFAC?

MR. LUCKMAN: Objection, Your Honor. It is an incomplete --

THE COURT: Well, he just asked if she was aware. If you can answer.

THE WITNESS: Yes. I was aware that TransUnion was [302] going to offer an OFAC service.

BY MR. SOUMILAS:

Q Right. And, eventually, you became the OFAC product manager, didn't you?

A Yes. I did.

Q Okay. So let's walk the jury through a little bit of that history.

Do you know when TransUnion first began offering this OFAC alert service?

A It went into production, I believe, in September of 2002.

Q Okay. And when it went into production, did TransUnion have this product in its category of products that were regulated by the Fair Credit Reporting Act? Or did it have it in the other category that you testified about previously?

A TransUnion's Legal and Compliance Department determined it was non-FCRA data.

Q Okay. So, what is the other department that it goes in when it's non-FCRA data?

A Well, I don't know that I would call it a department, but TransUnion has a number of databases. So we have the FCRA-governed databases that credit reports come from. And then there are other databases -- I can't remember their names, they may have had some acronyms -- that aren't governed by FCRA.

Q Okay. So, let me get this right.

[303] Initially, TransUnion's lawyers decided that the OFAC service should go in some other database, not the Fair Credit Reporting Act database.

A Well, they made a determination, you know, based on a lot of research, that we couldn't -- it wasn't FCRA-governed, and it wouldn't be added to the credit database. It would be stored in a separate file that we were getting from a vendor.

Q Okay. You're not a lawyer, right, Ms. Gill?

A No, I'm not.

Q And you're aware of the specific legal research that the lawyers engaged in at that time?

A No. I'm only aware of the decision that they, you know, came to.

Q Right. Because you said it was a lot of legal research. So I'm wondering if you know specifically what it was.

A No, I don't. I don't know. There was a process that was conducted to determine, you know, a lot of the Legal and Compliance questions. But, you know, they had done their research, and they got back to the product development team with, you know, the answer that they determined it wasn't FCRA-regulated data.

Q Who was the head of the Legal Department at the time?

A I -- I don't know if it was John Blenke or not. I don't know if he was around in 2002 when we launched the product.

Q Do you know who Denise Norgle is?

[304] **A** Yes, I do.

Q Who is that?

A She's -- I don't know what her title is, but she is a lawyer on the TransUnion legal team.

Q Are you aware whether she is a high-level lawyer for the corporation?

A I'm not aware of her exact title.

Q Do you know whether she is the general counsel of the corporation?

A No, I don't know.

Q Okay. At any rate, in 2002, you weren't managing this product. You were just assisting with the OFAC service?

A Yes. I wasn't the primary person, but I took over managing it after it was launched because the primary person left the company.

Q Got it. And, when, approximately, did you take over as the primary person managing the OFAC product?

A I really can't remember the exact date.

Q Could you approximate without guessing?

A Sometime after it was launched. That's the only thing I can remember.

Q Would the mid-2000s sound about right?

A I really don't want to guess on that.

Q How long were you the primary manager of the OFAC product at TransUnion?

[305] **A** From sometime after its launch until I left in November of 2010.

Q Were you the product manager of the OFAC product in the time that the *Cortez* litigation occurred?

A Yes, I was.

Q And, in fact, you gave testimony in that litigation. Correct?

A Correct. I was deposed and I gave testimony at trial.

Q And did you hear when we just read the stipulation concerning the *Cortez* litigation to the jury, that that litigation started in October of 2005?

A I -- I didn't remember the exact dates, but once it was read, my memory was refreshed on the timing of the *Cortez* trial.

Q So, would you agree, now that you had your memory refreshed, that in the mid-2000s, you were the product manager for the OFAC product?

A Well, based on everything, it must have been between 2002, when the product was launched, and the *Cortez* trial that I took over managing the product.

Q Okay. And you maintained the management responsibilities through November of 2010 when you left TransUnion. Correct?

A That's correct.

Q All right. So could you please tell us some of the basic duties and responsibilities that you had as the OFAC product [306] manager for the years that you were in charge of that product?

A Sure. In addition to OFAC, I did manage other products as well. But, basically, what a product manager does is it evaluates new concepts that typically come to us from a customer. There's some unmet need out in the marketplace.

And if the concept is approved by Legal and Compliance and we move forward with development,

I would be managing the product after it was launched.

So I would be answering questions primarily from salespeople. I would be updating marketing materials, making any changes that were deemed unnecessary to -- deemed necessary to the product.

Q And, would you know, for example, where information concerning the OFAC product would come from?

A Yes. We -- TransUnion had entered into a relationship with a third-party vendor by the name of Accuity, and they were furnishing us the OFAC information.

Q And, broadly speaking, would you also know how the product was supposed to deliver a match to a potential credit applicant?

A I'm a little confused by the wording, because even though the information was returned with a credit report, the searches were entirely different. And the information for OFAC was returned with a credit report, but as far as OFAC went, it was a name-only-based search. Where a search for a credit report [307] would be all the identifying information that the customer provided to us in the inquiry.

Q So, that's what I was getting at, whether you were aware that the OFAC product was a name-only search, as you put it.

A Yes. I was aware of that.

Q Let's break that down just a little further.

You said a moment ago that TransUnion used Accuity, Inc., as the company from which it retrieved data concerning OFAC? Correct?

A Accuity was our vendor for the OFAC solution.

Q So, are you aware whether the OFAC list is -- do you know what "OFAC" stands for?

A Yes, I do.

Q What is it?

A Office of Foreign Assets Control.

Q And do you know what that is, that office?

A I know it's a division of the U.S. Treasury.

Q And, am I correct that, when TransUnion obtained OFAC information during the years that you were product manager, that it did not go and get that information directly from the U.S. Department of the Treasury?

A That's correct. We were using Accuity to get the OFAC file.

Q And, Accuity was TransUnion's sole source of OFAC file information?

[308] **A** Yes. That's correct.

Q And that was from the very beginning through 2010, when you left the company. Correct?

A That's correct.

Q Got it. And, let's clarify a little bit further this name-only search procedure.

Would I be correct, Ms. Gill, that once a consumer submitted a credit application, and then one of TransUnion's customers wanted a credit report, there

would be some type of an inquiry by that customer for a credit report?

A That's correct.

Q And, typically, that customer would provide to TransUnion information about the consumer who's making the credit application?

A That's correct.

Q So, in the report that we just saw for Sandra Cortez, the Elway Subaru dealership would provide information about the name of the applicant, correct?

A Although I can't see it on this copy, they would have had to send us the name, along with other identifying information.

Q Right. So the other information typically is Social Security number, correct?

A. That's correct.

Q. Typically, a date of birth, when they have it. Correct?

A I don't know in how many cases, but, you know, always at [309] least name and address. That would be the minimum to pull a credit report. And then, hopefully, a Social Security number. And, you know, date of birth was also optional.

Q Certainly, there are data fields that the customer could fill in for date of birth, Social Security number, name and address, correct?

A Yes.

Q So when they want a TransUnion report, they could fill in all that data and give it to TransUnion and say: Give us a report on Sandra Cortez at such and

such an address, such and such Social Security number, such and such date of birth.

Correct?

A That's correct.

Q And then once that request comes to TransUnion, TransUnion uses that information to pull things like the trade lines. Correct?

A Well, it would use that identifying information to pull a credit report, yes.

Q Right. So the credit report would include information like the Discover credit card account that we saw and other things that you called the trade lines. Correct?

A Yes, trade lines or accounts.

Q So, like the car loans, the mortgages, the things that you described as trade lines. Correct?

A That's correct.

[310] **Q** And TransUnion would use all of the information that the customer provided to make a link between the applicant and whatever information was in the credit history that TransUnion had about that applicant.

A Based on the customer's, you know, input, which is identifying information, TransUnion would use their search logic to pull the credit report.

Q And it would use all the information that the customer provided. Correct?

A Yes.

Q Yeah. But, then, when it came time to -- so would I be correct that some customers also wanted

TransUnion to provide an OFAC search for that same applicant?

A Yes, OFAC could be returned with a credit report.

Q All right. So let's go back to that Exhibit 4 for a moment.

(Request complied with by the Witness)

Q And, the first page.

MR. SOUMILAS: Would you put it up, Mr. Reeser?

(Document displayed)

BY MR. SOUMILAS:

Q And, now, Ms. Gill, I would like us to focus in the middle part of the first page underneath "SPECIAL MESSAGES."

Would you take a look at that?

(Witness examines document)

[311] **A** Yes.

Q So this is a situation where a customer is requesting the OFAC product along with all the other credit information for Ms. Cortez. Correct?

A That's correct.

Q And the OFAC hit, if there is one, would show up under the "SPECIAL MESSAGES" field?

A Yes. The OFAC information, whether it was a clear message or a hit message, would be returned in the "SPECIAL MESSAGES" section on the printed credit report.

Q This one that we are looking at here on Exhibit 4 --

MR. SOUMILAS: Would you please blow up "SPECIAL MESSAGES" for the jury to see.

(Document displayed)

BY MR. SOUMILAS:

Q Was this a hit or a clear?

A This was a hit because it says "INPUT NAME MATCHES NAME IN THE OFAC DATABASE," and then underneath it you will find the information that was present in the OFAC Treasury Department database entries that potentially matched.

Q Okay. So, this language that says "INPUT NAME MATCHES NAME ON OFAC DATABASE," this is the language that was used at the time in 2005 to explain a hit?

A Yes, it was.

Q And the information underneath is information that comes [312] from Accuity to TransUnion, correct?

A That's correct.

Q And here it says that there is a hit to a Sandra Cortes Quintero of Cali, Colombia, correct?

A Yes, that's correct.

Q Why are there four separate hits, do you know?

A Most likely there were four entries in the OFAC database.

Q All right. And they're all for the same person?

(Witness examines document)

A A similar -- similar names.

Q It does appear that all four of these entries relate to a person that has a date of birth of June 21, 1971. Correct?

(Witness examines document)

Q Let me help you.

A Okay.

Q It is a lot of data. Do you see it now?

A The first one does, and I don't see it in the second. Oh, there it is.

Q And maybe there's the third (Indicating)?

A Yes.

Q And how about there (Indicating), the fourth?

A Yes.

Q Okay. Now, TransUnion knew, if you look further up on that credit report under the "PERSONAL IDENTIFYING INFORMATION," that Sandra Cortez's date of birth was May 1944.

[313]

Is that correct?

MR. SOUMILAS: Mr. Reeser, would you show the section under "TRANSUNION CREDIT REPORT," the top section?

MR. LUCKMAN: Your Honor, I think we are going pretty far down the road on this document on the *Cortez* case, following the stipulation --

THE COURT: I'll allow the questions.

(Document displayed)

BY MR. SOUMILAS:

Q So, am I right, Ms. Gill, that the date of birth for the applicant, Sandra Cortez, was May, 1944?

A That's the date of birth that was in the TransUnion database.

Q Got it. And it looks like TransUnion had data about Sandra Cortez in its database since the 1980s, right? 1982 (Indicating)?

(Witness examines document)

A Yes. That would be the in-file date.

Q All right. So I just want to go back to this name-only matching that TransUnion was using with Accuity. When we say "name-only," it means that we're not using things like the date of birth to look whether there's a potential hit. Correct?

A That's correct.

Q And we're not using the date of birth at any point, correct?

[314] **A** That's correct. Because the OFAC database, the only consistent element in each one of those records is name. The date of birth was only there in select cases.

Q Do you know what percentage of cases had the date of birth?

A No, I don't. But I know it wasn't in every case.

Q Are you aware whether TransUnion actually researched how frequently the date of birth was available in the OFAC database?

A I believe there was some analysis done.

Q Are you aware that it was over 80 percent?

A No.

Q Okay. You didn't do that analysis, correct?

A No. No, I didn't.

Q We'll discuss that later. But for now what I want to know is -- just establish that the date of birth was one of the fields that was just not used to compare the applicant to the data on the OFAC list. Correct?

A No. Because, once again, this wasn't determined to be an FCRA product. And the date of birth is part of the FCR-regulated database.

Q Okay. So that's a good point.

TransUnion, at this time, believed that the product was not one of the credit report database products. Correct?

A That's correct.

[315] **Q** So it didn't follow the FCRA procedures that it would for information coming from the FCRA database.

A TransUnion's Legal and Compliance Department determined that OFAC wasn't FCRA-governed data.

Q So, for that reason, TransUnion was not following the standards that it would use for FCRA-governed data?

A That's correct.

Q It was not using date of birth or Social Security number or any address information, or anything else, other than name, to match an applicant to a potential hit on the OFAC list.

Isn't that also correct?

A That's correct.

Q Now, even after this information was pulled from Accuity concerning the hit, no one at TransUnion compared any of the data in the "SPECIAL MESSAGES" to the data in the personal information of the applicant. Correct?

A No. When an inquiry came in to us, requesting OFAC, with a credit report, for example, the, you know, full identifying information would search the CRONUS database. And then concurrently, only the name would be used to search the OFAC file. And then the data would be returned, you know, in tandem with each other.

Q That's what I'm trying to get at.

So when the data is returned in tandem with each other, at that point, the report goes out to the customer, correct?

[316] **A** That's correct.

Q So there isn't a part of the process where we stop, before sending the report to the customer, and cross-reference things like dates of birth on the OFAC list, when they're available, to date of births in the CRONUS TransUnion database when they're available.

A No. We're not looking at the CRONUS database, because, once again, Legal and Compliance did not feel as though this was FCRA-governed.

Q Right. And with respect to that, since the company was of the view that this was not FCRA-governed information, also when they send personal credit reports to the homes of consumers who asked

for their reports, there wasn't any -- any information about OFAC. Correct?

A Right. As part of the policy review prior to developing the solution, since Legal and Compliance determined it wasn't FCRA data, it wouldn't need to be disclosed on the report returned directly to the consumer.

Q Right. So that was a deliberate decision made by the company at its Legal Department and Compliance Department?

MR. LUCKMAN: Objection, Your Honor.

THE WITNESS: That's correct.

THE COURT: Overruled.

BY MR. SOUMILAS:

Q Who was the head of Compliance?

[317] **A** I'm sorry. I don't remember who the head of Compliance was at the point it was developed. And I don't know who it is today, if that's your question.

Q At the point of the Cortez case, do you remember who was the head of Compliance?

A No. I'm sorry. I don't.

Q Okay. Let's take a look just for a moment at Exhibit 5, which is in front of you. That is another exhibit that was entered into evidence in connection with the *Cortez* litigation history.

(Witness examines document)

Q And would you agree with me that, beginning on Page 3 of that exhibit, that is the type of thing that we call a personal credit report?

(Witness examines document)

A I want to stipulate that I'm far less familiar with the direct-to-consumer version of a credit report than I am with the version of the credit report that one of our customers would have gotten.

Q Got it.

A So I'm not really familiar with the direct-to-consumer version, which is the version in No. 5.

Q Okay. So we could agree that this is not -- Exhibit 5 is not the version that a TransUnion customer would have gotten. It would have been something that goes to consumers at their [318] home.

A That's correct.

Q And would you agree with me that pursuant to the procedures at the time that you were working there, no OFAC information would ever be included in this type of a report (Indicating) that went to the consumer, that we see as Exhibit 5?

A Right. That's correct.

Q That is correct. And that is from the beginning of whenever you took over concerning the OFAC product in the early 2000s through November 2010, when you left.

A Right. From the time the product was launched in 2002 until the time I left, it was not being included on the consumer version of the report.

Q And I don't want to belabor the point, but just for the record, would you agree with me that Exhibit 5, which is the Cortez file disclosure, doesn't have a single word about OFAC in it, in any of its 16 pages?

(Witness examines document)

A Just give me a minute to look at this.

Q Sure. Take your time.

(Witness examines document)

A I have looked through it, and I don't see any section that has OFAC messages.

Q Okay. And that's consistent with the practice, as you [319] understood it, at least?

A That's correct.

Q Now, you said you were familiar that Sandra Cortez did bring a lawsuit against TransUnion in 2005. Correct?

A That's correct. I was deposed by you, and I testified at the trial.

Q And you were there throughout the trial in Philadelphia in 2007, correct?

A That's correct.

Q Would you agree with the statement in the stipulation that we read into the record, that Ms. Cortez claimed in that lawsuit that TransUnion violated the FCRA, allegedly because TransUnion confused Ms. Cortez's identity with the identity of someone with a similar name who was on the OFAC specially-designated nationals list?

MR. LUCKMAN: Objection, Your Honor. We have gone through the trouble of having a stipulation.

THE COURT: The stipulation also said that they may be allowed to ask witnesses --

MR. LUCKMAN: Excuse me?

THE COURT: They would be allowed to question witnesses about it --

MR. LUCKMAN: About the stipulation?

THE COURT: No. About the *Cortez* case, if you look at Paragraph 2.

[320] **MR. LUCKMAN:** Yes.

THE COURT: That is what he is doing.

MR. LUCKMAN: Okay.

MR. SOUMILAS: Thank you, Your Honor.

BY MR. SOUMILAS:

Q So you would agree with that statement, that that was one

of Ms. Cortez's allegations that TransUnion confused her

identity with someone with a similar name on the OFAC

specially-designated nationals list?

A Yes. That's what I remember hearing being read.

Q Got it. Do you have an understanding whether Mr. Ramirez in this case is claiming that his identity was confused with someone on the OFAC specially-designated nationals list?

A I -- I guess I -- I assume that.

THE COURT: Now I'm going to actually do my own objection.

She hasn't worked there since 2010. So I don't know why this witness -- the claim is what the claim is.

MR. SOUMILAS: She gave a deposition in this case, Your Honor, the Ramirez case. So she's familiar with it. But I can move along.

THE COURT: Yeah, move along.

BY MR. SOUMILAS:

Q Would you also agree, focusing on *Cortez*, that Ms. Cortez alleged in that lawsuit that TransUnion failed to disclose to [321] her any information about OFAC in her file disclosure?

A Yes, it was not part of the disclosure.

Q And you recall that there was a verdict in Philadelphia in the *Cortez* case, correct?

A Yes. There was some type of monetary award.

Q Is it your -- you were there for the verdict?

A I think I had already left to go back home, but I think I was told about it afterwards.

Q As the head of the OFAC product, were you told that the jury found against TransUnion on those allegations that I just read to you from the stipulation?

A Well, I knew she got a monetary award, but I don't really know the legal details or ramifications. I'm sure someone in Legal was notified, but I -- it wasn't shared with me.

Q Okay. Is it your understanding that Sandra Cortez has won her case against TransUnion?

A Um, I know she got, um, you know, a monetary settlement. So, I don't know if you only get those if you win a case.

Q Okay. So, after you participated in that case, no one told you who won or lost the trial?

A I knew there was a monetary settlement. And if there were discussions taking place, I was not part of them.

Q Yeah. And I don't mean to be nitpicky, but it's important.

Was it a monetary settlement? Or was there a jury verdict [322] in favor of Ms. Cortez, and against TransUnion, to your

knowledge?

MR. LUCKMAN: Your Honor, I'm going to object to the form of the question.

THE COURT: Overruled. It's what her understanding is.

Right? What you were told.

THE WITNESS: I know there was a jury. And I know they came to a decision and awarded her some money. So, I don't really know how to describe that.

BY MR. SOUMILAS:

Q Okay. Let's focus on the period after the jury verdict.

A Okay.

Q So that was in 2007, you recall, the jury verdict? Correct?

A I think it was the spring of 2007.

Q You are correct.

And you stayed on with the company through the fall of 2010.

A That's right.

Q And you continued to be the OFAC product manager for that product through the end.

A Yes. I was managing the product until I left.

Q And am I correct that, focusing on this time frame of after the verdict in 2007 through the time you left the company [323] in the fall of 2010, that TransUnion continued to use Accuity to get OFAC information?

A Yes. Accuity continued to be the vendor. And they were still the vendor when I left in November of 2010.

Q Got it. And TransUnion continued to not include any information about OFAC in the personal credit reports that it sent to consumers at their homes when they requested it. Isn't that right?

A At the time I left, I don't think OFAC was being disclosed on the reports delivered to the consumer.

Q Am I correct that, between the verdict in 2007 and the time you left in 2010, you are not even aware of any discussions at TransUnion to disclose the OFAC information to consumers?

A Well, I think I should clarify something. I really wasn't involved at all in Consumer Relations. So there could have been discussions. I was not part of them, no.

Q You were not familiar of any efforts taken by TransUnion to disclose OFAC information to consumers between the time of the Cortez verdict in 2007 and the time you left in 2010. Correct?

A I was not aware of any efforts, no.

Q But you were the product manager for this product.

A Yes. But Consumer Relations, you know, is really kind of self-contained. They do all the work on their version of the [324] credit report, themselves.

Q Well, you did do some work for Consumer Relations towards the end of your years with TransUnion, didn't you?

A Could you explain that to me?

Q Yes. Didn't you have some role in working with TransUnion to handle disputes from consumers concerning OFAC towards the end of your career at TransUnion?

A Yes, there was a procedure put in place.

Q And the procedure involved you, personally.

A Yes, it did.

Q Okay. And am I correct, this is towards the end of your career with TransUnion?

A I'm not sure when we started blocking the names, if that's what your question is.

Q That is my question. So let's talk a little bit about your role in handling consumer disputes that came to TransUnion through Consumer Relations about one of these OFAC alert products. Okay?

A Okay.

Q Do I understand, Ms. Gill, that information from Consumer Relations about the consumer who's disputing would be forwarded to you personally?

A Yes. After Consumer Relations did some vetting on the -- if you want to call it the claim of an OFAC hit.

Q And this was a new procedure put in place, correct?

[325] **A** Yes, it was.

Q So back in the days of the *Cortez* case, TransUnion wouldn't process disputes from consumers concerning OFAC information in particular.

A To my knowledge, there weren't any requests for disputes about OFAC.

Q Well, you said OFAC was not disclosed to consumers anywhere back in those days. Correct?

A Right.

Q And am I correct that there was no procedure at TransUnion that you were aware of to handle disputes about OFAC should they occur?

A That's correct.

Q Okay. So the procedure came in place later. Correct?

A Yes.

Q And then you were personally involved, and that's towards the end of your career at TransUnion.

A That's correct.

Q And am I correct that Consumer Relations would let you know: Such and such a consumer brought a dispute to our attention, and they say they're not on the OFAC list, for example?

A That's correct.

Q And you would review that dispute personally, wouldn't you?

[326] **A** I would review the request, yes.

Q And you would look at the actual OFAC list maintained by the U.S. Department of the Treasury, in that looking-into process that you engaged in?

A Yes. I would look on the Treasury website.

Q And you would look for information made available by the U.S. Treasury on its website concerning the person who's considered a match to that consumer. Correct?

A Correct. And that was the same information that we were returning in the case of a match.

Q Right. And you would use your judgment to try to figure out whether there was an actual match or whether there was some mismatch, if you will?

A Correct. And Consumer Relations was doing some vetting on their end with identifying the customer. And then once they did their identification, they would send the request to me.

Q And you would look at all the information that the Treasury Department had made available for that specially-designated national. Correct?

A Right. As part of the entry, which was also returned in the case of a hit.

Q And, in your experience, when you located some information on the Treasury Department's list that related to the hit that came back from that consumer, you would instruct Consumer Relations to block that hit from happening in the future. [327] Correct?

A No, that's not really the way it worked. If we determined the name should be blocked, I would write up a service request, and the IT people were somehow blocking it in the table.

So it wasn't Consumer Relations that was doing the blocking. It was a different group of IT people.

Q Okay. So let's get this sequencing correct. Consumer Relations would get the dispute in the first instance, correct?

A Yes.

Q Forward it to you for your review of the Treasury Department's information. Correct?

A Correct.

Q And your judgment call on what was a good match or not a good match. Correct?

A That's correct.

Q And then when you determined that the match was not a good match, you would forward it on to technical people to block that from happening again in the future.

A Yes.

Q And you --

A So instead of a hit message, they would be getting a clear message.

Q Got it. And when we say "a block," that means that the hit message would just be blocked from ever appearing in the [328] future?

A That's correct.

Q And you did that for every single one of the cases where you found the name on the Treasury list, correct?

A No. That's not correct. Actually, there was a lot of requests that came in that weren't actually hits. I don't know why, but people would say: I don't like the

fact that an OFAC message is on my credit report, even though it was a clear.

So there were a number of more requests -- there were more requests that wouldn't have matched, and I didn't end up submitting a request, than, you know, actual names that needed to be blocked. So the majority of the requests were really not legitimate.

Q You remember giving a deposition in this case, the Ramirez case, don't you, Ms. Gill?

A Yes, I do.

Q And, that deposition took place in Chicago. Am I right?

A That's correct.

Q And that was in -- let's see if I could get the date for this. December 2013. Does that sound right?

A That's correct.

MR. SOUMILAS: May I approach, Your Honor?

THE COURT: You may.

MR. SOUMILAS: Do you have a copy, Counsel?

MR. LUCKMAN: What page?

[329] **MR. SOUMILAS:** So I would like Ms. Gill to turn her attention to Page 36 of that deposition transcript, beginning at Line 21.

Would you like a copy, Your Honor?

THE COURT: I would.

MR. SOUMILAS: I have one.

(Document handed up to the Court)

THE COURT: Okay.

BY MR. SOUMILAS:

Q So you understood that when you were giving this deposition testimony Ms. Gill, you were under oath just like you are today. Correct?

A That's correct.

Q And you have done that before in other cases. Correct?

A Yes.

Q And, I want to go through the testimony that you gave that day concerning this issue of disputes during your deposition in 2013. Okay?

A Okay.

Q Let's begin with Page 36, Line 21, where the question is (As read):

> "QUESTION: But Consumer Relations wasn't processing these OFAC alerts. They were asking you to do that, right?"

Do you see the answer, your answer?

A Yes.

[330] **Q** What is it?

A "Right."

Q Next question:

> "QUESTION: So with respect to the group of people..."

MR. SOUMILAS: Would you mind putting that up, Mr. Reeser?

(Document displayed)

BY MR. SOUMILAS:

> "QUESTION: So with respect to the group of people who had disputed the OFAC alerts and their names were being sent to you from Consumer Relations, and you found the name on the OFAC list or the Treasury Department list, did you block all of them?"

And then there's an objection to the form.

Do you see that?

A Yes, I do.

MR. LUCKMAN: Your Honor, another objection presently before he moves on. It's not a proper question to impeach her. She --

THE COURT: Well, maybe not, but she is considered the defendant, since she's giving the testimony as to when she was -- right? You can use the deposition testimony of a party for any purpose.

MR. LUCKMAN: Understood. But he can't impeach her with a different question.

[331] **THE COURT:** So he's not impeaching her. I agree with that. He's not impeaching her.

MR. LUCKMAN: I thought that was the intent.

THE COURT: He can use the deposition if she's considered a party, which I believe she is, and he can use it for any purpose. So, I think that's why. Otherwise, I would agree with you.

MR. LUCKMAN: Okay.

BY MR. SOUMILAS:

Q So, I think your answer to that one was:

"ANSWER: I'm not sure I understand what you mean by 'block them all.'"

Isn't that your answer?

A Yes, that is my answer.

Q So I believe there's a followup to your concern and it's:

"QUESTION: Okay. Did you send a service request to this team that did the blocking or the bypassing for each person who had disputed OFAC information who you could find on the Treasury database?"

And your answer is?

A "Yes." "Yes."

Q Thank you. Now, I also would like to ask you a couple of questions about the matching logic. And, again, this is what we have called earlier in your testimony the name-only procedure. Do you recall that?

[332] **A** That's correct.

Q And, again, for now, I want to focus on the time period from the verdict in Cortez in April 2007 through the time you left the company in November of 2010. Okay?

A Okay.

Q And, am I correct that you are not aware of any discussions in that time frame whatsoever about changing the name-only matching logic?

A No. I was not aware of discussions, of changing it.

Q And you are not aware of any documents that were prepared by TransUnion about changing the name-only matching logic between April 2007 and the time you left the company in the end of 2010. Isn't that right?

A I can't remember any -- any discussions about changing the matching logic.

Q But you were the head of that product, the product manager through the end. Correct?

A Yes, I was.

MR. SOUMILAS: Okay. Thank you, Ms. Gill. I don't have any further questions right now.

THE COURT: Should we take our lunch break now? Or how long do you think you will be?

MR. LUCKMAN: That would have been my first question, Your Honor.

THE COURT: That is your first question?

* * *

[338] development, people on the technical side and marketing people.

And we would do a review with Legal and Compliance and we talk about things like: Is the product going to be FCRA governed? What type of data a client would submit to us to receive the data back? What type of data we would be returning to them if we're not -- if it would need to be disclosed or disputed? And then lastly, probably, the contract. How would they cover contractual use of the product?

Q. I think the term "permissible purpose" was used, but could you explain for the jury what a

permissible purpose is under the Fair Credit Reporting Act?

A. Sure. Under the Fair Credit Reporting Act, which is the FCRA, I can think of three reasons why you would be permitted to access credit type data.

The first would be for extension of credit; if you were applying for a credit card, some type of loan. The second would be for employment purposes. And the third would be for insurance purposes.

Q. If a product is governed by the Fair Credit Reporting Act, then, I take it, a customer would need to have one of those permissible purposes to obtain the information?

A. That's correct.

Q. Okay. And TransUnion sells products that are both governed and non-governed by the Fair Credit Reporting Act?

A. That's correct.

[339] **Q.** And for non-governed what, if any, permissible purpose would you need?

A. You wouldn't need permissible purpose under FCRA, but an example would be a database that was created from non-credit type data. So from sources other than the people that contribute data to us to update our database.

An example would be public -- phone directories that could be used in a database. You know, information that's publicly available. And people that didn't have FCRA purpose, permissible purpose, could access that data along with people that did have FCRA permissible purpose.

Q. Are you familiar with the beginnings or the genesis of the Name Screen product? How it came to be?

A. Yes.

Q. Could you explain that to the jury, please?

A. Sure. It was a little different than other things we had done in the past because we received quite a few requests from customers that were on the smaller scale, of TransUnion customers, requesting us to provide them with some type of OFAC solution.

Q. Did you learn why they needed an OFAC -- let me start with this. Corporate speak is solution, they needed a solution. What does that mean?

A. It means a product.

Q. A product that does something?

[340] **A.** Right. And we're talking about a data product or information product.

Q. And what, if anything, did you learn about why the customers needed that product, OFAC product?

A. Well, as a result of the terrorist events of 9/11, the Patriot Act was announced in October -- I'm sorry, the terrorist events of 9/11, the Patriot Act was announced in October of 2001 and a component of the Patriot Act compliance was checking names against the OFAC list.

Q. To your knowledge, the customers were coming to you for a product that would check names against the list?

A. Yes. And there was widespread interest.

Q. Meaning?

A. A lot of customers. Instead of just one or two, there was a lot of customers, smaller -- on the smaller side that were requesting it.

It seemed like the larger customers may have already had an OFAC solution in place, because there were other things that customers needed to screen for, not just, you know, credit extension. They needed to screen things like wire transfers and other things that TransUnion, you know, couldn't help them with.

Q. Now, also, I know we -- what did you call the product when it first started? What was the name?

A. The original name was OFAC Advisor.

* * *

[345] **THE COURT:** Now 89 is admitted.

MR. LUCKMAN: I apologize.

THE COURT: That's okay.

(Trial Exhibit 89 received in evidence)

(Document displayed)

BY MR. LUCKMAN

Q. If you could read the two provisions? They are actually highlighted there, but they are in front of you under the product description.

A. Okay.

Q. Explain to me -- read the first one to yourself and then explain to the jury what it means.

A. Would you like me to read the first highlighted sentence?

Q. Whatever is easiest for you to help you explain.

A. Okay.

"Name elements from the customer's request are used as input to the system to be matched against records for individuals on Thompson Financial Publishing's FAC File database."

Q. Okay. First of all who is Thompson?

A. That was the predecessor name to the company we now know as Accuity. So they were originally called Thompson Financial Publishing.

Q. Okay. And it says:

"The name elements from the customer's request are [346] used as input."

What does that -- tell the jury, please, what that means?

A. Input is basically the information we receive from a TransUnion customer to access whatever product they are requesting. So typically it would come from a customer application for credit. So that information is transmitted by the credit grantor to TransUnion.

Q. Okay. And the second portion, if you could read that, please? And I'm going to ask you to explain that.

A. Sure. "

Customers will use OFAC Advisor as a means towards complying with the USA Patriot Act of 2001 and OFAC regulations, basically requiring that they check the U.S. Treasury Department's OFAC file to verify that they are not conducting business with or on behalf of an individual or entity that is sanctioned under OFAC laws."

Q. Can you explain for the jury how the OFAC Advisor or Name Screen was part of the compliance effort for the TransUnion customers?

A. Well, customers came to TransUnion looking for an OFAC product and it was developed. And what -- what the Patriot Act regulations were stating is they need to check the OFAC database and if there is a match, they need to do due diligence after they get the match.

Q. What does that mean?

[347] **A.** They need to investigate further to determine if the person is really a match on the OFAC file.

Q. Do the customers need to keep any sort of records regarding their search of the OFAC list?

A. Yes, they did.

MR. SOUMILAS: Objection, your Honor.

THE COURT: Well, you can lay a foundation, I guess.

MR. LUCKMAN: Sure.

BY MR. LUCKMAN

Q. Are you aware, ma'am, whether the TransUnion customers that sought this product needed to keep a record of doing the screen, the screening of the list?

MR. SOUMILAS: Same objection.

THE COURT: I will allow it.

A. Yes. There was a recordkeeping requirement in the Patriot Act that clients or customers would need

to provide proof that they had OFAC screened in case of an audit.

BY MR. LUCKMAN

Q. Okay. And did they need to keep proof of -- to your knowledge, proof of flags or hits or no hits or just outright the screening?

A. Right. They needed to prove that they had screened the customer. So in TransUnion's case we would return a clear message indicating that they had checked the database, but it wasn't a match; or in the case of a hit, there was a potential [348] name match and they needed to check further.

So there is value in the fact that it was a clear message and it would prove that they had, you know, done their part or their requirement to OFAC screen.

Q. The compliance was to search and have a record to prove you searched, correct?

A. Correct.

Q. Ma'am, what, if anything, was told to the TransUnion customers about the use of the OFAC screen for credit eligibility determinations?

A. It was prohibited. It was just informational -- informational to be used as a first step, more or less, in their OFAC compliance. So it was specifically stated in the addendum that it wasn't to be used for credit purposes or, you know, denial of credit.

Q. All right. Thank you.

After, well, 2010 -- which I want to say is after the *Cortez* decision -- what, if any, changes were made in the manner in which the OFAC product, the Name Screen product, was sold by TransUnion?

A. In November of 2010 TransUnion made a change to the wording in the message.

Q. I'm going to ask you to take a look at Exhibit 62 in the book, please? Tell me if you recognize that?

MR. SOUMILAS: 62?

[349] (Brief pause.)

MR. LUCKMAN: Is there a problem with that?

(Discussion held off the record.)

MR. LUCKMAN: Is there an objection to it?

MR. SOUMILAS: It wasn't disclosed.

THE COURT: Is there a stipulation as to the admissibility of this document?

MR. SOUMILAS: Your Honor, this was not one of the documents disclosed in the prior procedures that we would use for this witness. So there is no stipulation and I'm looking at it for the first time.

THE COURT: Okay. Is there a stipulation to its admissibility?

MR. SOUMILAS: No.

THE COURT: No, all right.

MR. LUCKMAN: I'm sorry. Could I have one moment, your Honor? I didn't think there was an objection to it.

THE COURT: You may.

(Discussion held off the record amongst defense counsel.)

MR. LUCKMAN: I apologize. Was there an objection?

MR. SOUMILAS: Your Honor, could we have a sidebar for just one moment?

MR. LUCKMAN: Probably a better idea.

THE COURT: Okay.

(Proceedings held at side bar.)

[350] **MR. LUCKMAN:** It may well be that internally I made the request and didn't make it to John, but I'm pretty sure the document was --

MR. NEWMAN: It was on their list of exhibits they might use. And in our communication back we said that we might use any of the exhibits that are on your list, as well as these others.

And so we didn't specifically say --

THE COURT: What was the objection?

MR. SOUMILAS: It was not on our list and they have

never told us --

THE COURT: It's on an exhibit list. I see it.

MR. SOUMILAS: Well, I'm saying to your Honor that the procedure was 24 hours before a witness, they are supposed to tell us about the witness and exhibits.

THE COURT: Do you object to its admissibility in general, the request? Just the request of this particular witness?

MR. SOUMILAS: No.

THE COURT: All right. I'll let it in.

MR. LUCKMAN: All right.

(Proceedings held in open court.)

MR. LUCKMAN: I apologize.

BY MR. LUCKMAN

Q. Ms. Gill, can you tell the jury what No. 62 is?

[351] **A.** Yes. No. 62 is a document by the name of "Fast Track Project Document" and it's a request to change the wording in the OFAC message.

Q. And who made the request?

A. I made the request to the IT department.

Q. Why did you make the request?

A. Because I was instructed that the wording of the message needed to change from "match" to "potential match."

Q. And is that the purpose of Exhibit 62?

A. Yes.

MR. LUCKMAN: And could we have -- I move to admit number 62 now.

MR. SOUMILAS: No objection.

THE COURT: Okay. 62 admitted.

(Trial Exhibit 62 received in evidence)

(Document displayed)

BY MR. LUCKMAN

Q. The top of it says "Fast Track Project Document." Can you tell me what that means, please?

A. Sure. Fast Track is the high priority.

Q. "High priority" meaning what?

A. It would take precedence over other requests in the programming queue.

Q. Was the change accomplished, to your knowledge?

A. Yes, it was. In November of 2010.

[352] **Q.** Before you left?

A. Right before I left.

Q. Does that show the new message in English and Spanish?

A. That's correct.

Q. What was the purpose of changing -- to your knowledge, what was the purpose of changing from "match" to "potential match"? And I will not say the Spanish.

A. The intent was to provide better messaging.

Q. To whom?

A. To the people that were using the OFAC product.

Q. The --

A. TransUnion's customers.

Q. Better messaging to the people that use it?

A. Yes.

Q. Why do you want them to have better messaging?

A. Just as a reminder that it's a potential match. It's the first step in their compliance. And if they are getting a hit, they need to do due diligence and verify that the person, you know, is or isn't on the list.

Q. And how, if at all, were customers notified of this change?

A. It would have been announced to them in the form of a general announcement, which was sent to all customers.

MR. LUCKMAN: I'm going to ask the witness to see No. 70, but I want to make sure that we did it the right way.

[353] **MR. SOUMILAS:** 70? I think it was disclosed. 26 and 70 both, yes.

MR. LUCKMAN: Perfect.

BY MR. LUCKMAN

Q. Take a look No. 70, please? Let me know if you need help.

A. Yes. It's Technical General Announcement No. 92 dated in November of 2010.

Q. And what was the purpose of that, ma'am?

A. It was communication to all of our customers that the wording in the OFAC message was changing.

THE COURT: I'll admit 70.

(Trial Exhibit 70 received in evidence)

MR. LUCKMAN: If you could go to the next page, please, and blow that up just a little bit?

(Document displayed)

BY MR. LUCKMAN

Q. Is that what we're seeing on the screen, is that was what was sent or made available to the customers?

A. Yes. This was the detailed -- you know, all the details regarding the change.

Q. Okay. And there is some technical details in there as well?

A. Yes.

Q. About how it worked?

A. Yes.

[354] **Q.** Okay.

A. But what we're seeing here is the current version of the message, which is "Input name matches name on the OFAC database." And we're changing it to "Input name is potential match to name on the OFAC database."

Q. Did this one have an appendix with the technical detail on it?

A. Yes, it did.

MR. LUCKMAN: Can you show exhibit -- I think it's Appendix A?

(Discussion held off the record amongst counsel.)

(Document displayed)

A. Pardon me. There are some technical difficulties on the bottom of Page 2. I don't know if that's what you're referencing. Bottom of Page 2 and top of Page 3.

BY MR. LUCKMAN

Q. That's okay. We can move on. Never mind. Thank you.

Ms. Gill, do you feel or believe that you wilfully violated the Fair Credit Reporting Act in connection with your efforts to develop and sell the Name Screening product?

MR. SOUMILAS: Objection.

THE COURT: Sustained.

MR. LUCKMAN: Thank you. Nothing further.

THE COURT: Do you have anything further,

Mr. Soumilas?

[355] **MR. SOUMILAS:** I do. Just a couple of questions.

REDIRECT EXAMINATION

BY MR. SOUMILAS

Q. Ms. Gill, I have a couple of follow up items based on what Mr. Luckman asked you.

Let's begin with, I think you answered that as to the OFAC disputes that you recall handling at the end of your career, there were a handful or very few?

A. Yes. That's what I remember.

Q. Okay. Would you please take a look Exhibit 6 in front of you.

(Witness complied)

Q. Are you there?

A. Yes.

Q. And would you just tell the jury what this document is?

A. It's some type of legal document, but I'm not sure I see a name of this document. It's something about the Ramirez case.

Q. Let me help you. If you look right next to the Ramirez caption on the right-hand side, it says "Response of TransUnion, LLC to Plaintiff's First Set of Interrogatories." Do you see that?

A. Yes, I do.

Q. And do you understand that interrogatories are questions that are answered by the corporation in this case?

A. I'm not familiar with the term, but I -- I understand your [356] description.

Q. Okay. Take a look Interrogatory No. 14, please, which is on Page 11 of that exhibit.

MR. SOUMILAS: And before my question, your Honor, this is an interrogatory response by the defendant being presented to a corporate representative. I'd like to have it admitted into evidence, please.

THE COURT: Any objection to the Exhibit 6?

MR. LUCKMAN: Just with the objection which -- there is an objection to the interrogatory.

THE COURT: All right. Well, I think it's an appropriate interrogatory.

MR. LUCKMAN: It is an interrogatory, sure.

THE COURT: So is there any -- so are we admitting it just with respect to Interrogatory No. 14?

MR. SOUMILAS: Yes.

THE COURT: Just admission with respect to Interrogatory No. 14. Is there any objection other than the objections that were --

MR. LUCKMAN: Other than the objections that are there, correct.

THE COURT: Overruled.

Okay. So Exhibit 6, as to Interrogatory No. 14, is admitted.

(Trial Exhibit 6, as to Interrogatory No. 14, received in [357] evidence)

MR. SOUMILAS: Could we please display that to the jury, Mr. Reeser? And would you focus first on the question for 14?

(Document displayed)

BY MR. SOUMILAS

Q. So it reads:

> "State the number of natural persons in the United States who have made a dispute to TransUnion regarding an erroneous inclusion on an OFAC record from February 9, 2010 through the present."

Do you see that?

A. Yes I do.

Q. And that's towards the end of your career with TransUnion. You said you were there through November 2010, correct?

A. Correct.

Q. So take a look at the answer, please, underneath.

(Document displayed)

Q. There are a number of objections first that say it's vague and ambiguous and burdensome to answer this and so forth.

Do you see what the answer at the bottom is:

"...TransUnion responds to this interrogatory as follows."

How many disputes?

A. Approximately 493.

[358] **Q.** Okay. Next Mr. Luckman showed you an exhibit -- and I'm very sorry we had some confusion about that. I didn't know he was going to use it, but it's Exhibit 62 that he asked you to look at. Do you have that handy?

A. Yes, I do.

Q. And that was the technical request to do this change from displaying that the input name is a "match" to the OFAC database, to saying that it's a "potential match," correct?

A. That's correct.

Q. Now, the first time TransUnion acted on that point was, according to this exhibit, mid October 2010?

A. I don't know when I wrote up the request, but if it was fast tracked, it was probably, you know, shortly before the date on this.

So I would have written up a request and then this is the document they would write up to explain in detail what programs they were changing.

Q. So would you please take a look at Page 4 of that exhibit?

MR. SOUMILAS: And display Page 4, please? The Section that says "Project Schedule."

(Document displayed)

BY MR. SOUMILAS

Q. Would you agree with me that according to this document, the start date for the project was October 13, 2010?

A. Yes, but there was probably discussions in advance prior [359] to this document being written up

or the actual, you know, work being done by the programmer.

Q. Sure. But the start date there is October 13, 2010?

A. Yes.

Q. And the finish date was the same for the analysis, and the next day for the coding and testing, correct? **A.** Yes.

Q. So the project was done by the very next day, October 14, 2010?

A. Yes.

Q. Okay. Mr. Luckman showed you another document. Let me spend a moment with that, if I may. This is the Exhibit 70.

MR. SOUMILAS: Could you pull that up again?

(Document displayed)

BY MR. SOUMILAS

Q. Have you got it?

A. Yes, I do.

Q. All right. And you said that this was part of the announcement to customers about this change of "match" to "potential match," correct?

A. That's correct.

Q. All right. And this is a general announcement. It's not directed to any particular customer, this particular exhibit, correct?

A. I believe all customers are on the general announcement [360] list. There are, you know, probably thousands of recipients.

Q. But --

A. But all TransUnion customers get this announcement.

Q. But what we have here is the general announcement, not any particular sending to any particular customer; would you agree?

A. Well, there's a -- a list. It wasn't maintained by me, but there was a list of all the recipients.

Q. Do you know what the difference is between a release and an announcement?

A. In my opinion, a release was a general term we used when a change was being made and a release would usually include more than one item. So in a release we would be doing a few changes and they would all be announced together.

Q. And it would be announced to customers?

A. Yes.

Q. Okay.

A. And this technical general announcement is an example of an announcement of changes. So it talks about, you know, OFAC Name Screen changes, amongst other things.

Q. Okay. Let's focus on Exhibit 70 for a moment longer, the first page. At the bottom there is a box that begins with "Notice." Do you see that?

A. Yes.

Q. And in the second paragraph there is a sentence that begins with "No part". Do you see that?

[361] **A.** "No part"?

Q. Second paragraph, middle sentence. "No part of this publication."

A. Oh, yes, I do. "No part of this publication," I see the sentence.

Q. Could you just read the whole sentence to the jury?

A. Sure.

"No part of this publication may be stored in a retrieval system, transmitted, reproduced or distributed in any form or by any means, electronic or otherwise, without the explicit prior written permission of TransUnion."

All right. Would you please take a look at Exhibit 26, which should be in the other binder?

A. I have it.

Q. And do you know what that is?

A. Yes. This is a release announcement. So this is for internal distribution at TransUnion. And all the various departments would be included in this. And under the section where it says who is affected, everybody would be getting a notification of a release announcement. That list -- that distribution list was also extensive, from what I remember.

Q. So your understanding is that this is something -- the same type of message, but internal to TransUnion?

A. Yes.

[362] **Q.** All right. Let's go back to Exhibit 70, which, as you told me, is the general announcement. And Mr. Luckman had asked you to look at some

appendix that I don't think we found. Do you recall that?

A. Yes. I don't think there is an appendix in my copy here.

Q. So, but you did reference Page 2 of that exhibit as part of your answer. Do you recall that?

A. Yes.

Q. And would you agree with me that if you look in the middle page -- the middle part, excuse me, of Page 2 of Exhibit 70 under the heading "Fixed Format Inquiry," do you see that?

A. Yes.

Q. It provides "no program changes are required," correct?

A. That's correct.

Q. And immediately under that, under "Fixed-Format Response,"again it reads that "no program changes are required," Correct?

A. Right. And just to clarify things, an FFI is the response -- I'm sorry, the inquiry that's sent in to the system through larger customers. So it's considered the computer-to-computer version. And the FFR is the machine readable response.

And the format follows the bottom of Page 2 to the top of Page 3. So it's not the print image that's, you know, easily readable by all of us in this room.

[363] **Q.** But you told me this document that has the language "no program changes are required" is the document that gets distributed to customers. That's not the internal document, that's the one that goes out to customers?

A. Right. But if you look on Page 3, it says "print image display changes." So that's where the -- where someone is getting a printed image of a credit report and that's where the wording is changing.

Q. I understand the wording is changing --

A. Yes.

Q. -- but the announcement to customers does not say anything about programming changes. In fact, it says "no program changes are required." Would you agree with that?

A. Yes. But if someone was getting the print image directly from TransUnion, they would have started to get the new message. They wouldn't have had to do anything.

Q. Thank you, Ms. Gill.

A. Okay.

MR. LUCKMAN: Your Honor?

THE COURT: Yes.

MR. LUCKMAN: Very brief.

THE COURT: That's fine. It's your redirect.

MR. LUCKMAN: I can't remember what it is, but it's short.

* * *

Excerpts from Trial Transcript (June 14, 2017)

* * *

[411] entities, and individuals who have been targeted by the Department of Treasury to have sanctions imposed against them because they present or the U.S. government believes that they present some threat to the U.S. national security and foreign policy interests.

Q And who puts this list together of these SDNs and blocked persons?

A The Office of Foreign Assets Control.

Q Is that part of the Department of the Treasury?

A It is.

Q How long has the list been around?

A From what I understand, they first started making it available, I want to say some time in the 19-- either in the eighties or maybe even the seventies. From what I understand.

I -- one thing I would add, too, is that the concept of list-based sanctions program is fairly new. Most of the list-based -- not list-based programs, but the targeted-based programs is something that's developed over the last 30 or 40 years. Whereas before, we just had country-wide embargoes. Like the Cuban embargo, for example.

Q I understand. Now, focusing on SDNs for a moment, could you please tell the jury who are some of the SDNs on the OFAC list?

A Who are specific SDNs?

Q Sure, yeah.

[412] **A** Well, I guess the most famous ones are -- most famous one would be Osama Bin Laden, probably.

Q Oh, he's still not on the list?

A He's still on the list.

Q Even though he's dead.

A Yes. and interestingly, I've represented parties that passed away, and remained on the list for several years afterwards.

Q Why would that continue?

A The reason is because the government doesn't know at what -- if they were to take him off the list and have his assets released, who those assets would go to.

So this is the understanding I've developed from conversations with officials at OFAC, is that you can't just take someone off the list because they died. There has to be a reasonable -- if there's a reasonable cause to believe that those assets could go to other SDNs or to others engaged in nefarious conduct, you want to keep them on the list.

Q What other types of people who may be known to the public are on the OFAC list?

A Um, El Chapo.

Q Explain who that is.

A El Chapo was -- if I'm getting this correct, was the head of the Sinaloa Cartel, which has been accused by the U.S. government of being a Mexican drug cartel. And he's also quite [413] famous for having escaped jail several times in Mexico. He's currently in

New York, awaiting trial in Eastern District of New York.

Viktor Bout. I don't know if you know that name, but Viktor Bout was a Russian arms dealer. If anyone's seen the movie *Lord of War* with Nicholas. Cage it's loosely based on Viktor Bout. But he was formerly referred to by the U.S. as The Merchant of Death.

So I would say those maybe are the three most famous ones.

Q Would you say generally that the list is comprised of terrorists, money launderers, drug traffickers, those that proliferate in the weapons of mass destruction?

A Those undermining democratic processes, those engaged in human-rights abuses. But typically, those areas that you described are what the SDN is known -- most well known for. But it's typically conduct that we would view as bad conduct or nefarious conduct, yes.

Q No Boy Scouts on the list.

A Not that I'm aware of, no.

I would note, however, I have represented some of those parties on those lists, so I don't agree with all of the allegations that have been made. But, as far as a general characterization.

Q So part of your practice includes that if someone thinks that they are listed by the government, they are placed by the [414] government on the OFAC list but shouldn't be there, you have worked on those type of cases as well?

A Correct.

Q And you've also worked on the other side, where financial institutions are trying to avoid doing any business with people that are listed on -- who are SDNs or the list, excuse me.

A Correct.

Q Okay. What types of information does the U.S. government provide concerning the SDNs on the OFAC list?

A Well, whatever information they have available to them. So it could be names, address, passport numbers, dates of birth, national ID numbers or Social Security numbers. I have even seen email addresses on there before.

Q How long is the list?

A The last time I checked, it was over 6,000 names.

Q Have you ever seen a single entry on this list that is listed by name only, and no other information, whatsoever, about that SDN?

A Not that I recall.

Q Is there usually some type of other information, whether it be date of birth, address, something?

A Nationality, yeah. At least, usually a nationality. Or where the party is located.

Q Now, are you aware of the penalties that are imposed by the U.S. government for violating OFAC?

[415] **A** I am.

Q And are you familiar with the penalties that would be imposed on financial institutions?

A I am.

Q And how about on persons who may, themselves, be SDNs on the list?

A I am, yes.

Q Okay. From a legal perspective, are credit bureaus or credit reporting agencies like TransUnion subject to any type of a penalty by the Treasury Department if they simply do not provide any information to anyone about SDNs?

MR. LUCKMAN: Objection, Your Honor. Beyond the scope of the report, asking for a legal conclusion. It's not relevant.

THE COURT: Overruled.

BY MR. SOUMILAS

Q You can answer it.

A If I understand your question correctly, you're asking me if there's any legal requirement for credit reporting agencies to assist in the screening of individuals?

Q That's what I'm asking.

A No. Not that I'm aware of.

Q And, is there any penalty or consequence if credit reporting agencies just simply stay out of that realm entirely, and don't do anything to identify SDNs to their clients, or to [416] anyone at all?

A No. Not that I'm aware of.

Q If credit reporting agencies choose to identify an SDN, are you aware of the legal standards that they must follow in identifying them?

A Yes.

Q And are you aware of the standard of maximum possible accuracy, under the Fair Credit Reporting Act?

MR. LUCKMAN: Objection.

THE COURT: Sustained. Sustained.

BY MR. SOUMILAS

Q Let's go back to penalties that might be available to -- not available, but penalties that might be paid by financial institutions if they transact any business with SDNs.

What happens if a bank or some other institution does business with an SDN?

A Well, it depends upon what particular sanctioning authority is implicated, because there's several different statutes, and there's different executive orders and regulations.

But typically, it breaks down into two separate types of penalties. You have civil penalties, which are monetary fines. And then you have criminal penalties, which can include both criminal fines, as well as terms of imprisonment.

If you are going to look at the whole universe of [417] potential sanctions violations and what the penalties associated with those violations would be, in the civil context, penalties range -- again, depending on the sanctions authority implicated -- anywhere from $10,000 all the way up to $10 million. And in the criminal context, $50,000 all the way up -- I'm sorry. In the civil context, $10,000 all the way up to $1 million. In the criminal context, $50,000 all the way up to 10 million.

And criminal terms of imprisonment are anywhere from five years all the way up to 30 years.

Q And this is just for doing business with an SDN?

A Correct.

Q Any type of business?

A Well, so it's important to understand there are certain exemptions in general licenses that are contained within the statutes, or within the regulations, themselves, which may allow certain types of transactions.

So for example, if two years ago you were to fly on Iran Air, which was an SDN at the time, you would have been allowed to because there's a travel exemption related to dealings with Iran Air. So really, it's not -- I don't want to say it's all transactions, but it's virtually all transactions.

Q How about giving credit with someone? Would that be a type of prohibited transaction?

[418] **A** I'm not aware of any exemptions or general authorizations that would allow that.

Q What are the consequences for SDNs?

A Well, really, the consequences for the SDNs are the fact that they, themselves, have been designated, and therefore they have any assets under U.S. jurisdiction blocked and remain blocked until such time as they're removed. And they cannot transact with U.S. persons, in any way.

And why this is a major consequence for SDNs is because most of international trade is done in U.S. dollars. So if you're not able to pay in U.S. dollars or

receive payment in U.S. dollars, this can have a dramatic impact on your business.

Also, what we have been's seeing recently, there's been a series of prosecutions out of various jurisdictions around the country, is that SDNs who were involved in causing U.S. persons to violate, for example by obfuscating the SDN's own involvement in the transaction, are now being subjected to civil and criminal penalties, as well. So there's a wide variety of legal consequences.

I would also say, as someone who has represented a number of SDNs over a years, is that they suffer reputational damage in their home jurisdictions. They -- I've seen SDNs be arrested in their home jurisdiction, or investigated in their home jurisdiction. And so there's both legal consequences as well as just practical consequences.

[419] **MR. LUCKMAN:** Objection, Your Honor. Move to strike that testimony about the impact.

THE COURT: I want to clarify. That's for people who are, in fact, on the list.

THE WITNESS: Yes, Your Honor.

THE COURT: All right. I think with that --

MR. LUCKMAN: Thank you, Your Honor.

MR. SOUMILAS: And that was my question, Your Honor.

BY MR. SOUMILAS

Q For those people who are in fact on the list, as a general rule, would they be prohibited from getting a loan or credit in the United States?

A Yes, they would be.

Q Okay. Given the penalties that you just described for both the financial institutions and the SDNs, is it your opinion that it is important to accurately identify who is an SDN?

A Yes.

Q And what types of tools are available for the proper identification of SDNs?

A Well, you have interdiction or screening software that's typically considered the front line or the first line of defense.

You also have due diligence tools that can help you dig down a little deeper to get more information about the [420] particular parties that have been returned as possible matches.

You have the information which should be contained in a customer information file that was collected from the customer at the time that the transaction was either engaged or at the time that customer was on-boarded.

So, there's a variety of different ways and methods and tools to use.

Q Now, as part of your practice, for your clients, have you personally worked in situations where it was important to properly and accurately identify whether someone is an SDN?

A Yes.

Q Whether they refused to do business with them, or maybe to say that they're not an SDN?

A Yes.

Q And have you seen your financial-institution clients use any type of computer software as part of a process of going about to properly identify SDNs?

A I have.

Q What type of computer software have you seen as part of your practice with your clients?

A I have seen them use interdiction screening software, as well as due-diligence tools.

Q And focusing on the screening software first, what ones are you familiar with?

A MK Data Services. HotScan. There's one called ATTUS -- [421] used to be called ATTUS Technologies. That's A-T-T-U-S Technologies. They're now referred to as CSI. Accuity Compliance Link, I've also heard of. So there's a few different ones.

Q And what do you do in relation to your clients' efforts to use software to correctly identify SDNs?

A So what I tell them is a lot of the work revolves around what policies they should have in place. Policies and procedures. And so a lot of that involves minimizing false positives, so that they don't have to sift through hundreds or thousands of possible matches that are not anywhere near being actual matches.

So things we will do is tell them: Okay, you should look at two or more identifying pieces of information. You should adjust your filter, maybe, to take out certain key words that maybe you are getting repeat hits on but which are not leading to actual matches.

Setting up good guys lists so people that keep getting caught in the filter, but you've already

screened to demonstrate that you know them, you have a relationship with them, and they are not that actual SDN.

Also, gray lists. Companies where it's unclear whether they are owned or controlled by SDNs.

And I think that maybe an important note, too, is it's not -- the SDN designation is not just to that particular entity or [422] person, but anyone owned or controlled by them.

So "control" is -- you can separate that out. "Control" are parties who are actually identified in association with the main targeted SDN, but then "owned" are parties or entities where the aggregate ownership is owned 50 percent or more by one SDN or a number of SDNs.

So, we do a lot of that kind of work, as well.

Q Okay. So you said a lot there. I'm going to try to follow up on a couple of things, if I remember them.

A Okay.

Q Let's focus on, I think you used the word "filter." To filter for identifying information?

A Correct.

Q Would you just explain in layman's terms what advice would you give concerning filtering.

A Right. So for example, if a client comes to me and they say: We keep getting hits for Robert Mugabe Road, they may ask: Do we need to keep searching for this word "Mugabe"? Because that obviously, in Zimbabwe, would be a very famous name and associated with a lot of different addresses.

So we may say: No, you can adjust for filter to take that out.

Or it could be a particular company name that we've already accounted for and we've already done our due diligence, and have come to a conclusion that it's not an actual match to [423] the SDN list.

Q And do you give any advice concerning the filtering of personal identifying information such as names, dates of birth, addresses?

A We do. We tell our clients that you should look at two or more identifying pieces of information. Particularly when it comes to names, because there are so many common names that are contained on the OFAC list.

Q So does that mean two at the same time? In other words, to get a match on both a name and an address, or a name and a date of birth?

A No. It's usually a name and an address, or a name and a date of birth, a name and a passport number. Address and a date of birth. Date of birth and a passport number. So, a mix.

Q So let me just clarify that, because I'm not sure I understood.

Is your advice to your client, to your clients, that they should get a mix of personal identifiers in order to make a proper identification?

A Of a possible match, yes.

Q And what is the minimum number of identifiers, in your experience, that you have seen your clients use to properly identify SDNs?

A Two.

[424] **Q** Is anybody using just a name-only match to identify SDNs, in your experience?

A That I currently represent? No.

Q And, in the -- the industry that you work in, would you consider it to be a common practice for financial institutions to use only a name and no other identifier in order to identify SDNs?

A No.

Q Do most financial institutions use multiple identifiers, such as a mixture or a combination of name and some other variable?

A My clients do, and from I understand, most do. Yes.

Q Now --

A Can I just correct that? I want to say, instead of "most," many do. Because I don't have the universe of data on all financial institutions. So --

Q Thank you.

In your opinion, is a name-only procedure for identifying SDNs reliability in accurately identifying people who might actually be on the OFAC list?

A No.

Q And why not?

A Because you would have a high number of false positives returned.

Q So you have used that term a couple of times now, "false [425] positives" Would you tell the jury what that is?

A A false positive is where you have a possible match but it ends up not being the actual party on the SDN list.

Q And in your practice, do your clients sometimes come back with false positives?

A They do.

Q And is it your understanding that your clients wish to have false positives?

MR. LUCKMAN: Objection, Your Honor.

THE COURT: I'll sustain that.

BY MR. SOUMILAS

Q Do you give any advice to your clients as to whether they should reduce false positives?

A I give advice that they should minimize the number of false positives.

Q And why is that?

A Because there's only so much -- so many resources they have to allocate to sanctions compliance.

So if you are sifting through large numbers of false positives, it becomes -- one, you're spending more money, and probably unnecessarily.

And then, two, it becomes harder to identify the actual matches to the SDN list, because there's more to look through.

Q In your experience, have you seen financial institutions that have a blanket policy to just decline to do business with [426] possible SDNs if they just return as possible SDNs?

A I have seen that, yes.

Q And why is that?

A Well, really, they freak out once they hear that they have a possible match.

A lot of these guys buy screening software, and they say: Well, we put the money into having this software, so why are we now going to have to go through additional steps?

It costs them money. And then, the risk is way too high, given some of the penalties we've discussed. These are very substantial numbers for these individuals. So they just don't want to incur the risk.

MR. LUCKMAN: Objection, Your Honor. I move to strike that anecdotal discussion about what people are afraid of or not.

THE COURT: I'm not sure where this is going. Why don't you move on.

MR. SOUMILAS: Sure.

BY MR. SOUMILAS

Q Going back to the SDN list, the OFAC list for a moment, Mr. Ferrari, you've -- you said you have spent years reviewing this list?

A I have.

Q And have you ever seen Social Security numbers on that list?

[427] **A** I have. I believe so, yes.

Q And have you seen passport numbers?

A I have seen passport numbers.

Q Addresses?

A Addresses, yes.

Q Nationalities?

A Yes.

Q Dates of birth?

A Yes.

Q Among the people on the OFAC list, do you have an understanding of how many of them are Americans living here in the United States?

A Very few.

Q How few?

A I would say at most, 2 percent but probably under 1 percent of the parties on that list are U.S. -- and when I say "U.S. persons," I don't just mean Americans living in the United States, but U.S. citizens anywhere located, permanent legal residents, U.S. companies.

Q So 98 to 99 percent just live overseas somewhere?

A That's my belief, yeah.

I just want to clarify that. We also run a sanctions research blog and site called sanctionlaw.com. And several years ago we actually did that statistical analysis, but that was probably in 2013. And I reference the number being 98 to [428] 99 percent. So that's where I'm getting that from.

MR. SOUMILAS: Thank you.

THE COURT: Cross-examination?

MR. LUCKMAN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. LUCKMAN

Q Hello, Mr. Ferrari.

A Good morning.

Q We met earlier. My name is Bruce Luckman. I represent TransUnion. I'm going to be asking you some questions, into the microphone.

A Okay.

MR. LUCKMAN: Good?

THE REPORTER: (Nods head)

BY MR. LUCKMAN

Q You weren't retained by Mr. Ramirez to get him off the OFAC list, were you?

A I was not.

Q Okay. And you weren't retained by Mr. Ramirez in any way having to do with the transaction with Dublin Nissan in 2011, were you?

A I was -- well, I guess it depends.

Q Having to get -- because in 2011, were you retained by Mr. Ramirez?

A No, I was not.

* * *

[458] **THE COURT:** She didn't say that.

Okay. All right. Is the plaintiff prepared to call their next witness?

MR. FRANCIS: Yes, your Honor. Your Honor, plaintiff calls Michael O'Connell.

And before Mr. O'Connell testifies, based upon your Honor's rulings this morning and the stipulation reached between the parties, we move into evidence Exhibits 34 and 35.

THE COURT: All right. 34 and 35 admitted.

(Trial Exhibits 34 and 35 received in evidence)

MICHAEL O'CONNELL,

called as a witness for the Plaintiff herein, having been duly sworn, testified as follows:

THE WITNESS: I do.

THE CLERK: Can you please state your name and then spell your last name for the record.

THE WITNESS: Sure. Michael O'Connell.

O, apostrophe, C-O-N-N-E-L-L.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. FRANCIS

Q. Good morning, Mr. O'Connell. My name is Jim Francis. We haven't met before, but I am one of the counsel who represents the class in this case that's been brought against TransUnion.

I want to begin with some basic questions about your [459] background. Am I correct that you are employed by TransUnion?

A. Yes.

Q. Okay. And what is your current position at the company?

A. Vice-president of Product Development.

Q. Okay. And that's a title that you have held for some period of time, correct?

A. Correct.

Q. All right. And over 15 years, would you say?

A. Approximately, yes.

Q. Okay. Has anything changed about your job or your duties and responsibilities at TransUnion since, say, 2013?

A. Yeah. I got a couple of new product categories that we have been building within TransUnion.

Q. Okay. But other than that, your position is the same, correct, as it was back in 2013?

A. Yeah. Just different product categories, some new advancements we have.

Q. I got you. And would I be correct that you have been at TransUnion, from what I calculate, over 30 years?

A. That's correct.

Q. And specifically I think you know that this case involves the OFAC product, correct?

A. Correct.

Q. And am I correct that you actually were the one who was responsible for rolling out TransUnion OFAC product?

[460] **A.** That's right.

Q. Okay. And you did that -- when did that start, back in 2002?

A. Correct, yes.

Q. And when I say you were the one who did it, were you the one who was primarily responsible for bringing the OFAC product to the market?

A. Yes. For developing and launching in the market, yes.

Q. Okay. And prior to 2002 am I correct that TransUnion did not sell that product?

A. That's correct.

Q. All right. And you know that you're appearing today not in your individual capacity, but as a representative of TransUnion, correct?

A. Yes. I understand that.

Q. And you gave a deposition in this case back in 2013; do you recall that?

A. I do.

Q. And you testified in that case as a representative of TransUnion, correct?

A. Yes.

Q. All right. So what I want to establish is given your role in rolling out the OFAC product, would I be correct in stating that you would be familiar with the matching logic that the product used from the period, say, of 2002 through at least [461] 2013?

A. That's correct.

Q. Okay. And were you involved in the company's decisions in terms of where TransUnion would get its OFAC data from?

A. Yes.

Q. Okay. And were you involved in the company's decisions to employ the match logic that TransUnion used in connection with the OFAC product?

A. Yes.

Q. All right. And would you have been a person who would have been involved in working with the company in response to any legal compliance issues that related to the OFAC product and any changes that might have been made?

A. Changes that would have been made, yes.

Q. Okay. So, if, for example, TransUnion was -- made a change to OFAC in response to a case or a government inquiry, you would have been involved in carrying out those changes, correct?

A. Those that were related to our consumer relations activity was a more specialized team, but the majority of them, yes.

Q. Okay. But am I correct that you're not on the Board of Directors of TransUnion?

A. No, I'm not.

Q. Okay. And you report to somebody else at TransUnion?

A. That's correct.

[462] **Q.** Who do you report to?

A. Senior vice-president of product.

Q. Okay. And am I correct that you're not an attorney?

A. That's correct.

Q. And you're not -- do you know who Denise Norgle is?

A. I do.

Q. And Denise Norgle, for at least some point, was TransUnion's general counsel, correct?

A. Yes.

Q. Okay. So you wouldn't have been involved, correct me if I'm wrong, in any decisions that TransUnion's legal department made with regard to compliance issues related to OFAC, correct?

A. That's correct.

Q. All right. Now, one of the things that you were designated to testify about -- not only at your deposition, but you were also offered as a witness in this case by TransUnion's counsel in its opening as somebody who was familiar with the match logic, is that right?

A. That's right.

Q. All right. So I want to ask you about TransUnion's match logic for OFAC, and let's start in 2002. Okay?

A. Okay.

Q. Am I correct that the match logic that TransUnion utilized for OFAC was what you call name match?

A. I'm sorry. Ask me that again?

[463] **Q.** Yeah. TransUnion's -- the match logic that TransUnion used in connection with rolling out OFAC was a name match logic, correct?

A. The software that we purchased from Accuity, yes.

Q. And what that means is that the only identifiers that would have been queried in terms of returning a search or a hit would have been name, correct?

A. That's right.

Q. All right. So when you rolled it out, date of birth was not built into that match logic, correct?

A. That's right.

Q. Address was not built into that match logic, correct?

A. That's correct.

Q. Passport, for example, if it existed, was not built into that match logic, correct?

A. That's correct.

Q. No other identifying information other than the name, correct?

A. That's correct.

Q. All right. Now, you were asked at your deposition about whether there was a juxtaposition of names within the match logic. Can you explain what that means?

A. Yeah. That is where we have name reversals, where you don't necessarily know what the order of the names being provided, either on the OFAC file or on the input, and being [464] able to account for somebody making a mistake and reversing those names on the input.

Q. Right. So, for example, the match logic for the OFAC product would deliver a hit if there was a match to the first and last name or if the first and last name were reversed, correct?

A. Yes. The potential match would involve any -- those two names regardless of which order it was in, yes.

Q. So Sergio Ramirez would match not only to Sergio Ramirez. It would also match to Ramirez Sergio, correct?

A. That's correct.

Q. Now, am I correct that TransUnion sells other products other than OFAC? I think that's pretty obvious, right?

A. Yes.

Q. You sell basic credit reports to lenders, right?

A. That's right.

Q. And one of the things that you sell is public records?

A. Yes.

Q. And can you just expand upon what a public record is?

MR. LUCKMAN: Objection. Relevance.

THE COURT: Overruled.

A. Some public records could come from any source that is made publicly available through -- whether it be property information, civil judgment information, tax lien information. Things of that nature is typically referred to as public record [465] items.

BY MR. FRANCIS

Q. Right. So in connection with a regular credit report, there could be a public records section that could include a bankruptcy, for example?

A. That's correct.

Q. Or a tax lean or a judgment, something like that, correct?

A. That's correct.

Q. And those records come from a state or local government or federal government, correct?

A. Or the companies that gather that information from those courthouses, yes.

Q. And am I correct that TransUnion does not use name match logic for public records?

A. That's correct.

Q. And am I correct that TransUnion does not use name match only logic for any other product?

A. Not to my recollection, no.

Q. Okay. And would you agree with me that it would be inappropriate for TransUnion to use name match logic only for public records?

A. No. It depends on what the -- no, I wouldn't agree. I think it depends on what the information is being collected for and used for.

Q. Sir, you gave a deposition back in December of 2013, I [466] think, correct?

A. Yes.

Q. Okay.

MR. FRANCIS: Your Honor, may I approach?

THE COURT: You may.

(Whereupon document was tendered to the witness.)

THE COURT: Do you have an extra copy?

(Whereupon document was tendered to the Court.)

BY MR. FRANCIS

Q. Sir, what I would like you to do is turn to Page 60 of your deposition?

A. Six zero?

Q. Six zero. And specifically Line 5.

(Witness complied.)

Q. When you gave your deposition back in December of 2013, you swore to tell the truth, correct?

A. Yes.

Q. And you gave an oath in that case -- or that time, correct?

A. Yes.

Q. Now, at Page 60 I asked you -- or I didn't ask you, Mr. Gorsky of our firm asked you:

"QUESTION: And you agree that name matching only would be inappropriate for every other piece of credit data that appears on a consumer's TransUnion credit report."

[467] Do you see my question there?

A. I do.

Q. Would you read your answer?

A. It says:

"ANSWER: Yes."

Q. Okay. So --

A. That's not the question you asked me, though, just a minute ago.

Q. Okay, okay. But I think we can both agree that for general credit reports and general credit data TransUnion does not use name match only, correct?

A. That's correct.

MR. FRANCIS: Mr. Reeser, would you please put up Exhibit 1? And specifically the top half portion.

(Document displayed)

BY MR. FRANCIS

Q. Mr. O'Connell, I want to explore with a real-life example what the name match only logic was that TransUnion used in connection with OFAC by using a credit report that was entered into evidence here as Exhibit 1 in this case, okay?

So if you look at this report, would you agree with me that the subject input name is Ramirez, last name Sergio L.

A. Yes.

Q. Okay. And you've seen TransUnion credit reports before, correct?

[468] **A.** I have.

Q. Okay. And the top information here is information which pertains to Mr. Ramirez, correct?

A. That's information contained on our credit file.

Q. Right. So this information would have come from TransUnion's database, correct?

A. Our credit database.

Q. Your credit database. And so the data that we see here -- current address; former address, Fremont, California; Redwood City; Redwood City; Social Security Number, 4070; date of birth, 4/76; employer and address; and former employer and address -- am I correct that all of that data would have been in TransUnion's credit database at the time this report was generated?

A. Yes.

MR. FRANCIS: Now, Mr. Reeser would you please pull up the bottom section of the report -- or the middle section, excuse me.

(Document displayed)

BY MR. FRANCIS

Q. Mr. O'Connell, you're familiar with the way OFAC Advisor Alert messages would have appeared on a TransUnion credit report from 2002 through 2013, correct?

A. Yes.

Q. And if you look at -- let's pick one of the -- one of the [469] records. The first record relates to a Ramirez Aguirre, Sergio Humberto. Do you see that?

A. I do.

Q. Now, based upon the input data that you saw from Mr. Ramirez, would this record match according to TransUnion's name matching logic back in 2011?

A. Because two of the names, if they appeared on the OFAC file, matched two of those, yes.

Q. Okay. So it doesn't matter that the last name here might be Aguirre, is that correct?

A. As long as it matches to the two names, that's correct.

Q. Right, okay. And it doesn't matter that there is a Humberto there, correct?

A. Correct.

Q. And it doesn't matter that above, when we looked at the data that TransUnion had in its database, that neither the name Aguirre or Humberto was there, correct?

A. It didn't matter what was on the --

Q. In terms of the match. It would match regardless of the fact that neither of those names was in TransUnion's database?

A. Yeah. A credit database is not included in any of the matching comparisons. It's strictly the input information provided by the end-user compared to the OFAC listing. There is no interpretation or translation that occurs between that.

Q. Right. So as you look at this first OFAC Advisor Alert, [470] do you know whether or not the name Aguirre here is the last name?

A. I don't.

Q. You don't know. And do you know whether the name Humberto is the first, middle or last name?

A. I don't know.

Q. Okay. So to be clear, it doesn't matter in terms of the match, as long as two of those names would match with Sergio or Ramirez, it would deliver a hit, correct?

A. Correct.

Q. All right. And that was consistent with TransUnion's match logic for the time period 2011, correct?

A. That is correct.

Q. All right. And it's also the case that it was -- that would return a hit even after 2011, correct?

A. A potential match, yes.

Q. Okay. What I'm saying, in terms of just the name logic alone, am I correct that that logic that you just outlined, that was -- that was in place at least up through December of 2013, correct?

A. Yes.

Q. Okay. Didn't change in 2012, correct?

A. We made a number of changes to the name prior to that, related to, like, middle initial matching, to eliminate -- the Accuity software had a lot of other different matching rules [471] that existed that we didn't feel comfortable with.

So, for example, if there was a middle initial, a single letter, we wouldn't allow that to count as one of the names. There was also logic where there was just a single name, a single word name. So we eliminated a lot of those types of rules. So that's -- those things were changed.

Q. Are you saying that you weren't using name match only logic in 2013?

A. No, I'm not saying that. I'm explaining the type of name matching logic we used.

Q. Okay.

MR. FRANCIS: Mr. Reeser, would you please put up Plaintiff's Exhibit 8, and specifically Page 82?

(Document displayed)

BY MR. FRANCIS

Q. Okay. So I just want to make sure we understand how this match logic works.

This is a page, Mr. O'Connell, from the actual -- the class list in this case. There is a class list that contains the names of over 8,000 people. This is a page that refers to strictly Maria Hernandez's. Do you see that?

A. No. Actually, I'm sorry, I don't.

MR. FRANCIS: Okay. Mr. Reeser, can you blow that up?

[472] **BY MR. FRANCIS**

Q. Actually, if you want, if you look in your binder -- you should have a binder in front, the binder right there. It's actually Exhibit 8, Page 82.

A. Okay.

Q. Okay?

MR. FRANCIS: And, Mr. Reeser, if you could zero in -- yeah. Highlight a little bit, if you can, the top part of the names. (Document displayed)

BY MR. FRANCIS

Q. Okay. As I said, this is the class list in this case and this just pertains to the name Maria Hernandez.

So would I be correct in stating that at least during the time period in question, 2011, if there was an OFAC record with the name Maria and Hernandez, all of the people who were listed on this page would be returned as a hit or a potential hit by TransUnion?

A. That's correct.

Q. Okay. Thank you.

MR. FRANCIS: You can take it down.

(Document removed from display.)

MR. FRANCIS: And, Mr. Reeser, if you would also now put up Page 2 of Exhibit 23?

(Document displayed)

[473] **BY MR. FRANCIS**

Q. And if you'll go to your binder to Exhibit 23?

(Witness complied)

A. Yes.

Q. So, Mr. O'Connell, I will represent to you that Exhibit 23 is an excerpt of the government's Office of Foreign Assets Control, the Treasury's OFAC list. Do you have that in front of you?

A. I do.

Q. Okay. So what I'd like you to take a look at --

MR. FRANCIS: And if we can blow this up, Mr. Reeser, right here?

(Document enlarged.)

BY MR. FRANCIS

Q. All right. So one of the names on the list -- and I'm just picking this at random -- is a Fernandez Montero Marco Jose. Do you see that?

A. I see that up there, yes.

Q. Okay. So if somebody had any of those two names, am I correct that TransUnion would deliver a hit -- or the credit report would deliver a hit for that person?

A. Not the credit report. The OFAC service would deliver the potential match, yes.

Q. Right. So the hit -- a hit would be returned in connection with any of those two names, correct?

[474] **A.** Yes.

Q. Okay. Now, just finishing up with the OFAC matching logic. Am I correct that beyond running the person's name through the Accuity software, TransUnion would not do anything further with regard to confirming whether or not that individual was a match on the list?

A. We had -- we had them -- we had Accuity do a number of things, including removing aliases and synonyms that they would have added to their software. So there was a number of things that we would do to make that software more effective.

Q. Are you saying that beyond -- once the name was delivered back to TransUnion, that TransUnion would take additional steps to see whether there were additional identifiers in the file?

A. No. We removed some of the names that were in the file that Accuity had added.

Q. You would do that separate and apart from Accuity delivering the data?

A. No. I'm describing Accuity's process of removing names from the data that they provided us that that software utilized.

Q. Okay. But in terms of the name coming back after Accuity did whatever it did, TransUnion would not do anything further to confirm whether or not a person was actually on the OFAC list, is that correct?

A. That is correct.

[475] **Q.** Okay. It wouldn't perform any type of independent investigation or any independent analysis of -- to see whether or not the person was actually on the list, is that correct?

A. That's correct. Our understanding of it was the end-user, that was their responsibility, to ensure that they investigated with the individual that they were engaged with, whatever transaction that they were working with.

Q. Okay. So it was TransUnion's view, at least through 2013, that it was not its role to figure out whether somebody was actually on the list or not, correct?

A. We weren't engaged with -- correct. We weren't engaged with the consumer that was a part of the transaction. And our interpretation of the OFAC regulations indicated that once they look up a name on the list -- and whether they did it manually on a document like this and found the name -- the end-user was expected to then compare all the information that they had about their -- the individual they had engaged and compare it to the information on the OFAC list, make a determination if they needed to take any additional steps.

Q. All right. Now, am I correct that at some point TransUnion was notified by the Department of Treasury of its concern about the number of false positives?

A. I've gotten different Treasury Departments that have contacted us with different views. The OCC is a Treasury Department that expressed concern with us actually having the [476] synonym files removed. So that OCC group was part of the Treasury Department. Some of the language that they audited, financial institutions not allowing broader match rules, was communicated as a concern that we didn't deliver enough potential matches.

Q. Right. But I'm specifically referring to a notice from the Department of Treasury to TransUnion in which the Department of Treasury expressed that it was concerned about the level of false positives. Are you aware of that?

A. I'm aware of the letter that was sent to our legal department, yes.

Q. Okay. And just so we're on the same page, a false positive is a -- is somebody who was actually not on the list, but who has been returned through a hit, correct?

A. As a potential match, yes.

Q. All right.

MR. FRANCIS: Mr. Reeser, would you please put up Exhibit 34, please?

(Document displayed)

BY MR. FRANCIS

Q. Mr. O'Connell, at your deposition you were asked about this letter the Treasury sent to TransUnion, correct?

A. Yes.

Q. And you can see at the top --

MR. FRANCIS: I don't know if, Mr. Reeser, you can [477] highlight it so we can see the date?

(Document enlarged.)

BY MR. FRANCIS

Q. So this is the letter that we were just talking about from

the Department of Treasury to TransUnion. It's dated

October 27th, 2010.

MR. FRANCIS: And would you please highlight the first

sentence or two?

(Document enlarged.)

BY MR. FRANCIS

Q. And I'll read it since it might be difficult for the members of the jury to see. It begins with:

"Since our meeting with you in July 2007 and subsequent correspondence of May 27, 2008, the Office of Foreign Assets Control continues to hear from credit bureau clients and individual consumers who have been adversely affected by screening products related to OFAC targets that are associated with consumer credit reports.

> "While OFAC appreciates your firm attempts to provide tools to help ensure that persons on OFAC's Specially Designated Nationals and Blocked Persons List do not access the U.S. financial system, it is obviously important that such tools provide accurate information in an understandable manner."

Do you see that?

[478] **A.** I do.

Q. Okay. And the next sentence is what I was asking you about earlier.

MR. FRANCIS: Can you expand that?

(Document enlarged.)

BY MR. FRANCIS

Q. (As read)

> "We remained concerned that name matching services used by credit bureaus to inform clients about potential dealings with persons on the SDN list may be creating unnecessary confusion."

Do you see that?

A. I do.

Q. Okay. The first sentence references a meeting in July of 2007. Do you know anything about that meeting?

A. I don't know.

Q. Okay. And it also references correspondence of May 27th, 2008. Do you know anything about that?

A. I don't.

Q. Okay. Do you know whether or not Treasury was advising TransUnion back at that time that it was concerned about false positives?

A. I don't know.

Q. Okay. And would you agree with me that at least as of October of 2010, the U.S. Department of Treasury is telling [479] TransUnion they were concerned about the rate of false positives?

A. Yes. This letter indicated some concerns, yes.

MR. FRANCIS: And would you please, Mr. Reeser, just continue down for the last part of that first paragraph?

(Document enlarged.)

MR. FRANCIS: Yes.

BY MR. FRANCIS

Q. It goes on to read that:

"An interdiction product that does not include rudimentary checks to avoid false positive reporting can create more confusion than clarity and cause harm to innocent consumers. This is particularly worrisome

when interdiction products are disseminated broadly in conjunction with credit reports."

Do you see that?

A. I do.

Q. Okay. Do you know what is meant by the term "interdiction product"?

A. Yes.

Q. Is the OFAC product that TransUnion sold and what I asked you about earlier, is that an interdiction product?

A. Yes. It's -- the Accuity software is an interdiction product and at the time was the market leading user of that software.

[480] So I understand the rudimentary aspect of that because this is the same software that was used more than any other software in the financial services industry. So it was used exactly the same.

Q. And would you agree with me that TransUnion's OFAC product was disseminated in connection with credit reports? Just like this last sentences references.

A. It can be delivered at the same time as a credit report, yes.

Q. Okay.

MR. FRANCIS: And then just the second paragraph please? Then we can move on.

(Document displayed)

BY MR. FRANCIS

Q. All right. The paragraph references a recent appellate court decision and then the last sentence reads:

"We are particularly interested in procedures or policies you have established to mitigate the impact of false positives on credit applicants."

Do you see that?

A. I do.

Q. All right. And at some point TransUnion responded to that letter from Treasury, correct?

A. Correct.

Q. In fact, it was a letter that was sent by TransUnion's [481] general counsel, Ms. Norgle, back to the Treasury, correct?

A. Yes.

MR. FRANCIS: Mr. Reeser, would you please pull up Exhibit 35? Now, can you highlight the top portion of that so we can see the date, please? That's fine. (Document displayed)

BY MR. FRANCIS

Q. So the date of this letter is February 7, 2011. Do you disagree with me that that's when Ms. Norgle responded to Treasury's first letter?

A. I do not.

Q. And you work with Ms. Norgle, or did you at some point, correct?

A. I have worked with her, yes.

Q. Okay. And in connection with OFAC, you worked with her, correct?

A. Yes.

Q. And then she responds --

MR. FRANCIS: Can we see the first paragraph blown up as well?

(Document enlarged.)

BY MR. FRANCIS

Q. She responds: This letter -- and I'll paraphrase for the sake of time.

[482] "This letter is TransUnion's response to your letter of October 27, 2010.

"Like you" -- if you go further below -- "TransUnion recognizes the importance of balancing the important goal of blocking access to the U.S. financial system by persons on the SDN list against the equally important goal of minimizing the potential for inconvenience or adverse impact to a consumer."

After February 7th of 2011, am I correct that TransUnion continued to use the name matching logic?

A. That's correct.

Q. Am I correct that at least after February of 2011 and up through 2013, when you testified in this case, TransUnion never began using dates of birth in connection with the OFAC product?

A. We never put in it production, no.

Q. Okay. And am I correct that TransUnion, after receiving this letter from -- receiving the OFAC letter from Treasury, never began using addresses to help screen or reduce false positives?

A. That's correct.

Q. Okay. And at no point after February of 2011 and up through December of 2013 did TransUnion ever use another vendor for OFAC compliance, correct?

A. We did not.

Q. Okay. And at no point after receiving the letter from [483] Treasury and responding -- and TransUnion responding back in February of 2011, did TransUnion consider stopping selling the sale of OFAC data, is that correct?

A. That's correct.

Q. All right. And, sir, you would agree with me that there is no law or requirement of any sort that requires TransUnion to sell the OFAC product, is that correct?

A. TransUnion or any other company, yes.

Q. Correct. So you can just stop selling it if you wanted to, correct?

A. Yes.

Q. And at no point after February of 2011 did TransUnion ever consider bringing the OFAC list in its own database and creating its own product for sale in connection with a credit report, correct?

A. We did consider it.

Q. You didn't do it though, correct?

A. Couldn't, no.

Q. Okay. Is it your testimony that TransUnion could not import the OFAC database into a separate database?

A. We could not accurately match the file or build the software and the delivery tools that Accuity had built in their software. We had looked at it several times. Technically we did not have the capabilities at the time to do that.

Q. And at any time did you develop the capability to develop [484] your own OFAC product?

A. We did.

Q. Okay. But not up through 2013, correct?

A. No. In 2015, 2016, we had new capabilities.

Q. Okay. And you had no limitations, am I correct, on importing the OFAC list into a database maintained by TransUnion, correct?

A. Just copying the file?

Q. Yes, or a routine feed. Copying the file like Accuity got the file.

A. A routine feed, no, we did not have the ability to do that.

Q. Okay. And is it your testimony that you had no ability to actually get the OFAC list into a separate database?

A. Not one that we could production wise, no.

Q. Okay. At any point did you consider, let's try another vendor?

A. We would have, if Accuity hadn't told us they were actually going to build that version of the software that would provide those enhancements to us. So when they had committed to us to make that software available, we didn't see the need to try to pull out that software and replace it with another that did similar things.

Q. But as of the time that you testified in this case in 2013, you were still using the same match logic that was [485] employed in connection with Mr. Ramirez's report, correct?

A. With the other changes that I had mentioned already.

Q. What changes subsequent to Mr. Ramirez's report did you employ?

A. We employed the removal of the Synonyms file so that we couldn't match on name variations and the extent of different name variations that the Accuity product regularly offered in the marketplace.

Q. And for an example, when you say "Synonyms," you mean if a name were Cortes, C-O-R-T-E-S, previous to that change that would match to Cortez, C-O-R-T-E-Z, correct?

A. That's correct. By removing that information, it would no longer generate a potential --

Q. Right. And you made that change to Synonyms, correct?

A. Yes.

Q. All right. Subsequent to February of 2011 and up through 2013 what other exchanges did you make?

A. We continued to look at other name logic assumptions and we analyzed a lot of different matching logics. We had a number of different teams that looked at different criteria and matching criteria to determine if we could bring down the number of potential hits without exposing the risk of allowing true potential hits to be delivered.

Q. Sir, isn't it true that as of December of 2013, you employed no additional matching criteria other than name?

[486] **A.** Since then?

Q. As of 2013 --

A. Yes.

Q. -- and from 2011 isn't it true you didn't employ any other matching criteria other than name?

A. The matching criteria, yes, that's true.

Q. Okay. Now, am I correct that TransUnion at some point did look at methods for reducing false positives?

A. Yes. We had a number of research efforts that looked at different criteria and options, yes.

Q. And through that research you had did discover that there were ways that you could reduce the number of false positives, correct?

A. Not with putting at risk significantly allowing more true potential hits.

Q. That wasn't my question. The research that you had done indicated that there were ways that you could have reduced the number of false positives, correct?

A. Yes.

Q. Okay. And, for example, one of the things that you considered was using a 10-year range for date of birth, correct?

A. Yes.

Q. And what that would have meant was if the date of birth that was in the OFAC file was greater

than 10 years of [487] difference than what was in the consumer's file, that would not deliver a hit, correct?

A. Yes.

Q. That was one of the things you looked at?

A. Yes, yes.

Q. Okay. And one of the other things that you looked at was removing hits where there wasn't an exact match of all of the names, correct?

A. Yes.

Q. All right. And, in fact, you had -- you had research that you had conducted indicated that you could get the rate of false positives down to zero percent, is that correct?

A. If you just didn't deliver any hits, yes, that's true.

Q. Okay. And in terms of just using date of birth, right, aren't I correct that about 80 percent of the OFAC records contain a date of birth?

A. I think that's a close approximation, yes.

Q. Okay. So would I be correct, there was no reason that where a date of birth existed within the OFAC record, that TransUnion couldn't have designed a program which would cross reference to see if that date of birth was there and it didn't match and exclude that as a hit. You could have done that if you wanted to, correct?

A. No. Not at the time we could not.

Q. Are you telling -- are you telling us that once the hit [488] came back into TransUnion's database from the Accuity software, you could not run an

additional filter to screen out any dates of birth that didn't match with the consumer's file?

A. At the time, at that period of time, no, we could not.

Q. And you're saying at the time of 2011, correct?

A. That's right.

Q. 2012?

A. That's right.

Q. 2013?

A. 2013 is when we were able to start doing analysis where we had some technology people take a look at the criteria with the date of births and be able to use some of the newer softwares and tools that we had.

Prior to that, the challenges what the government filed was all that information that you see on the OFAC record didn't really have standard formatting to it. It kind of was all around. And what happened is the date of births themselves were in 10 to 15 different formats, including ranges of years. So there wasn't a consistent format for a date of birth to match to. Nor did we have the software and capabilities to perform that kind of a match at that time.

In 2013 we did then have more technical capabilities and Accuity continued to delay their deployment of their software. So we started planning how we could technically go about building that software around the top of Accuity, which we [489] eventually were able to figure out with some of our best technology people. But prior to then, it was not possible for us to do.

Q. When you say it's not possible, are you saying that it wasn't possible for you to build a separate database for the data that came in from the OFAC record?

A. Having the database is just one small piece of being able to productionalize a product.

Q. Are you telling us that you couldn't have imported the data from OFAC and then had your system, as it does with other credit reports, look to see whether or not there is a different date of birth in the file that is now downloaded into its own system and cross reference that with what's in the consumer's file? You couldn't do that?

A. No, we could not.

Q. Is TransUnion one of the big three credit bureaus in the world?

A. We are.

Q. Uh-huh. Okay. You mentioned 2013. But just to be clear, as of December of 2013, you still had not employed any other match criteria other than name, correct?

A. Correct.

Q. All right. Now, would you agree with me that TransUnion's customers believe that when they get a report back that includes OFAC data, that that data is accurate that it gets [490] from TransUnion?

A. They believe that it was fit for use with the OFAC regulation. In fact, customers expected us to be delivering more potential matches.

Q. Sir, do you remember being asked that question at your deposition, about what your customers expected?

A. Yes.

Q. Would you please turn to Page 34 of your deposition, Lines 1 through 10?

MR. FRANCIS: And could you, Mr. Reeser, please put up excerpt six?

(Document displayed)

A. I'm sorry. What page was that?

BY MR. FRANCIS

Q. 34. Now, at your deposition you were asked this question:

> **"QUESTION:** To ask you the question more practically, do your clients have some expectation that the possible matches that TransUnion provides in response to an OFAC add-on has some reasonable basis that it may, in fact, be true?"

And there is an objection. And your answer is what?

A. (As read)

"ANSWER: Generally, yes."

Q. Okay. So your clients aren't getting OFAC data from TransUnion thinking: Oh, this doesn't mean anything. It's not [491] accurate. Right? They expect it to be accurate?

A. They expect it to be a potential match to a name in the OFAC list that they would then screen.

Q. Okay.

A. That's what they would expect.

Q. Just a few more things, Mr. O'Connell.

As of December 2013 when you testified in this case, am I correct that you had no data that confirmed that any of the name matches that TransUnion had ever sold to a customer was actually a person on the OFAC list?

A. It would not know that, no.

Q. You had no data at all?

A. No.

Q. That would indicate that one of the reports and one of the hits that TransUnion sold or delivered was actually a hit of somebody on the OFAC list, correct?

A. That's correct.

Q. I have no further questions.

THE COURT: Mr. Newman?

MR. NEWMAN: Mr. O'Connell, do you need some water?

THE WITNESS: Yes, actually. Thank you.

MR. NEWMAN: Oh, you've got some right there.

THE WITNESS: Yes, I'm good.

MR. NEWMAN: Are you good?

THE WITNESS: Yes.

* * *

[521] end-user agreements with our customers, confirming the way they are supposed to use that information, or not use that information.

And it's also the type of language that we require our resellers of our services to pass along to their end users who sign up for that.

Q In other words, it's not -- there's not a contract between TransUnion and the end user. This is language that TransUnion requires the reseller to include in its contracts with the end user. Correct?

A Yes. That's right.

Q And why is this language there?

A To ensure we're absolutely clear with our end users that we do not want them using that information in any way to take adverse action on that transaction. It's only to be used for their OFAC regulation and compliance, and that's it.

Q And, will you please turn to --

MR. NEWMAN: Just two more exhibits, Your Honor, I promise.

BY MR. NEWMAN

Q Will you please turn to Exhibit 72.

(Request complied with by the Witness)

A Yes.

Q What is Exhibit 72?

A This is an example of a contract between TransUnion and [522] our reseller. If that reseller wants to resell the OFAC Name Screen service.

MR. NEWMAN: Your Honor, I offer 72 into evidence.

THE COURT: Any objection?

MR. FRANCIS: No objection, Your Honor.

THE COURT: 72, admitted.

(Trial Exhibit 72 received in evidence.)

(Document displayed)

MR. NEWMAN: And if we can just zoom in quickly on the passage in the middle, with the "1," and then the indented text.

And there's this language, and it says (As read) "Prior to the OFAC Advisor being provided to a Customer, Reseller obtain from each such Customer..."

(Reporter interruption)

MR. NEWMAN: I will slow down, I apologize.

BY MR. NEWMAN

Q This Paragraph 1 is a requirement that TransUnion imposes on all resellers, correct?

A Yes. This is the paragraph where there's -- at a minimum, this language needs to be flowed down into their customer contracts that they want to sell this service to.

Q And what does the term "Subscriber" mean?

A That's the end user that's contracting for the service.

Q And it says:

[523] "'In the event Subscriber obtains...'"

MR. NEWMAN: Am I doing better?

(Reporter nods)

MR. NEWMAN: Thank you. I apologize.

"'In the event Subscriber obtains TransUnion's OFAC Advisor services in conjunction with a consumer report, Subscriber shall be solely responsible for taking any action that may be required

by federal law as a result of a match to the OFAC File, and shall not deny or otherwise take any adverse action against any consumer based solely on Trans Union's OFAC Advisor services.'"

BY MR. NEWMAN

Q What's the purpose of that language?

A To ensure that it's clear to our resellers that not only do we want to hold them accountable for that rule, but also making sure that they understand they need to hold their customers accountable, so we require that to flow down to their customers, in their contracts.

Q Can you please turn to Exhibit 93.

(Request complied with by the Witness)

Q Do you have 93? They might not have been in all the binders.

A I don't have 93. Mine ends at 92.

(Off-the-Record discussion between counsel)

MR. NEWMAN: Your Honor, may I approach the witness?

* * *

[533] **THE COURT:** Well, let me ask you this way. Can you ask it as a question?

MR. FRANCIS: Yes.

THE COURT: You know: From that decision, did you understand that this is what the Court had said?

MR. FRANCIS: Yes, Your Honor.

BY MR. FRANCIS

Q Mr. O'Connell, you had expressed certain -- your views as to certain aspects of what you thought the *Cortez* decision said.

Are you aware that actually one of the things that the *Cortez* decision said was that the jury could have reasonably concluded that TransUnion could have taken steps to prevent and minimize the possibility of an erroneous OFAC alert by using or checking the date of birth of the consumer against the birthdate of the person on the SDN list?

Are you aware that's what the Court said, at least at that part of the decision?

A Not to that degree, no.

Q Oh. Okay. So, following *Cortez*, am I correct, TransUnion, at least through 2013, from 2010 when the decision came down through 2013, never used the date of birth in connection with the OFAC product?

A We could not, no.

Q Okay. My decision was you didn't -- my question was you

[534] did not do it. Correct?

A Correct.

Q All right.

You also expressed some statements regarding the Norgle letter, Ms. Norgle's letter back to Treasury, from February 7, 2011, which was Exhibit 35 which I asked you about before.

A Uh-huh.

Q And you discussed the response of Ms. Norgle to that letter.

Would you please look at Exhibit 35, and turn to Page 3.

MR. FRANCIS: Can you put up Page 3, please?

(Document displayed)

THE WITNESS: Yes.

MR. FRANCIS: And would you blow up the top portion of Page 3, please.

(Document displayed)

BY MR. FRANCIS

Q Among other things, the paragraph reads that (As read):

"In response to the *Cortez versus TransUnion* decision, TransUnion initiated a practice under which a consumer obtaining his consumer report is notified if we would consider his name to be a potential match to the SDN file."

Do you see that?

A I do.

Q And then the next sentence is:

[535] "That notification is accompanied by instructions on how the consumer can obtain further information from TransUnion about our OFAC Name Screen service, and how to request TransUnion to block the return of a potential match message on future transactions."

Do you see that?

A I do.

Q Is it -- was that true?

A Did we do that? Yes.

Q Okay.

A Absolutely.

MR. FRANCIS: Mr. Reeser, would you please turn to Exhibit 3.

(Document displayed)

BY MR. FRANCIS

Q Mr. O'Connell, Exhibit 3 is the letter that TransUnion was sending to consumers who were considered to be a match during the period of February, 2011 through July of 2011. There's testimony that this is the letter (Indicating), and this is how TransUnion would advise consumers of OFAC information in their file.

Have you seen this letter before?

A I have not.

Q Okay. I will represent to you -- and if you can find it, you let me know -- there is no instruction at all that [536] TransUnion provided to consumers in this class as to how to block information in their credit file.

Well, take a look at it, and tell me if I'm wrong.

A Well, at the bottom of the letter, it provides: For additional questions, contact TransUnion. For any additional questions or concerns.

Q Can you tell me where in this letter there are instructions to the consumer as to how to block OFAC information on their file?

A No.

Q Okay. It's not there, is it?

A Not what you just said, no.

Q Yeah. Would you please turn in your binder to Exhibit 9.

(Request complied with by the Witness)

Q Mr. Newman asked you some questions about TransUnion's attempt to reduce the rate of false positives following 2011. Correct?

A Yes.

Q And one of the things that you mentioned was that you asked Accuity to deliver a different type of product. Correct?

A An enhancement to the existing product.

Q Yes. And that was in 2011, correct?

A That's right.

Q But you didn't get that from them until 2013, isn't that correct?

[537]

A Yes.

Q So you waited two years.

A Well, they continued to move the date of availability, so in parallel to waiting for them to commit -- as they kept moving their date, we did pursue analysis on our own to try to figure out if it was possible or feasible for us to be able to build it, ourselves.

Q You never told them: If you don't give this to us by next month, we're going to use somebody else.

Correct?

A I don't recall that specific discussion, no.

Q Did you ever call up Experian, your competitor, and ask: Who do you use?

A We don't have those kind of conversations with competitors.

Q Did you ever call up your competitor, Equifax, and ask: Who do you use?

A No, we don't do that.

Q Okay. Did you do anything to change the match logic between 2011 and 2013 whale you waited for Accuity to get back to you over two years?

A No.

Q Now, at Exhibit 9, can you identify this document for me, please?

A Yes.

[538] **Q** Okay. What is it?

A It's an analysis that's a part of our consumer relations disclosure and dispute project.

Q Yes.

MR. FRANCIS: Your Honor, plaintiff and the class move Exhibit 9 into evidence.

MR. NEWMAN: No objection.

THE COURT: 9, admitted.

(Trial Exhibit 9 received in evidence.)

MR. FRANCIS: Can you please put that up, Mr. Reeser, the first page?

(Document displayed)

BY MR. FRANCIS

Q Exhibit 9 is a -- a slide, series of slides that relate to an analysis that TransUnion performed back in 2011. Correct?

A Yes.

Q Correct? Okay. Would you please turn to the third page.

(Document displayed)

Q On this slide, which is entitled "OFAC Disclosure/Dispute Enhancements Project Scope," there are a series of key goals and objectives that are identified.

Do you see those?

A I do.

Q And there is one that is in bold. Do you see that?

A I do.

[539] **Q** And what's in bold is:

"*Tighten the OFAC matching rules to reduce the return of false positive results.*"

Do you see that?

A I do.

Q Would you agree with me that as of 2011, TransUnion was concerned that its matching rules were not tight enough and it was resulting in too many false positives?

A We are always trying to analyze improvements in products. So yes, we always wanted to continue to bring down false positives.

Q Now, when you're saying you're always wanting to improve products, are you telling me, with this product, there's a slide show like this for every month you're looking at this, to reduce false positives?

This is a specific study, isn't it?

A This is a specific study. But there are many others like it, yes.

Q Okay. And, would you please turn to Exhibit 10. It's in the binder. It's the next exhibit. Are you able to identify this document for the Court?

A Yes.

Q Okay. And what is this document?

A This was a subsequent analysis after the -- after the previous one, where they weren't able to identify ways to do [540] the date-of-birth analysis before, this one was a subsequent effort a little later, like a year or two later, trying to, again, try to look for different ways to be able to do that.

MR. FRANCIS: Plaintiff and the class move Exhibit 10

into evidence.

MR. NEWMAN: No objection.

THE COURT: 10, admitted.

(Trial Exhibit 10 received in evidence.)

MR. FRANCIS: Would you please put up the first page of Exhibit 10.

(Document displayed)

BY MR. FRANCIS

Q Am I correct, sir, that this is another series of slides that TransUnion put together to study the OFAC hit analysis issue?

A Yes.

Q Okay. And would you please turn to Page 11 of Exhibit 10.

(Request complied with by the Witness)

(Document displayed)

A Yes.

Q Page 11 of Exhibit 10 outlines certain data that TransUnion compiled. Correct?

A Yes.

Q All right. And just real quickly, I want to go over what the columns are, so we understand what this data is.

[541] **A** Uh-huh.

Q The first column is "OFAC Hit Rate." Do you see that?

A I do.

Q And what does that mean, exactly?

A That's the percentage of potential matches delivered with the product.

Q Right. And the next column is "Percentage only Potential Candidates." Do you see that?

A I do.

Q And what does that indicate?

A I'm not sure what the criteria was to identify potential versus the false positive, but, intended to represent the percentage of only true potential hits.

Q And the next column after that is "Percentage some Potential Candidates." What does that refer to?

A I'm assuming it's a mix of potential and false.

Q And the last column is "Percentage only False Positives."

Do you see that?

A I do.

Q Doesn't that column indicate hits that were only false positives where there was no actual or accurate hit?

A I don't know what their definition in this analysis of "false positive" was, but objectively, that's what their intention was, yeah.

Q But you were part of the efforts that TransUnion was [542] making to study this data. Correct?

A I was not part of this analysis.

Q All right.

A I wasn't aware of it.

Q And then if you look, under the "Rule," there are various rules that are listed. Correct?

A Yes.

Q And there is a rule one, two, three four down from the top, that says "Name Rule 1A and date of birth," and there's a greater-than sign, "10 Years." Do you see that?

A I do.

Q Do you know what that means?

A The "greater than ten years"?

Q Do you know what that rule is?

A Just from reading on this, it's a date of birth greater than ten years' difference from the OFAC file.

Q Right. And do you know what 1A is?

A I don't.

Q If I tell you that 1A was a rule that TransUnion designed to prevent a hit from being delivered where all parts of a name didn't match, would you disagree with me that that's what 1A is?

A If you say so.

MR. NEWMAN: Objection.

[543] **BY MR. FRANCIS**

Q And would you agree with me, if you go over to the column "Percentage False Positives," the number is "0%."

A Yes.

Q Do you see that?

A I do.

Q Do you agree with me that TransUnion, at least as of 2011, had identified a method of returning hits that would result in a zero percent false positive?

They were -- they identified a method for doing that. Correct?

A No.

Q You don't agree that zero percent --

A This is a manual analysis that people were manually doing to compare those rules. And if we were

to figure out a technical method to be able to deploy this at production, that would be this. But this was strictly a manual effort to do those comparisons.

So I -- I want to be clear about what you said.

Q Do you disagree with me that TransUnion's information was that if that rule was applied, Rule 1A, and date of birth greater than ten years, it would result in a zero percent false positive?

A Yes, it would.

Q Okay. Now, in response to some of Mr. Newman's questions,

* * *

[545] **THE WITNESS:** I'll get there.

MR. SOUMILAS: Here, just hand him this (Indicating).

MR. FRANCIS: Yeah.

May I just approach the Witness Your Honor?

THE COURT: You may. 8-36.

THE WITNESS: I got it, thank you.

BY MR. FRANCIS

Q Mr. O'Connell, I will represent to you that the stack that I just placed in front of you --

(Document displayed)

Q -- represents the class of over 8,000 people in this case. Is it your testimony that TransUnion's enhancements and products benefited those 8,000 people?

A Absolutely.

Q Absolutely.

A Absolutely.

Q It's your testimony that the members of this class who were identified as being a hit on the OFAC list were benefited by TransUnion's practices.

A Yes.

Q Okay.

MR. FRANCIS: No further questions.

THE COURT: Mr. Newman, anything further?

RECROSS-EXAMINATION BY MR. NEWMAN

* * *

Memorandum of Points and Authorities in Support of Motion for Judgment as a Matter of Law (N.D. Cal. June 15, 2017)

I. INTRODUCTION

This case arises under the FCRA which governs the behavior of consumer reporting agencies ("CRA"), such as the defendant, TransUnion. TransUnion provides a service to lenders known as "OFAC Name Screen Alert" ("Name Screen"), which U.S. businesses use to comply with federal anti-terror and anti-drug trafficking rules administered by the Treasury Department's Office of Foreign Assets Control ("OFAC"). Plaintiff alleges that between January 1, 2011 and July 26, 2011, TransUnion's Name Screen product was sold in a manner that violated two provisions of the FCRA: one requiring that a CRA employ reasonable procedures designed to assure that consumer reports are prepared with maximum possible accuracy (15 U.S.C. § 1681e(b)) and one governing how credit file information must be disclosed to consumers (15 U.S.C. § 1681g).

Plaintiff does not seek to recover actual damages. Rather, he pursues classwide statutory damages under 15 U.S.C. § 1681n, which requires proof of a willful violation of an objectively clear legal requirement imposed by the FCRA. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 59-60 (2007); *Fuges v. Sw. Fin. Servs., Ltd.*, 707 F.3d 241, 248-49 (3d Cir. 2012). Plaintiff, on behalf of the Class, seeks to recover between $100 and $1,000 per class member on the grounds that TransUnion willfully violated the FCRA's requirements. *See* 15 U.S.C. § 1681n(a). Plaintiff's theory of the case is premised on two

assumptions: that the Third Circuit's decision in *Cortez v. Trans Union,* LLC, 617 F.3d 688 (3d Cir. 2010) constitutes a "requirement" of the FCRA, and that TransUnion willfully failed to comply with this requirement.

At this point in the trial, Plaintiff's case-in-chief has come to an end and Plaintiff has been fully heard on his claims against TransUnion. After Plaintiff's presentation of the evidence, there can be no dispute that Plaintiff has failed to meet his burden of proof on his three claims for statutory violations of Section 1681 of the FCRA. Specifically, Plaintiff has failed to adduce evidence to support a finding that: (1) TransUnion *willfully* violated the obligations of Section 1681g(a) to provide all information in the credit files of class members; (2) TransUnion *willfully* violated the obligations of Section 1681g(c) to provide the class with a statement of their FCRA rights; and (3) TransUnion *willfully* violated the requirements of Section 1681e(b) to assure maximum possible accuracy in its credit reports. Indeed, a review of a summary of the witnesses' wide-ranging testimony demonstrates that no evidence was adduced to address the fundamental question of whether TransUnion's conduct amounted to a willful violation. Instead, where TransUnion's conduct was addressed, the evidence compels the opposite conclusion.

First, with respect to Plaintiff's claims that TransUnion willfully failed to disclose all information in the credit files of class members, and willfully failed to provide class members with a statement of their FCRA rights, in violation of Section 1681g, the evidence shows that TransUnion disclosed all

information that *Cortez* suggested should be disclosed. The evidence shows that TransUnion chose not to seek Supreme Court review of *Cortez*, but instead attempted to comply fully with what the *Cortez* ruling seemed to say, and to comply on a nationwide basis, using the best methods that its technology then allowed. The evidence has shown that TransUnion developed the most efficient disclosure process it could under the technology constraints of the time, it acted efficiently and in a coordinated manner to continuously work towards effective and comprehensive disclosure, and that when it did develop technology capable of disclosing the OFAC information simultaneously with consumer reports, it did so. Through the testimony of its employees, TransUnion has reinforced the position it has maintained throughout this litigation that it did not willfully disregard requirements under the FCRA at any point during the class period (and Plaintiff's opening statement appears to concede a lack of willfulness, instead describing TransUnion's measures as "half-hearted").

Second, with respect to Plaintiff's class claim under Section 1681e(b), the evidence shows that TransUnion did not *willfully* fail to employ reasonable procedures to achieve maximum possible accuracy. TransUnion undertook significant efforts to comply with *Cortez*, and these efforts achieved maximum possible accuracy at the time. The evidence has shown that, rather than willfully disobeying the law, TransUnion made substantial and deliberate efforts to comply with the guidance set forth in *Cortez*, and TransUnion corrected the specific issues that led to the award in favor of the plaintiff in that litigation.

Plaintiff has failed to produce any evidence that TransUnion disregarded any legal obligations *Cortez* may have imposed. Accordingly, because Plaintiff lacks proof of a willful violation, the class claims under Section 1681e(b) fail.

Finally, in the alternative, TransUnion moves to decertify the Class on the grounds that the evidence presented at trial is insufficient to establish the elements of Federal Rule of Civil Procedure 23.

II. ARGUMENT

A. Legal Standard For Granting a Motion for Judgment as a Matter of Law

Fed. R. Civ. P. 50(a)(1) provides: "If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient, evidentiary basis to find for the party on that issue, the court may: (A) resolve the issue against the party; and (B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue."

Although a court ruling on a motion for judgment as a matter of law must view the evidence in the light most favorable to the non-moving party and draw all factual inferences in the non-movant's favor, judgment as a matter of law is proper if the evidence, construed in the light most favorable to the non-moving party, compels the conclusion that there is no legally sufficient evidentiary basis for a jury to find for the non-moving party on the issue or claim. *Acosta v. City & Cty. of San Francisco*, 83 F.3d 1143, 1145 (9th Cir. 1996); *Headwaters Forest Defense v. Cty. of*

Humboldt, 240 F.3d 1185, 1197 (9th Cir. 2000) (rev'd on other grounds). A "mere scintilla of evidence" is generally insufficient to prevent entry of judgment as a matter of law. *Lifshitz v. Walter Drake & Sons, Inc.*, 806 F.2d 1426, 1429 (9th Cir. 1986). The non-moving party must show substantial evidence to support a verdict in favor of the non-moving party. *Gillette v. Delmore*, 979 F.2d 1342, 1346 (1992) (citing *Jeanery, Inc. v. James Jeans, Inc.*, 849 F.2d 1148, 1151 (9th Cir. 1988)). Substantial evidence is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *Id.* (citing *Landes Constr. Co. v. Royal Bank of Canada*, 833 F.2d 1365, 1371 (9th Cir. 1987)).

Here, even construing all the evidence in the light most favorable to Plaintiff, there is no legally sufficient evidentiary basis to find that TransUnion *willfully* violated Section 1681g or Section 1681e(b) of the FCRA.

B. Plaintiff Has Not Proven a Willful Violation of FCRA § 1681g.

Plaintiff has failed to establish that, when Plaintiff or any member of the Class requested his or her file from TransUnion, TransUnion willfully failed to clearly and accurately disclose to Plaintiff or any other member of the Class all information in the consumer's file at the time of the request. In other words, Plaintiff has not satisfied his burden to prove that TransUnion undertook any actions with respect to disclosing information in consumer files that entailed an unjustifiably high risk of harm that was known or so obvious that it should be known.

The evidence also has shown that TransUnion's post-*Cortez* procedures to disclose such information to consumers were objectively reasonable. TransUnion witnesses testified at trial that TransUnion sought to comply with *Cortez* on a nationwide basis as best it could, as quickly as possible and in a manner that delivered information effectively. It is not disputed that *all* the information described in Section 1681g(a) and (c) was actually provided to Plaintiff and the Class. Plaintiff has not been able to prove that TransUnion's disclosure procedures "ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless." *Safeco*, 551 U.S. at 50; *Fuges*, 707 F.3d at 248.

The evidence, including the testimony of TransUnion witness Robert Lytle, has shown that all the information was transmitted and received within the statutory time deadline; roughly contemporaneous delivery provided the same substantive information. Importantly, Plaintiff has not offered any evidence that this method creates a material risk of harm. The evidence, based on actual consumer behavior, demonstrates that the manner of disclosure effectively conveyed the information meant to be conveyed. The evidence also shows that TransUnion's contemporaneous delivery procedure "had no practical effect" on Plaintiff's ability to receive information he needed to inquire further as to the results he received. *Dreher v. Experian Info. Sols., Inc.*, 856 F.3d 337 (4th Cir. 2017) (rejecting "informational injury" theory and finding that because plaintiff did not suffer a concrete injury as a result of the deprivation of information, he therefore lacked Article III standing to pursue a claim under 15 U.S.C. § 1681g(c)).

At trial Plaintiff testified that he called TransUnion on February 28, 2011, the next day after visiting the Dublin Nissan dealership, and was informed that he "was not on the OFAC list" and that he would be sent his file disclosure. (Transcript of Trial Proceedings on June 12, 2017 ("Day 1 Transcript") at 150:20-151:7.) He testified that he "had a sense of relief that [he] wasn't on the OFAC list." (*Id.* at 151:5-6.) He received his credit file disclosure "a couple days after" (*id.* at 151:8; Ex. 75), and received the OFAC letter *the next day*. (*Id.* at 153:10-16; Ex. 3.) The OFAC letter is dated March 1, 2011, meaning that it was generated one day after Plaintiff called TransUnion and only two days after Plaintiff and his wife purchased the vehicle at Dublin Nissan. (Ex. 3.) By March 16, 2011, two weeks after the transaction, Plaintiff wrote his letter to TransUnion asking to "get [him] off the OFAC list." (Day 1 Transcript at 156:24-157:3; Ex. 54.) By March 22, 2011, TransUnion informed Plaintiff that his name had been removed from the Name Screen Alert list. (*Id.* at 157:23-158:10; Ex. 53.) Plaintiff also testified that, since March 2011, he has not had any issues with an OFAC flag. (*Id.* at 166:3-5.)

Thus, the evidence sufficiently conveys that neither Plaintiff, nor any class member, suffered any concrete harm as a result of TransUnion's contemporaneous disclosure process. Plaintiff has proffered no evidence showing that TransUnion's conduct adversely affected consumers' ability to effectively dispute reported information. It is undisputed that Plaintiff himself effectively exercised his dispute rights in response to the supposedly non-

compliant disclosure format. (*Id.* at 153:10-16, 156:24-157:3; Exs. 3 and 54.)

Plaintiff has not put forth any evidence to suggest that TransUnion willfully violated anyone's rights or acted recklessly. The information delivered to Plaintiff was disclosed in a manner that is simple for a consumer to understand, and convenient to act upon if necessary, such as by requesting reinvestigation of a potentially inaccurate item—which, again, Plaintiff in fact did. The evidence establishes that TransUnion's disclosure procedures, which included presenting information in a separate letter with language TransUnion intended to be consumer-friendly, represented a reasonable application of Section 1681g. Indeed, Plaintiff has failed to provide any evidence at trial that any class member failed to understand what was disclosed as part of his OFAC disclosure.

The evidence at trial has not shown that TransUnion willfully attempted to deprive Plaintiff or any other class member of all the information in their files, or to prevent delivery of the § 1681g(c) statement of rights to anyone. To the contrary, as evinced by Mr. Lytle's testimony, TransUnion believed in good faith that it developed a solution that would make effective and legally-compliant disclosures to consumers. The evidence also proves that class members received effective notice of their rights, and thus suffered neither harm nor material risk of harm.

Therefore, the evidence presented at trial, construed in the light most favorable to Plaintiff and the Class, compels the conclusion that there is no legally sufficient evidentiary basis for a jury to find for

Plaintiff and the Class on their claims under FRCA Section 1681g(a) and (c).

C. Plaintiff Has Not Proven a Willful Violation of FCRA § 1681e(b).

Plaintiff also has not presented evidence at trial that TransUnion's conduct willfully violated Section 1681e(b). The only requirement of Section 1681e(b) is that when a CRA "prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." The evidence proves that TransUnion's internal processes were reasonably designed to meet the maximum *possible* accuracy standard in 2011.

The evidence also has shown, including through testimony of Dublin Nissan representative Annette Coito, that end users of the Name Screen product were expressly instructed that Name Screen alone could *not* be used to make an adverse credit decision. The evidence demonstrates that TransUnion sought to comply with the requirements under the FCRA and protect consumers' rights. The evidence establishes that at all times TransUnion sought to communicate accurate information to its customers. Therefore, Plaintiff has not established that TransUnion's conduct amounted to a willful effort to deliver inaccurate OFAC results as to Plaintiff or the Class.

The evidence at trial has shown that, after the Third Circuit's decision in *Cortez*, TransUnion did a great deal to achieve the maximum possible accuracy standard, and specifically to address issues raised in the *Cortez* ruling. The evidence, including the testimony of TransUnion employee Michael

O'Connell, demonstrates that TransUnion sought to comply with *Cortez*, and that TransUnion's response to *Cortez* was reasonable because it made nationwide changes to its Name Screen product, including by refusing Accuity's Synonyms file to reduce the number of "false positives" and to avoid the exact issue (Cortez/Cortes) that gave rise to the *Cortez* litigation itself. In fact, Mr. O'Connell testified that if TransUnion had used the Accuity product straight off the rack without any modifications via the Rules feature, the hit rate would have been about five percent. (Transcript of Trial Proceedings on June 14, 2017 ("Day 3 Transcript") at 493:15-19.) By employing the rules feature and refusing the Synonyms file, TransUnion lowered the hit rate to less than 0.5 percent, which is *substantially* lower than the "high" hit rate of twenty percent as described by Plaintiff's expert witness, Erich Ferrari. (*Id.* at 429:14-25, 494:18-21, 506:6-10.) Therefore, this compliance decision rendered TransUnion's screening algorithm tighter, and thus more "accurate" as Plaintiff defines accuracy. In fact, Mr. O'Connell testified at trial that, to the best of his knowledge, the Name Screen product had the lowest false positive rate of any OFAC software on the market. (*Id.* at 505:4-6.)

Additionally, TransUnion witness Colleen Gill has testified that TransUnion took steps to ensure that its description of OFAC results was modified to state that a positive result was only a "potential" match. That TransUnion took steps to add this language, prior to commencement of the class period here, demonstrates that it did not *willfully* violate Section 1681e(b) or *Cortez*. The effect of this evidence is that TransUnion's actions reduced both actual and

potential risk of misuse, and this is a further reason why Plaintiff's accuracy claim fails.

The trial testimony of Mr. Ferrari actually bolsters TransUnion's defense in this case. Mr. Ferrari's testimony established that the stakes of OFAC compliance are high and that a company such as TransUnion should take appropriate measures to provide its customers with the full range of information necessary for that customer to make a final determination as to whether an individual is a true SDN. Mr. Ferrari's testimony also establishes that the purpose of screening products, such as TransUnion's Name Screen product, is to provide an initial screen of the unusably lengthy SDN list and to require employees at the financial institution who wishes to transact business with a potential SDN to review any possible hits with their own eyes.

Plaintiff has identified only TransUnion's alleged failure to use a date-of-birth ("DOB") filter, also referred to as multifactor matching, for not achieving maximum possible accuracy standards during the class period. However, Mr. O'Connell testified that there was no DOB filtering technology available during the class period. TransUnion was informed through its third party service provider, Accuity, that the feature was not available. However, TransUnion was led to believe that such a filtering feature would be offered in late 2011—after the close of the class period. The evidence has shown that despite statements that it would do so before the end of 2011, Accuity did not actually offer to TransUnion any OFAC product capable of taking DOB into account until after the end of the class period, and even then,

when TransUnion tested it, TransUnion found that it did not improve accuracy. The legal standard involves consideration of "maximum *possible* accuracy," but Plaintiff's witnesses at trial, including Mr. Ferrari, have failed to proffer evidence of the existence of any *possible* technology that in 2011 could have achieved a greater accuracy rate, or at least any such technology that TransUnion both actually knew of, at the time, and *willfully* refused to implement.

Therefore, the evidence, construed in the light most favorable to Plaintiff and the Class, compels the conclusion that there is no legally sufficient evidentiary basis for a jury to find for Plaintiff and the Class on their claim under FCRA Section 1681e(b).

D. In the Alternative, the Class Should Be Decertified.

In the alternative, TransUnion moves to decertify the Class on the grounds that the evidence presented at trial is insufficient to establish the elements of Federal Rule of Civil Procedure 23. Plaintiff has presented no evidence that anyone else in the Class had an experience similar to Plaintiff's. The "potential match" language never appeared on Plaintiff's credit report, because Dublin Nissan received data on a non-approved form from 1994, without TransUnion's knowledge. The evidence also shows that Dublin Nissan ignored both its own contractual obligations as well as Plaintiff's request to follow the established OFAC requirement that a transacting party taking reasonable measures to determine whether a "potential match" was or was not an SDN before rejecting a transaction. There is no evidence that any other class member had a similar experience.

Therefore, the typicality element of Rule 23(a)(3) is not satisfied.

Commonality also is lacking under Rule 23(a)(2). As to his Section 1681g claims, Plaintiff has not proven any common experience relating to how the disclosure was communicated. Plaintiff testified that he received his written OFAC disclosure the day after he received his main disclosure. It cannot be determined on a common basis who in the proposed class read the main disclosure and the separate OFAC letter together as a single disclosure, and who did not. Similarly, as to Plaintiff's Section 1681e(b) claim, whether each communication was accurate as to each individual simply cannot be determined through common proof. Rather, an individualized analysis of each OFAC record and consumer is required.

Plaintiff also has failed to adduce evidence to satisfy the adequacy element under Rule 23(a)(4). "The presence of even an arguable defense peculiar to the named plaintiff or a small subset of the plaintiff class may destroy the required typicality of the class as well as bring into question the adequacy of the named plaintiff's representative." *Graham v. Overland Sols., Inc.*, No. 10-CV-672 BEN (BLM), 2011 WL 1769610, at *2 (S.D. Cal. May 9, 2011). Plaintiff admitted at trial that he made a false statement on his credit application (i.e., that he had never had a vehicle repossessed), which suggests a unique defense. Therefore, Plaintiff is not an adequate class representative.

Finally, the Class must be decertified because individualized issues predominate, such that Rule 23(b)(3) is not satisfied. The evidence shows that

multiple issues here should be determined individually (e.g., whether each communication of "potential match" data was accurate as to each individual). Likewise, even if "potential match" data were reported, the end user may well have followed the contracts and Treasury guidance, and closed the transaction seamlessly, perhaps even without the consumer's knowledge.

III. CONCLUSION

In light of the above, TransUnion respectfully requests that the Court grant this Motion for Judgment as a Matter of Law.

Dated: June 15, 2017

STROOCK & STROOCK & LAVAN LLP

* * *

By: */s/Stephen J. Newman*
Stephen J. Newman

Attorneys for Defendant TRANS UNION LLC

Excerpts from Trail Transcript (June 16, 2017)

(The following proceedings were held outside of the presence of the Jury)

THE COURT: Good morning. All right. So, we have TransUnion's motion for judgment.

MR. NEWMAN: Yes, Your Honor.

THE COURT: Anything you want to add to what was in the paper? I did read it.

MR. NEWMAN: Yes. Your Honor. Throughout the course of this case, we've heard plaintiff say, throughout most of this: We can prove it, we can prove it.

Through summary judgment: you've got to give us a chance to prove it; the evidence is going to come in.

In response to summary judgment they said: Oh, this is what our forecasted evidence is going to be, let us do it. It's going to come in.

Throughout the course of this week there's been no evidence on the key element of willfulness here. There's been an abject and total failure of proof. And we respectfully request that judgment as a matter of law be entered on behalf of TransUnion on each and every claim.

THE COURT: Do you want to respond, Mr. Francis?

MR. FRANCIS: Yes, I'm happy to respond, Your Honor, and let's start with that issue, willfulness. Because I can go [554] through each of the claims and respond to the motion in the order, but since he's starting with willfulness let's start there.

THE COURT: Everyone can be seated.

MR. FRANCIS: So Mr. Newman is correct: In response to our summary-judgment briefing in this case we did outline what the evidence was and how it would be presented. And every single thing that we outlined in claimant's response to summary judgment is in evidence today. As for willfulness, I'll start with the EB claim.

It is clear that TransUnion used a name-match-only product, starting from 2002. It was getting notified by the Department of Treasury in 2007 and 2008 -- your Honor has seen those letters -- that it was concerned with TransUnion's rate of false positives. TransUnion did nothing to change its name-match logic. At least through the class period here.

And I think the testimony was not even until 2014, which is outside the class period in this case, did they make any changes at all.

I think Your Honor heard me ask Mr. O'Connell all of the things that they could have done to prevent innocent people from being matched in the OFAC list. First of all, they could have stopped selling the data. That was a choice to them. The law doesn't require it. They chose, notwithstanding Treasury's concerns, to continue selling this list, even though they knew [555] the name-match logic that they were applying that they got from Accuity was creating a high rate of false positives. If that's not a support for willfulness, I don't know what is.

But we have more than that. As far as the -- the logic, itself, Your Honor saw that there was another credit reporting agency, its main competitor, that was able to employ the technology to properly screen this applicant. And did so.

So the argument that we didn't have the technology, and it wasn't available to us, is -- is belied by the Experian report that we saw. That is one of their arguments with regard to the EB claim; we are trying to get Accuity to respond and get us a better product. I think any reasonable jury could find that taking five or seven or ten years is too long.

And the argument that the technology does not exist is belied by what Experian did. And not only Experian. Dealertrack also had an OFAC screening product that properly got it right.

So with all of that evidence, I don't think there's any question that a reasonable jury could find that they willfully violated the law.

They want to make the argument that this case is about what happened in response to *Cortez*. We don't view it that way. We view that they were on notice from 2002 and 2005 when they sold this product. One of other pieces of evidence that's come in is they had hundreds and hundreds of disputes from [556] consumers who were disputing this information. So, this is not the first time it happened. They had had --

THE COURT: Well, that evidence, though, late in the class period. Correct?

That interrogatory response is sometime in 2010 to the present.

MR. FRANCIS: It is, but --

THE COURT: Do you have anything more to say on this? I have to tell you, the jury could find it. I deny the motion there.

MR. NEWMAN: Let me just make my record, Your Honor.

THE COURT: Of course.

MR. NEWMAN: What is missing is the connection between TransUnion's state of knowledge. Simply because, you know, there may have been something else out there and there was no evidence that there was, there's been no evidence of what other technology was being used or the reasons why those other particular results --

THE COURT: Does the jury have to believe Mr. O'Connell?

MR. NEWMAN: Does the jury have to believe Mr. O'Connell?

THE COURT: Yeah. No, right?

MR. NEWMAN: Well, it's their burden to prove that there was a willful -- plaintiff has the burden to prove a [557] willful violation. So there's no evidence that you are basically --

THE COURT: How did Ms. Gill, right -- the dispute comes in and she removed the person from the list. With nothing more than them disputing it. Why couldn't that have happened before?

MR. NEWMAN: Why couldn't that have happened before?

THE COURT: Yeah.

MR. NEWMAN: Well, first of all, what Ms. Gill testified about was all before the class period. Ms. Gill was no longer employed at TransUnion by the time the class period began. And by the time the class period began, TransUnion was using new procedures. There was evidence --

THE COURT: But they were removing -- the evidence is that when someone disputed it, they were removed from the list.

MR. NEWMAN: Right.

THE COURT: Based on nothing more than TransUnion looking at the very same information that was available to them before. They didn't conduct -- she didn't testify that there was any additional investigation that was done.

MR. NEWMAN: Well, she would receive the information from the consumer -- whatever the consumer sent in, and she would look at that and she would make the determination.

THE COURT: Well, here, the evidence is that Mr. Ramirez sent a handwritten note that was one line, right, [558] that said "Remove me." And he was removed.

So there's an inference to be drawn that the information that TransUnion had was exactly the same information that they had before they identified him as a potential hit.

MR. NEWMAN: Other than the consumer standing up and saying "I'm not the guy." You have a human being saying, "No, really, I'm not the guy." That is information. That is an additional piece of information.

THE COURT: Well, come on. A terrorist, whoever is on the list could say the same thing.

MR. NEWMAN: They could, but --

THE COURT: I'm going to deny it on that claim.

MR. NEWMAN: Okay.

MR. FRANCIS: With regard to -- that satisfies the evidence for the EB claim and the willfulness on that claim.

I would also point out that which I think is a very powerful piece of testified that Mr. O'Connell testified to supporting the EB claim, the reasonable procedures claim, was that they had a method by which they could have gotten the false positives down to zero. They never tried it.

But turning, turning attention to the Section 1681(g) claim, the evidence already is in through Mr. Lytle that during the class period, TransUnion did not include any OFAC disclosure information in the disclosures that it sent to the class during the time period. It's not there.

[559] The testimony was that every single person in the class was somebody who received a file disclosure, and it would never disclose the OFAC information.

THE COURT: That's the question that I said --

MR. NEWMAN: But where's the evidence that, you know, that was clearly understood by TransUnion to be a violation of the law?

THE COURT: It doesn't have to be clearly understood. It's reckless --

MR. NEWMAN: Well, even reckless. Where is the evidence that it was reckless or a desire to violate?

THE COURT: There is no standard of a desire to violate the law. That is not the standard at all. Right? That is not the standard.

MR. NEWMAN: Well, where is the evidence of recklessness? Where is the evidence of something that -- you know, put Mr. Lytle on notice he was doing it the wrong way?

THE COURT: Well, they were told. First they had been operating under the assumption that it wasn't covered by the FCRA.

MR. NEWMAN: I'm --

THE COURT: And that was TransUnion's reason, as I understand it, for not including it in this first place.

MR. NEWMAN: Right.

THE COURT: They are then told, and accept that it is [560] covered by the FCRA, but they continue to do it the same way.

MR. NEWMAN: They didn't continue doing it the same way, they began disclosing it. And the Cortez decision didn't say anything at all about how it should be disclosed. TransUnion received no guidance as to the specific manner of disclosure. And TransUnion did disclose.

THE COURT: Okay. That's an argument that they can make, but that's enough to go to the jury.

MR. FRANCIS: Your Honor, just on that point, very quickly, the *Cortez* decision did say how it should be disclosed. It says it should be disclosed with the file because it's part of the file. That was the issue in *Cortez*.

So the *Cortez* decision gives TransUnion very, very clear instructions that this is a piece of information that is in the consumer's file.

THE COURT: I don't know if that's in the stipulation, though, which is what's in evidence at this point.

MR. FRANCIS: Well, I'm talking about in terms of arguing the Rule 50 motion before Your Honor.

THE COURT: He's arguing it based on the evidence in the case up to this point.

MR. FRANCIS: Yes. But the evidence here is clear that none of the file disclosures sent to the class included OFAC information.

In addition, the evidence is also clear that the letter [561] that they sent, the OFAC letter to consumers, did not include any statement of FCRA rights, did not include the right to dispute, did not include the right to block, did not include any of the rights that the FTC's rights require. And as a result of that, it's a clear violation and a willful violation of the FCRA Section --

THE COURT: Why couldn't the jury find willfulness there, just based on the fact that they told the government they were doing something different than what they were doing?

MR. NEWMAN: I don't think there's a contradiction between those two, Your Honor. We said we were disclosing, and the manner was explained in the letter how to contact us. And in fact, TransUnion did process --

THE COURT: That's not what the letter said. You can make an argument, but there's certainly an inference to be drawn that what Ms. Norgle told the OFAC -- I think it was OFAC.

MR. FRANCIS: Yes, Your Honor.

THE COURT: -- is different than what they were actually doing. Again, it's argument, but this is all what the jury could find.

MR. NEWMAN: Understood, Your Honor. And in the alternative, we move to decertify the class. We believe the evidence has shown that there is great diversity of experience within this class, the elements of Rule 23 must be maintained [562] through judgment, and the evidence as it's come in has shown that Mr. Ramirez's experience was quite different from anyone else in the class.

THE COURT: It was, I think, but not in a way that's material to whether there was a violation or not.

MR. NEWMAN: I understand Your Honor's order, and you understand our objections.

THE COURT: I do. And they are preserved.

MR. NEWMAN: Okay. One other matter that Mr. Luckman would like to address relating to some of -- the close of testimony, the other day. And we want to express some concerns about the way the questioning was presented about the Cortez opinion, --

THE COURT: I'm glad you're bringing that up. So let me tell what you my understanding is.

MR. NEWMAN: Yeah.

THE COURT: The only reason the opinion -- the opinion is relevant to TransUnion's state of mind. It's relevant. The only reason it isn't being admitted is because I think it would confuse the jury. It's a long Third Circuit opinion. It would consume them.

MR. NEWMAN: Correct.

THE COURT: But what the stipulation said and what I believe is appropriate is the plaintiff can question any particular witness about what's in it. And the words that are [563] in it. I don't think that's improper at all. So with that, do you still have a concern?

MR. LUCKMAN: Absolutely, Your Honor. I think that what the plaintiff did was cherry-pick a line out of the section of *Cortez* that's dicta about negligence. Cherry-picked it, and read it to someone who said he'd never read the case, he just had an understanding about it.

So I think that under the *Cortez* --

THE COURT: But didn't he also testify that he was there as a representative of TransUnion? You're certainly not going to tell me that nobody at TransUnion read that decision. TransUnion is charged with knowledge of that decision.

MR. LUCKMAN: Of course, but --

THE COURT: Okay.

MR. LUCKMAN: But now all the jury -- Your Honor, in that case, you know, I would like to cherry-pick out a section of the District Court's opinion which said that all you have to do is add the word "possibly"; you may have avoided liability.

THE COURT: You're welcome to do so. I think that all comes in. That goes to -- it's all relevant to willfulness.

MR. LUCKMAN: So I guess my objection was -- and I stand by the objection -- that cherry-picking portions of a case to ask a witness who hasn't said he read it, he only understands it, would be confusing to

the jury and prejudicial to TransUnion because there's another 2,000 lines.

[564] **THE COURT**: Would you prefer that we admit the whole opinion, then? Because it was TransUnion's objection to admit. That's not cherry-picked. The whole thing is in front of them. So we could do that. We could admit the whole opinion, put it in evidence, and that will be evidence that the jury could consider.

MR. LUCKMAN: I think that's impossible for an uneducated -- unsophisticated in matters of appellate law, for them to appreciate what the decision says.

THE COURT: Maybe. Maybe. But the fact is those words are what those words are. And TransUnion interpreted it however they did.

And it's sort of -- TransUnion has to sort of explain: This is what we interpreted it, this is why we responded to it, the way it did.

I mean, this is an unusual case in the sense that you have an opinion that is directly relevant to willfulness. Although Mr. Francis says: Not so much.

MR. LUCKMAN: Well, Your Honor, if I may, the *Cortez* case was tried when TransUnion's state of mind was: This is not FCRA-governed.

The *Cortez* case did not have the same evidence that this case has. The Court did not have before it the same evidence this case has about the ability and the wherewithal and the technological advancements to do things that were different.

[565] This case has a whole different texture to it. And what they have done is sort of end run, you know, do not pass Go, go straight to jail, and take you back

two 2005 or -7 when the case was tried and very different facts and witnesses, and read to the jury a decision based on a very different factual setting. And I think that's why it's so unfair and prejudicial to TransUnion, that what was otherwise inadmissible came in, and it came in without any context.

THE COURT: I guess I disagree with you. It is admissible. It's judicially noticeable, it's admissible, and it's relevant. I kept the opinion out on 403 grounds and that I thought it would confuse the jury. But not because it's inadmissible. It is admissible.

MR. LUCKMAN: So the reason it was -- part of the reason it was prejudicial is it's a very lengthy, poorly-written, you know, appellate decision.

THE COURT: I am not going to subscribe to that. That may be TransUnion's position, and they can certainly say that. But there were a lot of things in that opinion.

For example, they made -- the Third Circuit made it abundantly clear that they thought TransUnion's position that it wasn't covered by the FCRA was hard to believe.

MR. LUCKMAN: No question. Oh, I'm not --

THE COURT: Why isn't that relevant? Why isn't that relevant?

* * *

[585] **Q**. Were you tasked with any communication roles relating to the OFAC products?

A. My specific role was to draft a communication to consumers that informed them about the fact that

they might be a possible match to information on the OFAC list.

Q. When were you given that assignment?

A. The assignment was given in late 2010.

Q. And who did you receive the assignment from?

A. I received it through meetings with the President of Consumer Services and with the Legal Department and, also, in conjunction with an individual who was working with me at the time.

Q. Can you give us some names? Who was the president of consumer relations?

A. Sure. The president of consumer relations was Mark Marinko. The individual in the Legal Department that I worked with most closely was Denise Norgle. And then I also worked closely with Sean Walker.

Q. And what did you understand the purpose to be in drafting this letter that was going to go to consumers to let them know they might be a potential match on the OFAC list?

A. As I understood it, it was the result of a decision in a court case, which was the Cortez case, and the purpose was to simply notify consumers that they might be a potential match to information on the OFAC list.

[586] **MS. ELLICE**: Could we please display Exhibit 3, which has been previously admitted into evidence?

(Document displayed)

BY MS. ELLICE

Q. And you have some binders in front of you, Mr. Katz. They might be easier for you to see.

A. Okay.

Q. And are you seeing anything on the screen in front of you?

A. Yes, I see it.

Q. Okay. So it's behind Tab 3 in one of those books.

MS. ELLICE: Can we show the whole thing at first please?

(Document displayed)

BY MS. ELLICE

Q. Does Exhibit 3 look to you like the one you assisted in drafting?

A. Yes, please.

Q. As far as you know, in your role in corporate communications and consumer relations, had TransUnion ever sent a letter like this before?

A. To my knowledge, no.

Q. Did you personally read the Cortez decision?

A. I read through it. I wouldn't say that I read the entire decision.

Q. Were you being asked to provide any legal input on this [587] letter?

A. No, not at all.

Q. Now, I think you testified that you were tasked with making the language more simple and friendly, is that right?

A. Yes.

MR. FRANCIS: Objection. Leading.

THE COURT: Sustained.

BY MS. ELLICE

Q. Mr. Katz, could you repeat your answer please as to what your role was in drafting this letter, what your assignment was.

A. Sure. My specific assignment was to draft the letter, but what we were trying to do across the board in consumer relations, and in my role also in corporate communications, was to make the communications to consumers more friendly in general. Because when consumers are presented with complex legal language, it was very difficult for them to process it.

Q. So I'd just like to go through the parts of this letter since you had a role in drafting it.

MS. ELLICE: Let's look at just the very first line under the intro. There we go. That's perfect.

(Document enlarged.)

BY MS. ELLICE

Q. Okay. And could you just read that for the jury?

A. Sure. It says:

[588] "Regarding OFAC (Office of Foreign Assets Control) database. Thank you for contacting TransUnion. Our goal is to maintain complete and accurate information on consumer credit reports."

Q. Okay. Let's move down to the next paragraph, and give it a second to come up on the screen.

(Document displayed)

Q. I will ask you -- starting from the third sentence that starts "As a courtesy," would you please read that to the jury, please?

A. (As read):

> "As a courtesy to you, we also want to make you aware that the name that appears on your TransUnion credit file, Sergio Ramirez, is considered a potential match to information listed on the United States Department of Treasury Office of Foreign Assets Control (OFAC) database."

Q. As you sit here today, do you recall whether you had any role in drafting that highlighted portion?

A. I did, yes.

Q. Anything in particular?

A. I would say essentially the entire paragraph, the way that it's worded.

Q. And is there any particular language here that you inserted to make the -- to make the letter seem more consumer [589] friendly?

A. Sure. The "As a courtesy to you, we want to make you aware" part is probably the most intentional language that was meant to simplify and be friendly to a consumer.

Q. And why did you believe this would make the language more consumer friendly?

A. Well, one of the goals, as I said, was to be courteous to a consumer, speak in terms that they would understand and would be approachable, and so we felt that that language would accomplish that.

Q. And what about the language "is considered a potential match to information listed on the United States Department of Treasury's OFAC database," did you draft that language?

A. Yes, I believe that I did.

Q. Did you come up with the term "potential match"?

A. I did not.

Q. Do you know who did?

A. I do not know who did, no.

Q. Let's move down to the third paragraph, please. And give it a second to come up, please, Mr. Katz.

(Document displayed)

Q. And if you could just read this aloud for the jury, in case they can't see it clearly?

A. Sure. It says:

> "The OFAC database contains a list of individuals and [590] entities that are prohibited by the U.S. Department of Treasury from doing business in or with the United States. Financial institutions are required to check customers' names against the OFAC database, and if a potential name match is found, to verify whether their potential customer is the person on the OFAC database. For this reason, some financial institutions may ask for your date of birth, or they may ask to see a copy of a government-issued form of identification, such as a driver's license, Social Security card,

> passport, or birth certificate. Some financial institutions will search names against the database themselves or they may ask another company, such as TransUnion, to do so on their behalf. We want you to know that this information may be provided to such authorized parties."

Q. What was the purpose of having this paragraph in there?

A. Again, we wanted to inform the consumer as much as possible about why they were receiving the letter and we felt that this explained as much as possible about how the information might be used by a potential lender in the process that they might be asked to go through once the lender or creditor had received that information.

Q. In your many years of experience in customer relations, did you believe that this paragraph would accomplish its goal of being simple and easy to understand to a consumer?

[591] A. Yes, I did.

Q. Now, let's move down to the second half of the page. What's the purpose of this section?

A. This section was not something that we specifically drafted. It's simply showing the specific information that was returned in terms of the consumer's name when it was presented against the OFAC list.

Q. Where did those names come from? Where did that information come from?

A. They came from OFAC.

Q. From the U.S. Department of Treasury?

A. Correct.

Q. And why did you believe it was important to repeat this information here in the letter?

A. Again, we wanted the consumer to understand as much as possible what information had been presented and what the lender or creditor would see, and for them to understand the name that was being presented as it appeared and why it might have been related to their name.

Q. All right. Let's just move down finally to the last section of this letter.

(Document displayed)

Q. And if you can read just the first paragraph of this section?

A. (As read):

[592] "For more details regarding the OFAC database, please visit http//www.ustreas.gov/offices/enforcement/ofac/faq/index.shtmi," I believe it says.

Q. Do you have an understanding of what that web address would direct a consumer to?

A. Sure. It was an FAQ section.

MR. SOUMILAS: Objection. This is hearsay.

THE COURT: Overruled.

BY MS. ELLICE

Q. You can answer.

A. Sure. It's an FAQ section on the U.S. Treasury website.

Q. And why did you believe it was important to put that into the letter?

A. We -- again, we were trying to give the consumer as much information as possible. And while we felt that we had presented that in the letter, if the consumer wanted to get additional information, we thought that was one of the -- one of the best places to do so.

Q. Okay. And the last portion of this letter, would you read that to the jury, please, Mr. Katz?

A. It says:

> "If you have additional questions or concerns, you can contact TransUnion at 1(855)525-5176 or via regular mail at TransUnion, LLC, P.O.Box 800, Woodlyn, Pennsylvania, 19094. When contacting our office, please [593] provide your current file number 234206417."

Q. That phone number that's listed there, do you know whether that's the general TransUnion phone number?

A. It is not.

Q. What is it?

A. It was a separate and distinct phone number that we set up so that consumers could get directly to information about how -- steps that they could take regarding the letter that they received so that they wouldn't have to go through the standard phone system, which would prompt them for various options. This way they could just go directly to that information.

Q. And the file number that's provided there, is that intended to be specific to the consumer who is receiving the letter?

A. Yes. It is specific.

Q. And why do you put it down there?

A. By putting it in the letter, the consumer can reference it and, therefore, there can be little question as to what they are looking to address.

MS. ELLICE: Thank you, Mr. Katz.

CROSS EXAMINATION

BY MR. FRANCIS

Q. Mr. Katz, good morning.

A. Good morning.

[594] **Q**. I do not have much for you today, but I do have a few questions.

You mentioned earlier in reference to the letter that was just put up that you were involved in the drafting of that letter, is that correct?

A. Yes, that's correct.

Q. Okay. Now, am I correct that you weren't the only person who was involved in drafting that letter?

A. Yes.

Q. And am I also correct that another person who was involved in drafting that letter was a person by the name of Denise Norgle, is that correct?

A. Yes.

Q. Okay. And am I correct that Denise Norgle was TransUnion's general counsel at the time?

A. Yes.

Q. Okay. And so would it be fair for me to state that the letter that we just looked at was written between -- by you and Ms. Norgle from legal working in conjunction, correct?

A. Yes. That's true, yes.

Q. And I think you said this, but I want to make sure that it's clear. You never worked within the Legal Department at TransUnion, correct?

A. No. I never did.

Q. You're not a lawyer, correct?

[595] A. Correct.

Q. All right.

MR. FRANCIS: Now, Mr. Reeser, would you please put up Plaintiff's Exhibit 34, please?

And would you blow up the first paragraph, please?

(Document displayed)

BY MR. FRANCIS

Q. Mr. Katz, you weren't here this week, but there was some testimony about this letter that the Department of Treasury sent to Ms. Norgle at TransUnion, and I just have a couple quick questions for you.

There is a reference in the first sentence about a meeting with you in July of 2007. Were you involved in any meetings with Ms. Norgle and the Department of Treasury in July of 2007?

A. I was not.

Q. Okay. So you don't -- do you know of any -- anything that came out of that meeting?

A. I do not.

Q. Okay.

A. No.

Q. And there was also a reference to May 27th, 2008. Specifically, that there was correspondence that the OFAC department had sent to TransUnion. Are you -- do you have any knowledge about that, that correspondence?

A. No, I don't.

[596] **Q**. Okay. And generally, other than putting aside whether you were at the meeting in July of 2007 and/or were copied on the correspondence of May 27th, 2008, am I correct that you -- you weren't knowledgeable about any of the meetings or communications that Ms. Norgle was having with the Department of Treasury regarding TransUnion's OFAC product?

A. That's correct. I was not knowledgeable of those.

MR. FRANCIS: All right. You can take that down, Mr. Reeser.

(Document removed from display.)

BY MR. FRANCIS

Q. Am I correct, sir, that most of the time you were working on the consumer relations side of TransUnion as opposed to the client servicing side?

A. From 2005 to 2010, yes.

Q. Okay. And would I be correct in stating that if -- if we had questions about the match logic or the available technology that TransUnion had at its

disposal regarding OFAC Advisor Alerts, you're probably not the guy to ask those questions to, correct?

A. I am not the guy.

MR. FRANCIS: Okay. Mr. Reeser, would you please put up Plaintiff's -- or, excuse me, Exhibit 3?

(Document displayed)

[597] **BY MR. FRANCIS**

Q. Mr. Katz, Ms. Ellice asked you some questions about this letter that I think you said you contributed to drafting.

MR. FRANCIS: Mr. Reeser, could we blow up the top half of that letter, please?

(Document enlarged.)

BY MR. FRANCIS

Q. If you look -- sir, if you look at the second paragraph, Ms. Ellice asked you questions about that paragraph. Specifically she pointed to the "As a courtesy to you" language.

Do you see that?

A. Yes, I see that.

Q. And she pointed out that it reads:

"As a courtesy to you, we also want to make you aware that the name that appears on your TransUnion credit file, Sergio L. Ramirez, is considered a potential match to information listed on the U.S. Department of Treasury's Office of Foreign Assets Control database."

Do you see that?

A. Yes, I see it.

Q. I understand that you wanted to make this letter friendly to the consumer. But that's not really a true statement, is it?

MS. ELLICE: Objection, your Honor. Argumentative.

[598] **THE COURT**: Overruled.

A. Can you repeat the question?

BY MR. FRANCIS

Q. Yes. You are asserting here in this letter that the reason TransUnion is providing this OFAC data to Mr. Ramirez is because of the courtesy that it wanted to extend to him. That's not true, is it?

A. I think we wanted to provide the letter in a manner that was being as direct and speaking to the consumer in a manner that was easy for them to understand and as courteous as possible, so.

Q. Sir, am I not correct that the reason TransUnion was sending this letter to Mr. Ramirez was because the law required it to disclose this information to him, not as some courtesy?

MS. ELLICE: Objection, your Honor. The witness has testified he's not a lawyer. The question calls for a legal conclusion.

THE COURT: Overruled.

A. Well, I understand -- and I am not a lawyer. I understand that there was a requirement as a result of the decision in *Cortez* to provide certain information. I think providing it as a courtesy to the consumer in a courteous manner is what we did.

BY MR. FRANCIS

Q. Sir, you mentioned that you had reviewed the *Cortez* [599] decision in your direct testimony to Ms. Ellice. Do you recall that?

A. Yes.

Q. And didn't you testify that the reason this letter started getting used was because of the *Cortez* decision; isn't that correct?

A. I'm not -- again, I'm not an attorney. My understanding was simply that I was asked to prepare this letter to communicate with consumers that they were a possible match to the OFAC list.

Q. And am I not correct, sir, from -- that you learned through your review of the *Cortez* decision that a jury found that TransUnion willfully violated the law in that case by failing to include --

MS. ELLICE: Objection, your Honor.

BY MR. FRANCIS

Q. -- OFAC information in -- in disclosures to consumers?

THE COURT: He can answer if he knows.

A. I -- I don't know the answer. I didn't -- I didn't review the case to that extent. I just -- I just basically glanced at it.

BY MR. FRANCIS

Q. Sir, isn't the reason this letter was being sent was because TransUnion knew that it had an obligation under the law to send it to consumers?

[600] **A**. Again, I'm not -- I'm not an attorney. What I knew was that I was tasked with drafting a

letter to inform the consumer that they were a possible match.

Q. Okay. And let's go down a little bit further, okay?

MR. FRANCIS: I'm sorry. Mr. Reeser, please keep that up.

BY MR. FRANCIS

Q. The second part of that sentence that begins with "As a courtesy to you" is that -- it reads:

"Sergio L. Ramirez is considered a potential match to information."

Do you see that?

A. Yeah, I see it.

Q. Would you agree with me that neither that sentence nor this paragraph communicates who considered Mr. Ramirez a potential match?

A. I'm not sure what you're asking. I'm sorry.

Q. Do you believe that this -- this letter, this section specifically, communicates who considers Mr. Ramirez a potential match?

A. I -- you know, my -- my assumption and the reason that I believe those words were used was because the analytics that were used to determine the match considered the individual a potential match.

Q. Do you -- do you remember that I took your deposition in [601] this case a few years ago?

A. I do.

Q. And do you remember me asking you questions about what that part of this letter meant?

A. I believe I do, yeah.

Q. Okay. And would you disagree with me if I told you that you weren't even certain at that time who considered Mr. Ramirez a potential match?

MS. ELLICE: Your Honor, if Mr. Francis could direct us to a portion of the --

THE COURT: No. He can ask answer the question. He can answer the question.

A. I believe what I indicated at the time was that the potential match was determined by the analytics or the matching logic that was used to determine whether someone was a match. I'm pretty sure that's what I indicated.

BY MR. FRANCIS

Q. Sir, you testified that you believed that the letter was unclear at that time, didn't you?

A. I don't think I did.

MR. FRANCIS: Your Honor, may I approach the witness?

THE COURT: You may.

(Whereupon document was tendered to the witness.)

MR. FRANCIS: May I hand the Court a copy?

(Whereupon document was tendered to the Court.)

[602] **BY MR. FRANCIS**

Q. Mr. Katz, I'd like you to turn your attention to Page 119, please.

(Witness complied)

Q. Are you there?

A. Yeah.

Q. Okay.

MS. ELLICE: Your Honor, can I ask before he starts reading that he just direct me to the exact lines that he's planning to read from?

THE COURT: It's 119. Wasn't Mr. Katz an employee of TransUnion at the time he was deposed?

MR. FRANCIS: Yes, your Honor.

THE COURT: So the deposition may be used for any purpose.

MR. FRANCIS: Thank you, your Honor.

BY MR. FRANCIS

Q. Are you there, sir?

A. Yeah, I am there.

Q. Okay. At Line 4 I ask:

"QUESTION: So when you drafted this, you weren't sure of who was saying the consumer is a potential match, correct?"

And after the objection you said what?

A. I'm sorry. Direct me to the objection.

Q. "MR. NEWMAN: "Objection, misstates testimony."

[603] **MR. FRANCIS**: Mr. Reeser, if you can pull this up in a timely manner, please do so. If not, I can do it without the exhibit.

BY MR. FRANCIS

Q. What was your answer to my question that you weren't sure who was saying the consumer was a potential match?

A. I -- are you referring to Line 17? I just want to make sure --

Q. No. I'm referring to Line 9.

A. Oh, okay. Line 9 reads:

"ANSWER: Yeah, I agreed."

Q. Okay. And then after that I asked you specifically, and I will quote:

> "QUESTION: Okay. You agree, right? You don't know if it was Equifax saying that they are a potential match, Accuity saying they are a potential match, or Experian saying they are a potential match. You weren't sure of where the match was coming from, is that correct?" And please read your answer.

A. I say:

> "ANSWER: Right. My understanding simply was that we were informing the consumer that they were a potential match and that's what was critical to provide to the consumer."

Q. And please turn to the page before that, Page 118.

(Witness complied)

[604] **Q**. And at the bottom, Line 21 I ask:

> "QUESTION: Okay. A potential match according to whom?"

And what was your answer to that question?

A. (As read)

"ANSWER: Again, I'm not -- I am uncertain."

Q. Okay. So would you agree with me now that this letter doesn't tell the consumer who is considering them a potential match to the OFAC list?

A. I would agree that I was uncertain as to who specifically was making that determination, and that's basically where I'm at on that.

Q. Right. But my question is: Would you agree with me that the letter doesn't communicate clearly and accurately to the consumer who was considering him a potential match?

A. I -- I suppose it leaves some room for interpretation as to how the potential match was derived.

MR. FRANCIS: I have no further questions, your Honor.

THE COURT: Anything further, Ms. Ellice?

MS. ELLICE: Brief redirect, your Honor.

And, Shoma, let's bring back up that exhibit we were just looking at, Exhibit 3. I know you need a second to switch over.

REDIRECT EXAMINATION

BY MS. ELLICE

Q. Mr. Katz, who is this letter from?

* * *

[679] **A**. No, not always.

Q. How did they look before, say, 2004?

A. So in 2004, 2005 TransUnion changed the look and feel of the disclosure. Previous to that date you would have received what looked like a computer printout from a mainframe file. So everything was in

capitals. There is no bolding. There is no shading. There is no graphics. Anything like that.

In 2004, 2005 we worked with our print vendors to be able to enhance the look and feel of that disclosure to make it more readable, I would say, from a consumer's perspective.

Q. You just used the term "print vendor." What is a print vendor?

A. Sorry. Yes. TransUnion prints and mails thousands of pieces of information each day. Those could be disclosures, letters, disputes to different credit grantors or different companies. That type of production, that type of scale can't be accomplished by TransUnion. So we work with an outside vendor who produces all of that work and print for us.

Q. Do you use more than one print vendor?

A. We do.

Q. Who are your print vendors -- what were the print vendors in use in 2011?

A. In 2011 we would have been using SourceHOV, which is our primary print vendor. A company called RR Donnelly, which is a [680] financial statement production company. As well as Metrolina.

Q. Where are those three companies located?

A. Source HOV is located in the Livonia, Michigan. RR Donnelly at the time was in West Caldwell, New Jersey. And Metrolina is located in Charlotte, North Carolina.

Q. Is there anything special about the Metrolina print vendor?

A. Yes. Metrolina provides for TransUnion what we refer to as alternative formats. They -- so when a consumer requests a copy of a credit report disclosure or a letter as being sent to them, they can identify themselves as visually impaired. In those instances they can choose to receive a copy of their disclosure or letter or correspondence either in a Braille or audio or even in a large print format.

So those -- so Metrolina in Charlotte would produce for us disclosures or letters or corrected copies in an audio or Braille format. The main print vendor would produce those in a large print format.

TransUnion also produces disclosures, letters, corrected copies and others in Spanish language, in addition to the Braille and audio and large print.

Q. So more on 75. What was the physical process for creating credit file disclosures in May of 2010?

A. Okay. So in May of 2010 TransUnion would send to the print vendor what's called a print-ready file or a print image [681] of what was supposed to be sent to the consumer. That information would go through the software that the print vendor provides to convert it into this nice look and feel, and then we would then mail it out to the consumer.

Q. The print vendor would actually mail it out?

A. Yes, correct.

Q. They would handle it at their factory, their location and make sure it actually got out?

A. Absolutely.

Q. And did TransUnion have processes to audit their print vendors to make sure they were doing what they were supposed to do?

A. Yes. That is part of my daily responsibility, daily reconciliation to the print pieces that are mailed, as well as on-site audits which occur, I believe, once every year or two years. As well as the invoice reconciliation that we would do.

Q. Did something happen in May 2010 with respect to the technology used to deliver file disclosures to consumers?

A. So in May 2010 TransUnion embarked on using -- instead of the print image file that was sent to the print vendor, switching that over to a data file. So we were moving from the print image to a process called XML. So XML is a data file as opposed to producing that in a print image or print-ready form, it would send the data specifically to the print vendor.

Q. What is the difference between the print image technology

* * *

[685] **Q**. Is that the same OFAC information that -- as was sent to purchasers of credit reports, if there were any purchasers?

A. Yes.

Q. Now, in relation to Exhibit 75, when was Exhibit 73 printed? If you could compare Exhibit 75 to Exhibit 73?

A. So the disclosure versus this OFAC letter?

Q. Yeah. The two documents.

A. So they would have been provided -- they would have been printed within hours, at most a day of each other.

Q. And I'll -- I'll tell you that Exhibit 75 bears the date of February 28, 2011, and Exhibit 3 bears the date of March 1st, 2011. And we know that February has 28 days, correct?

A. Right. So what happened -- what would have happened is the disclosure was requested on the 28th. That disclosure was batched up. It was created on the 28th. The OFAC information was run the next day, March 1st. And then both of those pieces would have been delivered to the print vendor.

Q. Are you aware of any delay for any member of this class that was more than one day?

A. No.

Q. And you said earlier that often it was printed within hours. How do you know that to be true?

A. Because I managed the print process. So what happens is, [686] again, each day the disclosures are requested at the end of the day, they are batched up. After midnight they are transmitted and/or looked at against OFAC. That file is completed and sent to the print vendor. Then the print vendor's processes are automated and run through their steps until they are done.

Q. Why wasn't the information in Exhibit 3 included in Exhibit 75? Why wasn't it included together?

A. We did not have the ability to include those together in the same -- at the same time.

Q. Why was that?

A. Again, the disclosure comes in a print image format. The OFAC letter comes in a separate file. It may not go to the same print vendor. There is not a way to -- to ensure that that could go together at that point in time.

Q. And did that state of affairs persist between January and July 2011?

A. It did.

Q. And what was happening -- what were you doing during that period January through July 2011?

A. So I believe it was in March of 2011 is when we began after some conversations, began looking at ways of how we could do indeed just that, which is to include that OFAC information into that disclosure.

Again, when I was talking earlier about the change from the print image file to the XML file -- because in an XML file [687] you have to define the placement, as I said, of each piece of data -- that began to open up the door for us to be able to use this other file that was coming in with the OFAC information and include that into the disclosure. That's what we did, which was released end of July 2011.

Q. And do you believe you made that change as quickly as you could have?

A. I know we did, yes.

Q. During the period January through July 2011, why wasn't the information in the Summary of Rights also dropped into Exhibit 3?

A. Right. The OFAC. Because it was provided as part of the credit file disclosure, Exhibit 75, that we

had sent to the consumer that same day, or within hours of each other.

Q. Was there any desire to deprive consumers of that information?

A. No. I would say it -- as an example, I -- I got a swing set a couple years back and that swing set had the directions. They didn't include the directions in every single box that they sent to me. They only included the directions in one of the boxes. Obviously, when I needed the directions I would get them out of that box.

Q. Did anyone ever tell you that it violated the Fair Credit Reporting Act to send the OFAC information in the way we have been discussing?

[688] **A**. Absolutely not.

Q. Did anybody ever tell you it violated the Fair Credit Reporting Act to send the Summary of Rights in the way we have been discussing?

A. Absolutely not.

Q. And were these communications prepared out of a desire to obey the law?

A. Absolutely.

Q. And what was your specific role in regard to communications of this kind?

A. Again, my specific role was to ensure that -- that that information was conveyed to the print vendor and to the consumer.

Q. Okay. Let's turn to what's been previously admitted as Exhibit 27. You should have it in your book as well.

MR. NEWMAN: And let's have the whole document, please, and zoom up. There we go.

(Document displayed)

BY MR. NEWMAN

Q. What is Exhibit 27?

A. Exhibit 27 is a printout of what our operations team would call the FIN Comments or Comments tab. It is a tab within our -- the application the operators use.

Q. Are you familiar with documents of this kind?

A. I am.

* * *

[694] **A**. Just what we just finished talking about, that how exactly the comment would be added to the FIN Comments tab when a match was made.

Q. Does everyone who gets a disclosure, do they also have a report sold about them with OFAC information necessarily?

A. No.

Q. Can you explain that?

A. Sure. A disclosure is a credit report that you get directly from TransUnion. That's what I would say it is. A credit report is something that's sold about you when you apply for credit, or provided. So not necessarily if you're not a credit active person, you may ask for your disclosure and you got your disclosure and it may have OFAC information in it, but it was never distributed to anybody else.

Or the opposite might be true, you might have your credit report and apply for credit a lot and never ask for a disclosure.

Q. And how much does -- most of the time does TransUnion charge consumers for their own credit reports, for their own disclosures?

A. No. So -- no. The answer is no.

Q. Why is that?

A. The FCRA allows for one -- a consumer to request a copy of their credit report every 12 months from each of the credit report reporting agencies. If you are denied credit, if you [695] are on welfare, if you're a victim of fraud, if you are unemployed, you're entitled to a free copy of your credit report.

The vast majority of the credit reports, I would say, that TransUnion distributes are for a reason free.

MR. NEWMAN: Can we go back to Exhibit 27, please?

(Brief pause.)

BY MR. NEWMAN

Q. While we're waiting for that to come up, so it's possible that a person could get their own credit report before applying for credit and then after receiving that, contact TransUnion and say: Hey, I haven't applied for credit yet. I'm going to be in the market for a mortgage soon. Can you please look into these things?

Is there a way TransUnion makes that possible?

A. Yeah. That's actually what most -- most of our suggestions would be, is that if you are looking to do a large purchase, that you would first get a copy of your

credit report so you have an understanding of what's on there so there is no surprises when you go to the bank, or anywhere else. And then if there are inaccuracies, if you notice something wrong, then you would dispute that information with the credit reporting agency that you got that information from.

Q. And you used the term "dispute." Does that word "dispute" suggest that the consumer was actually denied credit before the

* * *

Transunion's Memorandum in Support of Proposed Jury Instructions (N.D. Cal. June 18, 2017)

Defendant Trans Union LLC ("TransUnion"), pursuant to this Court's Amended Pretrial Order dated July 15, 2016 (Dkt. No. 196), hereby submits its Memorandum of Law in Support of Proposed Jury Instructions to be Included in the Court's Final Charge to the Parties.

A. [Re-Requested] Jury Instruction Re Jury Cannot Deliver a Compromise Verdict

This proposed instruction informs the jury that it may not deliver a compromise verdict. *Romberg v. Nichols*, 970 F.2d 512, 521 (9th Cir. 1992) ("When a jury compromises its verdict, its verdict should not stand.") This is not duplicative of Proposed Jury Instruction No. 22 re Duty to Deliberate. Instruction No. 22 broadly instructs the jury as to its duties, ranging from the pragmatic ("elect one member of the jury as your presiding juror") to the sage ("[d]o not be unwilling to change your opinion if the discussion persuades you that you should"). While Instruction No. 22 also mentions that the jury must reach a unanimous verdict, this proposed instruction is specifically targeted to the process of reaching a unanimous verdict and provides important information to the jury that it may not "horse trade" in reaching its verdict. The *process* of accomplishing unanimity is not addressed by Instruction No. 22.

B. [Re-Requested] Jury Instruction Re Prohibition Against Quotient Verdict

This proposed instruction informs the jury that it may not deliver a quotient verdict. It is proper and necessary for this Court to instruct the jury that arriving at a potential damages calculation by pre-agreement is prohibited. *See Freight Terminals, Inc. v. Ryder Sys., Inc.*, 461 F.2d 1046, 1053 (5th Cir. 1972). This instruction not duplicative of Instruction No. 22 because it specifically advises the jury of a prohibited method of calculating damages. It is important for the jury to be instructed on a method of deliberation that could potentially set aside its verdict. *See Nat'l R.R. Passenger Corp. v. Two Parcels of Land One 1691 Sq. Foot More or Less Parcel of Land in Town of New London, New London Cty. & State of Conn.*, 822 F.2d 1261, 1268 (2d Cir. 1987).

C. [Re-Requested] Jury Instruction Re Reseller Duties

It is not disputed that the Dublin Nissan auto dealership did not obtain a credit report about Plaintiff directly from TransUnion. Rather, TransUnion's data passed through multiple hands before reaching the salesperson who dealt directly with Plaintiff. TransUnion's evidence has shown that what Dublin Nissan received was not on an approved TransUnion format and is not a TransUnion credit report. TransUnion will be prejudiced if the jury is not informed that under the FCRA, resellers of credit reports have their own independent FCRA duties. *See* 15 U.S.C. §§ 1681a(u), 1681e(e); *see also Waterman v. Experian Info. Sols., Inc.*, No. 12-01400 SJO (PLAx), 2013 WL 675764 (C.D. Cal. Feb. 25, 2013) (15 U.S.C.

§ 1681e(b) applies to resellers); *Willoughby v. Equifax Info. Servs. LLC*, No. 2:13–CV–788–RDP, 2013 WL 8351203, at *3 (N.D. Ala. Aug. 12, 2013) (same); *Dively v. Trans Union, LLC*, No. 11–3607, 2012 WL 246095, at *5 (E.D. Pa. Jan. 26, 2012) (same). As a matter of law, TransUnion is not responsible for how others use its data, particularly when, as here, the information has been altered in contravention of TransUnion's specific directions. Moreover, Plaintiff has proffered no evidence that any reseller or other party who passed along data originated from TransUnion was an agent of TransUnion. An instruction on this subject is essential to prevent the jury from being confused into believing that TransUnion is legally responsible for changes to its data or its approved format subsequent to the data leaving TransUnion's control, and contrary to TransUnion's requirements for use of the data.

D. [Re-Requested] Jury Instruction Re Standing and Causation

Throughout the litigation and at trial, Plaintiff has identified no one who suffered any actual harm as a result of TransUnion's 2011 procedures. That Plaintiff's claim has been permitted to proceed so far does not excuse him from the need to prove standing as a factual matter. As explained in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992), a plaintiff's burden to produce evidence supporting Article III standing progressively increases from the pleading stage through summary judgment and ultimately trial. Accordingly, Plaintiff must proffer evidence to support "a factual showing of perceptible harm." *Id.* at 566 (1992); *see also Spokeo*, 136 S. Ct. at 1550.

The increasing burden of proof mandated by *Lujan* requires the plaintiff to produce enough evidence to enable a reasonable factfinder to find that he has standing. Plaintiff has not proffered any evidence that demonstrates that either individual class members or the class as a whole suffered real-world harm or even an undue risk of harm from the FCRA violations he alleges occurred, but Plaintiff must do so now. *See Sion v. SunRun, Inc.*, No. 16-cv-05834-JST, 2017 WL 952953, at *3 (N.D. Cal. Mar. 13, 2017) ("The Court finds that Sion's conclusory statement that 'Defendant increased the risk that [Sion] will be injured if there is a data breach on Defendant's computer systems' is insufficient, even when coupled with Sion's allegation of emotional distress, to defeat SunRun's motion to dismiss.").

The evidence has shown that there was no "practical consequence" to the class resulting from the challenged actions here. *See Safeco*, 551 U.S. at 63-64. On the Section 1681g disclosure claims, the evidence shows that the allegedly non-compliant disclosure employed during the class period was *more* effective in informing consumers of their rights than the present disclosure method (which Plaintiff concedes is compliant). Likewise, on the Section 1681e(b) accuracy claim, Plaintiff has not identified anyone who actually was denied credit improperly as a result of any TransUnion Name Screen. In order to "willfully" violate the FCRA and recover statutory damages, a consumer reporting agency's action must create an "unjustifiably high risk of harm that is either known or so obvious that it should be known." *See Safeco*, 551 U.S. at 49; *see also Smith*, 837 F.3d at 610-11. The fact that the class as a whole, or any

identified person within the class, did not sustain any concrete injury as a result of TransUnion's actions makes it more likely that there was not an "unjustifiably high risk of harm" that would justify a finding of willfulness under *Safeco*.

The aforementioned authorities are supported by a recent opinion published by the United States Court of Appeals for the Fourth Circuit in *Dreher v. Experian Info. Sols., Inc.*, 856 F.3d 337 (4th Cir. 2017). There, the court concluded that an individual who fails to allege a concrete injury stemming from allegedly incomplete or incorrect information listed on a credit report cannot satisfy the threshold requirements of standing. *Id.* In Dreher, the district court did not analyze whether any injury to plaintiff was specific and concrete and found instead that merely any violation of the FCRA sufficed to create an Article III injury in fact. *Id.* The Fourth Circuit court vacated the district court's judgment and remanded with instructions to dismiss on the grounds that the plaintiff had failed to demonstrate that he suffered a concrete injury sufficient to satisfy Article III standing. *Id.*

Here, Plaintiff does not assert that he has suffered any actual injury as a result of the alleged violations of the FCRA. Instead, TransUnion's evidence has shown that its contemporaneous delivery procedure "had no practical effect" on Plaintiff's ability to receive information he needed to inquire further as to the results he received. The evidence has established that neither Plaintiff, nor any class member, suffered any concrete harm as a result of TransUnion's contemporaneous disclosure process. By contrast,

Plaintiff has not introduced any evidence of harm. This is wholly relevant to the claims here because, as *Dreher* confirms, no constitutional standing can exist absent a concrete injury. Plaintiff must prove, as a factual matter, that he and the class sustained injury sufficient to pass muster under Article III as a result of each violation alleged. Because the lack of concrete injury is determinative of liability, the jury should be instructed as to the implications of a finding that neither Plaintiff, nor any class member, suffered any concrete harm as a result of TransUnion's conduct. TransUnion's proposed instruction hews closely to the Constitutional standard. The jury should be permitted to decide, as a factual matter, whether this standard has been met.

E. [Re-Requested] Jury Instruction Re Willful Non-Compliance

The instruction TransUnion proposes (in lieu of the Court's Proposed Jury Instruction No. 19) closely tracks the language of *Safeco Ins. Co. of Am v. Burr*, 551 U.S. 47 (2007), as well as other language from a recent Court of Appeals decision, reversing a jury verdict in favor of the plaintiff, that applies and explains the *Safeco* standard. *Smith v. LexisNexis Screening Sols., Inc.*, 837 F.3d 604 (6th Cir. 2016).

Safeco states that a "willful" failure to comply with the FCRA includes both knowing and reckless violations, but the case mandates a high degree of recklessness for liability to be imposed. 551 U.S. at 56. "While the term recklessness is not self-defining, the common law has generally understood it in the sphere of civil liability as conduct violating an objective standard: action entailing an unjustifiably high risk of

harm that is either known or so obvious that it should be known." *Id.* at 68 (internal citations omitted). *See also Smith*, 837 F.3d 604, 610 (citing *Safeco*) (negligence in compiling credit report "is a far cry from being willful" and inaccuracies resulting from carelessness are not equivalent to disregarding a high risk of harm of which it should have known).

TransUnion's proposed language about prompt correction of an error being evidence of the lack of willfulness is based on *Smith*, and is supported by the evidence TransUnion has presented at trial. As drafted, the instruction merely informs the jury that it *may* consider the evidence.

TransUnion's proposed instruction that the jury must assess TransUnion's conduct based on the state of affairs during the class period is a common-sense application of *Safeco*. TransUnion cannot fairly be held to a standard of behavior that is only applied in hindsight. Moreover, because 15 U.S.C. § 1681e(b) discusses reasonable procedures to achieve maximum possible accuracy, the statute has a temporal component built into it. What was *possible* in 2017 was not necessarily possible in 2011, and Plaintiff has the burden of proving what was possible in 2011.

F. [Proposed Modification of] Jury Instruction No. 14 Re Definitions

TransUnion proposes a modification to this incomplete instruction. TransUnion's proposed modification equips the jury with the definition of a "consumer report." Importantly, the instruction distinguishes for the jury that a key element of the definition of a "consumer report" is that it must be used or expected to be used for the purpose of

determining "eligibility" for credit, employment, housing or insurance. 15 U.S.C. § 1681a(d). Although the Court has ruled that sale of the report to a third party is not an mandatory element of the "consumer report" definition, the Court has not previously been asked to rule upon the "eligibility" element of the definition, which is expressly within the language of the statute. Plaintiff must prove, on his claim under 15 U.S.C. § 1681e(b), that an inaccurate "consumer report" was prepared as to each member of the class. The jury must find, as a factual matter, that such consumer reports were prepared, and under the statute, a communication is not a consumer report unless the eligibility element is satisfied. Failure to instruct the jury on the eligibility element of the definition of consumer report would be reversible error.

G. [Proposed Modification of] Jury Instruction No. 16 Re 15 U.S.C. § 1681e(b)

The portion of TransUnion's proposed modification defining for the jury the meaning of "inaccuracy" is appropriate. The proposed language stating, "[i]naccuracy means patently incorrect or misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions" is taken directly from controlling Ninth Circuit case law and this additional explanation should be provided to the jury. *See Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009).

TransUnion also is entitled to an instruction that the jury may not impose a different standard of accuracy on it simply by reason of its status as a consumer reporting agency. The First Amendment

provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. Const. amend. I. "[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Ashcroft v. Am. Civil Liberties Union*, 535 U.S. 564, 573, 122 S. Ct. 1700, 152 L. Ed. 2d 771 (2002) (quotations and citations omitted), aff'd, 452 U.S. 656 (2004). The Supreme Court recognizes that the First Amendment protects credit reporting. *See Sorrell v. IMS Health, Inc.*, S. Ct. 2653, 2667 (2011) (citing *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 783 (1985) for the propositions that a "credit report is 'speech'" and that "dissemination of information [is] speech within the meaning of the First Amendment"). The First Amendment also protects the publication of information about matters of public concern. *See Dun & Bradstreet*, 472 U.S. at 758-59 (1985) ("It is speech on 'matters of public concern' that is 'at the heart of the First Amendment's protection.'") (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 776, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978)). "[P]ublic records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495, 95 S. Ct. 1029, 43 L. Ed. 2d 328 (1975). Thus, First Amendment protection extends to the public Treasury information provided by TransUnion via the Name Screen product. *See Sorrell*, 131 S. Ct. at 2666 (recognizing "restrictions on the *disclosure of government-held information* can facilitate or burden the expression of potential

recipients and so transgress the First Amendment") (emphasis added); *Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144 (2017) (New York law permitting merchants to give a discount to cash-paying customers, but forbidding them from imposing a surcharge on credit card users, is a regulation of commercial speech that must be analyzed under the First Amendment); see also Reed v. Town of Gilbert, 135 S. Ct. 2218, 2226 (2015) ("Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional"). TransUnion's status as a consumer reporting agency does not diminish its protections under the First Amendment, including its protected right of free speech, as communicated through its reports. The jury should not be allowed to discriminate against TransUnion because it is a consumer reporting agency, rather than part of the media. *See Citizens United v. F.E.C.*, 558 U.S. 310, 340 (2010) ("Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others") (internal citations omitted); *Lovell v. City of Griffin, GA*, 303 U.S. 444, 452 (1938) ("The liberty of the press is not confined to newspapers and periodicals . . . The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion"); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 574 (1995) ("Nor is the rule's benefit restricted to the press, being enjoyed by business corporations generally and by ordinary people engaged in unsophisticated expression as well

as by professional publishers. Its point is simply the point of all speech protection, which is to shield just those choices of content that in someone's eyes are misguided, or even hurtful."). TransUnion's proposed jury instruction properly guides the jury to view the determination of "accuracy" through the proper Constitutional lens. TransUnion cannot, by reason of its status as a consumer reporting agency, be held to a different standard of accuracy than would apply to any other publisher of the information at issue in the present litigation. Failure to instruct the jury in the manner requested would deprive TransUnion of its rights under the First Amendment and constitute reversible error.

H. [Proposed Modification of] Jury Instruction No. 21 Re Statutory Damages

TransUnion's proposed modification is essential to a proper instruction regarding what types of damages may be awarded. The remedies provision asserted here by Plaintiff, 15 U.S.C. § 1681n(a)(1)(B), states that "Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of . . . any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000." (Emphasis added.) Since the statute expressly provides that actual *or* statutory damages may be awarded upon a finding of willfulness, Jury Instruction No. 21 should be revised to allow the jury to allow actual damages, which in this case Plaintiff concedes to be zero. Indeed, when

Congress intends for a plaintiff to recover the "greater of" actual or statutory damages, the statutory language is clear. *See, e.g.*, 18 U.S.C. § 2520 (in context of Electronic Communications Privacy Act, "the court shall assess *the greater of* the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500") (emphasis added). In fact, two different subsections of Section 1681n contain similar language. Section 1681n(a)(1)(B) provides: "Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of . . . in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, *whichever is greater*." (Emphasis added). Section 1681n(b) provides: "Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, *whichever is greater*." (Emphasis added). Congress's intentional omission of the "whichever is greater" language from Section 1681n(a)(1)(A), the relevant provision here, thus evidences an intent to permit an award of actual damages that is *less than* statutory damages.

Here, the plain language of the statute expressly permits the finder of fact to elect between actual and statutory damages, and the jury should be instructed in accord with the plain language of the statute. The statute does not state that the plaintiff should be

awarded the greater of actual or statutory damages; as drafted, the law contemplates that the jury may award the plaintiff his actual damages if they are below $100, just as the jury may award the plaintiff his actual damages if they exceed $1,000.

The instruction should be modified to conform to the statute.

I. [Proposed] Jury Instruction re Structure of the U.S. Judiciary

Throughout this trial, Plaintiff has made references, and sought to introduce evidence, of the prior Cortez rulings at the district and appellate court level. TransUnion's proposed instruction regarding the structure of the United States judiciary is critical to enable the jury to frame key theories proffered by both parties as to notice, TransUnion's state of mind, and to the ultimate issue of willfulness. The proposed instruction does not prejudice Plaintiff in any way. Rather, TransUnion's proposed instruction succinctly and accurately states the hierarchy of the U.S. judiciary and the regions included under the Third Circuit. For these reasons, the proposed instruction will give the jury the proper context to evaluate competing theories of the case.

J. [Proposed] Jury Instruction re Curative Instruction to Remedy Plaintiff's *Cortez*-Reading

A curative instruction must be given to the jury to negate the prejudicial effect of Plaintiff's misuse of excluded evidence. A curative instruction is the preferred remedy for correcting an error when the jury has heard excluded evidence. At the close of trial, a curative instruction is proper with respect to the

portion of the Cortez decision that was read to the jury.

At the second Pretrial Conference held on June 8, 2017, this Court excluded Plaintiff's proposed exhibit no. 32—*Cortez v. TranUnion*, 617 F.3d 688 (3d Cir. 2010) on the grounds that it would be confusing to the jury. On June 15, 2017, Plaintiff's counsel posed a question to Michael O'Connell by forming a question which included a near exact quote from the excluded exhibit (i.e., the *Cortez* decision). (Trial Transcript from 6-14-2017, 158:8-158:18.) Then, on June 16, 2017, this Court clarified its decision to allow Plaintiff's counsel to pose this question because parties were permitted to question witnesses about the contents of the decision because such questions would likely lead to evidence of TransUnion's state of mind. (Trial Transcript from 6-16-2017, 12:17-1.)

This proposed limiting instruction is necessary because the jury will not know what is or is not the proper way to evaluate the evidence. Moreover, the proposed instruction properly frames the Cortez decision according to the stipulation agreed to by the parties. With respect to the portion of the Cortez decision that was effectively read to the jury, a curative instruction should be given to the jury because it must be made clear that the Cortez excerpt cannot be considered as evidence for its substantive content. In other words, the jury may take into account that the Cortez decision occurred and that Mr. O'Connell was generally aware of its holding, but only for that limited purpose. If such an instruction were not to be read to the jury, then the jury may improperly assign weight to that specific excerpt from

Cortez without being able to balance it against the multitude of Third Circuit observations contained in that opinion. While TransUnion does not wish to admit the entire Cortez opinion out of concern that the jury will be confused, and as the Court recognized, the full opinion has been excluded under Fed. R. Evid. 403, TransUnion also believes that the jury should receive guidance as to how to properly apply and understand the evidence it heard at trial.

Dated: June 18, 2017

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP

* * *

By: */s/Stephen J. Newman*
Stephen J. Newman
Attorneys for Defendant
TRANS UNION LLC

Final Jury Instructions
(N.D. Cal. June 19, 2017)

IT IS SO ORDERED.

Dated: June 19, 2017

[handwritten: signature]
JACQUELINE SCOTT CORLEY
United States Magistrate Judge

JURY INSTRUCTION NO. 1 – DUTY OF JURY

Members of the Jury: Now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult if you find it necessary.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so at the beginning of this case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. Please do not read into these instructions or anything that I may say or do or have said or done that I have an opinion regarding the evidence or what your verdict should be.

JURY INSTRUCTION NO. 2 – WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

7. the sworn testimony of any witness;
8. the exhibits that have been admitted into evidence;
9. any facts to which the lawyers have agreed; and
10. any facts that I have instructed you to accept as proved.

JURY INSTRUCTION NO. 3 – WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

3. Testimony that is excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some evidence

was received only for a limited purpose; when I have instructed you to consider certain evidence only for a limited purpose, you must do so and you may not consider that evidence for any other purpose.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

JURY INSTRUCTION NO. 4 – DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

By way of example, if you wake up in the morning and see that the sidewalk is wet, you may find from that fact that it rained during the night. However, other evidence, such as a turned on garden hose, may provide a different explanation for the presence of water on the sidewalk. Therefore, before you decide that a fact has been proven by circumstantial evidence, you must consider all the evidence in the light of reason, experience, and common sense.

JURY INSTRUCTION NO. 5 – RULING ON OBJECTIONS

There are rules of evidence that control what can be received into evidence. When a lawyer asked a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may have objected. If I overruled the objection, the question was answered or the exhibit received. If I sustained the objection, the question could not be answered, and the exhibit could not be received. Whenever I sustained an objection to a question, you must ignore the question and must not guess what the answer might have been.

JURY INSTRUCTION NO. 6 – BENCH CONFERENCES AND RECESSES

From time to time during the trial, it became necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury was present in the courtroom, or by calling a recess. Please understand that while you were waiting, we were working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

Of course, we have done what we could to keep the number and length of these conferences to a minimum. I did not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

JURY INSTRUCTION NO. 7 – STIPULATIONS OF FACT

The parties have agreed to certain facts. You must therefore treat these facts as having been proved.

JURY INSTRUCTION NO. 8 – DEPOSITION IN LIEU OF LIVE TESTIMONY

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. When a person is unavailable to testify at trial, the deposition of that person may be used at the trial.

The deposition of the following individuals were used at trial:

(1) Annette Coito

(2) Brent Newman

(3) Robert Lytle

(4) Bharat Acharya

Insofar as possible, you should consider deposition testimony, presented to you in court in lieu of live testimony, in the same way as if the witness had been present to testify.

If the deposition was read into the record, as with Ms. Coito, do not place any significance on the behavior or tone of voice of any person reading the questions or answers.

JURY INSTRUCTION NO. 9 – USE OF INTERROGATORIES

Evidence was presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers were given

in writing and under oath before the trial in response to questions that were submitted under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

JURY INSTRUCTION NO. 10 – CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;

2. the witness's memory;

3. the witness's manner while testifying;

4. the witness's interest in the outcome of the case, if any;

5. the witness's bias or prejudice, if any;

6. whether other evidence contradicted the witness's testimony;

7. the reasonableness of the witness's testimony in light of all the evidence; and

8. any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it

differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

JURY INSTRUCTION NO. 11 – EXPERT OPINION

Experts may give opinions on those subjects in which they have special skills, knowledge, experience, training or education. You should consider each expert opinion in evidence and give it whatever weight it deserves. Remember, you decide all the facts. If, in reaching an opinion, you find that an expert relied on certain facts, and you decide that any of those facts were not true, then you are free to disregard the opinion.

The law allows expert witnesses to be asked questions that are based on assumed facts.

These are sometimes called "hypothetical questions." In determining the weight to give to the expert's opinion that is based on the assumed facts,

you should consider whether the assumed facts are true.

JURY INSTRUCTION NO. 12 – THIS IS A CLASS ACTION

As I told you at the beginning of this case, this lawsuit is proceeding as a class action. A class action is a lawsuit that has been brought by one or more plaintiffs on behalf of a larger group of people who have similar legal claims. All of these people together are called a "class." The class representative who brings this action is Sergio Ramirez.

In a class action, the claims of many individuals can be resolved at the same time instead of requiring each member to sue separately. Here, Mr. Ramirez is suing defendant Trans Union on behalf of a class of 8,185 people. If you find it appropriate, you may apply the evidence at this trial to all class members. All members of the class will be bound by the result of this trial. The fact that this case is proceeding as a class action does not mean any decision has been made about what your verdict should be.

The class in this case consists of "All natural persons in the United States and its Territories to whom Trans Union sent a letter similar in form to the March 1, 2011 letter Trans Union sent to Plaintiff regarding "OFAC (Office of Foreign Assets Control) Database" from January 1, 2011- July 1, 2011."

Your verdict in this case, whatever it may be, must be the same for every class member because I have already found that the important issues in the case are common to all class members.

JURY INSTRUCTION NO. 13 – FCRA'S GENERAL PURPOSE

The Fair Credit Reporting Act, otherwise known as the FCRA, requires that "consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information." The FCRA regulates Trans Union's reporting of OFAC information, such as the OFAC Alerts at issue in this case.

JURY INSTRUCTION NO. 14 – DEFINITIONS

Plaintiff Sergio L. Ramirez and the members of the certified class are "consumers" as defined in the FCRA.

Defendant Trans Union, LLC is a consumer reporting agency as defined in the FCRA.

JURY INSTRUCTION NO. 15 – THE CLAIMS OF PLAINTIFF AND THE CLASS

Mr. Ramirez and the Class bring three claims against Trans Union under the FCRA: (1) a claim under 15 U.S.C. § 1681e(b); (2) a claim under 15 U.S.C. § 1681g(a); and (3) a claim under 15 U.S.C. 1681g(c)(2)(A). I will now describe each to you.

JURY INSTRUCTION NO. 16 – FIRST CLAIM: 15 U.S.C. § 1681E(B)

The FCRA requires that when any consumer reporting agency prepares a report, it must "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the [agency's] report relates."

To find for Mr. Ramirez and the Class on their First Claim, you must find that Trans Union willfully violated this provision.

JURY INSTRUCTION NO. 17 – SECOND CLAIM: 15 U.S.C. § 1681G(A)

The FCRA also requires that when any consumer requests his or her file from a consumer reporting agency, such as Trans Union, the agency shall clearly and accurately disclose to the consumer all information in the consumer's file at the time of the request.

To find for Mr. Ramirez and the Class on their Second Claim, you must find that Trans Union willfully violated this provision.

JURY INSTRUCTION NO. 18 – THIRD CLAIM: 15 U.S.C. § 1681G(C)(2)(A)

The FCRA also requires that, with each written disclosure, a consumer reporting agency, such as Trans Union, must provide to the consumer a summary of rights identified by the Federal Trade Commission.

To find for Mr. Ramirez and the Class on their Third Claim, you must find that Trans Union willfully violated this provision.

JURY INSTRUCTION NO. 19 – WILLFULLY DEFINED

An act is done willfully if it is done knowing that it will violate the Fair Credit Reporting Act or with a reckless disregard of a statutory duty under the Fair Credit Reporting Act. "Reckless disregard" means an action entailing an unjustifiably high risk of harm that is either known or so obvious that it should be

known. A consumer reporting agency does not recklessly violate the Act when it acts in accord with an objectively reasonable interpretation of the Act.

JURY INSTRUCTION NO. 20 – BURDEN OF PROOF – PREPONDERANCE OF THE EVIDENCE

Mr. Ramirez and the Class have the burden of proving their claims, including that one or more violations of the FCRA was willful, by a preponderance of the evidence. A preponderance is the greater weight of the evidence.

To say it differently: if you were to put the evidence favorable to Mr. Ramirez and the Class and the evidence favorable to Trans Union on opposite sides of the scales, Mr. Ramirez and the Class would have to make the scales tip somewhat on their side. If they fail to meet this burden, the verdict must be for Trans Union. If you find after considering all the evidence that any claim or fact is more likely so than not so, then that claim or fact has been proven by a preponderance of the evidence. If the evidence on that claim appears to be equally balanced, or if you cannot say upon which side it weighs more heavily, then you must find in favor of the defendant on that claim.

You should base your decision on all of the evidence, regardless of which party presented it.

JURY INSTRUCTION NO. 21 – STATUTORY DAMAGES

If you find that Trans Union willfully violated the FCRA with respect to any of the three claims brought by Mr. Ramirez and the Class here, then you must award each member of the Class statutory damages of

no less than $100 and no more than $1,000. It is up to you to set the amount based upon the facts and circumstances of this case.

JURY INSTRUCTION NO. 22 – DUTY TO DELIBERATE

Before you begin your deliberations, elect one member of the jury as your presiding juror. The presiding juror will preside over the deliberations and serve as the spokesperson for the jury in court.

You shall diligently strive to reach agreement with all of the other jurors if you can do so. Your verdict must be unanimous as to each issue submitted to you.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to their views. It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not be unwilling to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or change an honest belief about the weight and effect of the evidence simply to reach a verdict.

JURY INSTRUCTION NO. 23 – USE OF NOTES

Some of you took notes during the trial. Whether or not you took notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of other jurors.

You will have in the jury room the exhibits admitted into evidence, except for Exhibit 8(B) which is the class list. We are not providing you with the class list because it contains class members' personally identifiable information.

JURY INSTRUCTION NO. 24 – COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the court staff, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing. I will not communicate with any member of the jury on anything concerning the case except in writing or here in open court.

If you send out a question, I will consult with the lawyers before answering it, which may take some time. You should continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including the me—how the jury stands, whether in terms of vote count or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to me.

JURY INSTRUCTION NO. 25 – RETURN OF VERDICT

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror should complete the verdict form according to your deliberations, sign and date it, and advise the court that you are ready to return to the courtroom.

Excerpts from Trial Transcript (June 19, 2017)

* * *

[724] **MR. NEWMAN**: So we will not display those slides.

THE COURT: Okay.

MR. NEWMAN: Thank you, your Honor.

MR. SOUMILAS: And the final thing, other than jury instructions, is we submitted a request for judicial notice last night that we would like to use for a second phase of closing, should we get there, concerning punitive damages which we think is on all fours on punitive damages.

THE COURT: I did -- I did read through that.

Let's do the jury instructions first. Let's take it in order, because that's something we can do last.

Okay. So let's do then jury instructions. And with respect to -- so I fess up. I did not stay up until 11:00 last night waiting for your submissions.

MR. NEWMAN: That's okay, your Honor. I didn't expect you to.

THE COURT: So I have briefly read through some of them. Let's go through mine, and then you can tell me where yours add in or if you have a change to one of mine.

MR. NEWMAN: Yes, your Honor.

THE COURT: So let's start with seven, which is stipulations of fact. Should I just say here: Parties have agreed to certain facts which have been read to you. You must, therefore, treat these facts as having been proved.

I don't believe there is --

[725] **MR. NEWMAN**: Yes.

MR. SOUMILAS: Yes.

THE COURT: That's correct? Okay.

Okay. So I think the first one is maybe 11, this is a class action. And the plaintiff had submitted --

MR. SOUMILAS: Is it 12, your Honor?

THE COURT: Or, 12, yeah. Sorry, 12.

Had submitted an instruction.

MR. SOUMILAS: And, your Honor, may I just focus for a moment first on the part of 12 that the Court has already provided to the parties.

THE COURT: Yes.

MR. SOUMILAS: I don't know if it's a typographical error or what, but I think we all agree that the class in this case is 8,185 people, not 84. So I'd like that correction.

THE COURT: All right.

MR. SOUMILAS: And then we submitted a supplemental, your Honor, which we call 12a because we think that it's very important to instruct this jury that they cannot treat some members of the class differently for purposes of their verdict. That is a Rule 23 issue. We've briefed on it at the certification motion, the decertification motion.

The Court repeatedly denied TransUnion's attempts --

THE COURT: Yeah, I understand that. So one question I had raised at the beginning of the trial was whether -- and I [726] didn't get any revisions to the

verdict form. So I assume TransUnion, the way the verdict form reads now, there will be a number that will apply to each class member.

MR. NEWMAN: Correct.

THE COURT: So I think it's probably appropriate to instruct them that it would be the same for each class member. However, the second sentence you have I don't think is appropriate because, in fact, the number that the jury decides to impose may, in fact, reflect that there are different experiences. There are some like Mr. Ramirez, who I think actually had some real actual harm, or anyone, for example, who had to call TransUnion and change it, but maybe someone who didn't is different.

In other words, in determining the amount of the statutory damages, I think it would be error for me to instruct them they couldn't consider that. But I will instruct them that their verdict must be the same for each class member.

MR. SOUMILAS: Understood.

MR. LUCKMAN: Your Honor, the Marshal tells me I need to get the Clerk to open our break-out room. I don't want to sit with the witnesses because the jury is going to come in. I apologize.

THE COURT: That's okay.

MR. SOUMILAS: So, your Honor, thank you as to 12a.

THE COURT: Okay. So where should I put that though?

[727] **MR. SOUMILAS**: We were suggesting that you just read it, put it as 12a because we thought that

would make sense in that sequence between 12 and 13 --

THE COURT: I will find somewhere to put it. I would put within 12.

Do you have any thoughts on that, Mr. Newman?

MR. NEWMAN: I agree, your Honor, that it would be error to include that second sentence, and the first sentence is basically fine.

THE COURT: We'll do it as 12a, okay. Or somewhere in there.

Okay, let's see. 13, nothing, correct?

MR. SOUMILAS: So 13, your Honor, is one that we've suggested, a supplemental charge.

Your Honor will recall that we had filed a motion in limine to exclude these contracts that have disclaimers and language that essentially says, you know: We are imposing these obligations on you, buyers of our data.

And your Honor denied that motion and allowed all this testimony before the jury, and now we think it's important to instruct the jury that those contracts do not change the application of the Fair Credit Reporting Act. That's language straight out of the Third Circuit in Cortez, that I believe this Court has also used in denying TransUnion's motion for summary judgment.

[728] **THE COURT**: Okay. I will -- if they were to argue that they didn't Violate the FCRA somehow because it was a reseller, I think that would be an appropriate argument. I don't think they are going to make that argument. I think more it goes to

willfulness, and I think it is relevant to willfulness. You will make whatever argument you want as to that, as will they.

I understand that they are going to argue it wasn't willful. We thought that these -- you know, these resellers -- it was reasonable for us to rely on the resellers to comply with the contract. And you'll make your argument as to why it's not, but I don't -- I don't know that I should instruct -- I think the error with your instruction is that I would be, in essence, instructing them to disregard the evidence which is relevant to willfulness.

MR. SOUMILAS: So, your Honor, we think that this language comes directly out of Cortez on the willfulness argument, which is that the contracts somehow excuse a violation of the FCRA, and they don't.

So I think the jury could be very confused by saying you have these contractual arrangements. Most people think contracts are law. And that they have some affect on TransUnion's duties to comply -- whether negligently or willfully, to comply with the FCRA. And whether the violation is a negligent one or a willful one makes no difference. The [729] issue is should this jury understand that the contracts do not water down TransUnion's duty under the FCRA no matter what they say.

THE COURT: It does not. And I won't instruct them that it does. So they are not going to get that instruction, right? They are just getting an instruction of what their obligation is under the FCRA. And I'm not going to instruct them at all that the contracts somehow water down their argument.

But I don't think Cortez said it was error to admit the contracts --

MR. SOUMILAS: So --

THE COURT: -- right?

MR. SOUMILAS: That's correct, your Honor. I could argue that point about the contracts.

THE COURT: Okay.

All right. What is the next one that we should look at then?

MR. SOUMILAS: So the next one that we propose, your Honor, is a -- is to 19, which is "willfully" defined. And there is -- we have a supplemental charge that we think should be added to the first two sentences of the existing charge, and we very strongly believe that the third and last sentence of the existing charge needs to be removed.

That's the sentence that reads that:

[730] "A consumer reporting agency does not recklessly violate the Act when it acts in accord with an objectively reasonable interpretation of the fact."

That is a pure legal defense. It relates to what the statute and the law is and whether there is an objective reading. Judges are safe -- are gatekeepers on that function and TransUnion tried its motion under Safeco and lost.

We cannot possibly have a jury deliberate about what an objectively reasonable interpretation of the law is. This Court did not permit any testimony on what the law was or how to interpret it. Cortez is not in evidence, the Third Circuit decision. And we think

that this will be so highly prejudicial and confusing to the jury.

So we think the third sentence should go and that the Court should elaborate on willfulness as we propose in 19a.

MR. NEWMAN: Your Honor, we believe that what's been proposed in 19a is an attempt to put the thumb on the scales in terms of a lot of the context evidence that's presented in this case and is not consistent with Safeco.

And, you know, you're basically telling the jury to disregard the evidence that TransUnion has compliance people. And you're asking the Court to disregard that, you know, the law was evolving.

And, you know, again, state of mind and willfulness are appropriate facts to go to the jury, and the proposed [731] instruction is basically telling the jury not to consider that.

THE COURT: Well, what is the objectively reasonable interpretation of the Act, or just that adding the word "potential," or...

MR. NEWMAN: Well, what I'm focused on in their proposed instruction language:

"This is true even if the consumer reporting agency's lawyers" --

THE COURT: Yeah, I wouldn't -- so my instructions, I do not comment on the evidence. I think that's not appropriate to do.

Sometimes maybe the way something was argued, in order to correct an argument I might have to do that, but I stay away from that. So I wouldn't do that.

I'm more intrigued by plaintiff suggesting that we delete the last line of the instruction that's there.

MR. NEWMAN: (As read)

"So a consumer reporting agency does not recklessly violate the Act when it acts in accord with an objectively reasonable interpretation of the Act."

Well, you have had, you know, evidence in this case that there was not a lot of guidance out there in the time, you know, leading up to Cortez. They have talked a lot about, you know, the pre-Cortez period. There is evidence that different agencies had pushed in different directions as to how many hits [732] is too many hits. And I think that that justifies the instruction, which is absolutely consistent with the language of Safeco that a company that acts in accord with an objectively reasonable interpretation is not willful.

THE COURT: But what is the reasonable interpretation of the Act? You didn't -- you didn't point to me what is the Act.

So, for example, we have the Ninth Circuit's recent decision --

MR. NEWMAN: Yes, your Honor.

THE COURT: -- in which they actually held it was not a recently interpretation of the Act. They actually reversed, came to the exact opposite conclusion. We don't have that here.

MR. NEWMAN: Well, right. There is no, like, legal opinion that's been put into evidence that says, you know: You have asked me to examine these provisions of the Fair Credit Reporting Act and the associated regulations and based on the facts you have

given me, I conclude that a reasonable Court applying reasonable guidance...

We don't have that evidence. But the language here in the last sentence is from *Safeco*.

THE COURT: No, I understand that. But the question is whether that language applies to the facts of this particular case.

[733] **MR. NEWMAN**: Well, I think you've heard witnesses say that they think they were doing what the law required of them. And you haven't seen --

THE COURT: Actually, I haven't heard that. What I heard the witnesses say is, I was doing what I was told to do.

MR. NEWMAN: Well, you've heard witnesses --

THE COURT: Nobody even said they even read Cortez. Nobody said they got any advice or anything. So I actually haven't heard that, at least not yet.

All right. Well, I'm going to take this one under advisement.

MR. SOUMILAS: And, your Honor, from our point of view we also have one final issue on the jury charge. It's not a new proposed charge, but the Court's instruction 26 on punitive damages, the very, very last line which says:

"The degree of reprehensibility of a defendant's conduct and the relationship and any award of punitive damages to actual harm inflicted on Mr. Ramirez and the class."

I think using the word "actual" there really confuses the difference between actual damages and

statutory damages in this case. I think you're allowed to recover --

THE COURT: All right. Let's deal with theirs related to -- before we get to punitives, since we have bifurcated that in any event.

[734] **MR. SOUMILAS**: Yes, your Honor.

THE COURT: All right. So TransUnion then -- which one should I look at, Mr. Newman, that maybe have not been --

MR. NEWMAN: So since we just looked at 19, if your Honor could look at our 19? You know, we have added some additional language which we requested.

MR. SOUMILAS: Could you help me, just where that is?

MR. NEWMAN: Page 6 of our proposed instructions.

MR. SOUMILAS: Okay.

MR. NEWMAN: We have added language:

"A good faith attempt to obey the law is not reckless conduct."

We have also added language:

"Evidence that the consumer reporting agency promptly corrected an error after it was brought to its attention."

THE COURT: I'm not going to do that. See that's commenting on the evidence, right? Then I would have to go to all their evidence and blah, blah, blah. You argue the evidence. The jury will decide what they believe. I'm not going to instruct on it.

MR. NEWMAN: And we've also asked for the instruction:

"The relevant time for determining whether TransUnion willfully violated the FCRA is January 1, 2011 through July 26, 2011. You must assess TransUnion's conduct based on what was known and what was technologically feasible at [735] that time."

THE COURT: I don't like the second sentence. But the first sentence?

MR. FRANCIS: The first sentence is problematic as well, your Honor, because the class definition is that time period. That doesn't mean that that's the only time that TransUnion could violate the law.

And, in fact, this is a major issue, that the fact that during this period these reports were prepared and went out doesn't mean that after the period these exact class members didn't continue to suffer injury. So --

THE COURT: I think the problem with that is it may confuse the jury, that they can only consider evidence from that time period; whereas, evidence from before and after, I think, is relevant to that.

MR. NEWMAN: Well, I'm not sure evidence after is, but I understand --

THE COURT: I think arguably it is also, what they did or didn't do afterwards is somewhat relevant to the intent before as well.

Anyway, as I told you guys, willfully statutory damages, pretty much we just let it come in and see what the jury says. All right. So I'm not going to do that.

MR. NEWMAN: Okay.

THE COURT: And then, obviously, I'm not going to give [736] your instruction on standing, but I understand your argument is preserved.

MR. NEWMAN: Correct. We have also argued for what we think are some pretty standard instructions about that the verdict has to be anonymous as to each issue.

THE COURT: They are not standard in the Ninth Circuit. I'm giving the Ninth Circuit model jury instructions.

MR. NEWMAN: Okay. And you have heard -- you have seen our comments on the quotient verdict instruction. I understand your Honor's ruling on that.

We asked for a specific instruction about reseller duties based on what your Honor said earlier about not commenting on the evidence. I think I know what your Honor's ruling is on that, but we have made that argument.

THE COURT: Okay.

MR. NEWMAN: We've addressed standing and causation. We have just gone through 19.

THE COURT: I do want to add something on standing. I do actually think that the trial has shown even more so that there is standing here and that there was concrete injury in particular. And I didn't remember this being before. Mr. Ramirez testified that he actually -- when he got this letter, he then changed plans to going to Mexico, which, of course, makes sense. If you get this letter, you would be: Oh, gosh. Can I even leave the country? What's going to

[737] happen if I try to go back? So that was to him in particular.

And then as to each class member, certainly each that had to notify TransUnion in order to get their name off of it, that's having to do something. I think that's a concrete injury. They had to spend the time to do that, and maybe some anxiety or anything about that.

MR. NEWMAN: And you know our objection to that now.

THE COURT: I do.

MR. NEWMAN: So we have gone through-19.

Next page we reiterate our request for an instruction on the definition of consumer report as:

"A communication which is used or expected to be used or collected to serve as a factor in establishing the consumer's eligibility for credit, insurance, housing or employment."

Obviously, that's in support of our argument that the class on the e(b) claim needs to be limited to those people about whom data was sold.

THE COURT: Okay. Overruled.

MR. NEWMAN: Okay. Next page we reiterate our arguments as to the definition of inaccuracy. And the second sentence is -- you know, really does implicate First Amendment issues. Plaintiff seems to be arguing for a higher standard of accuracy based solely on TransUnion's status as a consumer reporting agency. We've heard evidence that OFAC itself [738] permits delivery of results that are -- could be described as false positives.

You have heard testimony there's other providers of interdiction software that are out there that deliver higher rates of false positives, and we suggest that the First Amendment requires that the accuracy standard must be the same across the board regardless of what industry you're in.

THE COURT: Why though? That would just make the FCRA meaningless.

MR. NEWMAN: Not necessarily, your Honor.

THE COURT: The FCRA says that credit reporting agencies must use reasonable procedures to ensure maximum possible accuracy. That doesn't apply to those banks, which by the way, didn't -- didn't -- they then went and did the human looking at it to make sure it was accurate. I don't even understand that argument.

But I mean you want to preserve your First Amendment argument to the FCRA, okay. TransUnion, you're right, is being held to a different standard. The FCRA holds them to that different standard.

MR. NEWMAN: Well, again, your Honor, we believe the FCRA, you know, permits some new remedies. It provides opportunities for consumers to achieve corrections to their report.

But in terms of whether something is accurate or not [739] accurate, the First Amendment imposes -- the First Amendment does not permit distinctions between a credit reporting agency or Google or the *New York Times*.

I mean, if the *New York Times* were to publish: Mr. Ramirez has a name that is a very much like two

names on the OFAC list, they could not be held liable for that. I mean, it's -- and the First Amendment does not admit distinctions based on status. That's all we're saying.

THE COURT: So that's your objection to the FCRA.

MR. NEWMAN: Correct.

THE COURT: Okay.

MR. NEWMAN: Well, it's our objection to the instruction, your Honor.

THE COURT: No. It's the objection to the FCRA. It's the FCRA that applies that standard to consumer reporting agencies. We're not -- it's not a defamation case. It's based solely on the statute that Congress passed, that because consumer reporting agencies and how these reports are used, you're right. They did put a higher standard on this commercial speech.

MR. NEWMAN: Understood, your Honor.

Our next instruction, we renew our argument that the jury should be permitted to go below $100 based on the language in the statute that says the award is actual damages or.

THE COURT: Okay. The objection is preserved.

[740] **MR. NEWMAN**: Next page. We do -- this is something new. We do believe it's worthwhile to tell the jury a little bit of something about how our courts are structured. We've talked about the Third Circuit, and all we are asking for is simply for the judge to explain to the jury completely truthful factual information as to how our courts are organized.

THE COURT: Why?

MR. NEWMAN: Why? Because it's not going to be readily apparent to them.

THE COURT: Yeah, but why does it matter?

MR. NEWMAN: Why does it matter? It -- because we have -- we've put in evidence that we did not appeal further to the --

THE COURT: Right. Then if we're going to do, then we are going to put in evidence that you don't have a right of appeal to the Supreme Court; that how many cert petitions do they get and they take only about 70 a year, and generally only if there is a conflict in the circuit. And there is no conflict in the circuits on this issue.

MR. NEWMAN: Understood, your Honor.

THE COURT: So we're not going to do this one either.

MR. NEWMAN: Okay. And our last request is, we do -- we are still concerned about the way that plaintiff's counsel questioned the witness about Cortez, and I think we just need to reiterate to the jury the point that questions from counsel [741] are not evidence.

THE COURT: Well, I do -- that will be in my instructions because I will tell them at the beginning. Plaintiff understands that.

MR. NEWMAN: Very good, your Honor.

THE COURT: Yeah.

MR. NEWMAN: And, of course, we preserve our -- if there is anything we forgot to mention.

THE COURT: They are preserved.

MR. NEWMAN: Thank you, your Honor.

THE COURT: There is a lot of legal issues in this.

MR. NEWMAN: Yes, your Honor.

I just want to be sure because your Honor's pretrial order does require us to make sure you're aware of the issues that we are preserving, and I thank you for that.

THE COURT: No. Absolutely, absolutely.

MR. FRANCIS: So can I get a sense? Are we getting three witnesses today and then you're closing?

MR. NEWMAN: We're going to put on, you know, at least two. And we'll make a decision later as to the third, but I think we will be able to finish today.

THE COURT: Can you tell him who the two are?

MR. NEWMAN: So Mr. Turek and Ms. Briddell. And possibly Ms. Cronshaw, not sure.

THE COURT: All right. Thank you.

* * *

[754] a long time. And they have been very, very responsible with any changes, things like this, and making sure that it's flowed down to their end users.

MR. NEWMAN: I have no further questions at this time, Mr. Turek.

THE WITNESS: Thank you.

THE COURT: All right. Ms. Brewer.

CROSS EXAMINATION

BY MS. BREWER

Q. Good morning, Mr. Turek. I'm Carol Brewer and I'm one of the attorneys for the plaintiff and the class.

A. Good morning.

Q. Mr. Turek, you don't dispute that the credit report that Dublin Nissan obtained through Dealertrack and ODE is a genuine TransUnion credit report, do you?

A. That is a credit report we delivered to ODE. Not sure what happened between ODE and Dealertrack.

Q. But the end result, the actual credit report that's Exhibit 1 in this case, TransUnion does not dispute that that is, in fact, a TransUnion credit report, correct?

A. Yes.

Q. Dealertrack just used ODE's system to get the TransUnion credit report to Dublin Nissan, is that right?

A. Say that again? Sorry.

Q. Dealertrack used ODE's system to get the TransUnion credit [755] report to Dublin Nissan.

A. In this case, my understanding is that Dealertrack's system used ODE's credentials to pull it through their technology.

Q. Okay. Well, Dealertrack is a third party to this case; wouldn't you agree?

A. I don't know.

Q. It's not in this case.

A. I -- I don't know that.

Q. Okay. And ODE is not in this case either, is that right?

A. I don't know that.

Q. Okay. Well, TransUnion didn't bring either of those parties into this case, right?

A. I don't know that.

Q. And TransUnion could have brought those parties into this case if TransUnion had thought that either of those parties had any liability here, right?

MR. NEWMAN: Objection.

THE COURT: Sustained.

BY MS. BREWER

Q. Dealertrack provides a secure channel that connects the auto dealers to TransUnion, is that right?

A. Dealertrack is a credit aggregator. They, you know, get the same general announcements that a lot of other software platforms provide, but in this particular case our -- our [756] contractual obligations were with ODE.

Q. But you do not dispute that the raw data on Sergio Ramirez's credit report, which is Exhibit 1 --

MR. NEWMAN: Your Honor, can --

BY MS. BREWER

Q. -- did come from TransUnion?

MR. NEWMAN: Excuse me, your Honor. If she's going to be questioning the witness on Exhibit 1, can we please display it so the witness has it?

MS. BREWER: Sure.

Mr. Reeser, can you blow up the top part of that please?

(Document displayed)

BY MS. BREWER

Q. Mr. Turek, you don't dispute that -- TransUnion does not dispute that this is a genuine TransUnion credit report, correct?

A. It -- it certainly looks like a credit report there.

Q. Okay. You testified that you asked your resellers to use TransUnion's header and -- and that new header was the header that changed "match" to "potential match." Do you remember that?

A. No.

Q. You -- your testimony was that the --

MS. BREWER: If you would take the next section, where it says "Special Messages"?

[757] (Document displayed)

BY MS. BREWER

Q. Okay. In reference to Mr. Ramirez's credit report, it says "Input name matches name on OFAC database." Do you see that?

A. Yeah.

Q. And your testimony was that someone was supposed to change "Input name matches" to "Input name potentially matches." Is that your testimony?

A. Yes.

Q. And who do you contend was supposed to make that change?

A. In this particular case ODE is the entity that should have had "potential" in there.

Q. Okay. So TransUnion could have required ODE to give TransUnion the new format before TransUnion allowed ODE to sell reports, right?

A. So we have a contract with ODE, amendment that required them to have that language in there. We followed our processes the same way we did with every other reseller. And my understanding is this is the only one that -- that it's never had "potential."

Q. Did --

A. I've never seen it.

Q. Did --

A. Never seen it like that before.

[758] Q. Did TransUnion ever check to make sure that it was using the new format before it started selling these reports?

A. So we have been selling the reports through ODE for a long time. And when that came through, they received the bulletin. And just like any of the other changes and all the other resellers, we expected them to follow the procedures that was delivered to them. And, you know, that's -- that's how we typically do it.

Q. But you don't usually check to make sure that they actually follow them? You just rely on the contract?

A. We rely on the contract for a lot of our services, and my understanding is this is the only one that -- you know, the only case I've ever seen.

Q. Okay. TransUnion says that its subscribers like Dublin Nissan are supposed to agree to a contractual provision -- and here you showed a couple of different contractual provisions; that no transaction will be denied and that no adverse action will be taken

against a consumer based just on a potential match to the OFAC Name Screen data.

Is that a fair characterization of what TransUnion's requirement is?

A. Yeah. We require customers that use our data to -- especially with OFAC, not to deny credit based solely on matches.

Q. You don't know whether TransUnion subscribers actually

* * *

[777] A. Yes. So for trainees, of course, because they are still learning the process, we do an increased amount. So when they are in actual training in the classroom, we QA 100 percent of that work. Then we knock it down to about 20 percent for about three months while they are in their nesting or training period, and then it goes down to the 5 percent.

Q. And with regard to the OFAC Name Screen, what, if any, analysis have you done with -- about the number of disputes that -- I'll say then, Consumer Relations received in 2011 and 2012?

A. So we looked at the number of OFAC hits in comparison to the disclosure volume, as well as the calls that we received to the dedicated phone line that we had set up. And just looked at the hit rate, the amount of disputes in relation to the hit rate.

And then we also looked at, with the telephone report, like, where those consumers were calling from. Because we had that information, as far as state wide. We were just looking at that so we can get an idea on volumes.

Q. You said "we" looked at. Who actually did the work?

A. So for the analysis, my team did a lot of that, working in conjunction with our technology team.

Q. Okay. And you supervised the team that did the work?

A. Uh-huh. Yes.

Q. Yes? And where did the information come from?

[778] A. Our CRS system.

Q. And could you tell the jury what is your CRS system?

A. So our CRS system is our Consumer Relations System. This is where we enter all of the Consumer Relations activity. So if a disclosure is requested, it would be logged in that system. You could see the date that it was requested, the information that was pulled, the time of the contact, the time that the agent did it, the agent's name. If a dispute then subsequently came in, you would be able to see that. So any type of activity, there would be an audit trail within the Consumer Relations System.

So because of those audit trails, we are able to pull metrics and stats as it relates to any of that activity. So that's how we were able to do the OFAC analysis.

Q. And the records and the stats you're talking about, they are all kept in the ordinary course of TransUnion business?

A. Oh, yes. Absolutely.

Q. And they are created contemporaneously with the event that they are keeping track of?

A. Correct, yes.

Q. And can you take a look Exhibit 69 in the book in front of you, please?

(Witness complied.)

A. Okay.

Q. Do you recognize that document, ma'am?

[779] A. Yes.

Q. What is it?

A. It's an OFAC Activity Report that my team created.

Q. That's what we were just discussing?

A. Yes.

MR. LUCKMAN: Move to admit Exhibit 69.

MS. BREWER: No objection.

THE COURT: 69 admitted.

(Trial Exhibit 69 received in evidence.)

BY MR. LUCKMAN

Q. Can you see that okay, either in front of you or on the screen?

A. Yes.

Q. Okay. Can you describe, please, for the jury what the columns are, what the information you actually have on here?

A. Yes. So this shows the OFAC activity month-to-month from January 2011 to December 2011. The first line are the number of calls that we receive to the OFAC information line. So we had a number, a dedicated OFAC number set up for consumers. And

this shows the number of calls that we received each month.

And then to the far right you'll see the totals. And then the average per month.

The next row is the number of names checked for OFAC --

Q. Just to interrupt you, where is that number located? How do consumers get that number?

[780] A. Which number?

Q. The number that you said people call to the OFAC line.

A. Oh, that was on the OFAC letter that was sent to them. So if a consumer was a hit or a potential match to the OFAC list and they got a letter, there was a phone number at the bottom of the letter.

Q. And what did that phone number provide?

A. The phone number provided additional --

MS. BREWER: Objection, hearsay.

THE COURT: I don't understand the question.

MR. LUCKMAN: I could ask it differently. I'm not asking for hearsay.

BY MR. LUCKMAN

Q. Were you involved in setting up the phone system?

A. Phone number.

Q. The phone number which was involved with that?

A. Yes. Correct.

Q. Are you aware of what occurred when someone called the number?

A. Yes.

MS. BREWER: Objection.

THE COURT: Overruled.

BY MR. LUCKMAN

Q. And could you describe for the jury, in essence, what happened when a person called that number?

[781] **MS. BREWER**: Objection again.

THE COURT: Overruled. It's not hearsay. Go ahead.

A. So if someone called the number, they would receive additional information about what the OFAC Name Alert was and how to dispute that information.

BY MR. LUCKMAN

Q. They wouldn't dispute it on that call, but it gave them information, correct?

A. Correct. It provided them with information they would have to submit to us in order to initiate the dispute.

Q. Okay. And what is the next "Names Check for OFAC," what does that mean?

A. So the number of names checked for OFAC, that is the disclosure request.

Q. Okay. Meaning, people that ask for --

A. For a copy of their credit report.

Q. Does that mean in January 2011 that there are 549,920 people had an OFAC alert on their disclosure?

MS. BREWER: Objection.

THE COURT: Leading?

MS. BREWER: Yes.

THE COURT: Sustained.

BY MR. LUCKMAN

Q. What, if any, does that -- what, if anything, does that say about whether they had an OFAC hit on their disclosure?

[782] A. This was the number of names that were checked. So it was the disclosures. So we -- any disclosures that were processed were bumped against the OFAC database.

Q. Does that -- it does not mean there was an OFAC screen hit. It means there was an OFAC screen?

A. Correct.

Q. And what's the next line?

A. This is the actual number of OFAC hits.

Q. Okay. So of the -- just taking January 11th of the 549,000 disclosures that were screened against OFAC, am I correct that -- if I can read that -- 2,398 were -- actually had alert information on them?

A. Correct.

Q. And that goes again throughout end of the year and has the totals?

A. Correct.

Q. And what's the next number down?

A. This is the number of disputes of the OFAC alert.

Q. What does that mean, ma'am?

A. So for that row above, that 2,398 hits in January, for example, only one person disputed the alert.

Q. Okay. And that information comes from the Consumer Relations System that tracks and records all this information automatically?

A. Correct.

[783] Q. Okay. And what is the next number, percentage of OFAC hits?

A. Right. So that's just a formula just showing the percent of OFAC hits as it relates to the number of names checked. And then the last line is the percent of disputes to hits.

Q. Why is that zero percent?

A. Because it was less than .01 percent.

Q. Okay.

A. Yes.

Q. And I'm not going to go over each of them, but that's the same information for each month during January 2011, correct?

A. Correct.

Q. And to your knowledge, ma'am, that was after TransUnion started disclosing the OFAC information when consumers asked for the consumer disclosure?

A. Correct.

MS. BREWER: Objection. I don't believe there is evidence on that.

THE COURT: Well, I think that there is. Why don't you do it in a non-leading way. Are you aware when they started...

MR. LUCKMAN: Sure.

BY MR. LUCKMAN

Q. Are you aware of when TransUnion started disclosing OFAC information to consumers?

[784] A. Yes. In 2011. We started, you know, getting the process ready at the end of 2010, but in 2011.

Q. Started January 2011?

A. Yes.

Q. Okay. And the next page, please, which is -- starts

January 12th.

(Document displayed)

Q. Without going through each and every one, is this the exact same information but for 2012?

A. Correct.

Q. Do you -- do you know, ma'am, when TransUnion started sending the OFAC information in one envelope instead of two? Do you know when that occurred?

A. I believe it was September.

Q. Of which year?

A. 2011.

Q. Right.

A. If I remember.

Q. Okay. So in 2012, am I correct, ma'am, that TransUnion was disclosing the OFAC information in a single envelope with the file?

A. Yes.

Q. When I say "file," I mean what we have been calling the credit report to the consumer.

A. Correct.

[785] Q. Okay. And so these are the numbers for 12 months during which TransUnion was making the disclosures with -- in a single package?

A. Correct. All together.

Q. Okay. And what, if any, difference are you aware of in the number of disputes of OFAC in 2011 as opposed to 2012 when it was being disclosed in the single envelope?

A. Well, the number, as you can see, was higher in 2011 than in 2012. So when it was a separate letter, we saw more disputes versus when it was all together.

Q. Okay. Thank you.

Ms. Briddell, are you familiar with the history of TransUnion's handling of consumer contacts about the OFAC disputes?

A. Yes.

Q. Okay. And that's handled by your department, correct?

A. Correct.

Q. And can you tell me prior to 2010 if TransUnion disclosed information about OFAC to consumers?

A. No, we did not.

Q. Do you know when that practice changed?

A. The practice changed in -- oh, it was in 2010, was when we started disclosing that information.

Q. Okay. And do you know why?

A. It was a result of a legal mandate.

* * *

[803] A. Based on my role in Consumer Relations, a/k/a Contact Center Services. Since I'm responsible for implementing policies, procedures and training, if there was a mandate that came down from our regulatory agency, I would be involved.

Q. That would be your job?

A. Yes.

MR. LUCKMAN: No further questions, ma'am. Thank you.

THE WITNESS: Okay.

MR. LUCKMAN: But you have stay there.

THE COURT: All right. But I think what we'll do is we will take our morning break. All right?

MR. LUCKMAN: Okay.

THE COURT: So we will take our 20-minute break.

Ladies and gentlemen, please, as always -- we're getting close, but please do not discuss the case.

Thank you.

(Whereupon there was a recess in the proceedings from 9:57 a.m. until 10:18 a.m.)

THE COURT: Thank you, ladies and gentlemen. Ms. Brewer.

MS. BREWER: Thank you, your Honor.

CROSS EXAMINATION

BY MS. BREWER

Q. Ms. Briddell, I'm Carol Brewer. I'm one of the attorneys for the plaintiff and the class in this case.

[804] You've testified about TransUnion's OFAC dispute process and training over a number of years, and that's part of your area of expertise, right?

A. Correct.

Q. And you testified about the number of people who disputed OFAC information over a several-year period, right?

A. Correct.

Q. When did TransUnion first start disclosing OFAC alerts to consumers?

A. 2011.

Q. And that was January 2011?

A. Yes.

Q. And when did it start disclosing OFAC alert information to consumers who -- who got their information online as opposed to in print?

MR. LUCKMAN: Objection, relevance.

THE COURT: Overruled.

A. I'm not exactly sure. I don't recall exactly.

BY MS. BREWER

Q. It wasn't January 2011, though, was it?

A. I don't believe so. I think it was a few months later.

Q. Was it more like September 2011?

A. Possibly.

Q. Now, the number of people who have disputed information between January 2011 and -- the number -- I'm sorry.

[805] The number of people who got an OFAC alert between January 2011 and July 2011 are the people who make up this class, is that your understanding?

A. Correct.

Q. And all of those people got their consumer disclosure in print, in hard copy, right?

A. To my understanding, yes.

Q. And you didn't testify about the number of people who were an OFAC hit, but who looked at their consumer disclosure online, right?

A. I'm not sure of the question.

Q. Okay. You had testified earlier about the number of people who were OFAC hits. In other words, their names were potential matches to people on the OFAC list, right?

A. Yes.

Q. And then they disputed saying: TransUnion, I'm not -- on the OFAC list, so please take my name off the OFAC list, right?

A. Correct.

Q. Okay. But you -- those people that you testified about were all people who got their disclosure in print? In other words, not online, right?

A. Correct.

Q. Okay.

MS. BREWER: I would like to pull up, please, Exhibit 10. And I'd like to direct your attention to Page 5 of [806] Exhibit 10.

If you could blow that up just a little bit? There you go.

(Document displayed)

BY MS. BREWER

Q. You see where it says "CRS Mailed Disclosures" and then "Disclosure Web Service"?

A. Yes, I could see that.

Q. Okay. So it has month-by-month. For example, in February 2011, when Mr. Ramirez had his disclosure mailed, there were 1,723 hits. Do you see that?

A. Yes.

Q. But in the same month it shows that in February of 2011 there were 3,599 OFAC hits online. Is that right?

A. Yes. Via our web service. So that means they requested their report online.

Q. Okay. And in July 2011 it shows there are 1,577 hits in mailed disclosures, but 3,228 hits on the web, right?

A. Correct.

Q. But TransUnion was not providing any of its customers who got their disclosure on the web any information about OFAC, correct, in either February 2011 or July 2011?

A. If the consumer was a hit to the OFAC list, they would receive the letter, regardless if it was mailed or online.

Q. Your testimony is that they -- that all the people who [807] received an OFAC hit online also received a letter?

A. Correct.

Q. Okay. And is that letter the same form as Exhibit 3?

MS. BREWER: If you could bring that up, please, Ken?

(Document displayed)

BY MS. BREWER

Q. If you could look at Exhibit 3?

A. Correct. This is the OFAC alert letter.

Q. And this is the letter that says that people are a potential match to the OFAC list, right?

A. Yes.

Q. And you had testified earlier that this is how customers can request to get their name off, right?

A. This letter is telling them what the OFAC is. And then at the bottom that's where they are provided with the contact number so they know to call us if they have questions and would like to dispute it.

Q. But that letter doesn't say that the OFAC information is part of a consumer disclosure, right?

A. No. The letter does not say that.

Q. And the letter doesn't say that consumers have a right to dispute the OFAC information, right?

A. But the consumer receives the Bill of Rights and it tells them that in their Bill of Rights.

Q. But the Bill of Rights is not contained in the letter, [808] correct?

A. Not in this letter. Not in the same envelope, but it is received by the consumer.

Q. It's received by the consumer in an entirely separate mailing, isn't that right?

MR. LUCKMAN: Objection, your Honor, argumentative.

THE COURT: Overruled.

A. Correct.

BY MS. BREWER

Q. And that letter doesn't have -- Exhibit 3 doesn't have any instructions about how to dispute the information, correct?

A. Well, it does instruct the consumer, if they have additional questions or concerns, where to contact us at.

Q. Yes. It does say: If you have questions or concerns, you can contact a number. But it doesn't tell the consumer that they have a right to dispute the OFAC hit, correct?

A. Not specifically in that paragraph, no.

Q. You suggested that the number of disputes about OFAC declined after July 2011, is that fair?

A. Correct.

Q. And why would you say that the number declined?

A. Because it was not in a separate letter anymore. Now it was all together as part of the disclosure. It was all together, not separate.

Q. But you didn't testify about the format of the disclosure [809] that TransUnion was sending consumers after July 2011, correct?

A. Correct.

Q. And TransUnion continued to have problems after July 2011 with its OFAC disclosure, correct?

MR. LUCKMAN: Objection, your Honor. It's vague.

THE COURT: Well, if she can answer, she can.

A. What do you mean by "problems"?

BY MS. BREWER

Q. You had complaints about TransUnion's disclosures not being in compliance with the Fair Credit Reporting Act.

MR. LUCKMAN: Objection, your Honor. It's confusing and vague.

THE COURT: Overruled. She can answer, if she can.

A. I'm not sure.

BY MS. BREWER

Q. Specifically, TransUnion was receiving complaints that the credit disclosures that it was sending to consumers that gave the OFAC information, the information was contained in a document that was only inserted after the language "end of credit report," isn't that correct?

MR. LUCKMAN: Objection, your Honor.

THE COURT: Overruled. She can answer, if she can.

A. So we did in 2011 start disclosing the information, but prior to that we were not.

[810] **BY MS. BREWER**

Q. Okay.

A. Is that what your question was?

Q. No. What I'm saying is that you have suggested that the reason that the -- the dispute rate went down after July 2011 was because TransUnion was able to get the OFAC alert in the same document as the consumer disclosure, is that right?

A. Yes, that's correct.

Q. And that's -- you're saying -- TransUnion is saying that's the reason. And I'm suggesting that an additional reason was because TransUnion put the OFAC information in the consumer disclosure at the very end of the consumer report after it said "end of consumer report," where the information would be buried?

MR. LUCKMAN: Objection, your Honor, argumentative.

THE COURT: Overruled.

MR. LUCKMAN: It's testifying.

THE COURT: Overruled.

A. The "Additional Information" section has information -- additional information that's not the traditional credit information. So it's not a typical trade line, public record or inquiring information.

So "Other Additional Information," that's the section we would put any of the other types of information not specific to the traditional credit data.

[811] **BY MS. BREWER**

Q. So your testimony is that TransUnion inserted that OFAC information in a different place other than in the consumer disclosure?

A. No. It's part of the consumer disclosure. It's just not in the same section as the trade lines and the public records because we felt that would be confusing to the consumer.

Q. Okay. Well, when TransUnion sends credit reports to its subscribers, it puts that OFAC information right up front, correct?

MR. LUCKMAN: Objection, your Honor, foundation.

THE COURT: Overruled.

A. I'm not exactly sure where it falls on the customer report.

MS. BREWER: Mr. Reeser, could you put up Exhibit 1, please?

If you could blow up the top two sections? I don't know if that's possible.

(Document displayed)

BY MS. BREWER

Q. Ms. Briddell, this is Sergio Ramirez's credit report from TransUnion, is that right?

A. Correct.

Q. And the very top section is his identifying information?

A. Correct.

[812] Q. And the very next section is the OFAC alert?

A. Correct. The "Special Messages" section.

Q. Okay. So would you agree with me that TransUnion does put its OFAC disclosures to its subscribers right up front?

MR. LUCKMAN: Objection, your Honor, foundation.

THE COURT: Overruled.

A. Yes. So "Special Messages" are up front.

BY MS. BREWER

Q. Ms. Briddell, is it TransUnion's contention that TransUnion was able to accurately get OFAC alerts into file disclosures after July 2011?

MR. LUCKMAN: Objection, your Honor.

A. That I can't answer.

BY MS. BREWER

Q. You don't know whether they were accurately able to get file disclosures into consumer reports?

THE COURT: I guess I don't quite understand the question.

BY MS. BREWER

Q. The OFAC alert -- well, the class consists of people who got these letters from January to July --

MR. LUCKMAN: Your Honor --

THE COURT: It seems beyond the scope of her testimony. And she's not a 30(b)6, correct.

MS. BREWER: She testified about --

[813] **MR. LUCKMAN**: Your Honor, may we have a side bar instead of sharing whatever this argument is?

THE COURT: Just lay a foundation. Why don't you just lay a foundation?

BY MS. BREWER

Q. You testified about the disputes by people who got OFAC lists at -- all through 2011 and into 2012, right?

A. Correct. The volumes, uh-huh, of disputes. The OFAC disputes.

Q. And it's TransUnion's contention that the reason the volume of disputes went down is because TransUnion was sending the OFAC disputes in the same letter with -- was including the OFAC alert in the consumer disclosure, right?

MR. LUCKMAN: Objection, your Honor.

THE COURT: Sustained. There certainly was evidence of that. I don't know that she testified that was their contention.

MS. BREWER: I believe it was. I believe it was her contention, but --

MR. LUCKMAN: Your Honor.

THE COURT: The jury, as I have instructed you at the beginning, attorney argument or statements are not evidence. You decide the case based solely on the evidence in the case.

All right. You may move on, Ms. Brewer.

[814] **BY MS. BREWER**

Q. And you were not certain about when TransUnion began disclosing OFAC communications to online consumers, is that correct?

A. Correct. I don't remember the exact time frame.

Q. Is it -- is it TransUnion's contention that the -- that it was accurately sending OFAC alerts to consumers after July 2011?

MR. LUCKMAN: Your Honor --

THE COURT: Sustained.

MS. BREWER: Okay.

One second.

(Discussion held off the record between plaintiff's counsel.)

BY MS. BREWER

Q. Ms. Briddell, I wanted to turn your attention to Exhibit -- I believe it's 68, that you testified about earlier.

MR. LUCKMAN: Did you say 68? I don't think we've --

MS. BREWER: I may have gotten it wrong. Exhibit 69.

I'm sorry.

And can you blow up the top, please, Ken?

(Document displayed)

BY MS. BREWER

Q. It's really, really hard to read, but there seems to be --

MS. BREWER: Can you possibly blow it up so we can see [815] the dispute statistics in September and October of 2011?

(Document displayed)

MS. BREWER: This is 2012. We're looking for 2011. I think it's the first page.

(Document displayed)

BY MS. BREWER

Q. Can you tell which of the columns is the number of disputes? I know the information is over here.

A. From which month? You said September.

Q. October of 2011.

A. October. For October 2011, it looks like 59 OFAC disputes.

Q. Right. Okay. So they -- this seems to be a sharp uptick in the number of disputes for October of 2011. Is that right?

A. Yes. The number did go up.

Q. Why did that happen?

A. Honestly, I don't recollect why there was a sharp increase because then it dropped right back down. I'm sorry. I'm not sure.

Q. Was it because of the format of TransUnion's OFAC disclosures?

MR. LUCKMAN: Objection, your Honor, foundation. She said she didn't know.

THE COURT: Overruled.

A. That could be possible.

[816] **MS. BREWER**: Thank you.

THE COURT: Mr. Luckman?

MR. LUCKMAN: No further questions, your Honor. Thank you, Mrs. Briddell.

THE COURT: Thank you. You are excused.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: All right. Does defendant have another witness?

MR. NEWMAN: Can you give me just a few minutes to consult with Mr. Luckman?

THE COURT: I will give you 30 seconds.

MR. NEWMAN: 30 seconds.

(Discussion held off the record between defense counsel.)

MR. NEWMAN: Your Honor, we rest.

THE COURT: Okay.

All right. Ladies and gentlemen, that, I believe, concludes the evidence in the case.

So what we are going to do then is we are going to take a brief adjournment, and then we are going to proceed and I'm going to instruct you. I'll give you some of the instructions and then the lawyers will give their closing arguments. We probably won't finish them before lunch.

Well, actually, what I want to do is I want to confer with the lawyers now about scheduling, but you are going to get the

* * *

[863] Which takes us to the final question, question four. And this is a question on damages.

Now, as Judge Corley has already instructed you, I believe, if you check a "yes" on any of the first three questions, any of the liability questions, you are entitled to go to damages and award the full statutory damages of $1,000. You don't have to check "yes" to all

three. I'm urging you to do so because that's a correct verdict in this case.

And what are the statutory damages? What amount of statutory damages of not less than 100 or more than 1,000 do you award to each member of the class?

Well, like most laws there is a consequence for violating them. And for a case like this, a certified class action under the FCRA, the consequence is this, 100 to 1,000. No less than 100, no more than 1,000. It's not something we just came up with. It's in the statute. Congress wrote it.

I told you in the opening I wish that number were higher because I would like to ask you for more money to compensate class members, but the top is a fact.

Other laws work this way. When you put people at a risk of harm, for example, because you're speeding on the highway, there is a consequence. The consequence is you get a speeding ticket. And it's some fixed amount of money, $200 or $300. Sometimes there is a range depending on how fast you're going. And the same is true here. There is a consequence of [864] violating every law, and in this case the consequence is 100 to $1,000.

Now, I asked you for 1,000 at the get-go and I'm going to ask for it again. And that's because of the nature of the violation here. We are not talking about some minor item of credit information not being disclosed to consumers or being incorrectly associated with consumers. This isn't your credit card balance. This is the most damning information that you could have on a credit report.

It's whether you're associated with the government's watch list of terrorists, money launderers, drug traffickers, kingpins. The nature of the information here requires the maximum damages provision. These are important rights, and TransUnion is violating them in multiple ways as to thousands of people.

And the risk of harm is obvious and known to TransUnion. Look what happened to Mr. Ramirez, as one example. Mr. Ramirez is a decent, hard working man, who is just trying to raise his family. You might have noticed his teen-age daughter was sitting in the back a couple of days. He tried to go get his wife a car at Dublin Nissan that she was primarily going to drive.

He was there with his father-in-law and the salesman comes out and says: You're on the terror list.

That's not right. That shouldn't happen. He was scared. He was embarrassed. He was shocked. He canceled his vacation [865] to Mexico because he wasn't sure what was going to happen. These are natural reactions when someone informs you of that. It's the risk that TransUnion knows about from Cortez in 2005 through the disputes through the years, through the Treasury Department letters.

And then they also didn't help him correct this problem. Let's be clear about this. He called my office and then the problem was corrected. It wasn't through TransUnion's letter, which so clearly told him what his rights are and how to block it. That's what TransUnion told the Treasury. That's not what they told him.

Mr. Ramirez has taken a week off of work. He's not getting paid. And he's here. And he's here not just for himself. He's here on behalf of complete strangers. This man has fought for justice for the last six years. It's not because it's been easy. It's not because TransUnion has yielded an inch. He deserves the maximum penalty under the law. And so does every single other member of this class.

The judge told you at the beginning and she told you again that your verdict must be the same for every class member. Again, we don't make this up. That's what the law requires. That is because this is a certified class action. You heard that word several times. And that means something. It's not just empty talk.

It means that there is a determination that Mr. Ramirez is

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[878] have had no evidence from the plaintiff to show you that this was not generally effective or that it did not help the other members of the class.

We also know from Mr. Sadie's testimony that what Mr. Burns did, failing even to take a second look at the information he had, was highly irregular. There is no evidence suggesting that TransUnion could have anticipated that Mr. Burns would act contrary to how TransUnion expected Name Screen data to be used. There is no evidence that anyone could have expected Mr. Burns to act contrary to the training he received at his dealership on how to process a Name Screen result to clear the transaction. We simply do not know.

What we do know, as this has been stipulated, is that only 40 consumers during the class period were even at risk of a similar issue because only 40 reports were sold via ODE. There is no proof that the class as a whole faced even the same situation as Mr. Ramirez.

Ms. Coito of the Dublin Nissan dealership seemed to know how to handle OFAC data properly, to view it only as a potential match, and to attempt to clear consumers. Perhaps if ODE had followed the instructions it received and had used an approved format, perhaps even Mr. Ramirez's day would have gone better. Plaintiff has not proven otherwise to you. And you have seen no one else come before you with a similar situation.

Yes, of course, it would not be reasonable to expect 8,000 [879] people to pile into this courtroom. That's not why we have class cases. But one, two, three, four? To amplify the evidence? To show that what happened to Mr. Ramirez actually happened to someone else? That evidence has not been placed before you, ladies and gentlemen.

Mr. Sadie also has explained to you what was the state of knowledge and the state of industry practice in 2011. Mr. Sadie explained that in 2011 it was understood by those who received Name Screen data that it was to be used only as a potential match, as a starting point for a compliance process. And it was never intended a loan to be used to deny credit.

With respect to the class as a whole, you have seen no evidence that OFAC data was misused. You have seen no evidence that any class members were harmed. You have seen no evidence that any class

members even faced any significant risk of harm or hardship.

The other evidence also supports that TransUnion instructed users and resellers on the proper use of its data. Ms. Gill testified that a general announcement went out to thousands of users and resellers to explain the change and to remind them that OFAC data is name screening only, to remind them that name screening should not alone be used to deny credit. Mr. Turek also explained this to you this morning. Ms. Coito seemed to understand this, but you have heard no

* * *

[881] You have seen that TransUnion is committed to consumers and tries to make things easy, easier for them in a system that we all depend on to get credit quickly and to, you know, go into a car dealership and to comply with all sorts of laws while still maintaining security.

You have heard no evidence of anyone in this class who was denied credit or had any transaction delayed because of TransUnion's delivery of an OFAC result. The evidence has shown you that the Ramirez family got its car at the same time, at the same price, and on the same financial terms as they would have even if no OFAC data had been delivered by TransUnion at all. You have heard no evidence either of hardship or of even inconvenience to any class member as a result of the normal screening process.

As you remember, having an effective screening process helps us all move efficiently through that metal detector.

And by the way, it's called a metal detector, not an intent detector. When the machine beeps, that does not signal that the person going through the machine is up to no good. It is just a signal to the end user, the human being using the machine, to take further steps before clearing the subject. And just as with the metal detector, even when we beep, we usually get through without incident.

The evidence has shown you from Mr. Sadie and others that even when a Name Screen Alert has been delivered, the

* * *

[903] Now, TransUnion doesn't appear to also have much regard for the law of class actions. This is a certified class action. That means Mr. Ramirez is typical. He's the appropriate class representative. And that the claims are common and people are similarly situated. That's why we're here. There is no legal standard that you're going to hear from Judge Corley or anybody else about five people coming in or 10 people coming in. And if you -- if you had five people come in, they would say: Well, where are the other 8,000? You know that.

The issue is were the procedures reasonable in ensuring accuracy. And it was the name only matching logic that applied to every single person in this class. That's the evidence. Were the disclosures clear and adequate -- excuse me, clear and accurate? And did they inform people of their rights to block? And they applied to every single person. That's the common evidence that ties this case together when it's a class action.

And Mr. Newman, very careful with his language, he tells you: Well, only about a quarter of these people, 1,800, even applied for credit to have their reputations harmed. Not so, all right? The evidence of the records through our stipulation is during a six-month period, from June -- sorry, January 2011 to July 2011 about 25 percent of the class population applied for credit. That's because people don't apply for credit every day. Not everybody needs a car loan or a credit card all the [904] time.

We don't know the data for the next six months and the six months after that and the year after that. But we know the name only procedure was the same. We know that it attacked every single one of these people. So the fact that we have some select evidence shows that there is a risk of harm, a substantial risk of harm, to 25 percent only over a six-month period.

Yet, there is other risk of harm as well that you heard testimony about. Mr. Ramirez canceled his vacation. People could be misled. Who would possibly think -- seriously, if anybody came in here -- do you expect anybody to come in here and tell you: Well, I thought I was benefited by TransUnion that they linked me to the terrorist list. I was happy. I got some benefit from it. No one is going to tell you that. That argument makes no sense.

Now, TransUnion also says, you know, that they rolled up their sleeves -- I don't know exactly what Mr. Newman said. They got to work after Cortez. Okay. Cortez was decided in 2007. That jury came back and told them they were wrong. They paid no respect to that jury whatsoever. They seemed to think that they wanted to hear from the Court of Appeals, roll the dice

that they were going to reverse that jury verdict. That's what happened.

All right? They didn't need to wait. There is no

* * *

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

JOINT APPENDIX
Volume III of III

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February 1, 2021

Petition for Writ of Certiorari Filed Sept. 2, 2020
Petition for Writ of Certiorari Granted Dec. 16, 2020

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The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following page in the appendix to the Petition for Certiorari:

Memorandum of Points and Authorities in Support of Renewed Motion for Judgment as a Matter of Law (N.D. Cal. July 19, 2017)

I. INTRODUCTION

Defendant TransUnion LLC ("TransUnion") requests that the Court set aside or amend the judgment in favor of plaintiff Sergio Ramirez ("Plaintiff") and the class, which awards an unprecedented sum to a class that sustained no measurable harm from the practices at issue here. The evidence supports neither the massive verdict nor the liability findings underlying it.

First, the evidence does not support a finding that TransUnion willfully violated the Fair Credit Reporting Act ("FCRA"). TransUnion's witnesses testified in detail and without contradiction that prior to the class period they made objectively reasonable efforts to comply with the FCRA, in response to the appellate ruling in *Cortez v. Trans Union, LLC*, 617 F.3d 688 (3d Cir. 2010). Plaintiff argued that TransUnion did not do enough to comply with *Cortez*, but the evidence showed no willful violation of the FCRA or any particular mandate of *Cortez*. To the contrary, the evidence showed that TransUnion was mindful of *Cortez* and employed "reasonable procedures for meeting the needs of commerce for consumer credit." *See* 15 U.S.C. § 1681(b). No substantial evidence showed that TransUnion willfully violated any clear legal guidance, harmed the class or even exposed the class to any material risk of harm.

Second, the damages awarded—both statutory and punitive—were grossly excessive and so

disproportionate to the lack of actual impact on the class as to shock the conscience. Plaintiff made no attempt to prove that 8,184 of 8,185 class members suffered any injury ***at all***. Moreover, because TransUnion changed its practices years ago, no allegedly violative conduct remains to be deterred. The jury's $8.1 million statutory damages award vastly exceeds any appropriate measure of punishment and deterrence for conduct that was not proved to cause any actual harm.

Yet the jury did not stop with its outsized statutory damages award; it then piled on more than *$50 million* in punitive damages—again, for practices that Plaintiff never even tried to prove caused any class member any concrete injury. The total award of more than $60 million is grossly disproportionate not only to the (complete lack of) evidence of harm, but also to TransUnion's economic activity during the class period, hugely exceeding TransUnion's gross revenue from Name Screen sales for all of 2011, the relevant year, by a factor of nearly thirty to one, and greatly exceeding TransUnion's profits for ***all*** of its economic activity in 2011.

Both the statutory and the punitive damages awards are unduly punishing and cannot be justified on either compensatory or deterrence grounds, but the punitive damages award is particularly egregious and unconstitutionally excessive, constituting impermissibly duplicative punishment. Statutory damages are intended, at least in part, to serve the same punishment and deterrence ends as punitive damages. Thus, when statutory damages are awarded to every member of the class of individuals potentially

injured by the relevant conduct, no punishment or deterrence is left to achieve. That is particularly true here, where the plaintiff made no attempt to prove that the class suffered any concrete injury, thus leaving the statutory damages award explained only in terms of punishment and deterrence, rather than compensation. Imposing ***any*** punitive damages on top of class-wide statutory damages thus created a grave risk of impermissible overlap, and the punitive damages verdict ***six-and-a-half times*** larger than the statutory damages award shows that this "risk" became a certainty. Such a massive award cannot be understood as anything other than the product of a jury inflamed by passion, prejudice, and rampant improper arguments by Plaintiff's counsel. At a minimum, TransUnion is entitled to a remittitur or a new trial on damages.

Third, the evidence did not support the class certification theory here, and thus the judgment does not comply with Rule 23. The evidence shows that Plaintiff's claim was highly atypical of the class. Moreover, no evidence was presented to show that class members sustained any concrete injury. Many class members also were never given notice of these proceedings.

The evidence and the law do not support the judgment as entered, and it should be set aside.

II. FACTS

A. TransUnion's Name Screen Product

TransUnion launched the initial version of its Name Screen product in 2002, which was intended to help lenders conduct preliminary data screens of the U.S. Treasury's Office of Foreign Assets Control

("OFAC") Specially Designated Nationals ("SDN") list to ease their USA PATRIOT Act compliance burden. (Trial Tr. (O'Connell) 459:24-460:10.)

Critically, the evidence at trial, including the testimony of both parties' experts, established that "interdiction software" products like Name Screen are simply not used to make credit decisions or to determine conclusively that an individual is on the SDN list. (Trial Tr. (Sadie) 622:5-623:6, (Ferrari) 430:9-25.) Rather, as even Plaintiff's expert, Erich Ferrari, confirmed, because of the length and complexity of the SDN list, lenders understand that such products are to be used only as a "first line of defense" in identifying "possible" matches to list data, which then must be confirmed with further human analysis. (Trial Tr. (Ferrari) 430:9-25.) Because it was intended to be only the first step in a compliance review process, using a name-only screening technology was appropriate and did not risk material harm to consumers. (Trial Tr. (Sadie) 625:23, 626:18, 636:6-637:11; *see also id.* at 620:1-624:12.)

TransUnion did not develop the Name Screen product itself, but instead contracted with a third-party vendor, Accuity. (Trial Tr. (Gill) 306:15-17.) As explained by TransUnion Vice President of Product Development Michael O'Connell, TransUnion chose Accuity because "Accuity was the most widely-used software by financial institutions at the time" and it was "the best that was out there." (Trial Tr. (O'Connell) 500:1-20.) Colleen Gill, TransUnion's former Director of Product Development and Management, also noted Accuity's "very high level clearance and endorsement by the American Bankers

Association" and that "they ha[d] been doing all types of financial services compliance for a very long time." (Trial Tr. (Gill) 341:24-342:10.)

The Accuity software used name-only matching technology. (Trial Tr. (O'Connell) 463:1-8.) Long before the class period, TransUnion renamed the product "Name Screen" to indicate that it screened only by name. (Trial Tr. (Gill) 341:6-10.) The evidence showed, without contradiction, that the limited nature of interdiction software, and its appropriate use, was communicated repeatedly to end-users. (Trial Tr. (Gill) 353:5-11, (Sadie) 627:16-628:16, 640:19-641:19.) Indeed, TransUnion's expert, Jaco Sadie, testified that during the January to July 2011 class period, financial institutions regularly used interdiction software only in the limited manner expressly directed by TransUnion. (Trial Tr. (Sadie) 623:7-624:12.) And the documentary evidence confirmed this expert testimony. With respect to Dublin Nissan in particular, the dealer's contract for OFAC screening expressly stated that an OFAC name "match" was "merely a message that the consumer may be listed" and did not indicate that the consumer was actually on the OFAC list:

> Client acknowledges that such an indicator is merely a message that the consumer may be listed on one or more U.S. government-maintained lists of persons subject to economic sanctions, and Client further certifies that in the event that a consumer's ***name*** matches a ***name*** contained in the information, it will contact the appropriate government agency for confirmation and

> instructions. Client understands that a "match" ***may or may not apply*** to the consumer whose eligibility is being considered by Client, and that in the event of a match, Client should not take any immediate adverse action in whole or in part until Client has made such further investigations as may be necessary (i.e., required by law) or appropriate (including consulting with its legal or other advisors regarding Client's legal obligations).

(Trial Tr. (Coito) 279:20-282:8 & Ex. 42 § G.1 at 042-007 (emphasis added).)

B. TransUnion's Response to the *Cortez* Decision

In October 2005, Sandra Cortez sued TransUnion for alleged violations of the FCRA arising from TransUnion's reporting to a third party that Cortez's name was a "match" to a similar name ("Sandra Cortes") on the OFAC list, and for not disclosing this to her when she requested a copy of her credit file. In April 2007, a jury found in favor of Cortez, and the decision was affirmed by the Third Circuit in 2010. *See Cortez v. Trans Union, LLC*, No. CIV.A.05-CV-05684JF, 2007 WL 2702945, at *2 (E.D. Pa. Sept. 13, 2007), *aff'd*, 617 F.3d 688 (3d Cir. 2010).[1]

[1] The Third Circuit affirmed jury findings that TransUnion negligently failed to maintain reasonable procedures to assure maximum possible accuracy in reporting the "match" and willfully failed to disclose information about the reported "match" to Cortez. *See Cortez*, 617 F.3d at 705.

After the *Cortez* jury verdict, and while the appeal was pending, TransUnion used a "rules feature" within Accuity's product to reduce the hit rate from the approximately 5% delivered in its "off-the-rack" state, to a rate of 1%, which was lower than what others delivered. (Trial Tr. (O'Connell) 493:15-494:1, 494:18-21.) It was significantly lower than the 20% hit rate described by Plaintiff's witness, Ferrari, as concerning. (Trial Tr. (Ferrari) 429:14-25.)

In 2010, before the class period here began, TransUnion changed OFAC header language on reports that it sold from "input name matches" to "input name is potential match." (Trial Tr. (Gill) 350:25-352:23; ECF No. 303-1 at 3-6 (Acharya), Ex. 62.)[2] The change was announced widely to Name Screen resellers and users. (Trial Tr. (Gill) 352:20-353:10, Ex. 70.) TransUnion also developed a disclosure letter for consumers whose names were considered to be a potential match to an OFAC-listed name. (Trial Tr. (Katz) 585:19-585:25, Ex. 3.) In addition, TransUnion expanded upon and refined its procedure whereby consumers could dispute the delivery of an OFAC result and block future results. (Trial Tr. (O'Connell) 501:1-5, (Briddell) 771:14-772:20.)

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[2] Ruling on post-trial motions, the *Cortez* trial court noted, "It may well be that the defendant could have escaped liability if it merely reported that the plaintiff's name was (arguably) similar to a name on the OFAC list" rather than reporting plaintiff's name as a "match." *Cortez*, 2007 WL 2702945, at *1. The Third Circuit similarly observed, "The alert on Cortez's credit report does not state that the names are 'similar' to someone on the SDN List or that a match is 'possible.' It reported a 'match' with someone on the SDN List." *Cortez*, 617 F.3d at 708-09.

Steven Katz, TransUnion's Vice President of Consumer Affairs and Operations at the time, contributed to drafting the OFAC letter and testified that TransUnion "wanted to inform the consumer as much as possible about why they were receiving the letter and we felt that this explained as much as possible about how the information might be used by a potential lender in the process that they might be asked to go through once the lender or creditor had received that information." (Trial Tr. (Katz) 590:17-590:22.) In response to the OFAC letter, more consumers contacted TransUnion and were able to successfully block OFAC results from appearing on their TransUnion reports. (Trial Tr. (Briddell) 785:5-10, 810:4-8.) No evidence showed that ***any*** class members failed to understand the information provided.

TransUnion also improved its accuracy rate by demanding that Accuity cease use of a "Synonyms" file, which returned "matches" between names with different spellings (such as the Cortez/Cortes match in *Cortez*). (Trial Tr. (O'Connell) 474:7-9; ECF No. 303-1 at 15-17 (Newman).) Ceasing use of the "Synonyms" file reduced the hit rate to one-half of one percent. (Trial Tr. (O'Connell) 494:18-21.) Mr. O'Connell testified that, to the best of his knowledge, the post-*Cortez* Name Screen product had the lowest false positive rate of any OFAC software on the market. (Trial Tr. (O'Connell) 505:4-6.) It also produced a lower hit rate than is achieved today with OFAC's website search tool, which recommends "fuzzy logic" match techniques. (Trial Tr. (Sadie) 649:4-650:15, Ex. 79.) No evidence showed that any other interdiction software achieved a lower hit rate on a statistical basis

or would not have delivered data as to this class. To the contrary, although Plaintiff ***argued*** that TransUnion could have used date-of-birth filtering technology during the class period (Trial Tr. (O'Connell) 487:18-23, 839:6-840:2), argument is not evidence, and no evidence showed that this was reasonable or even feasible in 2011, let alone that it would have led to different reporting as to every member of the class. Rather, TransUnion's expert witness testified that in 2011 it was not standard financial industry practice to use date-of-birth filtering to reduce the amount of data receiving human review. (*See* Trial Tr. (Sadie) 621:8-13.) Nor does OFAC's website search tool permit date-of-birth filtering. (*See* Ex. 79.)

C. The Dublin Nissan Credit Report

In February 2011, Plaintiff and his wife visited Dublin Nissan to purchase a car. (Trial Tr. (Ramirez) 141:2-4.) Plaintiff's wife was intended to be the primary driver of the vehicle. (Trial Tr. (Ramirez) 160:7-8.) Plaintiff's wife filled in Plaintiff's name on a joint credit application, which both she and Plaintiff signed, providing Plaintiff's name as simply "Sergio Ramirez," leaving a blank space on the part of the form requesting a middle name. (Trial Tr. (Ramirez) 162:6-13, Ex. 43.) The dealer used Plaintiff's information to obtain data about him through a third-party data aggregator. (Trial Tr. (Ramirez) 142:21-143:6.) A report provided to the dealer by the aggregator via a reseller of TransUnion data included a "SPECIAL MESSAGES" section that included several lines reading: "***OFAC ADVISOR ALERT—INPUT NAME MATCHES NAME ON THE OFAC

DATABASE," followed by two names and the information from the OFAC list to allow the user to complete its PATRIOT Act compliance process and clear the applicant. (Ex. 1.) Each of the OFAC names delivered contained "Sergio" as one of the subject's two given names and "Ramirez" as one of the subject's two surnames. (Trial Tr. (Ramirez) 146:9-14, Ex. 1, (O'Connell) 469:1-18.) When the salesperson informed Plaintiff of the results, Plaintiff "asked him to double check and he just wouldn't." (Trial Tr. (Ramirez) 147:16-18.) This was contrary to the dealership's policy, to training the salesperson had received, to contractual limitations on the use of Name Screen data and to instructions set forth on OFAC's website. (Trial Tr. (Coito) 251:22- 252:2, 263:9-25, 276:9-18, 281:21-282:8, (O'Connell) 518:20-519:15, 520:25-521:16, Exs. 42, 74.) Instead, rather than follow a formal process of clearing Plaintiff, the salesperson took the informal shortcut of resubmitting the transaction with Plaintiff's wife as the sole purchaser. (Trial Tr. (Ramirez) 147:24-148:8.) Plaintiff believed that the salesperson "just wanted to sell the car" and "obviously knew" that he was not on the list. (Trial Tr. (Ramirez) 147:18-23.)

Although the Dublin Nissan credit report was often referred to at trial by Plaintiff's counsel as a "TransUnion credit report," the Dublin Nissan report was not prepared by TransUnion. TransUnion Senior Vice President Peter Turek explained that Dublin Nissan obtained Plaintiff's credit report via a reseller, Open Dealer Exchange ("ODE"). (Trial Tr. (Turek) 747:23-748:20.) The Dublin Nissan report differed significantly from the authorized TransUnion report format in use at the time, including (among several

other variations) the lack of the new "potential match" language. (ECF No. 303-1 at 55-56 (Lytle), Ex. 93.) Mr. Turek also confirmed that, beginning in 2010, resellers like ODE were required to describe Name Screen results as "potential matches" rather than "matches," and that he was unaware of any other resellers that failed to include the mandatory "potential match" language added in 2010. (Trial Tr. (Turek) 747:13-747:22.) No evidence was presented at trial establishing that anyone other than Dublin Nissan received a report that lacked the post-*Cortez* "potential match" language, or that any report other than Plaintiff's report failed to include this change.[3]

At trial, the parties stipulated to the following facts:

> The class certified by the Court contains 8,185 consumers. Out of 8,185 consumers in the class, Name Screen data was delivered to a potential credit grantor with respect to 1,853 consumers during the class period of January 1, 2011 through July 26, 2011.

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[3] The witness from the company that provided Dublin Nissan's dealer management systems, DealerTrack, corroborated that to retrieve credit data, its system merely passes along the "credit bureau codes" provided to it by the dealer. (Trial Tr. (Vale) 213:17-214:5.) This witness had no knowledge of the actual codes that were input, and no documentary evidence was presented to show what codes were input. (Trial Tr. (Vale) 235:10-12.) No evidence contradicted TransUnion's evidence that the Dublin Nissan report (although based on data obtained from TransUnion by ODE) was prepared and delivered by ODE, not TransUnion. TransUnion objected to the document repeatedly on foundational grounds and under Federal Rule of Evidence 403.

> Out of the 1,853 consumers for whom Name Screen data was delivered to a potential credit grantor, 40—that's four zero—were delivered via the reseller ODE or one of its affiliates during the class period of January 1, 2011 through July 26, 2011.

(ECF No. 289; *see* Trial Tr. 402:3-8.)

D. Disclosure of OFAC Information to Plaintiff

After his experience at Dublin Nissan, Plaintiff telephoned TransUnion. (Trial Tr. (Ramirez) 150:20-24.) In response to that telephone call, TransUnion mailed to Plaintiff his traditional credit information in the format of a personal credit report, and a separate letter disclosing to him that his name was considered to be a potential match to the OFAC list. (Trial Tr. (Ramirez) 150:20-151:8.)[4] After receiving both items, Plaintiff sent a handwritten note to TransUnion to dispute that he was a potential match, and TransUnion responded by blocking future results from being delivered on all future TransUnion reports. (Trial Tr. (Ramirez) 156:23-157:9.) Plaintiff knew that he had the right to dispute information on his credit file because he had done so in the past. (*See* Trial Tr. (Ramirez) 164:21-165:2.) Plaintiff's dispute was resolved in his favor within the timeframes set forth

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[4] Although Plaintiff's counsel argued that it was wrongful for TransUnion's telephone operators not to disclose OFAC information to Plaintiff immediately when he called (Trial Tr. (Ramirez) 150:20-151:3, 859:23-860:7), this is not a requirement of the FCRA. The FCRA does not mandate disclosure on-demand over the telephone. 15 U.S.C. §§ 1681h(a)(2), 1681h(b)(2)(B) (telephonic disclosure must be preceded by written request for telephonic disclosure).

in 15 U.S.C. § 1681i. (*See* Trial Tr. (Ramirez) 156:23-158:9.) There was no evidence that, due to the manner of disclosure, or due to any particular language in the disclosure (such as its use of the term "courtesy"), any class member did not understand his rights. Nor was there any evidence that any class member had any difficulty disputing OFAC data.

E. Damages

With respect to damages, the ***only*** evidence introduced related to Plaintiff's own unique experience. It was not disputed that Plaintiff's vehicle purchase was completed on the same financial terms and with the same time of vehicle delivery as otherwise would have occurred. (*See* Trial Tr. (Ramirez) 148:6-8, 155:5-9.) The only difference in the transaction was that Plaintiff's wife was on the title alone. (Trial Tr. (Ramirez) 147:24-148:1.) Plaintiff also testified that due to concern about the Name Screen result, he canceled a trip to Mexico, in spite of his knowledge of the correction of his TransUnion file. (Trial Tr. (Ramirez) 155:5-9.)

No evidence was presented that any other class member was denied credit, had a transaction delayed or canceled travel as a result of TransUnion's sales of Name Screen to third parties or as a result of how it was disclosed to consumers. Nor was any evidence presented to suggest that class members were confused or were discouraged from exercising their FCRA rights. To the contrary, data presented by Denise Briddell suggested that the format encouraged contact with TransUnion. (Trial Tr. (Briddell) 785:5-10, 810:4-8, Ex. 69.) Plaintiff presented the class case on the theory that no evidence of class-wide damages

need be proffered. (*See* Trial Tr. 110:17-112:5.) No evidence quantified the "potential risk" allegedly resulting from TransUnion's practices.

F. The Verdict and Its Relationship to TransUnion's Economic Activity

The jury here awarded of $984.22 in statutory damages per class member and $6,353.08 in punitive damages per class member. (ECF No. 309.) Based on a class size of 8,185, this calculates to $8,055,840.70 in statutory damages and $51,999,959.80 in punitive damages, or a total of $60,055,800.50. The total reflects approximately four percent of TransUnion's 2016 net worth. It also exceeds TransUnion's ***entire*** economic activity during the class period, and it dwarfs TransUnion's revenue from the Name Screen product by a factor of nearly thirty. As shown in the concurrently filed Declaration of David Gilbert, TransUnion's gross revenue (*i.e.*, not taking costs into account) from sales of Name Screen in 2011 was approximately $2,100,000. (*See* Declaration of David Gilbert ("Gilbert Decl.") ¶ 2.) TransUnion's net income (profit) in 2011 from ***all*** business operations, *i.e.*, not limited to Name Screen sales, was approximately $41,000,000. (*See id.* ¶ 3).[5]

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[5] Rule 59(c) permits submission of affidavits with a new trial motion. Unlike a Rule 60 motion for relief from judgment, Rule 59(c) does not require a showing that the moving party could not have obtained material earlier through the exercise of reasonable diligence. *See Benton v. United States*, 188 F.2d 625 (D.C. Cir. 1951) (allowing affidavit that contradicted trial testimony). Moreover, because 15 U.S.C. § 1681n(a)(2) states that punitive damages are to be "as the court may allow," the Court should

III. ARGUMENT

A. Legal Standards

1. Standard on a Motion for Judgment as a Matter of Law

A party is entitled to judgment as a matter of law if no reasonable jury would have had a legally sufficient evidentiary basis to find against the party. Fed. R. Civ. P. 50(a)(1). "A jury's verdict must be upheld if it is supported by 'substantial evidence.'" *S.E.C. v. Todd*, 642 F.3d 1207, 1215 (9th Cir. 2011) (citing *Maynard v. City of San Jose*, 37 F.3d 1396, 1404 (9th Cir. 1994)). "Substantial evidence is evidence adequate to support the jury's conclusion, even if it is also possible to draw a contrary conclusion from the same evidence." *Id.* (citing *Wallace v. City of San Diego*, 479 F.3d 616, 624 (9th Cir. 2007) (citation and internal quotation marks omitted)). TransUnion filed a written motion under Rule 50(a) and argued it orally at trial, and accordingly TransUnion may renew that motion now "and may include an alternative or joint request for a new trial under Rule 59." Fed. R. Civ. P. 50(b).

2. Standard on a Motion for New Trial or to Alter or Amend a Judgment

Under Rule 59(a), "[t]he trial court may grant a new trial, even though the verdict is supported by substantial evidence, if 'the verdict is contrary to the clear weight of the evidence, or is based upon evidence which is false, or to prevent, in the sound discretion of the trial court, a miscarriage of justice.'" *Roy v.*

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consider this information even though it was not presented to the jury.

Volkswagen of Am., Inc., 896 F.2d 1174, 1176 (9th Cir. 1990) (quoting *Hanson v. Shell Oil Co.*, 541 F.2d 1352, 1359 (9th Cir. 1976)); *see also Byrd v. Blue Ridge Rural Elec. Co-op., Inc.*, 356 U.S. 525, 540 (1958) (federal judge has "discretion to grant a new trial if the verdict appears to him to be against the weight of the evidence.").

Rule 59(a) also permits the granting of a new trial to address a "grossly excessive" award of damages, or to order damages remitted. *Del Monte Dunes v. City of Monterey*, 95 F.3d 1422, 1435 (9th Cir. 1996). A new trial also may be granted to address instructional error. *Masson v. New Yorker Magazine, Inc.*, 85 F.3d 1394, 1397 (9th Cir. 1996). "[T]he existence of substantial evidence does not prevent the court from granting a new trial if the verdict is against the clear weight of the evidence. 'The judge can weigh the evidence and assess the credibility of witnesses, and need not view the evidence from the perspective most favorable to the prevailing party.' Therefore, the standard for evaluating the sufficiency of the evidence is less stringent than that governing the Rule 50(b) motions for judgment as a matter of law after the verdict." *O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc.*, 420 F. Supp. 2d 1070, 1075-76 (N.D. Cal. 2006) (quoting *Landes Constr. Co. v. Royal Bank of Canada*, 833 F.2d 1365, 1371 (9th Cir. 1987)).

Rule 59(e) permits amendment of a judgment "if (1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law." *O2 Micro*, 420 F. Supp. 2d

at 1075 (quoting *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001)).

B. Plaintiff Failed to Present Sufficient Evidence That TransUnion Willfully Violated the Requirement of § 1681e(b) to Employ Reasonable Procedures to Assure Maximum Possible Accuracy of the Information in Class Members' Credit Reports.

TransUnion is entitled to judgment as a matter of law, or to a new trial, because the evidence did not support a finding that TransUnion willfully violated 15 U.S.C. § 1681e(b).

The FCRA requires consumer reporting agencies, in creating credit reports, to "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). A "willful" violation of the FCRA occurs only if the defendant either knew that it was violating clearly established law or that it took such an "obvious" risk of violating the law that its culpability was substantially greater than ordinary negligence. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 68-69 (2007); *see also Smith v. LexisNexis Screening Sols., Inc.*, 837 F.3d 604, 611 (6th Cir. 2016) (holding that plaintiff must prove that the defendant disregarded "a high risk of harm of which it should have known").

Here, Plaintiff failed to present substantial evidence either: (1) that TransUnion failed to follow reasonable procedures to assure maximum possible accuracy of the information it reported; or (2) that any violation of § 1681e(b) in this regard was willful.

First, the evidence showed that TransUnion's Name Screen product met the "maximum possible accuracy" standard because it accurately conveyed precisely the information that it was designed to convey: whether an individual's ***name*** was a possible match to the OFAC list, such that the user of the information could perform its own due diligence in reaching a final determination of whether the ***individual*** was on the list. (Trial Tr. (Sadie) 621:8-622:4, (Ferrari) 430:13-25.) The testimony of both parties' experts established that "interdiction software" products like TransUnion's Name Screen are simply not used, without further human review, to determine that an ***individual*** is on the OFAC list; rather, they are understood to provide only first-level checks to be buttressed by human review. (Trial Tr. (Ferrari) 430:9-25, (Sadie) 625:23-626:18, 636:6-637:11; *see also id.* at 620:1-624:12.) The evidence also showed that the proper—and limited—use of interdiction software results was communicated to the end-users. (Trial Tr. (Gill) 353:5-11, (Sadie) 627:16-628:16, 640:19-641:19.) For instance, Dublin Nissan's contract for OFAC screening corroborated that an OFAC name "match" was "merely a message that the consumer may be listed" and that "a 'match' may or may not apply to the consumer whose eligibility is being considered." (Trial Tr. (Coito) 279:20-282:8, Ex. 42 § G.1 at 042-007 (emphasis added).) No evidence showed that, except with respect to Plaintiff, any end-user misused any OFAC Name Screen sold with respect to any member of the class.

In short, the evidence at trial showed that TransUnion was asked by its customers during the class period to report only whether the ***name*** of an

individual matched a name on the OFAC list. (Trial Tr. (Gill) 340:3-341:10, (O'Connell) 491:2-5.) TransUnion was not asked to cross-check the individual's name with other information such as date of birth, address, nationality or any other information that might be included within the OFAC database. (*Id.*) Nor did TransUnion ever lead end-users to believe that TransUnion might cross-check these factors. These were things that the end-users themselves would check, and in fact were in a better position to check because of their direct access to the consumer and the consumer's identity verification documents (such as a driver's license). (Trial Tr. (Sadie) 620:10-621:7.) Because TransUnion accurately reported only what it was asked to report, and accurately described the limited nature of what it was reporting, it did not violate § 1681e(b) by including name-only matches in the credit reports it provided to its customers. In other words, because users understood the limited purpose for which a Name Screen would be employed, and because TransUnion expressly and repeatedly explained to users that limited purpose and because TransUnion (post-*Cortez*) changed the result delivery format to describe results as merely ***potentially*** matching the input name provided by the user, no substantial evidence shows that TransUnion willfully provided information that was either "patently incorrect" or "misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions." *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010); *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009); *see also* FTC, Report to Congress Under Sections 318 and 319 Under the Fair and

Accurate Credit Transactions Act of 2003 at 46 (Dec. 2004) (refusing to recommend a rule that would mandate perfect data matching: "The CRAs often identify matches that are close, but not perfect. Accepting an imperfect match risks inaccuracy. . . . On the other hand, rejecting the match risks incompleteness. The CRAs attempt to minimize both inaccuracy and incompleteness, but the limitations of the identifying information mean that they cannot eliminate both. If the CRA adopts a 'stricter' matching algorithm that reduces inaccuracy, the necessary result is that incompleteness will increase."). Here, when used as intended, Name Screen results would not be expected to adversely affect credit decisions. (Trial Tr. (Sadie) 622:5-623:6, (Ferrari) 430:9-25.)

Toliver v. Experian Info. Solutions, Inc., 973 F. Supp. 2d 707 (S.D. Tex. 2013), is instructive. The *Toliver* plaintiff alleged that certain codes used by a consumer reporting agency were inaccurate or misleading because they might be read by third parties as implying something other than what the agency intended. *See id.* at 714 (alleging that it was misleading to label an account as "open" as opposed to being "charged off"). However, because the plaintiff provided no evidence that the agency ever characterized the codes as meaning anything other than their defined meanings, the court determined that the reporting was "undeniably accurate," in spite of plaintiff's claim that the codes were misused; the agency had a right to expect that its reporting would be used as intended. *See id.* at 717-19; *see also Dickens v. Trans Union Corp.*, 18 F. App'x 315, 318 (6th Cir. 2001) (credit report was not inaccurate because user

understood how the information was supposed to be used). Further, in *Shaw v. Experian Info. Sols., Inc.*, No. 13-CV-1295 JLS (BLM), 2016 WL 5464543, at *10 (S.D. Cal. Sept. 28, 2016), *appeal docketed*, No. 16-56587 (9th Cir. Oct. 25, 2016), summary judgment was entered against a class on the grounds that a consumer reporting agency is not responsible for a user's misreading of data that was transmitted. Here, as in *Tolliver* and *Shaw*, the uncontroverted evidence showed that TransUnion made substantial efforts to ensure that users read and applied Name Screen data properly. (Trial Tr. (Gill) 344:9:19, 345:11-348:15, (Turek) 747:13-747:22.) TransUnion's expert also confirmed that, as a common practice, lenders understand how to properly use results received from interdiction software like Name Screen. (Trial Tr. (Sadie) 615:3-616:23.)

Plaintiff offered no substantial evidence to the contrary. Indeed, Plaintiff failed to present evidence of the existence of any ***possible*** technology that in 2011 could have achieved a greater accuracy rate, or at least any such technology that TransUnion actually knew of then. Likewise, the only evidence of an end-user failing to properly verify a possible OFAC match was Plaintiff's own transaction at Dublin Nissan. (Trial Tr. (Ramirez) (146:2-14.) Although Plaintiff's expert, Mr. Ferrari, testified (over TransUnion's objection) that he had seen creditors decline to do business with individuals based solely on interdiction software results, he did not state when this occurred (*i.e.*, during or after the class period), whether it had happened to any class members, how many times he had seen this, or whether the unnamed creditors he referred to relied upon name-only matching

technology or instead, had reached a conclusion to decline business based on interdiction software that also used other criteria. (Trial Tr. (Ferrari) 425:2-426:12, 432:15-17.) Moreover, Dublin Nissan's General Manager testified that, in the only other instance in her experience where interdiction software delivered a "hit," the dealer completed the transaction promptly after confirming that the customer was not on the OFAC list. (Trial Tr. (Coito) 268:25-270:16.) A single aberrant anecdote describing a report not even prepared by TransUnion is simply not sufficient evidence of a class-wide violation of § 1681e(b).

Second, even if Plaintiff introduced sufficient evidence that TransUnion violated § 1681e(b), any violation in this regard was not willful. As a result of the *Cortez* appellate ruling, TransUnion changed the OFAC header language from "input name matches" to "input name is potential match," to make it more certain that users would not misuse the information. (Trial Tr. (Gill) 304:24-305:5, 350:25-352:23, Ex. 62.)[6] That TransUnion changed this language prior to commencement of the class period here demonstrates that it was attempting to comply with *Cortez* and thus did not ***willfully*** violate § 1681e(b). Again, Plaintiff offered no substantial evidence to the contrary. In particular, the fact that the revised "potential match" language did not appear in Plaintiff's own credit report does not support a finding of willfulness. As discussed above on pages 6 and 7, the evidence at trial confirmed that the Dublin Nissan report was not

[6] As addressed above in footnote 2, both the trial and appellate courts in *Cortez* recognized that addition of language like this might have led to a defense outcome in the *Cortez* case itself.

prepared by TransUnion, and that resellers were required to include the "potential match" language and to forbid end-users from denying credit solely because of a Name Screen result.

Additional evidence, including the testimony of TransUnion employee Michael O'Connell, also demonstrates that TransUnion sought to comply with *Cortez* and that TransUnion's response to *Cortez* was reasonable. TransUnion made nationwide changes to its Name Screen product, including by refusing Accuity's Synonyms file to reduce the number of "false positives" and to avoid the exact issue (Cortez/Cortes) that gave rise to the *Cortez* litigation itself. (Trial Tr. (O'Connell) 501:15-502:1; ECF No. 303-1 at 15-17 (Newman).) Mr. O'Connell testified that if TransUnion had used the Accuity product without making any modifications via the rules feature, the hit rate would have been about five percent. (Trial Tr. (O'Connell) 493:15-19.) By employing the rules feature (after the *Cortez* verdict but before the appeal was decided) and refusing the Synonyms file (in response to the *Cortez* appellate ruling), TransUnion lowered the hit rate to less than 0.5 percent, substantially lower than the "high" hit rate of twenty percent described by Plaintiff's expert witness, Mr. Ferrari. (Trial Tr. (Ferrari) 429:14-25, (O'Connell) 494:18-21, 506:6-10.) Mr. O'Connell testified at trial that, to the best of his knowledge, the Name Screen product had the lowest false positive rate of any OFAC software on the market. (Trial Tr. (O'Connell) 505:4-6.) No evidence suggested that any other interdiction software provider had a lower hit rate, on a statistical basis. By contrast, uncontradicted evidence showed that others, including Accuity and OFAC itself, offer

interdiction tools that, by permitting "fuzzy logic" matching, deliver higher hit rates. (Trial Tr. (O'Connell) 494:18-21, (Sadie) 649:4-20.)

At trial, Plaintiff focused on TransUnion's alleged failure to use a date-of-birth filter during the class period. (Trial Tr. (O'Connell) 487:18-23, 839:6-840:2.) The evidence does not support a finding that this constituted a ***willful*** failure to employ a reasonable procedure to assure maximum possible accuracy. As discussed above, Name Screen (at the time) was intended by TransUnion (and understood by users) to be used only to match potential names, and thus users understood that the results indicated only a potential name match. (Trial Tr. (Sadie) 622:5-623:6, (Ferrari) 430:9-25.) The product achieved the "maximum possible accuracy" for the information it actually conveyed, with respect to the class here. Moreover, as explained by Mr. O'Connell, there was, in fact, no date-of-birth filtering technology available to TransUnion during the class period, and Plaintiff presented no contrary evidence in this regard. (Trial Tr. (O'Connell) 487:18-489:3.) The legal standard involves consideration of the maximum ***possible*** accuracy, but Plaintiff's witnesses at trial, including Mr. Ferrari, failed to present evidence of the existence of any ***possible*** technology that in 2011 could have achieved a greater accuracy rate, or at least any such technology that TransUnion both actually knew of, at the time, and ***willfully*** refused to implement. *See Halo Elecs., Inc. v. Pulse Elecs.*, 136 S. Ct. 1923, 1933 (2016) ("Nothing in *Safeco* suggests that we should look to facts that the defendant neither knew nor had reason to know at the time he acted.").

Accordingly, TransUnion was and is entitled to judgment as a matter of law or, in the alternative, a new trial on Plaintiff's claim for a willful violation of § 1681e(b).

C. Plaintiff Failed to Present Sufficient Evidence That TransUnion Willfully Violated the Requirement of § 1681g(a) and (c)(2) to Provide All Information in Class Members' Credit Files and a Statement of Their FCRA Rights.

TransUnion is entitled to judgment as a matter of law, or to a new trial, because the evidence did not support a finding that TransUnion willfully violated the disclosure requirements of 15 U.S.C. §§ 1681g(a) or 1681g(c)(2). *See Murray v. New Cingular Wireless Servs., Inc.*, 523 F.3d 719, 727 (7th Cir. 2008) (no FCRA statutory damages liability for violation of § 1681m disclosure rules because no specific guidance had issued at the time of the violation); *Henderson v. Trans Union, LLC*, No. 3:14-CV-00679-JAG, 2017 WL 1734036, at *3 (E.D. Va. May 2, 2017) (summary judgment granted against class on FCRA statutory damages claim challenging timing of § 1681k disclosure, because of the lack of "clear guidance" as to the "mechanics" of disclosure).

Section 1681g(a) requires that a consumer reporting agency "clearly and accurately disclose to the consumer … [a]ll information in the consumer's file at the time of the request," and § 1681g(c)(2) states that the agency shall "provide to [the] consumer" a summary of the consumer's rights under the FCRA "with each written disclosure by the agency to the consumer under this section." In 2011, no

authoritative legal guidance put TransUnion on specific notice that disclosing OFAC information in a separate letter would violate these provisions.

It is beyond dispute that TransUnion adopted this manner of disclosure out of a desire to comply with the appellate ruling in *Cortez*, which was the first precedential statement that Name Screen was subject to the FCRA. The evidence here showed that TransUnion made a good-faith attempt to comply with its disclosure obligation by sending the consumers' personal credit reports with a letter identifying the OFAC records that were considered a potential match to the name on the consumers' files. (ECF No. 303-1 at 45 (Lytle).) This material was sent via an automated process, such that the OFAC letter was always sent contemporaneously with the other material, including the statement of rights. (*See* Trial Tr. (Walker) 677:9-16.) It is undisputed that the information in the credit report, together with the information in the letter, constituted "[a]ll information in the consumer's file at the time of the request." 15 U.S.C. § 1681g(a). Undisputed testimony also established that TransUnion provided the summary of rights to all class members in the envelope containing each class member's personal credit report. (Trial Tr. (Walker) 687:9-14.)

Nothing in § 1681g(a) or (c)(2) requires file information to be delivered in a single document or envelope. Section 1681g(a) states only that all information in the file at the time of the request must be disclosed. Likewise, Section 1681g(c)(2) states only that the summary of rights must be provided "with each written disclosure … under this section." Neither

the *Cortez* trial nor the appellate decision addressed the details of compliance, because the case focused on whether OFAC data was subject to the FCRA at all. TransUnion was under no clear mandate to include a separate summary of rights in ***each*** envelope when information was disclosed in multiple mailings in response to a single disclosure request. Neither the FTC nor the CFPB has ever stated how the summary of rights must be conveyed, only that all information must be "clearly and prominently displayed." *See* CFPB Examination Procedures: Consumer Reporting Larger Participants, Sept. 2012, http://files.consumerfinance.gov/f/201209_cfpb_Consumer_Reporting_Examination_Procedures.pdf.

No regulatory or judicial guidance required delivery of this summary of rights more than once per disclosure ***request***. Neither the FCRA itself nor the FTC's commentary on the FCRA requires that an individual's information all be sent in a single document or in a single mailpiece. Instead, the FCRA and the FTC Staff Interpretations state only that disclosures must be made "in writing"; the statute and regulatory guidance nowhere require that all disclosures be made in a ***single*** writing. *See* 15 U.S.C. § 1681h(a)(2) ("Conditions and form of disclosure to consumers"); 40 Years of Experience with the Fair Credit Reporting Act, FTC Staff Summary of Interpretations of the Fair Credit Reporting Act 70-72 (July 2011). When Congress intends to impose a singledocument requirement, it does so clearly, but nothing in the FCRA suggests that such a requirement exists under § 1681g(a) or (c)(2). *Cf.* FTC Issues Final Rule Amendments Related to the E-Warranty Act, https://www.ftc.gov/news-events/press-

releases/2016/09/ftc-issues-final-ruleamendments-related-e-warranty-act (clearly defining the parameters of what constitutes a warranty disclosure, under the "Disclosure Rule": "Any warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than $15.00 shall clearly and conspicuously disclose ***in a single document*** in simple and readily understood language . . .") (emphasis added); FTC Franchise Rule Compliance Guide, https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-complianceguide.pdf (defining a "single document" as "be[ing] printable as a single document—***it cannot be presented in multiple, discrete parts***") (emphasis added); *see also Henderson*, 2017 WL 1734036, at *2-*3 (no willful violation of § 1681k requirement to make a disclosure to an applicant for employment "at the time" a report is provided, even though the applicant was not sent the disclosure ***simultaneously*** with the employer's receipt of the report; mailing the disclosure to the applicant within one business day of sending it to the employer did not willfully violate the FCRA).

Cortez also provided no guidance as to the mechanics of disclosure or the language that should be used in the disclosure. In *Cortez*, the Third Circuit concluded that OFAC information must be disclosed under § 1681g(a), but it did not state what form the disclosure must take. At trial, both Steven Katz and Denise Briddell testified that TransUnion's goal was consistent with *Cortez*—to present information about OFAC results to consumers in a manner that was complete and easy to understand. (Trial Tr. (Katz) 585:19-25, 589:5-10, (Briddell) 780:3-781:5, 807:9-17.)

Ms. Briddell also explained that the consumer relations contact data demonstrated the effectiveness of this manner of communication. (Trial Tr. (Briddell) 785:5-10, 810:4-8, Ex. 69.) Plaintiff presented no evidence that the information was ***not*** easy to understand, that anyone failed to understand it or that use of the term "courtesy" distracted from anyone's understanding of the information. Plaintiff understood it well enough to successfully contact TransUnion and block future deliveries of OFAC data with TransUnion reports. (Trial Tr. (Ramirez) 156:11-157:9, 157:23-158:10, 166:3-5.) Thus, TransUnion is entitled to judgment as a matter of law, or to a new trial, because no substantial evidence showed that TransUnion's disclosure procedures "ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless." *Safeco*, 551 U.S. at 50; *Fuges v. Sw. Fin. Servs., Ltd.*, 707 F.3d 241, 248 (3d Cir. 2012).

Finally, mailing the personal credit report and letter separately did not evidence any intent to violate the requirements of the FCRA as set forth by the court in *Cortez*. As noted above, *Cortez* did not address this detail. Sean Walker, a senior manager in consumer relations, testified that, at the time of the *Cortez* decision and during the class period, TransUnion did not have the technology to provide the information in the OFAC letter and the credit report in a single mailing. (Trial Tr. (Walker) 686:6-687:14.) Mr. Walker also explained that the summary of rights was not included a second time in the OFAC letter "[b]ecause it was provided as part of the credit file disclosure ... that we had sent to the consumer that same day, or within hours of each other." (Trial Tr. (Walker) 687:12-

14.) No one ever told him that it violated the FCRA to send OFAC information in a separate letter or without an additional summary of rights, and he confirmed that TransUnion's desire was to comply with the law. (Trial Tr. (Walker) 687:23-688:8.)

Accordingly, TransUnion was and is entitled to judgment as a matter of law or, in the alternative, a new trial on Plaintiff's claims for willful violations of §§ 1681g(a) and (c)(2).

D. A New Trial Should Be Ordered Because of Counsel's Improper Arguments.

TransUnion also is entitled to a new trial because Plaintiff's counsel both repeatedly misstated the evidence and stipulated facts, and improperly attempted to put excluded material before the jury in violation of pretrial rulings. As a result of Plaintiff's counsel's improper arguments, the jury was left with the false impression that TransUnion was attempting to conceal information from them, thus leading to the enormously punishing verdict here.

"[N]o verdict can be permitted to stand which is found to be in any degree the result of appeals to passion and prejudice." *Minneapolis, St. P. & S. S. M. Ry. Co. v. Moquin*, 283 U.S. 520, 521 (1931). Accordingly, counsel's improper reference in closing argument to excluded material is grounds for new trial. *See Anheuser-Busch, Inc. v. Nat'l Beverage Distribs.*, 69 F.3d 337, 346-47 (9th Cir. 1995) (reference to excluded material merits new trial); *see also Leathers v. Gen. Motors Corp.*, 546 F.2d 1083, 1086 (4th Cir. 1976) ("Counsel for defendant was placed in an unnecessarily difficult and embarrassing position. To interrupt argument by plaintiffs' counsel

might antagonize the jury, and would certainly emphasize the point."); *Globefill, Inc. v. Elements Spirits, Inc.*, 640 F. App'x 682, 684 (9th Cir. 2016) (district court should have granted new trial based on counsel's mischaracterization of evidence during summation). The huge aggregate amount of statutory and punitive damages here, in a case with no proof of actual impact on the class, *see Kehr v. Smith Barney, Harris Upham & Co.*, 736 F.2d 1283, 1286 (9th Cir. 1984), shows convincingly that counsel's improper argument led the jury to be "influenced by passion and prejudice in reaching its verdict," *Standard Oil Co. v. Perkins*, 347 F.2d 379, 388 (9th Cir. 1965).

For example, Plaintiff's counsel improperly referred to unnamed "executives in tall buildings in Chicago just waiting to hear what you're going to say about this." (Trial Tr. 948:25- 949:2.) He also claimed that the persons with bad intent were not any of the witnesses who testified at trial, but rather the never-identified "people they answer to," "bosses" and "business managers—made decisions that are in willful non-compliance." (Trial Tr. 901:20-902:6.) None of these people were named, and no evidence about them was presented. The only person identified in counsel's closing argument was Lynn Prindes: "You remember Ms. Prindes? [Mr. Newman] said she was going to come here and explain the technology. Where was she?" (Trial Tr. 906:23- 24.) However, Ms. Prindes was mentioned nowhere in TransUnion's opening, and Plaintiff ***stipulated*** that she need not be produced at trial because her testimony about the class data was agreed to be presented by stipulation. (*See* ECF No. 289.) Nor did the pretrial order indicate that Ms. Prindes would be offered to "explain the technology."

(ECF No. 250 at 18 ["Expected to testify regarding data and the authenticity or lack of authenticity of particular documents."].)

Plaintiff's counsel similarly argued, with no evidentiary basis, and contrary to stipulation, that TransUnion concealed evidence of impact to class members after the class period:

> And Mr. Newman, very careful with his language, he tells you: Well, only about a quarter of these people, 1,800, even applied for credit to have their reputations harmed. Not so, all right? The evidence of the records through our stipulation is during a six-month period, from June—sorry, January 2011 to July 2011 about 25 percent of the class population applied for credit. That's because people don't apply for credit every day. Not everybody needs a car loan or a credit card all the time.
>
> We don't know the data for the next six months and the six months after that and the year after that. But we know the name only procedure was the same. We know that it attacked every single one of these people.

(Trial Tr. 903:18-904:5.)

What was read to the jury about the data was a stipulation of facts, agreed to by both sides. (ECF No. 289.) No evidence was presented that any of the vast majority of class members about whom no OFAC data was sold were "attacked" or injured in any way.

Collectively, these arguments, calling to mind a shadowy network of unseen executives secretly

attacking members of the public, improperly inflamed the jury to passion and prejudice, inviting them to ignore the actual evidence presented at trial. This was prejudicial. "[I]rreparable prejudice was caused because the statement[s] before the jury encouraged speculation upon what was purposely being kept from them." *Maricopa Cty. v. Maberry*, 555 F.2d 207, 217 (9th Cir. 1977) (reversing denial of motion for new trial); *Hern v. Intermedics, Inc.*, 210 F.3d 383, 2000 WL 127123, at *4 (9th Cir. 2000) (reversing denial of motion for new trial, based on counsel's improper reference in closing argument to material outside the record, which "left the jury with a final impression that serious information had been kept from it at trial").

Regarding use of the *Cortez* appellate opinion, the Court ruled before trial to exclude the opinion pursuant to Federal Rule of Evidence 403. (Further Pre-Trial Conf. Tr. 5:16-21 ["So the *Cortez* Third Circuit opinion I'm not inclined to let in. That's just going to really confuse the jury. There's a lot of stuff in there. I mean, the fact that the Third Circuit ruled and affirmed, of course, is a fact that needs to come in, but that will come in, but not with the opinion."].) Throughout the course of the trial, and over TransUnion's repeated objections and requests for curative instructions, Plaintiff's counsel aggressively worked to put this excluded material before the jury, reading exact quotations from it and at one point even displaying it on the exhibit screen visible to the entire jury. (*See* Trial Tr. (O'Connell) 531: 8-533:19, 763:6-22.) This was a clear violation of Federal Rule of Evidence 103(d), which states, "To the extent practicable, the court must conduct a jury trial so that

inadmissible evidence is not suggested to the jury by any means." Similarly, Plaintiff's counsel's closing argument differed substantially from the parties' stipulation as to how *Cortez* would be put into evidence, as the Court already noted in response to TransUnion's objection. (*See* Trial Tr. 918:17-25, 919:3-7 ["In your closing argument you said the *Cortez* jury found a willful violation on the disclosure. And while that's, in fact, true, it is not in evidence. The stipulation does not include that distinction as to the negligence or the willful finding."].) This too was highly prejudicial. In *Cortez*, TransUnion was found to have willfully violated the FCRA for not disclosing OFAC data at all, and for refusing to respond to the *Cortez* plaintiff's request to dispute the data. This case, by contrast, involves a claim that TransUnion's efforts to comply were insufficient, not that TransUnion never attempted to comply.

Plaintiff's improper arguments in violation of prior stipulations and the Court's *Cortez* order should be corrected by ordering a new trial.

E. The Jury's Awards of Statutory and Punitive Damages Are Excessive and Should Be Reduced Significantly, or a New Trial Should Be Ordered.

Despite the lack of substantial evidence that TransUnion violated the FCRA—let alone did so willfully, or in a way that actually caused the class any harm—the jury here awarded $984.22 in statutory damages per class member and $6,353.08 in punitive damages per class member. Based on a class size of 8,185, this calculates to $8,055,840.70 in statutory damages and $51,999,959.80 in punitive damages, for

a total of $60,055,800.50. These are staggering awards, particularly since so much of the case focused on highly technical disclosure provisions. The damages are all the more shocking given that no effort was made to prove that the class suffered ***any*** actual damages as a result of any of the challenged practices. Nor did Plaintiff even attempt to quantify any potential harm. In light of the reality that the challenged practices had no measurable impact on the class, both the statutory and punitive damages awards are so excessive as to shock the conscience. They should be substantially reduced, or a new trial should be ordered.

1. Statutory Damages Are Excessive in Light of the Lack of Evidence of Harm to the Class and the Lack of Evidence That the Legal Requirements for Post-*Cortez* Compliance Were Abundantly Clear.

A statutory damages award should be reduced if it "would be unconstitutionally excessive." *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 954 (7th Cir. 2006); *accord In re Toys R Us-Del., Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453-54 (C.D. Cal. 2014); *see also Parker v. Time Warner Entm't Co., L.P.*, 331 F.3d 13, 22 (2d Cir. 2003) (Due Process Clause can justify reducing an aggregate statutory damages award); *United States v. Citrin*, 972 F.2d 1044, 1051 (9th Cir. 1992) (statutory penalty violates due process if it "is so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable") (quoting *St. Louis, Iron Mt. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66-67 (1919)); *Pinner v. Schmidt*, 805 F.2d 1258, 1265-66 (5th Cir.

1986) (court may remit award of compensatory damages where there is no proof of financial damages); *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1309-10 (9th Cir. 1990) ("When the class size is large, the individual award will be reduced so that the total award is not disproportionate."); *In re Hulu Privacy Litig.*, No. C 11-03764 LB, 2014 WL 2758598, at *23 (N.D. Cal. June 17, 2014) (a court may reduce statutory damages post-verdict because "aggregation of statutory damages claims potentially distorts the purpose of both statutory damages and class actions"); *In re Farmers Ins. Co., Inc., FCRA Litig.*, 738 F. Supp. 2d 1180, 1224-26 (W.D. Okla. 2010) (discussing post-verdict reduction of statutory damages); *Ashby v. Farmers Ins. Co.*, 592 F. Supp. 2d 1307, 1316 (D. Or. 2008) (stating that review of statutory damages award for excessiveness will occur post-verdict). The award of statutory damages here is grossly excessive and unduly punitive. It should not be upheld.

Because the jury did not differentiate among the three claims when awarding damages, the statutory damages award can be sustained in its current form only if the evidence is sufficient to support a finding not only that each purported violation was willful, but that each purported violation caused the class concrete harm. As already explained, however, Plaintiff did not prove that any of the alleged statutory violations was willful, let alone that all three were. Nor did Plaintiff prove that each violation caused the class concrete harm. The proof was particularly weak as to the two disclosure claims, with no evidence showing that ***even Plaintiff*** suffered harm specific to the alleged disclosure violations. Nor did Plaintiff even try to prove that any other class member was

harmed by receiving the OFAC letter separately from the personal credit report and its enclosed statement of rights. That alone requires a new trial on damages or a remittitur.

But even setting aside that problem, the statutory damages verdict of nearly $8.1 million—for the seven-month class period of January through July 2011—is nearly four times TransUnion's gross revenue of $2.1 million from Name Screen sales for all of 2011. (*See* Gilbert Decl. ¶ 2.) The statutory damages award is excessively punitive because it bears no reasonable relationship either to the actual impact on the class (for which there was no evidence) or to TransUnion's financial gain. It is also excessive because the conduct complained of was corrected. TransUnion no longer discloses OFAC information in a separate letter, and TransUnion now uses date-of-birth information to screen results. (Trial Tr. (O'Connell) 512:20-513:4.) There is no past harm to remedy and no future harm to deter. With respect to a remittitur, TransUnion submits that statutory damages should be reduced to an amount no greater than TransUnion's OFAC-related revenue for the year 2011, of $2.1 million, or $256.56 per class member (based on 8,185 class members). Because this is a revenue figure, not a profits figure, and because it is for the full calendar year, and not just for the class period, an award of this size deprives TransUnion of substantially ***more*** than any financial gain associated with its OFAC sales during the period of alleged non-compliance. This figure also is well within the $100 to $1,000 range established by Congress, and therefore would amply compensate class members for what the evidence showed was at most only a ***potential*** risk of harm. It

would also deprive TransUnion of more than what it obtained from selling Name Screen during the seven-month class period.

As entered, the statutory damages award is excessive and a violation of due process principles. *See Six Mexican Workers*, 904 F.2d at 1310 (reducing class statutory damage award averaging $1,369 per class member to between $150 and $600 per class member, in part because "the district court's damage assessment did not involve fact specific calculations of actual injury" and to balance "the need for deterrence with the inequity of disproportionate punishment"). A new trial should be ordered, or the total statutory damages should be remitted to not more than the $2.1 million revenue figure described above.

2. The Jury's Award of Punitive Damages Is Excessive and Should Be Eliminated or Reduced Significantly, or a New Trial Should Be Ordered.

a. Any Award of Punitive Damages Here Would Be Excessive.

Trial courts have a duty to prevent excessive awards of punitive damages and should order a new trial or remit damages when a jury renders an excessive award. *See, e.g.*, *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 513 (2008). Similarly, when substantial compensatory damages are awarded, punitive damages that exceed the compensatory award should only rarely be awarded. *See id.*; *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) ("When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit

of the due process guarantee."); *see also, e.g.*, *Bach v. First Union Nat'l Bank*, 486 F.3d 150, 156 (6th Cir. 2007) (reducing punitive damage award in FCRA case to equal the compensatory damages in light of "general principle that a plaintiff who receives a considerable compensatory damages award ought not also receive a sizeable punitive damages award absent special circumstances … [A] ratio of 1:1 or something near to it is an appropriate result"); *Morgan v. New York Life Ins. Co.*, 559 F.3d 425, 443 (6th Cir. 2009) (vacating punitive damages in a discrimination case where the compensatory award was $6 million and instructing lower court not to exceed 1:1 punitive damages ratio); *Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 603 (8th Cir. 2005) (reducing punitive damages to a 1:1 ratio where compensatory award was over $4 million).

Excessive punitive damages awards are even more problematic where, as here, substantial statutory damages have been awarded. *See Parker*, 331 F.3d at 26 (noting the "pseudo-punitive intention" of statutory damages) (Newman, J., concurring). Indeed, the large statutory damages award here should preclude the imposition of ***any*** punitive damages. The purpose of punitive damages is to punish and deter egregious conduct. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580 (1996). While punishment and deterrence are not the only aim of statutory damages, statutory damages undoubtedly serve similar (if not the same) punishment and deterrence ends, especially in a case like this where there is no evidence of actual harm for statutory damages to compensate. *See, e.g.*, *Bateman v. Am. MultiCinema, Inc.*, 623 F.3d 708, 718 (9th Cir. 2010)

(FCRA's "statutory damages provision[] … effectuate[s] the Act's deterrent purpose"); *Vanderbilt Mortg. & Fin., Inc. v. Flores*, 692 F.3d 358, 373 (5th Cir. 2012) (purpose of statutory damages is to "deter[] the public harm associated with the activity proscribed, rather than seeking to compensate each private injury caused by a violation" (quoting *DirecTV, Inc. v. Cantu*, No. SA-04-CV-136- RF, 2004 WL 2623932, at *4 (W.D. Tex. Sept. 29, 2004))); *cf. Educ. Testing Servs. v. Katzman*, 670 F. Supp. 1237, 1243 (D.N.J. 1987) ("[S]tatutory damages have all the trappings of punitive damages and, indeed, the tests are virtually the same, *i.e.*, the more willful the infringement—the more outrageous the conduct—the higher the award.").[7]

Given that potential overlap, courts in cases under the Copyright Act—which, like the FCRA, authorizes victims of "willful" conduct to receive statutory damages and punitive damages—have often rejected attempts to impose punitive damages on top of statutory damages, out of concern that doing so could impose double punishment in violation of the Due Process Clause. *See, e.g.*, *TVT Records & TVT Music, Inc. v. The Island Def Jam Music Grp.*, 262 F. Supp. 2d 185, 186 (S.D.N.Y. 2003) (rejecting attempt to impose punitive damages because statutory damages already punished); *see also On Davis v. The*

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[7] *See also Phillips v. Netblue, Inc.*, No. C05-4401 SC, 2006 WL 3647116 (N.D. Cal. Dec. 12, 2006) ("Statutory damages may either take the form of penalties, which impose damages in an arbitrary sum, regardless of actual damages suffered, or, ... may provide for the doubling or trebling of actual damages as determined by the jury." (quoting *Beeman v. Burling*, 216 Cal. App. 3d 1586, 1589 (Cal. App. Ct. 1990))).

Gap, Inc., 246 F.3d 152, 172 (2d Cir. 2001) ("The purpose of punitive damages—to punish and prevent malicious conduct—is generally achieved under the Copyright Act through the provisions of 17 U.S.C. § 504(c)(2), which allow increases to an award of statutory damages in cases of willful infringement."); *Silberman v. Innovation Luggage, Inc.*, No. 01 CIV. 7109 (GEL), 2003 WL 1787123, at *10 (S.D.N.Y. Apr. 3, 2003) ("the purpose of punitive damages—to punish and prevent malicious conduct—is generally achieved by statutory damages").

The potential for impermissible overlap between statutory and punitive damages is particularly acute in the class action context. When a defendant engages in conduct that injures many individuals, but suit is brought on behalf of only one of them, the statutory damages award alone might not be considered sufficient to deter egregious conduct if the limit on statutory damages is relatively low. An additional punitive damages award in an individual case thus could at least theoretically be designed to punish and deter the defendant from injuring other individuals in the same way that it injured the plaintiff. But when a class action suit has already brought the relevant universe of potentially affected individuals before the court, and when every class member has been awarded statutory damages, then imposing a punitive damages award on top of the classwide statutory damages award is all but certain to result in excessively punishing damages.

Here, that risk of excessive and unconstitutional double punishment was ever further exacerbated by the problem that Plaintiff submitted literally ***no***

additional evidence to support his plea for punitive damages, except for TransUnion's wealth. *See, e.g.*, *Ashby*, 592 F. Supp. 2d at 1315 (noting that it would be impermissible to permit punitive damages "for the same conduct that gives rise to statutory damages" under FCRA). There simply is no evidence—let alone sufficient evidence—to support the imposition of any punitive damages on top of an award of substantial statutory damages to each and every class member.

b. A New Trial on Punitive Damages Should Be Ordered Because the Jury Was Not Properly Instructed on the Proper Legal Standard.

In an effort to guard against precisely that risk of impermissible duplicative punishment, TransUnion repeatedly requested jury instructions that would have required the jury to find a higher level of culpable conduct for punitive damages than for statutory damages. The Court repeatedly refused these instructions, on the grounds that under the statute and *Safeco*, the same standard applied. Over TransUnion's objection, the Court expressly permitted the jury to award punitive damages "if the defendant acts in the face of a perceived risk that its actions will violate the plaintiff's rights under federal law." (Trial Tr. 939:18-20.) Based on this instruction, Plaintiff's counsel argued, to TransUnion's prejudice, that the legal standard for statutory damages and punitive damages was exactly the same:

> You've already made the liability determination in your verdict. There is no further liability determination. The standard is the same. It is showing reckless disregard

> of consumer rights. You have already found that. The only issue is one of damages. What punitive damages, and in what amount would you award. The perceived risk of harm that you just heard Judge Corley speak about is the same as we talked about yesterday. So liability is done. So therefore, you're completely within your rights to award punitive damages if you see fit, and in whatever amount you see fit.

(Trial Tr. 943:3-11.)

This was error, further justifying setting aside the punitive damages award, as that instruction invited the jury to impose impermissible double punishment for the same conduct. *See Masson*, 85 F.3d at 1397 (new trial may be granted to address claim of instructional error).

Safeco addressed the standard of recklessness that must be proven for statutory damages, but it did not address punitive damages specifically. Pre-*Safeco* authority consistently recognized that punitive damages may only be awarded upon proof of a high level of culpability: "knowing and intentional commission of an act the defendant knows to violate the law." *Gohman v. Equifax Info. Servs., LLC*, 395 F. Supp. 2d 822, 828 (D. Minn. 2005) (quoting *Phillips v. Grendahl*, 312 F.3d 357, 370 (8th Cir. 2002)); *see also Pinner*, 805 F.2d at 1263 (plaintiff must prove that the defendant "knowingly and intentionally committed an act in conscious disregard for the rights of others"); *Riley v. Equifax Credit Info. Servs.*, 194 F. Supp. 2d 1239, 1245 (S.D. Ala. 2002) (same). A defendant's belief it is in compliance with the law, even if

erroneous, bars a punitive damages claim under the FCRA. *See Grendahl*, 312 F.3d at 370; *see also Acton v. Bank One Corp.*, 293 F. Supp. 2d 1092, 1102 (D. Ariz. 2003) (no FCRA punitive damages without proof that the defendant "knowingly or intentionally acted in conscious disregard of the Plaintiff's rights").

Post-*Safeco* cases also state that to obtain punitive damages, the plaintiff must prove a higher degree of culpable conduct than recklessness. *See Davenport v. Sallie Mae, Inc.*, 124 F. Supp. 3d 574, 584 (D. Md. 2015) ("knowing and intelligent commission of acts in conscious disregard for the rights of its customers"); *Edeh v. Equifax Info. Servs., LLC*, 974 F. Supp. 2d 1220 (D. Minn. 2013) ("knowingly and intentionally committed an act in conscious disregard for the rights of others") (quoting *Bakker v. McKinnon*, 152 F.3d 1007, 1013 (8th Cir. 1998)), *aff'd*, 564 F. App'x 878 (8th Cir. 2014). That requirement is essential to ensure that imposing punitive damages on top of statutory damages does not violate due process. *See supra* Section E.2.a. Because the Court's instruction was not just improper, but also invited a constitutional violation, TransUnion is entitled to a new trial with respect to punitive damages.

c. The Punitive Damages Should At Least Be Reduced Substantially, Or a New Trial on Punitive Damages Should Be Ordered.

At a minimum, the considerable risk of impermissible overlap between the awards weighs heavily in favor of a remittitur or a new trial on damages. It is hard to see how the evidence demonstrated ***any*** need for deterrence or punishment

here given TransUnion's undisputed evidence that the particular practices challenged were corrected years ago: OFAC information is now disclosed in a single document, and TransUnion now employs date-of-birth screening technology to reduce the hit rate well below the already-low level it achieved during the seven-month class period. (Trial Tr. (O'Connell) 512:15-513:20.) But even assuming some minimal level of punishment and deterrence were still permissible, surely it was fully achieved (and then some) by the jury's $8.1 million statutory damages award. As noted, that award alone is nearly ***four times*** higher than TransUnion's entire gross revenue from the sales of OFAC Name Screen during ***calendar year*** 2011 (approximately $2.1 million). (Gilbert Decl. ¶ 2.) The $50 million punitive damages award is a shocking ***25 times*** greater than those revenues. Indeed, the punitive damages award is excessive even in relation to the company's entire economic activity in 2011. TransUnion's net income for all of calendar year 2011 was $41 million. (Gilbert Decl. ¶ 3.) The $50 million punitive damages award, which is based on only seven months of activity and only one of TransUnion's products, would more than wipe out its entire profitability for that entire year, for all of its economic conduct, even though the case involves only a small portion of the company's activity, and only for a little more than half of the year.

Such an astounding award is not only excessive, but unconstitutionally so. Under *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), courts consider three factors when determining whether a punitive damages award exceeds the bounds of constitutional due process:

(1) the degree of reprehensibility of the defendant's conduct; (2) the ratio of punitive damages to harm or potential harm to the plaintiff; and (3) the disparities between the punitive damages award and the civil penalties authorized or imposed in comparable cases. Every one of those factors confirms that the jury's punitive damages award is unconstitutionally excessive.

First, there is no evidence of reprehensibility here. Reprehensibility is measured by "considering whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident." *Id.* at 419. Even taken as a given the jury's unsupported willfulness finding, none of the factors is present here. There is no claim of physical harm—indeed, there is not even any evidence of economic harm. Nor did the technical FCRA violations pose any risk to the health or safety of anyone or target the vulnerable. *See Jones v. United Parcel Serv., Inc.*, 674 F.3d 1187, 1207 (10th Cir. 2012) (punitive damages of $2 million reduced to equal the compensatory damages of approximately $630,000, because the impact of the defendant's conduct was economic and did not threaten health or safety). Plaintiff introduced no evidence that TransUnion made any deliberate false statements or engaged in any form of deceit. To the contrary, the evidence demonstrated that TransUnion was actively attempting to address the issues in *Cortez* after the Third Circuit ruled in that

case. (Trial Tr. (O'Connell) 500:21-502:1.) Moreover, the omission of the "potential match" language from the Dublin Nissan report was not intentional and was outside of TransUnion's control (*see* ECF No. 303-1 at 56), and there was no evidence that any other class member was similarly affected. This is not a case where a defendant was flouting the law; indeed, Plaintiff's theory of the case was that TransUnion did not act rapidly enough in attaining compliance. Thus, even accepting Plaintiff's theory of liability, this factor supports reduction of the punitive damages award to something that does not exceed the statutory damages award.

As to the second factor, the ratio of punitive damages to actual or potential harm is, by definition, excessive because Plaintiff did not even ***try*** to prove any actual or even potential harm as to 8,184 members of the 8,185-member class. Instead, he attempted to prove harm only as to himself—and even there he came up woefully short. He identified ***zero*** harm as a result of the disclosure violations, which plainly did not impede his ability to contact TransUnion and exercise his FCRA rights. And as TransUnion's evidence showed, Plaintiff was not unique in that respect: Consumers have repeatedly demonstrated that they had no problem understanding or exercising their rights under the FCRA when they received notice in the manner that Plaintiff did. (Trial Tr. (Briddell) 785:5-10, 810:4-8, Ex. 69.) As for the reasonable procedures claim, Plaintiff offered no evidence that positive Name Screen results had any adverse credit impact on any class members. Users, when employing properly-trained reviewers, rapidly clear positive Name Screen

results with no denial of credit or inconvenience to consumers. (Trial Tr. (Sadie) 637:12-638:6.) TransUnion presented unrebutted evidence that, in the wake of the *Cortez* decision, it specifically instructed Name Screen users that they may not deny credit solely on the basis of a Name Screen result, and that the Treasury Department provides similar guidance as well. (Trial Tr. (O'Connell) 523:5-18, (Sadie) 645:9-23, Exs. 74, 82.) The jury's staggering $50 million punitive damages award thus does not correspond to any actual or potential harm to Plaintiff or the class ***at all***.

When compared to the statutory damages award, which is not an appropriate measure of either actual or potential harm, the ratio is a grossly excessive 6½ to 1. Ratios above 2:1 are typically reserved for extreme misconduct resulting in bodily harm or severe emotional distress, yet no such evidence was presented here. The jury's verdict here is grossly excessive because it is at a ratio that greatly exceeds those imposed on defendants who imposed massive abuse on their victims. *Cf. Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140, 146 (2d Cir. 2014) (ratio of 2:1 in case involving "racial insults, intimidation, and degradation over a period of more than three years"); *Lee ex rel. Lee v. Borders*, 764 F.3d 966, 976 (8th Cir. 2014) (ratio of 3:1 approved in case involving rape of a patient at a facility for the developmentally disabled); *Ondrisek v. Hoffman*, 698 F.3d 1020, 1029 (8th Cir. 2012) (punitive damages reduced to 4:1 ratio in case involving a cult leader's repeated instances of child abuse); *Leavey v. Unum Provident Corp.*, 295 F. App'x 255, 258-59 (9th Cir. Oct. 6, 2008) (insurance bad faith claim where jury found defendant acted with an "evil

mind"; $15,000,000 punitive damages award reduced to $3 million; original ratio was 7½:1, and the reduced ratio was 1½:1). This factor supports reduction of the punitive damages award to no more than the amount of the statutory damages award, a 1:1 ratio as in *Exxon*.

Finally, as to the third factor, comparison to a comparable civil penalty, the jury's award of more than $50 million in punitive damages, or $6353.08 per class member, far outpaces the maximum civil penalty of $2500 the FTC could obtain only upon a ***greater*** showing of culpability than the jury was instructed on here: proof of "a knowing violation, which constitutes a pattern or practice of violations." 15 U.S.C. § 1681s(a)(2)(A). The award also greatly exceeds the maximum statutory damages of $1,000 authorized under § 1681n(a)(1)(A)—the same maximum that applies when a person violates consumer privacy by obtaining credit data "under false pretenses or knowingly without a permissible purpose," § 1681n(b), a more serious violation than at issue here. Under any measure, there is simply no justification for the massive over-deterrence reflected in the jury's award of punitive damages. The award should be remitted or a new trial ordered.

F. The Judgment Should Be Altered or Amended to Conform to Rule 23.

TransUnion also requests, in the alternative, that the judgment be altered or amended pursuant to Fed. R. Civ. P. 59(e).

a. The Evidence Does Not Support Entry of Any Class Judgment.

TransUnion renews its prior challenges to class certification, and submits that because the evidence at trial did not establish the elements of Rule 23, it is improper for any class-wide judgment to be entered. Critically, with respect to the element of typicality under Rule 23(a)(3), the evidence showed that Plaintiff's experience was so far removed from the experiences of other class members that it deprived TransUnion of a fundamentally fair trial. *See Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 598 (3d Cir. 2012) (purpose of the typicality requirement is "to screen out class actions in which the legal or factual position of the representatives is markedly different from that of other members of the class") (internal quotation marks and citation omitted); *Soutter v. Equifax Info. Servs., LLC*, 498 F. App'x 260, 265 (4th Cir. 2012) (reversing certification order because the representative's claims were "typical" only on an "unacceptably general level"); *Cox v. TeleTech@Home, Inc.*, No. 1:14-CV-00993, 2015 WL 500593, at *7 (N.D. Ohio Feb. 5, 2015) (denying certification on typicality grounds because of "the unique factual circumstances" of plaintiff's case); *Davis v. Chase Bank U.S.A., N.A.*, No. CV 06-04804 DDP PJWX, 2013 WL 169868, at *6 (C.D. Cal. Jan. 16, 2013) (denying motion for class certification because "[t]he factual circumstances surrounding Plaintiff's purchases are so atypical as to fall below the normally permissive standard of Rule 23(a)'s typicality requirement"). There was no evidence that the post-*Cortez* "potential match" language was dropped from any Name Screen sold as to any other class member. There was no evidence that

any other class member was denied credit because a lender failed to follow TransUnion's and OFAC's instructions with respect to the handling of interdiction results. There was no evidence that any class member was confused or misled by any communications with TransUnion, either in writing or over the telephone. Most importantly, with respect to more than three-quarters of the class, no Name Screen data was sold at all. Plaintiff unfairly leveraged his unique experience into a massive statutory and punitive damages award in favor of a group of highly atypical and dissimilar people.

A class judgment also is improper because no evidence of actual harm to any class members, or to the class as a whole, was proffered. Plaintiff maintains that such evidence is not necessary. (*See* Trial Tr. 842:20-23, 851:10-12, 863:20-22, 864:15.) With respect to the Court's prior rulings on this issue, TransUnion notes recent Supreme Court authority calling into doubt whether a class case may proceed without proof of concrete injury to class members other than the representative plaintiff. On June 5, 2017, in *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645 (2017), the Supreme Court examined what a proposed intervenor-of-right under Rule 24(a)(2) must show to comply with the standing requirements of the Constitution's Article III. The Supreme Court confirmed that "standing is not dispensed in gross," that "a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought" and that the "same principle applies when there are multiple plaintiffs." *Id.* at 1650-51 (internal citations and quotation marks omitted). "[A]n intervenor of right must demonstrate Article III

standing when it seeks additional relief beyond that which the plaintiff requests." *Id.* at 1651.

This same principle should also apply in class cases under Rule 23(b)(3), as class litigation is merely a species of intervention. Because here Plaintiff asks the Court to award each class member his or her own separate money damages, the standing limitations of Article III must be considered in light of each class member, and not simply the class representative. *See* 137 S. Ct. at 1651 ("In sum, an intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing. That includes cases in which both the plaintiff and the intervenor seek separate money judgments in their own names."). There was no evidence of concrete harm to the class as a whole here, or even to any particular individual. *See Nicklaw v. Citimortgage, Inc.*, 839 F.3d 998, 1002-03 (11th Cir. 2016) (intangible harm caused by delay in recording a mortgage satisfaction did not cause injury in fact, barring claim for statutory damages), *pet. for reh'g en banc denied*, 855 F.3d 1265 (2017). To the contrary, the evidence showed that more than three-quarters of the class had no OFAC data sold about them at all (Trial Tr. 577:1-13), and further, that even when data was sold, financial institutions' general practice was to rapidly clear consumers without incident or inconvenience. (Trial Tr. (Sadie) 637:12-638:6.)

With respect to the disclosure claims under 15 U.S.C. § 1681g, and as argued previously in regard to *Dreher v. Experian Information Solutions, Inc.*, 856 F.3d 337 (4th Cir. 2017), *pet. for reh'g en banc denied* (June 26, 2017), "informational injury" alone does not

satisfy Article III's standing requirements. *See also Medellin v. IKEA U.S.A. West, Inc.*, 672 F. App'x 782, 783 (9th Cir. 2017) (vacating lower-court judgment where plaintiff "alleged only a bare procedural violation of the statute"); *Smith v. Bank of Am., N.A.*, No. 15-55674, 2017 WL 631696, at *1 (9th Cir. Feb. 16, 2017) ("[m]ere receipt" of a document that does not adhere to the standards of a federal statute, "without more, is insufficient to establish injury-in-fact"); *Holmes v. Contract Callers, Inc.*, No. 3:17CV148-HWH, 2017 WL 2703685 (E.D. Va. June 22, 2017) (dismissing claim under Fair Debt Collection Practices Act for lack of standing where plaintiff failed to show how he was injured by the lender's alleged failure to report to credit bureaus that plaintiff disputed the debt); *Gathers v. CAB Collection Agency, Inc.*, No. 3:17CV261-HEH, 2017 WL 2703686 (E.D. Va. June 22, 2017) (same). Accordingly, the class should be decertified for lack of proof that each class member—or even a specifically ascertainable subset of class members—sustained concrete, individualized injury in fact as a result of each FCRA violation alleged. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016) ("special, individualized damage" must be shown to recover under the FCRA for violation of a public right) (Thomas, J., concurring).

b. Persons Known With Certainty Never to Have Received Notice Should Be Omitted From the Class, and the Judgment Should be Corrected to Reflect the Proper Number of Class Members.

As raised before trial, the number of class members needs to be corrected to reflect only those persons whom the notice might have reached. (*See* ECF No. 280.) The evidence was undisputed that neither actual nor constructive notice was given to approximately 15 percent of the class, and that ***at maximum*** only 6,894 persons (taking the seven opt-outs into account) could have even seen the class notice. (*See* Declaration of Jason S. Yoo Ex. A.)[8]

It is fundamental that each class member is entitled to the best notice practicable under the circumstances. Fed. R. Civ. P. 23(c)(2); *see, e.g.*, *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 157 (1974) ("The express language and intent of Rule 23(c)(2) leave no doubt that individual notice must be sent to all class members who can be identified through reasonable effort … [I]ndividual notice to identifiable class members is not a discretionary consideration to be waived in a particular case but an unambiguous requirement of Rule 23"). It is also fundamental that a court has the discretion to "adjust the class, informed by the proceedings as they unfold." *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620

[8] Further, publication notice was never provided to class members who could not be reached by mail, so there is not even any constructive notice basis to keep in the class the 1,291 persons for whom mailed notice is known to have failed.

(1997) (citing Fed. R. Civ. P. 23(c), (d)). As these class members were never even given an opportunity to request exclusion, they cannot be included in the final judgment. *See, e.g.*, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).

Any defect in notice is the class representative's and counsel's responsibility. *See Lambert v. Nutraceutical Corp.*, No. ED CV 13-05942-AB (SPx), 2015 WL 12655392, at *8 (C.D. Cal. June 24, 2015). Their failure to address this issue requires amendment of the judgment. TransUnion faces risk of severe prejudice if the wholly unnoticed class members are included in the judgment, as TransUnion cannot be certain that the judgment will even bind them to preclude subsequent litigation. *See, e.g.*, *In re Del-Val Fin. Corp. Sec. Litig.*, 154 F.R.D. 95 (S.D.N.Y. 1994) (permitting extension of time to opt out where class member did not receive notice until after opt-out deadline); *In re Prudential-Bache Energy Income P'ships Sec. Litig.*, No. MDL 888, 1995 WL 263879, at *6 (E.D. La. May 4, 1995) (permitting extension of time to opt out where notice sent to wrong address). Persons for whom the notice program failed should be removed from the class.

c. The Judgment Does Not Comply With Rule 23(c)(3)(B).

The judgment also does not comply with the formalities of Rule 23(c)(3)(B), which mandates that the judgment expressly "include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members." As entered, the judgment does not set forth what the rule requires,

and at a minimum should be amended to comply with the rule.

The judgment should be amended to decertify the class, or at a minimum to limit its scope to eliminate persons known with certainty never to have received any notice of these proceedings, and further to comply with the requirements of Rule 23.

IV. CONCLUSION

For the foregoing reasons, TransUnion respectfully requests that this Court enter an order granting judgment to TransUnion as a matter of law or, in the alternative, granting a new trial or, in the alternative, ordering a remittitur or, in the alternative, altering or amending the judgment, as requested herein, and for such other and further relief as may be just and proper.

Dated: July 19, 2017

STROOCK & STROOCK & LAVAN LLP

* * *

By: */s/Stephen J. Newman*
Stephen J. Newman

Attorneys for Defendant TRANS UNION LLC

Final Verdict Form
(N.D. Cal. Jun. 20, 2017)

We, the jury in the above-entitled action, find as follows:

Question No. 1 (First Claim): Did Defendant Trans Union, LLC willfully fail to follow reasonable procedures to assure the maximum possible accuracy of the OFAC information it associated with members of the class?

Yes ____x_____ No _____

Proceed to Question No. 2

Question No. 2 (Second Claim): Did Defendant Trans Union, LLC willfully fail to clearly and accurately disclose OFAC information in the written disclosures it sent to members of the class?

Yes ____x_____ No _____

Proceed to Question No. 3

Question No. 3 (Third Claim): Did Defendant Trans Union, LLC willfully fail to provide class members a summary of their FCRA rights with each written disclosure made to them?

Yes ____x_____ No _____

If your answer is "Yes" to Question Nos. 1, 2, or 3 (or any combination of these), proceed to Question No. 4. However, if you do not answer "Yes" to any of Questions Nos. 1, 2, or 3, then your deliberations are concluded. Your Presiding Juror should sign this verdict and inform Court staff.

Question No. 4: What amount of statutory damages (of not less than $100 and not more than $1000) do you award to each class member?

$[handwritten: 984.22]

Your deliberations are now concluded. Your Presiding Juror should sign this verdict and inform Court staff.

[handwritten: signature]
Presiding Juror

Opposition to Renewed Motion for Judgment as a Matter of Law (N.D. Cal. Aug. 8, 2017)

Plaintiff Sergio L. Ramirez ("Plaintiff" or "Ramirez") and the certified Class hereby oppose Defendant Trans Union, LLC's ("Defendant" or "Trans Union") Motion for Judgment as a Matter of Law or, in the alternative, Motion for a New Trial or, in the alternative, Motion for Remittitur or, in the alternative, Motion to Alter or Amend the Judgment in this class action brought under the Fair Credit Reporting Act (FCRA).

I. INTRODUCTION

Few defendants would take a class action case to trial faced with three separate FCRA claims, *each of which* could result in statutory damages in excess of $8 million, *and each of which* allowed for the recovery of unlimited punitive damages. Defendant Trans Union not only welcomed a trial here, but it also unapologetically attacked Plaintiff and the class, and called itself the victim. It tried this case by contending that it actually "benefited" Ramirez and the 8,184 other innocent Americans that it falsely and unfairly associated with a terrorist watch list.

The jury heard the testimony of 14 witness and considered 44 properly admitted exhibits and several stipulations. This was more than sufficient evidence to support its verdict, which is in line with FCRA standards and constitutional principles. Defendant now seeks a different result. But that is not possible.

The very nature of jury trials is that either side could win, and that verdicts could vary in size. But the losing party does not get a do-over because it does not like the result. There was no error at the trial of this

matter that warrants the extraordinary relief that Defendant now seeks. The jury acted within its province, and the verdict in this matter was proper. It must therefore be upheld.

II. FACTS

A. The OFAC List And The Inception Of Trans Union's OFAC Product

The evidence at trial included background on the credit reporting industry, the Office of Foreign Assets Control (OFAC) list and Trans Union's OFAC alert product. The jury learned that Trans Union is one of the Big Three Consumer Reporting Agencies (CRAs) in the United States, with a net worth of nearly $1.5 billion. Tr.[1] Vol. 2 (Gill) 291:7-10; Dkt. No. 285. Trans Union compiles and sells reports about consumers to banks, car dealerships, and other lenders. Tr. Vol. 2 (Gill) 291:16-18, 293:7-21; Ex. 93 at 093-002. Those reports typically include data about existing credit accounts as well as public records such as bankruptcies, judgments, and tax liens. Tr. Vol. 2 (Gill) 296:23-298:16; Ex. 93 at 093-007, 093-008.

In 2002, Trans Union saw an opportunity to sell additional information to its existing customers—information from the U.S. Department of Treasury's OFAC Specially Designated Nationals (SDN) list. Tr. Vol. 2 (Gill) 302:8-10, 307:11-17, 310:11-14; Tr. Vol. 3 (Ferrari) 410:16-411:10. As part of the USA PATRIOT Act, the U.S. government sought to prevent terrorists, drug traffickers, and others from using the U.S.

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[1] Unless otherwise specified, all citations to "Tr." herein refer to the official transcript of the trial in this matter, and citations to "Ex." refer to the exhibits admitted at trial.

financial system. Tr. Vol. 3 (Ferrari) 413:10-17, 445:11-13. It accomplished this goal in part by establishing a list of individuals who may not engage in financial transactions, including access to credit, in the United States. *Id.* at 410:19-411:8. Individuals on the OFAC list include Osama bin Laden, Mexican drug kingpin El Chapo, and Russian arms dealer Viktor Bout, known as "The Merchant of Death." *Id.* at 411:21- 413:8. The OFAC list includes a wide variety of information about SDNs, including name, address, date of birth, social security number, and passport number. *Id.* at 414:8-13. Approximately 80% percent of entries on the OFAC list include a date of birth. Tr. Vol. 3 (O'Connell) 487:14-17. No entries are made on name alone. Tr. Vol. 3 (Ferrari) 414:16-19.

Lenders and other business are subject to severe penalties for doing business with SDNs, which could include monetary fines of up to $10 million and up to 30 years in prison. *Id.* at 416:12-417:13. In order to reduce or avoid these penalties, lenders use "interdiction software" to identify SDNs before engaging in transactions with them. *Id.* at 419:19-420:7. Trans Union informed its customers that already wanted to review an applicant's credit worthiness that Trans Union's OFAC alerts would also help them avoid doing business with terrorists and other OFAC list criminals. Ex. 89 at 089-002. The product was first known as OFAC Advisor Alerts. Ex. 4; Tr. Vol. 2 (Gill) 340:23-25.

Large lenders, such as national banks and broker-dealers that handle a small number of high-value transactions, typically developed their own internal interdiction procedures, as confirmed by Trans

Union's trial witnesses. Tr. Vol. 2 (Gill) 340:10-22; Tr. Vol. 4 (Sadie) 636:8-637:23, 641:8-16. But Trans Union saw a business opportunity to sell its OFAC alerts to smaller businesses such as car dealerships. Tr. Vol. 2 (Gill) 340:10-22.

Trans Union obtained the OFAC data and matching logic from a third party seller, Accuity, Inc. Tr. Vol. 2 (Gill) 306:13-17, 307:18-308:4; Tr. Vol. 3 (O'Connell) 463:1-4, 482:21- 24; Dkt. No. 303-1 at p. 24 (Newman) 15:10-18. Trans Union elected to configure the matching logic software to use only the consumer's first and last name to associate the consumer to OFAC data. Tr. Vol. 2 (Gill) 315:8-12; Tr. Vol. 3 (O'Connell) 462:23-463:19. Like any buyer, Trans Union had the control over how to configure and use Accuity's software, and over what filters to use. Dkt. No. 303-1 at pp. 26-27 (Newman) 53:21-54:3, 56:8-15, 67:9-16. Pursuant to Defendant's desired "name-only" matching, different spellings and name variations such as nicknames, or even using only a first initial (such as "S" for "Sergio") would still be returned as "matches." *Id.* at pp. 30-31 (Newman) 87:8-89:16, 93:9-94:1. Names would furthermore be matched in any order, so a record for "Sergio Ramirez" would also match to "Ramirez Sergio." Tr. Vol. 3 (O'Connell) 464:3-11.

When this name-only search logic returned a "hit," Trans Union placed an OFAC alert on the first page of a consumer's credit report without any further measures or process to assure that the OFAC alert related to the consumer about whom the report was prepared. Tr. Vol. 3 (O'Connell) 474:21-25; Tr. Vol. 2 (Gill) 310:11-311:10; Ex. 4. The evidence showed that

Trans Union has substantial personal identifying information, including middle names, dates of birth, social security numbers, and addresses in its database. Tr. Vol. 2 (Gill) 294:1-14; Ex. 4. Trans Union did not use this personal information to eliminate false positives, even when that information was available to it and could be compared to the information on the face of the OFAC list. Tr. Vol. 2 (Gill) 315:8-316:7; Tr. Vol. 3 (O'Connell) 469:15-24.

The jury also heard evidence that this name-only matching process was in stark contrast to Trans Union's procedures for matching consumers to tradelines and public record information, which minimally required the match of additional identifying information, such as address, date of birth, and social security number. Tr. Vol. 2 (Gill) 308:16-310:10; Tr. Vol. 3 (O'Connell) 465:13-15. Trans Union testified that it does not use name-only matching for *any other product* it sells or item of information it places on credit reports. Tr. Vol. 3 (O'Connell) 465:16-18.

Before rolling out the OFAC product, Trans Union's lawyers and compliance personnel made a deliberate decision that Trans Union would not attempt to comply with the FCRA with respect to OFAC information. Tr. Vol. 2 (Gill) 302:11-16, 316:10-22. As a result of this decision Trans Union intentionally omitted OFAC information from disclosures sent to consumers. *Id.* at 318:3-14; Tr. Vol. 4 (Walker) 706:7-13.

B. Trans Union's Notice of Problems With Its Treatment of OFAC Information

The trial record included evidence that Trans Union was aware of problems with its practices with respect to its handling of OFAC information for years. Trans Union received numerous consumer inquiries regarding OFAC during 2006 and 2007. Ex. 29.

The evidence furthermore showed that Trans Union had specific notice from a consumer who sued Trans Union in October 2005 for FCRA violations that are a strikingly similar to Plaintiff's claims here. Dkt. No. 287 (Stipulation of the Parties regarding *Cortez* litigation). Sandra Cortez claimed that Trans Union inaccurately included an OFAC alert on a consumer report about her to a car dealership and that it failed to properly disclose OFAC information to her upon her request. *Id.*; Ex. 4. The district court ruled that OFAC data is covered by the FCRA and the jury found that Trans Union violated the FCRA by failing to follow reasonable procedures to assure the maximum possible accuracy of OFAC information on consumer reports, and by failing to properly disclose OFAC information in her file. *Id.*

The record demonstrates that although the *Cortez* jury and trial court found against Trans Union in 2007, Trans Union continued with business as usual with respect to OFAC data until late 2010. Specifically, it continued to use the name-only matching logic to associate consumers with the OFAC list. Tr. Vol. 3 (O'Connell) 485:24-486:6. Similarly, Trans Union continued to omit OFAC data from disclosures it sent to consumers during this period. Tr. Vol. 2 (Gill) 322:12-323:24; Tr. Vol. 4 (Walker) 706:7-

13. Instead of complying with the FCRA, Trans Union made no changes to its practices while it appealed the jury's verdict in *Cortez*. Dkt. No. 287. In August of 2010, the Third Circuit affirmed *Cortez*. *Cortez v. Trans Union, LLC*, 617 F.3d. 688, 721 (3d Cir. 2010).

Even with the benefit of this guidance, Trans Union made no substantive changes to its procedures for associating consumers with SDNs on the OFAC list, continuing to use only nameonly matching logic. Tr. Vol. 3 (O'Connell) 470:7-21, 485:24-486:6. Instead, Trans Union waited for two years for its vendor Accuity to release new matching software. Tr. Vol. 3 (O'Connell) 536:15-537:7. Trans Union did not push Accuity for a faster delivery of this new product. *Id.* at 537:8-11. Trans Union never considered using a different vendor to obtain OFAC information. *Id.* at 482:21-24. And Trans Union never even considered stopping sales of OFAC data. *Id.* at 482:25-483:4.

The only relevant change Trans Union made with respect to its reporting of OFAC information following the *Cortez* appellate decision was to add the word "potential" in front of the word "match" on credit reports delivered to Trans Union's customers, a computer programming change that took a single day to implement. Tr. Vol. 2 (Gill) 358:6-359:9; Dkt. No. 303-1 at pp. 8-9 (Acharya) 27:5-16, 28:22-29:19.[2]

The trial record shows that Trans Union also made no changes to its disclosure practices for OFAC

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[2] Defendant also abandoned the use of Accuity's "synonyms table." Tr. Vol. 3 (O'Connell) 485:3-15. But that change is irrelevant to this case since none of the class members here were considered a "hit" because of any synonym.

information until January 2011. Tr. Vol. 4 (Walker) 706:7-13, 706:22-707:2; Dkt. No. 303-1 at pp. 69-70 (Lytle) 283:11-284:22. At that point, the consumer file disclosure or "personal credit report" sent to consumers continued to omit reference to OFAC information entirely. Tr. Vol. 2 (Walker) 708:6-709:1.

In January 2011, Trans Union began sending consumers it associated with the OFAC list who requested a file disclosure a separate form letter with a subject line "Regarding: OFAC (Office of Foreign Assets Control) Database." Ex. 3; Tr. Vol. 4 (Walker) 684:18-22. The letter had none of the normal indicia of a consumer file disclosure. Ex. 3. To the contrary, the letter said that in response to the consumer's request for their personal credit report, "*That report* has been sent to you *separately*." *Id.* (emphasis added). Trans Union's form letter then said in the passive voice that the recipient's name was "considered a potential match to information listed" on the OFAC database. *Id.* Even the Trans Union employee who drafted the letter admitted that it was unclear, stating that the letter does not clearly state who considered the consumer to be a potential match to an SDN. Tr. Vol. 4 (Katz) 604:6-16.

The letter also set forth the information Trans Union considered a match, including the additional identifying information such as date of birth, place of birth, social security number, and place of birth, despite continuing to fail to use this information in its matching logic. Ex. 3. The form letter indicated that it was being provided as a "courtesy," and was not identified as including information contained within the recipient's consumer file. *Id.* The letter did not

provide required information regarding a toll-free telephone number for disputes, or list the federal agencies responsible for enforcing the FCRA. *Id*. Most importantly, the letter failed to inform consumers of their rights, including their right to know that OFAC information is part of their "file" and that such information may be disputed and must be promptly corrected when inaccurate. *Id.*

C. The Department of Treasury's Concerns And Trans Union's Misrepresentations In Response

The U.S. Department of Treasury ("Treasury"), the government agency responsible for maintaining the OFAC list, contacted Trans Union on October 27, 2010 with continuing concerns regarding its reporting and disclosure of OFAC information. Ex. 34 (referencing prior meetings and correspondence in 2007 and 2008). Treasury specifically expressed concerns with placing OFAC records on credit reports using name-only matching alongside traditional credit data subject to more complex matching:

> We remain concerned that **name-matching services** ("Interdiction Products") used by credit bureaus to inform clients about potential dealings with persons on the SDN List **may be creating unnecessary confusion**. An Interdiction Product that does not include rudimentary checks to avoid false positive reporting can create more confusion than clarity and cause harm to innocent consumers. This is particularly worrisome when Interdiction Products are disseminated

> broadly **in conjunction with credit reports**.

Ex. 34 (emphasis added). Treasury further stated that it was "particularly interested in procedures or policies you have established to mitigate the impact of false positives on credit applicants." *Id.*

Trans Union's legal department took over three months to respond, during which time it created the form letter to send to consumers it was associating with the OFAC list. Ex. 35; Tr. Vol. 4 (Katz) 585:1-7. Trans Union's response misrepresented its actual procedures and communications with consumers. Ex. 35. Trans Union's General Counsel Denise Norgle assured Treasury that its communication to consumers provided "instructions on how the consumer can request Trans Union block the return of a potential match message on future transactions." *Id.* at 035-003. The actual letter, however, contained no such instructions. Ex. 3; Tr. Vol. 3 (O'Connell) 535:16-536:12.

D. The Experience Of Representative Plaintiff Sergio L. Ramirez

1. Trans Union Falsely Associated Ramirez with the OFAC List

The jury heard evidence regarding the experience of Plaintiff Ramirez, beginning when he tried to purchase a car from a Nissan dealership in Dublin, California on February 27, 2011. Tr. Vol. 1 (Ramirez) 140:25-141:14. After negotiating for several hours, Ramirez and his wife submitted a credit application which contained his name, address, social security number and date of birth. Tr. Vol. 1 (Ramirez) 142:8-143:6; Ex. 43 at 043-001. The dealer used the

identifying information on the application to pull a Trans Union credit report about Ramirez. Tr. Vol. 2 (Coito) 252:3-253:16.[3]

Trans Union's name-only matching logic returned the following OFAC alert for Ramirez:

> (013561) UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/O ADMINISTRADORA DE INMUEBLES VIDA, S.A. DE C.V. TIJUANA MEXICO AFF:SDNTK DOB: 11/22/1951 OriginalSource: OFAC OriginalID: 7176
>
> (013562) UST 03 RAMIREZ AGUIRRE, SERGIO HUMBERTO C/O FARMACIA VIDA SUPREMA, S.A. DE C.V. TIJUANA, MEXICO AFF: SDNTK DOB: 11/22/1951 OriginalSource: OFAC OriginalID: 7176 P_ID: 13561
>
> (013563) UST 03 RAMIREZ AGUIRRE, SERGIO HUMERTO C/O DISTRIBUIDORA IMPERIAL DE BAJA CALIFORNIA, S.A. DE C.V. TIJUANA, MEXICO AFF: SDNTK DOB: 11/22/1951 OriginalID: 7176 P_ID 13561

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[3] The report appeared under the header "Trans Union," and multiple Trans Union witnesses conceded that it was a Trans Union credit report. Ex. 1; Tr. Vol. 5 (Turek) 754:13-21, 756:14-17; Dkt. No. 303-1 at p. 64 (Lytle) 98:1-9. In February of 2011, Dublin Nissan pulled credit reports through a third party software, DealerTrack, which provides a secure channel of communication between the credit bureaus and car dealerships. Tr. Vol. 2 (Vale) 212:20-214:4. DealerTrack made no changes to the substance of the report, which came from Trans Union. Tr. Vol. 2 (Vale) 218:20-219:11.

> (174125) UST 03 RAMIREZ RIVERA, SERGIO ALBERTO CEDULA NO: 16694220 (COLOMBIA) POB: CALI, COLOMBIA CALI, COLOMBIA Passport no. AF771317 AFF: SDNT DOB: 01/14/1964 OriginalSource: OFAC OriginalID: 10438 POB: CALI, COLOMBIA Passportissuedcountry: COLOMBIA CEDULA NO: 16694220 (COLOMBIA)

Ex. 1. The report falsely stated that Ramirez's name was a "match" to two separate SDNs on the OFAC list. *Id.*

Due to its name-only matching criteria, Defendant associated Ramirez with an unrelated Mexican national, "Sergio Humberto Ramirez Aguirre" who had a birth date of 11/22/1951, and also to an unrelated Colombian national, "Sergio Alberto Ramirez Rivera" who was reported with a birth date of 01/14/196*. *Id.* It was clear from the other information contained in Trans Union's report that Ramirez had no association with either of those individuals on the OFAC list. Ex. 1. Trans Union's own file showed that Plaintiff was born in April of 1976, and his middle initial is "L" (for "Luna") not "Alberto," or "Humberto," and he uses only "Ramirez" as his last name, not "Rivera" or "Aguirre." Tr. Vol. 1 (Ramirez) 146:2-14; 161:25-162:13; Ex. 1; Ex. 75.

In addition to obtaining Plaintiff's Trans Union report, the car dealership also obtained information about him from Experian Information Solutions, Inc. (Experian), another of the "Big Three" nationwide consumer reporting agencies. Ex. 20. Experian operates its own OFAC interdiction software available

to businesses, and in this instance, it did not return a match for Plaintiff. *Id.* Dublin Nissan also ran Ramirez's name through the OFAC interdiction software offered by another business, DealerTrack, which resells credit data and is thus a CRA. Ex. 21; Tr. Vol. 2 (Vale) 227:20-228:3. DealerTrack's analysis also found no match to the OFAC list. *Id.*

Ramirez testified that he was shocked and confused by the appearance of the OFAC alert on his consumer report. Tr. Vol. 1 (Ramirez) 146:15-20. He also testified that he was embarrassed, scared, and did not know what to do next. *Id.* at 147:6-11. The dealership refused to sell Ramirez the car because of the appearance of the OFAC alert on his credit report. *Id.* at 146:24-147:23.

This is consistent with the other evidence at trial, which showed that the smaller lenders who are the intended users of Trans Union's OFAC product typically deal in a high volume of transactions, and when confronted with a "hit" are likely to simply move on to the next transaction rather than run the risk of punishments associated with noncompliance. Tr. Vol. 3 (Ferrari) 425:24-426:12. Some smaller entities adopt a blanket policy of declining to do business with anyone identified even as a potential match to the OFAC list. *Id.* ("Well, really, they freak out once they hear that they have a possible match.").

2. Trans Union Failed to Disclose OFAC Information to Ramirez and Did Not Inform Him of His FCRA Rights

The evidence at trial demonstrated Ramirez's efforts to resolve the problem, beginning with a call to Treasury the day after the incident at the car

dealership. Tr. Vol. 1 (Ramirez) 149:3-150:19.[4] He spoke to a representative of Treasury, who told him he would need to contact Trans Union. *Id.* Ramirez called Trans Union on February 28, 2011, and was told there was no OFAC alert on his file. Tr. Vol.1 (Ramirez) 150:20-151:3. Trans Union's representative told him that Trans Union would mail him a copy of his credit report stating that he was not on the OFAC list. *Id.* at 150:25-151:8. Trans Union then sent Ramirez a copy his "personal credit report," also known as a file disclosure. 152:4-17; Ex. 75. The personal credit report did not mention anything about OFAC, which was Trans Union's standard practice at the time. Ex. 75; Tr. Vol. 4 (Walker) 708:6-709:1.

A day later and in a separate envelope, Ramirez received the separate OFAC letter described above. Tr. Vol. 1 (Ramirez) 153:10-154:24; Ex. 3. He was again shocked and confused, because Trans Union had told him that he was not on the OFAC list, and this had been confirmed by the absence of OFAC information on his Trans Union file. Tr. Vol. 1 (Ramirez) 154:19-24. He did not know what to do to fix the problem, because the letter did not give any instructions. *Id.*

At his wife's urging, Ramirez looked for a lawyer who could advise him about the problem. *Id.* 155:2-15. Ramirez testified that he did not learn about his FCRA rights, or submit a dispute to Trans Union, until after he consulted with a lawyer. *Id.* at 156:9-157:20; Ex. 54 (dated March 16, 2011). He also testified that he was

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[4] Ramirez also learned about the similar experience of Sandra Cortez through his research. Tr. Vol. 1 (Ramirez) 149:17-23.

concerned that this damaging information would be associated with him again, and as a result canceled plans to travel to Mexico on a family vacation. *Id.* at 155:2-9.

E. The Consumers Affected By Trans Union's Practices, Including The Certified Class of Consumers

In addition to hearing Ramirez's story, the jury was presented with evidence regarding other consumers affected by Trans Union's practices regarding OFAC data. Between January and July of 2011, Trans Union sent the same confusing and misleading letter regarding OFAC that it sent Ramirez to 8,184 other consumers. Dkt. No. 289; Tr. Vol. 4 (Walker) 677:13-16, 684:18-22. Trans Union associated each of these consumers with the OFAC list using the same name-only matching logic it used with respect to Ramirez. Tr. Vol. 3 (O'Connell) 468:21-470:21; Tr. Vol. 4 (Walker) 685:2-4; Dkt. No. 303-1 at p. 68 (Lytle) 240:17-242:17. Each of these consumers requested his or her file disclosure by mail,[5] and each

[5] Trans Union's statistics, summarized in its internal analysis of OFAC hits, demonstrate that Trans Union was not disclosing OFAC information to consumers who requested a disclosure online during the class period. In February of 2011, there were 1,723 "OFAC Names Found (hits)" among mailed disclosures. Ex. 10 at 010-005. These are class members who also received the separate OFAC letter, and this number is consistent with the total of 8,185 class members over the six month class period. In the same month, there were 3,599 OFAC Names Found for the disclosure web service. *Id.* OFAC information was not incorporated into web disclosures until September 2011. Dkt. No. 303-1 at p. 45 (Lytle) 70:15-21. If these consumers received the OFAC disclosure letter and are part of the class, then the class size would have to be much larger than 8,185. Thus, either Trans

was sent a file that contained no reference to OFAC. Tr. Vol. 4 (Walker) 708:6-709:1. The evidence regarding the class demonstrated the indiscriminate nature of the name-only matching logic: for example, nearly 100 class members are named "Maria Hernandez," and were all linked to the same individual on the OFAC list, regardless of their vastly differing middle names, addresses, and dates of birth. Tr. Vol. 3 (O'Connell) 472:2-19; Ex. 8 at 008-081 to 008-083.

The evidence also showed that a substantial number of individuals outside of the class were affected by Trans Union's practices. Trans Union's OFAC product was on the market for over a decade, using name-only matching logic to associate consumers with criminals on the OFAC list. Tr. Vol. 3 (O'Connell) 462:20-463:19, 468:21-470:21. The evidence further showed that in a single year, Trans Union used this name-only matching procedure to place OFAC alerts more than 200,000 consumers' credit reports and delivered them to creditors. Ex. 10 at 010-005 (17,557 in July 2012 alone). And during the first eight years Trans Union sold OFAC data, it disclosed *no information at all* about OFAC to consumers who requested their files, leaving thousands of consumers in the dark each year. *Id.*; Tr. Vol. 2 (Gill) 318:9-319:2; Tr. Vol. 4 (Walker) 706:7-13.

Union was not disclosing OFAC information following online disclosure requests in the January to July 2011 time frame, or the class is substantially larger than previously known.

F. Evidence of Trans Union's Disregard for Alternative Procedures To Protect Consumers' Rights

The trial record contains evidence that Trans Union had numerous alternative methods to its chosen procedures. From the beginning, Trans Union's chosen vendor Accuity offered customizable match logic options, which could search OFAC data using different items of personal identifying information, including date of birth. Dkt. No. 303-1 at pp. 26-29 (Newman) 50:7-52:8, 53:21-54:3, 54:23-55:4, 56:8-15, 67:9-16, 70:21-71:21, 72:5-75:20.[6]

The record also demonstrates that Trans Union had access to a variety of other interdiction software options. Tr. Vol. 3 (Ferrari) 420:23-421:4 (naming three providers of screening software other than Accuity). Furthermore, the jury heard evidence that the recommended best practices for OFAC interdiction software is to conduct searches with name plus at least one additional item of personal information. *Id.* at 423:2-25.

The evidence showed that more accurate alternative methods were available in 2011. Two other CRAs screened Ramirez against the OFAC list on the very same day, and accurately found that he was not associated with any SDNs. Ex. 20; Ex. 21. Trans Union's direct competitor Experian conduct its own OFAC search and found no match. Ex. 20. DealerTrack ran a separate screen and independently

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[6] During the January-July 2011 time frame, Trans Union paid Accuity as little as 1/10 of one cent per search. Dkt. No. 303-1 at p. 25 (Newman) 42:8-43:9.

found no match. Ex. 21. Plaintiff's expert testified that he has consulted with financial institutions concerning proper filters for detecting possible OFAC matches, and that in his ten years of legal practice specializing in OFAC compliance, the minimum number of identifiers he has ever recommended to properly identify SDNs is two. Tr. Vol. 3 (Ferrari) at 404:4-405:5, 423:22-25.

The testimony and documents admitted at trial also showed that Trans Union chose not to implement several more accurate matching procedures. Trans Union's own internal research showed that it could have entirely eliminated false positive results by disqualifying potential matches where the date of birth on the OFAC file was more than ten years different from the consumer's date of birth. Tr. Vol. 3 (O'Connell) 486:16-487:9; Ex. 10 at 010-011 (two different rule options which included "DOB>10 Yrs" reduced false positives to 0%). But Trans Union did not implement any of these additional rules or use date of birth in its matching logic until 2013. Tr. Vol. 3 (O'Connell) 489:19-22, 533:20-534:2. The evidence also showed that a human review of OFAC records was feasible, because Trans Union in fact established an in-person review system of consumer disputes of OFAC information in late 2010 after the *Cortez* appellate decision. Tr. Vol. 2 (Gill) 325:10-326:21. A Trans Union employee would review the consumer's identifying information and compare it to the information Treasury made available regarding the SDN. *Id.* When the information did not match, Trans Union would block the alert from reappearing on the consumer's credit report. *Id.* at 327:7-328:2. This human review process demonstrated the inaccuracy of

the name-only matching system: Trans Union conceded that *every one* of the OFAC alerts reviewed in this process was inaccurate, and thus blocked each one. *Id.* at 331:15-21.

Trans Union testified at trial that it cannot identify a single instance since 2002 in which its OFAC alert procedure identified a person actually on the OFAC SDN list. Tr. Vol. 3 (O'Connell) 491:7-17. Yet, Trans Union continues to this day to argue that its procedures in fact *benefitted* class members:

> Q Mr. O'Connell, I will represent to you that the stack that I just placed in front of you - (Document displayed)
>
> Q -- represents the class of over 8,000 people in this case. Is it your testimony that TransUnion's enhancements and products benefited those 8,000 people?
>
> A Absolutely.
>
> Q Absolutely.
>
> A Absolutely.

Tr. Vol. 3 (O'Connell) 545:8-16.

G. The Jury's Verdict

After hearing all of the evidence and argument in this matter, the jury found that Trans Union willfully violated the FCRA by (1) failing to maintain reasonable procedures to assure the maximum possible accuracy of OFAC information it associated with class members, (2) failing to clearly and accurately disclose OFAC information upon request, and (3) failing to provide a summary of FCRA rights with each file disclosure. Dkt. No. 305 (verdict form).

The jury awarded $984.22 in statutory damages to each class member. *Id*. The jury awarded an additional $6,353.08 in punitive damages to each class member. Dkt. No. 306 (punitive damages verdict form).

III. ARGUMENT

Trans Union challenges each of the jury's liability determinations, requests a new trial, and seeks a reduction of both the statutory and punitive damages awards. Trans Union must satisfy an exacting standard in order to invalidate the jury's determination. Trans Union fails to meet the burden extraordinary burden for each of its requests.

A. The Jury's Verdict Was Supported By The Evidence And There Is No Basis For Judgment As A Matter Of Law

1. Legal Standard

A party seeking to overturn a jury's verdict after trial faces a "very high" hurdle. *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 859 (9th Cir. 2002). Judgment as a matter of law is appropriate only where "a reasonable jury would not have a legally sufficient evidentiary basis" to find in favor of the moving party. Fed. R. Civ. P. 50. The moving party has the burden of demonstrating that its opponent failed to support its claims with "substantial evidence." *Weaving v. City of Hillsboro*, 763 F.3d 1106, 1111 (9th Cir. 2014). "Substantial evidence is such relevant evidence as reasonable minds might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence." *Landes Constr. Co. v. Royal Bank of Can.*, 833 F.2d 1365, 1371 (9th Cir. 1987); *see also Weaving*, 763 F.3d at 1111.

The court must view the evidence and draw all reasonable inferences in favor of the nonmoving party. *Ostad v. Oregon Health Sciences Univ.*, 327 F.3d 876, 881 (9th Cir. 2003). The court may not weigh the evidence or assess the credibility of witnesses in determining whether substantial evidence exists. *Landes Constr.*, 833 F.2d at 1371; *Costa*, 299 F.3d at 859. Granting a motion for judgment as a matter of law is proper if "the evidence permits only one reasonable conclusion, and the conclusion is contrary to that reached by the jury." *Ostad*, 327 F.3d at 881.

2. The Jury Had Sufficient Evidence to Conclude That Trans Union Willfully Failed to Follow Reasonable Procedures to Assure the Maximum Possible Accuracy of Class Member OFAC Alerts

The FCRA requires CRAs such as Trans Union to follow "reasonable procedures to assure the maximum possible accuracy of the information concerning the individual about whom the report relates" when creating consumer reports. 15 U.S.C. § 1681e(b).

An inquiry into the reasonableness of procedures under FCRA section 1681e(b) centers on whether the CRA's procedures included reasonable procedures to prevent inaccuracies in preparing the report at issue. *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333-34 (9th Cir. 1995). "The reasonableness of the procedures and whether the agency followed them will be jury questions in the overwhelming majority of cases." *Id.* at 1333; *Dalton v. Capital Associated Indus.*, 257 F.3d 409, 416 (4th Cir. 2001).

Multiple circuit courts, including the Ninth Circuit, have found a report to be inaccurate when

information in it is "patently incorrect" or when it is "misleading in such a way and to such an extent that it can be expected to [have an] adverse" effect. *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890-91 (9th Cir. 2010) (citing and quoting *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1157 (9th Cir. 2009).

Willful violations of the FCRA include "action taken in 'reckless disregard of statutory duty,' in addition to actions 'known to violate the Act.'" *Syed v. M-I, LLC*, 853 F.3d 492, 503 (9th Cir. 2017) (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 56-57 (2007)). A CRA can willfully violate the FCRA even in the absence of prior authoritative guidance. *Id.* at 504. Indeed, "in the FCRA context, a 'lack of definitive authority does not, as a matter of law, immunize [a party] from potential liability' for statutory damages." *Id.* (quoting *Cortez*, 617 F.3d. at 721). Where the FCRA is clear, a defendant's subjective belief that its actions are proper is immaterial. *Id.* at 505.

Blanket policies that result from corporate decision-making regarding treatment of data about consumers can underpin a willfulness finding under the FCRA even in the absence of guidance. *Seamans v. Temple Univ.*, 744 F.3d 853, 868 (3d Cir. 2014). *See also See Soutter v. Equifax Info. Servs., Inc.,* 307 F.R.D. 183, 206-07 (E.D. Va. 2015) (a CRA's "conscious decision to categorically subject" different types of information to different collection standards was a sufficient basis for a reasonable jury to find a willful violation of FCRA section 1681e(b)).

The jury here found that Trans Union willfully violated the FCRA by failing to follow reasonable

procedures to assure the maximum possible accuracy of the OFAC information it associated with class members. Dkt. No. 305 (verdict form). This determination is supported by the substantial evidence Plaintiff presented at trial:

- Trans Union used identical name-only matching logic, disregarding middle names, dates of birth, social security numbers, places of birth, and all other available identifying information, to associate Ramirez and all other class members with the OFAC list, even when additional information was provided to it and available from its credit database and/or the face of the OFAC list. Tr. Vol. 3 (O'Connell) 468:21-470:21; Tr. Vol. 4 (Walker) 685:2-4; Dkt. No. 303-1 at p. 68 (Lytle) 240:17-242:17; Tr. Vol. 2 (Gill) 294:1-14, 315:8-316:7.
- Trans Union's name-only matching procedure for OFAC information was in stark contrast to its procedures for all other items of information included on credit reports, which required additional identifying information, such as address, date of birth, or social security number, to match in order for Trans Union to associate such information with a consumer. Tr. Vol. 2 (Gill) 308:16-310:10; Tr. Vol. 3 (O'Connell) 465:13-18.
- The recommended best practice for OFAC interdiction software is to use at least one item of personal identifying information *in addition* to name. Tr. Vol. 3 (Ferrari) 423:2-25.
- The smaller lenders to which Trans Union's OFAC product was marketed were unlikely to run the risk of doing business with a person associated with the OFAC list and would prefer to move on to the next

transaction, regardless of Trans Union's contractual language, as shown by Plaintiff's experience. Tr. Vol. 2 (Gill) 340:10-22; Tr. Vol. 3 (Ferrari) 425:24-426:12; Tr. Vol. 1 (Ramirez) 146:2-147:5

- Trans Union's vendor Accuity had filtering options which included searching the OFAC database by date of birth, and allowed the buyers of its software, such as Trans Union, to control the filters they wished to use of OFAC "hits." Dkt. No. 303-1 at pp. 26-29 (Newman) 50:7-52:8, 53:21-54:3, 54:23-55:4, 56:8-15, 67:9- 16, 70:21-71:21, 72:5-75:20.
- The two other CRAs (Experian and DealerTrack) that screened Mr. Ramirez against the OFAC list in February 2011 were able to accurately determine that he is not a match to the OFAC SDN List. Ex. 20; Ex. 21.
- Trans Union had repeated notice of problems with its procedures regarding OFAC between 2005 and 2011, including the *Cortez* complaint in 2005, the jury's verdict in 2007, frequent consumer inquiries in 2006 and 2007, and communications from Treasury in 2010, which referenced earlier communications from 2007 and 2008. Dkt. No. 287; Ex. 29, Ex. 34.
- Trans Union's internal statistics for the relevant time period show that over 75% of OFAC records matched to consumers using only first and last name had a date of birth *more than ten years different* than that of the allegedly matching consumer. Ex. 10 at 010-003.

- Trans Union continued to use name-only matching logic for OFAC information until 2013. Tr. Vol. 3 (O'Connell) 489:19-22, 533:20-534:2.
- After Trans Union began accepting disputes of OFAC information, it employed a manual review process to determine accuracy of OFAC hits, and as a result conceded the inaccuracy of *each one* by always blocking it. Tr. Vol. 2 (Gill) 325:10-326:21, 327:7-328:2, 331:15-21.
- Trans Union did not consider using a different vendor other than Accuity, or stopping the sale of OFAC information. Tr. Vol. 3 (O'Connell) 482:21-483:4.
- Trans Union is unable to identify a single instance since 2002 in which its OFAC alert procedure identified an SDN actually on the OFAC list. Tr. Vol. 3 (O'Connell) 491:7-17.
- Trans Union nonetheless argues that its OFAC procedures "absolutely" benefitted consumers. Tr. Vol. 3 (O'Connell) 545:8-16.
- Trans Union conceded no mistakes, and admitted that its reporting in this case was done in accordance with its policies in 2011. Tr. Vol. 3 (O'Connell) 468:21- 470:21.

Viewing this evidence, and all inferences therefrom, in the light most favorable to Plaintiff and the class, a reasonable jury could conclude that Trans Union willfully violated conclusion, and that conclusion is contrary to that reached by the jury." Ostad, 327 F.3d at 881. Defendant has thus failed to meet its burden under Rule 50 and its motion for judgment as a matter of law on the accuracy claim should be denied. FCRA section 1681e(b). This is not a case where "the evidence permits only one

reasonable conclusion, and that conclusion is contrary to that reached by the jury." Ostad, 327 F.3d at 881. Defendant has thus failed to meet its burden under Rule 50 and its motion for judgment as a matter of law on the accuracy claim should be denied.

None of Trans Union's arguments to the contrary have merit. First, Trans Union relies upon the disclaimers in its contracts and the addition of the word "potential" in front of the word "match" to argue that it was neither inaccurate nor misleading to associate innocent consumer with the OFAC list. Trans Union asserts it was the end user's responsibility to determine whether the subject of a report was actually a match to the OFAC list. Defendant's Renewed Motion for Judgment As A Matter Of Law (herein, "Def. Mem.") Dkt. No. 321 at p. 11.

This attempt to shift the burden of assuring accuracy to its customers fails both factually and legally. Ramirez's experience, which was the only evidence presented to the jury about how small lenders who purchase Trans Union's OFAC product actually react in the face of an OFAC alert, demonstrates how a car dealership did nothing other than review the Trans Union report, and refused to extend credit to Ramirez based upon the report. Tr. Vol. 1 (Ramirez) 146:15- 147:23. This corroborates the testimony of Plaintiff's expert Mr. Ferrari, who stated that small lenders will "freak out" in the face of an OFAC alert, and end the transaction rather than run the risk of violating OFAC sanctions. Tr. Vol. 3 (Ferrari) 425:24-426:12. And Trans Union knows that it has never been able to confirm the actual accuracy

of a single OFAC hit, and conceded the inaccuracy of every disputed OFAC alert. Tr. Vol. 3 (O'Connell) 491:7-17; Tr. Vol. 2 (Gill) 325:10-326:21, 327:7-328:2, 331:15-21.

Further, multiple courts have found that disclaimers and qualifications on credit reports about the accuracy of the data on those reports does not provide a FCRA defense, and surely does not transform inaccurate information into accurate information. *Cortez*, 617 F.3d at 708 ("We are not persuaded that [defendant's] private contractual arrangements with its clients can alter the application of federal law, absent a statutory provision allowing this rather unique result."); *Smith v. E-Backgroundchecks.com, Inc.*, 81 F. Supp. 3d 1342, 1348-49 (N.D. Ga. 2015) ("Ultimately, regardless of whether Defendant had presented this argument to the Magistrate Judge, the Court finds the 'disclaimer' used by Defendant does not negate liability" under the FCRA); *Henderson v. Corelogic Nat'l Background Data, LLC*, 178 F. Supp. 3d 320, 336 (E.D. Va. 2016) (disclaimers or other contractual delegations of responsibility do not prevent application of FCRA's requirements). If Trans Union's argument is accepted, CRAs could place completely false information about credit card accounts, bank accounts, judgments, or tax liens on credit reports, and escape liability for inaccuracy, simply by adding disclaimers requiring the purchasers of reports to confirm the information before using it. FCRA section 1681e(b) requirement of

maximum possible accuracy cannot countenance such a result.[7]

Trans Union also argues that its later addition of the word "potential" in front of "match" demonstrates that any violation of FCRA section 1681e(b) could not be willful because it was attempting to comply with *Cortez*. Trans Union again misstates the ruling of the *Cortez* court by arguing that the addition of this single word is sufficient—as this Court has noted, the Third Circuit was dismissing Trans Union's argument that OFAC alerts are only "possible" matches to be screened by the end user, an argument Trans Union repeats here. *Ramirez v. Trans Union, LLC*, 2017 WL 1133161, at *5 (N.D. Cal. Mar. 27, 2017) (denying motion for summary judgment). Even a cursory review of *Cortez* makes clear "that 1681e(b)'s 'maximum possible accuracy' standard 'requires more than merely allowing for the possibility of accuracy.'" *Id.* (quoting *Cortez*, 617 F.3d at 708-09).

Trans Union also points to its sole other change to its OFAC product after the *Cortez* appellate decision, an email sent to its vendor asking it to remove the synonym matching function. Def. Mem., Dkt. No. 321

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[7] The *Toliver* and *Shaw* cases that Trans Union cites for the proposition that CRAs may expect data to be used as intended are simply inapplicable here. Def. Mem., Dkt. No. 321 at p. 13 (citing *Toliver v. Experian Info. Solutions, Inc.*, 973 F. Supp. 2d 707 (S.D. Tex. 2013) and *Shaw v. Experian Info. Sols., Inc.*, 2016 WL 5464543 (S.D. Cal. Sept. 28, 2016)). Both of those cases dealt with interpretation of internal codes related to tradelines which undisputedly pertained to the consumer about whom the credit reports related, and provide no support for the proposition that a CRA may avoid liability when it attributes data to the wrong consumer.

at p. 5. This minor adjustment did nothing to affect the fundamental problem with Trans Union's name-only matching procedures, which the Third Circuit clearly identified and labeled as "reprehensible": the name-only matching logic which disregarded additional data when present, including date of birth. Tr. Vol. 3 (O'Connell) 468:21- 470:21; *Cortez*, 617 F.3d at 723. Indeed, Cortez's date of birth was more than ten years different from the OFAC criminal Trans Union associated with her, just like Ramirez and 75% of other consumers Trans Union associated with OFAC alerts. Ex. 4 (Trans Union report on Sandra Cortez, showing a May 1944 date of birth for Cortez, and a June 1971 date of birth in the OFAC record); Ex. 1 (Trans Union report showing April 1976 date of birth for Ramirez and November 1951 date of birth in OFAC records); Ex. 10 at 010-003. The problem was the name-only matching logic, which Trans Union continued to use until 2013. Tr. Vol. 3 (O'Connell) 489:19- 22, 533:20-534:2.

The evidence also contradicted Trans Union's claim that better technology was not available in 2011. Two other CRAs screened Ramirez against the OFAC list on the very same day Trans Union did so, and correctly found that he was not a match, or even a potential match. Ex. 20, Ex. 21.

Although Trans Union would like to focus on its actions following the appellate decision in *Cortez* in 2010, the jury here was presented with a broad range of evidence that Trans Union had notice of problems with its OFAC procedures far earlier. Cortez brought her lawsuit in 2005, and the trial court found in 2007 that OFAC information is covered by the FCRA and

thus subject to the maximum possible accuracy standard. Dkt. No. 287. The *Cortez* jury sent a message to Trans Union that it was violating the FCRA in 2007. *Id.* During the *Cortez* litigation, in 2006 and 2007, Trans Union was receiving frequent inquiries from consumers about OFAC. Ex. 29. OFAC itself contacted Trans Union in 2010, referencing prior communications in 2007 and 2008, with concerns about the sale of OFAC alerts on consumer credit reports. Ex. 34. In the face of all of this, Trans Union never even considered pausing sales of OFAC alerts. Tr. Vol. 3 (O'Connell) 482:25-483:4. Furthermore, Trans Union's disregard for consumer rights was continuing—even after *Cortez*, Trans Union did not begin using any data other than name to match consumers to the OFAC list until 2013. Tr. Vol. 3 (O'Connell) 489:19-22, 533:20-534:2.

Finally, the jury was entitled to consider the unapologetic and implausible stances Trans Union took at trial, which support a finding of willfulness. Trans Union asserted that it was the victim, claiming that the case was about Trans Union's reputation, not the reputations of consumers. Tr. Vol. 5. 898:11-899:11. Trans Union took the position that Ramirez's experience at the Dublin Nissan dealership was his fault for having a prior repossession, or his wife's for not writing his middle initial on the credit application. Tr. Vol. 1 (Ramirez) 161:25-164:13, 163:7-164:11.[8] Trans Union also sought to blame Dublin Nissan for

[8] Other evidence presented at trial demonstrated that Trans Union had Mr. Ramirez's middle initial, "L" in its database (Ex. 1, Ex. 75), and that the repossession referenced had no impact on the transaction. Tr. Vol. 2 (Coito) 255:3-13.

taking action based on the report (Tr. Vol. 5 (Turek) 750:2-752:23), and the company that provided the secure channel between Trans Union and Dublin Nissan for omitting the word "potential." *Id.* at 757:3-25. Defendant even asserted that the credit report delivered to Dublin Nissan on February 27, 2011 wasn't a genuine Trans Union report at all. *Id.* at 764:7-10.[9] Trans Union claimed a market-best rate of false positives, but did not even know the false positive rates of any of its competitors. Tr. Vol. 3 O'Connell 527:8-12, 528:6-529:22. Perhaps most tellingly, Trans Union asserted that class members have been benefitted by its use of name-only matching logic that falsely associates them with terrorists, drug traffickers, and other criminals. Tr. Vol. 3 (O'Connell) 545:8-16.

The jury's conclusion that Trans Union was in willful violation of the FCRA's accuracy requirements is supported by the evidence and must stand.

3. The Jury Had Sufficient Evidence to Conclude That Trans Union Willfully Failed to Clearly and Accurately Disclose OFAC Information

Whenever a consumer requests a copy of their file, the FCRA requires CRAs to "clearly and accurately disclose to the consumer all information in the consumer's file" at the time of the request. 15 U.S.C. § 1681g(a). The FCRA defines a consumer's file to

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[9] Mr. Turek later contradicted his testimony by stating that Exhibit 1 was a genuine Trans Union report, and confirmed that the source of the OFAC data was Trans Union. Tr. Vol. 5 (Turek) 754:18-21, 756:14-17, 764:14-766:3.

include "all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored." 15 U.S.C. § 1681a(g). Unambiguous statutory language like this, which is "not subject to a range of plausible interpretations," renders a defendant's subjective interpretation of the law irrelevant and supports a finding of willfulness. *Syed*, 853 F.3d at 505. As the Third Circuit found in upholding the jury's willfulness finding on the disclosure claim in *Cortez*, the broad reach of FCRA section 1681g(a) is "obvious." 617 F.3d at 711.

The jury found that Trans Union willfully failed to clearly and accurately disclose OFAC information to class members upon request. Dkt. No. 305 (verdict form). This determination was fully supported by the substantial evidence presented at trial:

- Ramirez requested a copy of his Trans Union file, and received his file or "personal credit report" which identified itself as the response to his request, and contained no reference whatsoever to OFAC. Ex. 75.
- The form of the "personal credit report" was the same for all class members in 2011, and was the same form sent to Ms. Cortez in 2005 in that it omitted OFAC information. Tr. Vol. 4 (Walker) 708:6-709:1; Dkt. No. 303-1 at pp. 62-63 (Lytle) 81:1-82:7; Ex. 75; Ex. 5.
- Trans Union sent Ramirez and all other class members a separate letter regarding the OFAC record that "is considered a potential match" to the consumer's name. The author of the letter admitted that it is unclear who or what considers

the consumer's name to be a match. Tr. Vol. 4 (Walker) 684:18-22; Ex. 3; Tr. Vol. 4 (Katz) 604:6-16.

- The separate letter is not identified as a file disclosure, and says that the requested personal credit report "has been mailed to you *separately*." The letter also states that it is being provided as a "courtesy," and does not inform the consumer that the OFAC information can be disputed if inaccurate. Ex. 3.
- Ramirez did not know that he could dispute the OFAC information associated with him, or how to do dispute it, until after he consulted with a lawyer. Tr. Vol. 1 (Ramirez) 156:9-157:20; Ex. 54.
- Since it introduced the product in 2002, Trans Union had the capability to incorporate OFAC information on the credit reports sold to customers. Tr. Vol. 2 (Gill) 310:11-311:10; Ex. 4.
- Trans Union had notice that OFAC information should be disclosed in the form of the plain language of the FCRA, the Cortez complaint in 2005, the Cortez jury verdict in 2007, and numerous consumer inquiries regarding OFAC in 2006 and 2007. Dkt. No. 287; Ex. 29.
- Trans Union did not begin to disclose OFAC information to consumers in any manner until 2011, and never considered stopping sales of OFAC alerts to third parties. Tr. Vol. 4 (Walker) 706:7-13, 706:22-707:2; Dkt. No. 303-1 at pp. 69-70 (Lytle) 283:11-284:22; Tr. Vol. 2 (Gill) 318:9-319:2; Tr. Vol. 3 (O'Connell) 482:25-483:4.
- Trans Union misrepresented the content of the separate OFAC letter in a communication to Treasury, falsely claiming that it instructed

consumers about their right to dispute OFAC information. Ex. 3; Ex. 35.

This evidence and the inferences drawn from it, viewed in the light most favorable to Plaintiff and the class, was more than sufficient for the jury to conclude that Trans Union willfully failed to clearly and accurately disclose OFAC information upon request.

Trans Union argues that its use of a separate letter constituted a proper disclosure under the FCRA because the letter should be read together with the personal credit report. Def Mem., Dkt. No. 321 at p. 16. Nothing about the two documents indicates that they should be read together: the "personal credit report" does not say that it is incomplete and will be supplemented, and the separate letter defines itself in opposition to a file disclosure, saying that the consumer's file has been sent "separately." Ex. 3. Even the author of the separate letter conceded that it is unclear. Tr. Vol. 4 (Katz) 604:6-16. Thus, even taken together, the two documents do not clearly and accurately disclose all of the information in a consumer's file, as required by FCRA section 1681g.[10]

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[10] Furthermore, the jury could infer from the content of the separate OFAC letter that Trans Union did not want consumers to know that OFAC information was part of their file or that they could dispute it. The letter said that Trans Union was providing the information as a "courtesy" and not as required by law, suggesting that the information is not part of the file. Ex. 3. The inference that Trans Union misled class members is bolstered by the evidence that shortly after drafting the OFAC letter, Trans Union's general counsel falsely represented to Treasury that the letter contained instructions on how to block future return of potential match messages. Ex. 35 at 035-003.

Trans Union asserts that a willful violation is not possible allegedly because there was no "authoritative legal guidance [that] put Trans Union on specific notice that disclosing OFAC information in a separate letter would violate" FCRA section 1681g. Def. Mem, Dkt. No. 321 at p. 15. As this Court has already recognized, this incorrect legal standard is made up of whole cloth: "no court has held that a defendant can be found to have willfully violated the FCRA only when its conduct violates clearly established law." *Ramirez v. Trans Union, LLC*, 2017 WL 1133161, at *2 (denying Trans Union's motion for summary judgment). Indeed, Trans Union's approach is entirely foreclosed by the binding precedent of *Syed*, which makes clear that when a statute is unambiguous, no prior guidance is necessary to find a willful violation. *Syed*, 853 F.3d at 504-05.[11] No such lack of clarity exists here—FCRA section 1681g(a) is pellucidly clear that *all* information in the consumer's file must be disclosed.

Trans Union claims that it "made a good faith attempt to comply with its disclosure obligation," (Def. Mem., Dkt. No. 321 at p. 16) but this assertion is also undermined by the evidence at trial, which demonstrates that Trans Union made no effort whatsoever to disclose OFAC information to consumers until well after the appellate decision in

[11] The cases Trans Union cites are both nonbinding and not to the contrary. In *Murray v. New Cingular Wireless Servs., Inc.*, 523 F.3d 719, 727 (7th Cir. 2008), the court found that the provision at issue was unclear. Likewise, although obscured by Trans Union's selective quotation, the "lack of guidance" at issue in *Henderson v. Trans Union, LLC* was a lack of clarity in the *statutory terms*. 2017 WL 1734036, at *3 (E.D. Va. May 2, 2017).

Cortez in 2010. Tr. Vol. 4 (Walker) 706:7-13; Dkt. No. 303-1 at pp. 69-70 (Lytle) 283:11-284:22. In addition to disregarding the clear mandate of FCRA section 1681g(a), Trans Union had notice in the form of the *Cortez* lawsuit and jury verdict in 2007, as well as numerous consumer inquiries in 2006 and 2007. Dkt. No. 287; Ex. 29. Even after the *Cortez* appellate decision, Trans Union continued to sell OFAC information to its customers through 2010 and until 2011 without any way of clearly disclosing information to consumers. Tr. Vol. 4 (Walker) 706:7-13, 706:22-707:2. It could have avoided thousands of willful violations of FCRA section 1681g(a) by pausing sales until it had a proper disclosure method in place, but never even considered it. Tr. Vol. 3 (O'Connell) 482:25-483:4.

Trans Union argues that FCRA section 1681g does not require disclosures to arrive in a single envelope, but this misses the point. This provision requires clear and accurate disclosure of all information in a consumer's file, and Trans Union's method of disclosure was not clear or accurate, and did not include all information.

Trans Union also repeats its claim that it simply "did not have the technology" to make OFAC disclosures in a single document. Def. Mem., Dkt. No. 321 at pp. 18-19. As an initial matter, the only evidence supporting this claim is Trans Union's self-interested testimony, which the jury is entitled to disregard and this court need not consider. *Harper v. City of L.A.*, 533 F.3d 1010, 1021 (9th Cir. 2008); *Charyulu v. Cal. Cas. Indem. Exch.*, 523 Fed. App'x 478, 481 (9th Cir. 2013). Furthermore, this testimony

is contradicted by evidence that Trans Union had the technology to incorporate OFAC information on consumer reports it sold to third parties for money, and had that technology for years. *See* Ex. 4 (Cortez report, incorporating OFAC alert in 2005). And certainly nothing was stopping Trans Union from making a clear statement that OFAC information is part of a consumer's file and was being sent as part of a file disclosure.

The jury verdict regarding FCRA section 1681g(a) was fully supported by the evidence, and Trans Union's motion must be denied.

4. The Jury Had Sufficient Evidence to Conclude That Trans Union Willfully Failed to Include a Statement of Rights with Its Disclosure of OFAC Information

In addition to providing clear and accurate disclosures upon request, the FCRA also unambiguously requires CRAs to "provide to a consumer *with each written disclosure*…the [FTC's] summary of rights…." 15 U.S.C. § 1681g(c) (emphasis added). As with the disclosure requirement, this mandate is not subject to multiple plausible interpretations, rendering any alternate reading unreasonable and actions taken based on such an alternate reading willful violations. *Syed*, 853 F.3d at 505.

The jury found that Trans Union willfully failed to provide the FCRA summary of rights with each written disclosure made to consumers. Dkt. No. 305 (verdict form). This finding was likewise fully supported by the evidence, listed in section III.A.3 above.

Trans Union claims that it fulfilled its obligations under FCRA section 1681g(c) with respect to OFAC information by including the summary of rights with the personal credit report it sent to class members. Def. Mem., Dkt. No. 321 at pp. 16-17. But it is undisputed that the personal credit report did not contain any reference to OFAC whatsoever. Ex. 75; Tr. Vol. 4 (Walker) 708:6-709:1. It is further undisputed that the separate letter, which did contain OFAC information, did not contain a summary of rights. Ex. 3. The OFAC letter did not include any reference to the summary of rights contained in the personal credit report, or indicate that those rights applied to OFAC information. Ex. 3.

Trans Union cannot have it both ways—since Trans Union asserts that the separate letter is a written disclosure, then it was required to provide the summary of rights *with that mailing*. Trans Union protests that no authority existed requiring a single envelope, or providing the summary of rights more than once per request (Def. Mem., Dkt. No. 321 at pp. 16-17), but these arguments ring hollow in light of the unambiguous language of FCRA section 1681g(c) requiring the inclusion of the summary of rights with "*each written disclosure*." 15 U.S.C. § 1681g(c) (emphasis added). There is no plausible interpretation of this language that permits sending the summary of rights with a separate piece of mail, and thus no additional authority is needed. *Syed*, 853 F.3d at 505.

As described above, Trans Union's argument that it was just not possible for it to deliver a single integrated file in 2011 does not hold water, and the jury had sufficient evidence to conclude otherwise.

Trans Union was able to deliver a single integrated report with OFAC and all other data on it to lender clients since the early 2000s. Ex. 4. The jury was entitled to infer that Trans Union could have delivered the exact same thing to consumers including class members.

Trans Union's separate OFAC letter provides no defense. Rather than include a summary of rights with the letter, or reference the summary of rights contained in the personal credit report, or even simply state that the OFAC information could be disputed if incorrect, the letter is silent regarding consumers' rights. Ex. 3. Worse still, when Treasury contacted Trans Union with concerns regarding its OFAC procedures, Trans Union responded by misrepresenting the contents of the OFAC letter. Ex. 34; Ex. 35. Trans Union claimed that the letter "is accompanied by instructions on … how to request TransUnion block the return of a potential match message on future transactions." Ex. 35 at 035-003. The letter contains no such instructions, much less a full statement of rights. Ex. 3.

Finally, Trans Union's assertion that Ramirez "understood [the letter] well enough to successfully contact TransUnion and block future deliveries of OFAC data" is contradicted by the evidence of record. Def. Mem., Dkt. No. 321 at p. 18. Ramirez testified that he was confused after receiving the letter and did not contact Trans Union to dispute the OFAC information until after he consulted with a lawyer. Tr. Vol. 1 (Ramirez) 154:19-24, 156:9-157:20; Ex. 54. A disclosure that requires legal advice to decipher

cannot possibly be clear, accurate, or properly inform consumers of their rights.

The jury was presented with substantial evidence that Trans Union was aware of its obligations under the FCRA with respect to disclosure of OFAC information and inclusion of consumers' right to dispute with each disclosure, as well as evidence that Trans Union did not comply with these obligations. Judgment as a matter of law for Defendant is thus inappropriate, and Trans Union's motion should be denied.

B. Counsel's Arguments Do Not Warrant A New Trial

As with its request for judgment as a matter of law, Trans Union fails to meet its high burden in seeking a new trial. A new trial is appropriate under Rule 59 "only if the jury verdict is contrary to the clear weight of the evidence, is based upon false or perjurious evidence, or to prevent a miscarriage of justice." *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007) (quoting *Passantino v. Johnson & Johnson Consumer Prods.*, 212 F.3d 493, 510 n.15 (9th Cir. 2000)).

"The federal courts erect a 'high threshold' to claims of improper closing arguments in civil cases raised for the first time after trial." *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1193-94 (quoting *Kaiser Steel Corp. v. Frank Coluccio Constr. Co.*, 785 F.2d 656, 658 (9th Cir. 1986)). In the absence of a contemporaneous objection, a new trial is only appropriate where "the integrity or fundamental fairness of the proceedings in the trial court is called into serious question." *Bird v. Glacier Electric Coop.*

Inc., 255 F.3d 1136, 1148 (9th Cir. 2001).[12] The burden is on the moving party to demonstrate concrete prejudice, in light of the totality of the circumstances. *Hemmings*, 285 F.3d at 1193. Even in the presence of clearly proven prejudice, the remedy of a new trial is reserved for "extraordinary cases," such as those involving inflammatory terms or appeal to racial prejudice. *Bird*, 255 F.3d at 148, 1152.

This is plainly not such an extraordinary case. Trans Union made no objection to Plaintiff's closing argument and did not move for a mistrial following argument, but instead chose to "sit silent" and wait for the jury to return. *Hemmings*, 285 F.3d at 1193, 1195 ("The fact that counsel did not object before the jury was instructed strongly suggests that counsel made a strategic decision to gamble on the verdict and suspected that the comments would not sway the jury."). None of the statements to which Trans Union objects were excluded after *in limine* motions, and none was incendiary. Importantly, each was a true statement fairly inferred from the evidence. For example, Plaintiff's reference to corporate decisionmaking by executives was supported by the

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[12] Trans Union's citation to *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 69 F.3d 337 (9th Cir. 1995) is inapposite. Far from allowing a new trial anytime excluded material is referenced, *Anheuser-Busch* makes clear that a new trial is warranted on the ground of attorney misconduct only where the misconduct was pervasive and "the jury was influenced by passion and prejudice in reaching its verdict." 69 F.3d at 346 (internal quotations and citations omitted). The misconduct at issue in *Anheuser-Busch* was repeated reference to hearsay which had been explicitly excluded from trial, and was demonstrably false. *Id.* at 346-47.

fact that multiple Trans Union witnesses testified that their actions regarding OFAC were taken on the direction of their superiors. Tr. Vol. 3 (O'Connell) 461:21- 462:13; Tr. Vol. 2 (Gill) 351:1-8; Tr. Vol. 4 (Walker) 683:17-684:2, 706:22-707:2; Tr. Vol. 4 (Katz) 585:1-12. The fact that Chicago has tall buildings is common knowledge. Likewise, counsel's statement that "[w]e don't know the data" on class members' applications for credit outside the class period was an entirely accurate description of the state of the evidence, and counsel at no point suggested that Trans Union was concealing this data. *See* Dkt. No. 289 (providing data only regarding January 2011 through July 2011). Counsel has "wide latitude" on closing, is not limited to the exact wording of the evidence presented, and may argue based upon inferences. *Fleming v. City of Los Angeles*, 187 F.3d 646, 648 (9th Cir. 1999). None of the statements by Plaintiff's counsel identified by Trans Union go beyond this wide latitude.

Counsel's references to *Cortez* were similarly appropriate. Although the full text of the Third Circuit's appellate opinion was excluded from evidence, nothing in either the Court's ruling or the parties' stipulation prevented Plaintiff from referencing the opinion, quoting it, or questioning witnesses about the opinion or the *Cortez* case in general. Dkt. No. 287 ("Nothing in this stipulation shall preclude either party from examining any witness about the *Cortez* litigation or about Ms. Cortez."); Tr. Vol. 4 (The Court) 562:23-563:1 ("But what the stipulation said and what I believe is appropriate is the plaintiff can question any particular witness about what's in [the *Cortez* appellate opinion].

And the words that are in it."). Plaintiff properly sought to explore witnesses' knowledge regarding the *Cortez* litigation, and demonstrate when their testimony departed from the facts of the case. It was particularly appropriate for Plaintiff's counsel to question Trans Union's witness Mr. O'Connell about *Cortez*, including through reference to an excerpt of the opinion, after *Trans Union's counsel* asked him to testify about the meaning of the case. Tr. Vol. 3 (O'Connell) 500:21-501:14.

Most importantly, Trans Union has made absolutely no showing of prejudice here. The statements made in closing were supported by evidence and reasonable inferences and were within the wide latitude permissible during closing argument. It is undisputed that the *Cortez* litigation is of fundamental relevance to this case; indeed, Trans Union's arguments both at trial and in the present motion focus almost entirely on its reaction to the *Cortez* appellate opinion. And, significantly, each of Plaintiff's counsel's quotations and references to the *Cortez* appellate opinion, including reference in closing to a willful violation on the disclosure claim, was *completely accurate* and fairly inferred from admitted evidence. Trans Union cannot both proclaim its knowledge of and reaction to *Cortez* as a defense to this case, but claim prejudice at accurate references to that case. This is no case founded upon "false or perjurious evidence" and there was no "miscarriage of justice" here. *Molski*, 481 F.3d at 729. Trans Union therefore does not have a right to a new trial.

C. The Jury's Award of Statutory and Punitive Damages Must Stand

A post-trial motion for a new trial pursuant to Fed. R. Civ. P. 59(a) "may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States … " As the U.S. Supreme Court has warned, however, a court can only grant a new trial in order to correct a "wrong" and when it "clearly appears that the jury ha[s] committed a gross error, or ha[s] acted from improper motives, or ha[s] given damages excessive in relation to the person or the injury …." *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 433 (1996). No such gross error or miscarriage of justice occurred here.

1. A Request For A Constitutional Reduction Is Not A Remittitur

As a threshold matter, it is important to distinguish between a request for a constitutional reduction of a damages verdict (which is only available for punitive damages, does not lead to a new trial, and which both sides can appeal) and a request for a remittitur (which can lead to a new trial upon condition of remittitur, or can be conditional upon the non-acceptance of a new trial). Trans Union here confuses the two, arguing that the jury's verdict is a "violation of due process principles," and citing to cases regarding constitutional reduction, but requesting a new trial or remittitur. Def. Mem., Dkt. No. 321 at p. 24. The concept of "remitting" an award

is unrelated to constitutional concerns.[13] Indeed, no new trial is appropriate under Rule 59 where the alleged error cannot be cured by a new trial, since no jury would pass on the constitutional limitation of damages in a second trial.[14] Trans Union omits the true standard for remittitur or a new trial under Rule 59, perhaps because it wholly fails to satisfy its burden. Indeed, as discussed below, after Trans Union's arguments against the jury's verdict here are

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[13] The Eleventh Circuit put the concept in these terms:

> A constitutionally reduced verdict ... is really not a remittitur at all. A remittitur is a substitution of the court's judgment for that of the jury regarding the appropriate award of damages. The court orders a remittitur when it believes the jury's award is unreasonable on the facts. A constitutional reduction, on the other hand, is a determination that the law does not permit the award.

Johansen v. Combustion Eng'g, Inc., 170 F.3d 1320, 1331 (11th Cir. 1999); *see also Ross v. Kansas City Power & Light Co.*, 293 F.3d 1041, 1049-50 (8th Cir. 2002) ("Here, while perhaps labeled as such, the action the district court took was not actually a remittitur, but instead was simply a reduction of the excessive punitive damages award in conformity with constitutional limits").

[14] In *Gore*, for example, the U.S. Supreme Court found that the Alabama Supreme Court (from where the case was appealed) could make an "independent determination" as to the appropriate maximum, but did not require a new trial. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 561 (1996). If a new trial was necessary, a reviewing court could still review for constitutional excessiveness. *Id. See also State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 429 (2003) ("The proper calculation of punitive damages under the principles we have discussed should be resolved, in the first instance, by the Utah courts [from where the case was appealed]").

untangled, it becomes clear that there is no valid basis to override the jury's determination.

2. The Statutory Damages Award Is Supported By The Evidence

Courts "'must uphold a jury's damages award unless the amount is 'clearly not supported by the evidence, or only based on speculation or guesswork.'" *Guy v. City of San Diego*, 608 F.3d 582, 585-86 (9th Cir. 2010) (quoting *Pavao v. Pagay*, 307 F.3d 915, 918 (9th Cir. 2002). Juries have substantial discretion in making damages determinations, particularly in light of what the Ninth Circuit recently called the "inherent difficulty in quantifying damages for injury to creditworthiness or reputation" under the FCRA. *Kim v. BMW Fin. Servs. NA, LLC*, ___ Fed. App'x ___, 2017 WL 3225710, at *1 (9th Cir. July 31, 2017) (upholding $250,000 damages award in FCRA claim involving a misattributed car loan).

The jury here awarded $984.22 in statutory damages per class member. This award was within the range set by statute for willful violations. 15 U.S.C. § 1681n(a)(1)(A) (permitting award of "damages of not less than $100 and not more than $1,000"). For all the reasons discussed in section III.A above, this award was fully supported by the evidence presented, and Trans Union has plainly failed to demonstrate the existence of clear error or a miscarriage of justice.

Trans Union's only argument that relates to the Rule 59 standard (which it failed to set forth), is that there was insufficient evidence of harm to support the statutory damages verdict. Def. Mem., Dkt. No. 321 at p. 23. Trans Union first claims, without citation, that the statutory damages award can only be sustained if

the evidence of harm is sufficient for all three counts presented to the jury. *Id.* This is a plain misstatement of the law, which provides for statutory damages upon a willful violation of "*any requirement* imposed" by the FCRA. 15 U.S.C. § 1681n(a) (emphasis added). If the jury had been presented with any one of the three claims in this case as a single count, it would have been entitled to award between $100 and $1,000 after finding liability, and any one of the claims is sufficient to support the statutory damage award here.

In any event, the jury had sufficient evidence to find that Trans Union harmed each class member by exposing them to risk "in precisely the way Congress was attempting to prevent" in enacting the FCRA. *Ramirez v. Trans Union, LLC*, 2016 WL 6070490, at *4 (N.D. Cal. Oct. 17, 2016) (denying motion to decertify the class, because class members suffered concrete harm).[15] As set forth above, the evidence at trial showed that Trans Union associated all class members with terrorists, drug traffickers, and other criminals on the OFAC list, and provided only incomplete and misleading information to them in response to their requests for their files. Trans Union has failed to meet its burden under Rule 59, and no

[15] The Ninth Circuit's recent decision in the *Spokeo v. Robins* case on remand from the U.S. Supreme Court makes clear that the interests protected by the FCRA's requirements are "'real,' rather than purely legal creations," and that the FCRA was specifically intended to protect consumers against the risks associated with inaccurate data, including "the uncertainty and stress" that come with inaccurately attributed information. __ F.3d ___, 2017 WL 3480695, at *4 (9th Cir. Aug. 15, 2017).

reduction in the statutory damages award or new trial should be granted.

3. The Statutory Damages Award Is Not Constitutionally Excessive

Trans Union once again faces an exceedingly high burden in seeking to reduce the jury's statutory damages on constitutional grounds. A statutory damages award only violates constitutional due process protections when it is "'so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.'" *U.S. v. Citrin*, 972 F.2d 1044, 1051 (9th Cir. 1992) (quoting *St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66 (1919)); *Perez- Faria v. Global Horizons, Inc*., 499 Fed. App'x 735, 737 (9th Cir. 2012). Statutory damages need not be proportional to plaintiff's own injury in part because "'Congress may choose an amount that reflects the injury to the public as well as to the individual.'" *Coach, Inc. v. Celco Customs Servs. Co*, 2014 WL 12573411, at *24 (C.D. Cal. June 5, 2014) (quoting *Centerline Equip. Corp. v. Banner Personnel Serv., Inc.*, 545 F.Supp.2d 768, 777 (N.D. Ill. 2008)). Where a jury awards damages that are within a range set by statute, such damages are not excessive. *Kim v. BMW Fin Servs. NA, LLC*, 142 F. Supp. 3d 935, 947 (C.D. Cal. 2015) (upholding civil penalty assessed by jury because it was within the statutory limit).

Trans Union once again fails to meet its burden. Notably, Trans Union fails to cite even a single case in

which a court actually reduced a statutory damages award as constitutionally excessive.[16]

The evidence at trial demonstrated that Trans Union harmed all class members by associating them with terrorists, narco-traffickers, international arms dealers, and other criminals prohibited from doing business in the United States, and then failed to adequately inform class members that it associated these harmful records with their credit files. As discussed above, the evidence was sufficient for the jury to conclude that Trans Union's violations of the FCRA showed willful disregard for consumers' rights. In enacting the FCRA, Congress selected a statutory damages range of $100 and $1,000 to reflect the seriousness of a reckless approach to consumer rights. The jury's award of statutory damages is within this range and is thus not excessive.

Furthermore, the Ninth Circuit's decision in *Bateman v. Am. Multi-Cinema, Inc.* firmly rebuts Trans Union's argument here. 623 F.3d 708, (9th Cir. 2010). Although decided at the class certification stage, *Bateman* makes clear that "[t]here is no language in the [FCRA], nor any indication in the legislative history, that Congress provided for judicial discretion to depart from the $100 to $1000 range

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[16] The *Six (6) Mexican Workers v. Arizona Citrus Growers* case does not support Trans Union's argument as it makes no reference to constitutional due process or the relevant standard, instead following an analysis specific to liquidated damages under the (now-repealed) Farm Labor Contractor Registration Act. *Six Mexican Workers*, 904 F.2d 1301, 1309-10 (9th Cir. 1990) (citing *Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332 (5th Cir. 1985)).

where a district judge finds that damages are disproportionate to harm…. the plain text of the statute makes absolutely clear that, in Congress's judgment, the $100 to $1000 range is proportionate and appropriately compensates the consumer." *Id.* at 718- 19.

Trans Union's remaining arguments are simply irrelevant to the analysis here. The fact that Trans Union changed its OFAC procedures in the face of repeated litigation has no bearing on the appropriateness of statutory damages. Trans Union's continued use of name-only match logic through 2013 bolsters the jury's finding of willfulness. Furthermore, no "overlap" between statutory and punitive damages exists in this case—the FCRA makes plain that statutory damages are an alternate form of compensatory damages,[17] and the jury heard an entirely separate set of instructions and argument on punitive damage, making clear that the punitive phase of the trial served a separate purpose from statutory damages. Tr. Vol. 6, 939:5-940:5.

Trans Union's comparison of the jury's statutory damages award to its revenue from the OFAC product during the class period is inappropriate for several reasons.[18] First, as set forth in Plaintiff's Motion to

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[17] 15 U.S.C. § 1681n (offering statutory damages as an alternative to actual damages).

[18] Although it should be disregarded entirely, it is worth noting that Trans Union's representation that its revenue from "OFAC sales during the period of alleged non-compliance" was only $2.1 million is misleading. Def. Mem., Dkt. No. 321 at pp. 23-24. Although the class period in this case covers only January through July of 2011, Plaintiff's contention is that Trans Union

Strike the Gilbert Declaration, this additional evidence is not properly before the Court. Trans Union failed to produce this information in discovery despite Plaintiff's requests, failed to disclose Mr. Gilbert as a witness, and stipulated to a statement regarding its financial condition which excluded this information as well as other evidence Plaintiff sought to introduce. Dkt. No. 327. Furthermore, under the relevant legal standard, Trans Union's revenue or profit for a time from the practice at issue has no bearing whatsoever on the appropriateness of a constitutional reduction in statutory damages. *Citrin*, 972 F.2d at 1051 (considering only amount of damages and interests served by statutory penalty and determining that no reduction was necessary). The Due Process clause does not require Congress to "make illegal behavior affordable, particularly for multiple violations." *Phillips Randolph Enterprises, LLC v. Rice Fields*, 2007 WL 129052, at *3 (N.D. Ill. Jan. 11, 2007); *Bateman*, 623 F.3d at 719 (proportionality of statutory damage to harm does not change as dollar amount of total award goes up—it increases "at exactly the same rate as the class size.").

The jury's award of $984.22 in statutory damages per class member was within the range set by Congress as appropriate to address the harms associated with willful violations of the FCRA, and was appropriate here.

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practices were in violation of the FCRA from the product's inception in 2002 and as late as 2013

4. The Punitive Damages Award Is Appropriate

Upon a finding of a willful violation, the FCRA also permits an award of punitive damages, in addition to statutory damages. 15 U.S.C. § 1681n(a)(2). After hearing additional evidence, argument and instruction, the jury here awarded $6,353.08 in punitive damages to each class member. Dkt. No. 306. Trans Union argues that the Court's instruction to the jury on punitive damages was improper, and that the award should be reduced or eliminated on constitutional grounds. Each of these arguments fails.

i. The Court's Instruction on Punitive Damages Was Proper

District courts have "broad discretion" in formulating jury instructions. *U.S. v. Harris*, 587 Fed. App'x 411, 411 (9th Cir. 2014) (quoting *U.S. v. Hayes,* 794 F.2d 1348, 1351 (9th Cir. 1986)). Post-trial review of the instructions to the jury considers whether the instructions, "as a whole, were inadequate or misleading." *Masson v. New Yorker Magazine, Inc.*, 85 F.3d 1394, 1397 (9th Cir. 1996) (quoting *Gizoni v. Southwest Marine Inc.*, 56 F.3d 1138, 1142 n.5 (9th Cir. 1995)). The essential issue is whether the court misstated the elements to be proved. *Id.* Failure to include additional language requested by a party is not error so long as the instruction correctly describes the legal requirements of the FCRA. *Kim v. BMW Fin. Servs. NA, LLC*, ___ Fed. App'x ___, 2017 WL 3225710, at *2.

The Court's punitive damages instruction was in accordance with the Ninth Circuit's Model Civil Jury

Instruction 5.5 (2007), and correctly described the standard for awarding punitive damages under the FCRA. Trial Tr. Vol. 6, pp. 939-40. The Court properly relied upon the authoritative Supreme Court precedent on availability of damages under the FCRA. *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47 (2007). The Court's punitive damage instruction quotes repeatedly from *Safeco*, stating that "[y]ou may award punitive damages only if you find that TransUnion's conduct was in reckless disregard of the rights of plaintiff and the class" and defining reckless disregard in accordance with *Safeco*. 551 U.S. at 57-60, 69 (willfulness includes actions taken "with reckless disregard" of consumer rights, including taking actions "entailing 'an unjustifiably high risk of harm that is either known or so obvious that it should be known.'"). The Court furthermore instructed the jury regarding the distinction between compensatory and punitive damages. Trial Tr. Vol. 6, 939:7-9.

Trans Union's assertion that an FCRA plaintiff's burden of proof is higher for punitive damages than for statutory damages is simply incorrect. The Supreme Court acknowledged in *Safeco* that the same finding of willfulness justifies both statutory and punitive damages. 551 U.S. at 53 (upon a finding of willfulness under the FCRA, a consumer is entitled to "statutory damages ranging from $100 to $1,000, and even punitive damages").[19] *See also Saunders v. Equifax Info. Servs. L.L.C.*, 469 F. Supp. 2d 343, 348

[19] *Safeco* overruled many of the cases Trans Union cites. Reliance on these outdated cases, and on post-*Safeco* cases which continued to cite them, lends no support to Trans Union's argument.

(E.D. Va. 2007) (hereinafter, "*Saunders*") ("The jury's $1,000 statutory damages award properly allowed the jury to consider and then render an award of punitive damages for any willful violation of the FCRA.").[20]

The Court's instruction on punitive damages accurately described the relevant legal standard, and was not otherwise misleading, and it was thus proper.

ii. A Reduction in Punitive Damages Is Not Warranted

No constitutional basis exists to reduce the jury's punitive damages award here. There is no mathematical formula or "bright line ratio that a punitive damages award cannot exceed." *State Farm*, 538 U.S. at 425. The U.S. Supreme Court has identified three "guideposts" for assessing punitive damages: (1) the reasonableness of the punitive damages in relation to the reprehensibility of defendant's actions; (2) the disparity between the punitive damages awarded and the compensatory damages awarded (the "ratio"), and (3) the difference between the punitive damages awarded by the jury and civil penalties authorized in comparative cases. *Id.* at 418 (*citing Gore*, 517 U.S. 559).[21]

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[20] Even if a different, higher standard is required for punitive damages, it was met here. The evidence showed that Trans Union's noncompliance with the FCRA was the result of deliberate corporate decision-making in the face of substantial notice, lasted over a decade, and adversely affected thousands of consumers. Plaintiff submits that the evidence at trial and inferences drawn therefrom was sufficient satisfy the highest imaginable standard for punitive damages.

[21] The High Court has overturned only two punitive damages verdicts because of their size—*Gore* and *State Farm*, *supra*. *See*

a. The Punitive Damages Verdict Here Is Reasonably Related to the Reprehensibility of Defendant's Conduct

As far as fair credit reporting cases are concerned, Trans Union's conduct here was highly reprehensible. Defendant is well aware of its longstanding and unambiguous responsibility under FCRA section 1681e(b) to assure the maximum possible accuracy of records it reports, and under FCRA section 1681g to make clear and complete disclosures to consumers, including information about their rights under the FCRA. *See, e.g. Guimond*, 45 F.3d at 1332- 33; *Cortez*, 617 F.3d at 709-12. Indeed, "notwithstanding the conclusion of Trans Union's lawyers, the breadth and scope of the FCRA is both evident and extraordinary." *Cortez*, 617 F.3d at 721.

And Trans Union was on notice of problems with its practices regarding OFAC data as early as the commencement of the *Cortez* litigation in 2005, and the jury's verdict finding violations of the FCRA's accuracy and disclosure provisions in 2007. The Third Circuit found that Trans Union's treatment of OFAC data was reprehensible because it "ignored 'the overwhelming likelihood of liability' and contorted its policies to avoid its responsibilities under the FCRA." 617 F.3d at 723 (quoting *State Farm*, 538 U.S. at 419). The *Cortez* court further found that Trans Union's

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Saunders, 469 F. Supp. 2d at 349 n.7. Those cases are very different from this case, with punitive damages more than 140 times the compensatory damages awards. Neither the Supreme Court nor Congress has ever limited punitive damages under the FCRA.

failure to use dates of birth when available to match consumers to the OFAC list was reprehensible. *Id.*

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Trans Union's behavior was reprehensible then, and it became only more so when Trans Union ignored the Third Circuit's warning by continuing to use name-only matching logic to associate consumers with the OFAC list, and continuing to fail to provide clear and accurate disclosure of OFAC data along with a statement of rights. The evidence in this case is that Trans Union's policies with respect OFAC information as applied to Ramirez and the class were substantively the same as those found to be reprehensible by the *Cortez* jury in 2007 and the Third Circuit in 2010: Trans Union still used name-only matching logic, disregarding all additional identifiers including dates of birth. Trans Union's disclosures to consumers it associated with the OFAC list continued to make no mention whatsoever of OFAC information. And despite the clear warning of the *Cortez* litigation that its actions were already both willful and

reprehensible, Trans Union never even considered pausing sales of OFAC data in order to improve its practices. The depth of Trans Union's disregard for consumer rights with respect to OFAC was put on stark display at the trial in this matter, where Trans Union's corporate representative insisted that its OFAC procedures in fact *benefitted* class members. Tr. Vol. 3 (O'Connell) 545:8-16.

Trans Union's conduct plainly satisfies this "reprehensibility" standard, and an award of $6,353.08 per class member is more than reasonable.

The circumstances underlying *State Farm*, a bad faith insurance claim matter stemming from a fatal car accident, led the Court to discuss five factors as to "reprehensibility," factors which are not a meaningful match for FCRA consumer cases. *See Saunders*, 469 F. Supp. 2d at 351 (discussing *State Farm* in FCRA punitive damages case, refusing to remit 80:1 ratio of punitive to compensatory damages, and explaining why reprehensibility factors are not a good guide for FCRA cases). Specifically, the first two of the *State Farm* reprehensibility factors should be given less weight in consumer actions since FCRA actions typically will not involve physical injury of the type in *State Farm*. *Id*. *See also Kemp v. American Telephone & Telegraph Co*., 393 F.3d 1354, 1363 (11th Cir. 2004) (upholding district court's finding that first two factors of State Farm reprehensibility analysis did not apply to consumer overcharging case).

Additionally, the final factor can also be discounted since malice is not necessary in FCRA cases to recover punitive damages. *See Saunders*, 469 F. Supp. 2d at 351. *See also Cushman v. Trans Union*

Corp., 115 F.3d 220, 227 (3d Cir. 1997); *Stevenson v. TRW, Inc.*, 987 F.2d 288, 294 (5th Cir. 1993); *Dalton*, 257 F.3d at 418; *Cousin v. Trans Union Corp.*, 246 F.3d 359, 372 (5th Cir. 2001) ("Malice or evil motive need not be established for a punitive damages award [in FCRA cases], but the violation must have been willful") (citation omitted).

Moreover, the Supreme Court stated that the reprehensibility considerations are not a mandatory checklist that must be satisfied in full, but that the absence of all five factors renders a punitive damages award "suspect," although not necessarily unconstitutional. *State Farm*, 538 U.S. at 418. This analysis is bolstered by the Ninth Circuit's conclusion that when punitive damages are awarded pursuant to a statutory regime, as opposed to under state common law, "rigid application of the *Gore* guideposts is less necessary or appropriate." *Arizona v. ASARCO LLC*, 773 F.3d 1050, 1056 (9th Cir. 2014). Nevertheless, the evidence of record satisfies the factors applicable to the case at bar.

First, the harm here was neither purely "economic" nor "physical." A major part of the harm was reputational and emotional in nature—Trans Union associated class members with terrorist and criminals, and deprived class members of the information they needed to correct the problem. Second, this was not a case that involved the "health or safety of others." Third, the evidence demonstrated that the OFAC information associated with class members could result in them being entirely cut off from the U.S. financial system, potentially rendering them "financial vulnerable." Tr. Vol. 3 (Ferrari)

419:10-13, 425:24-426:12. Each class member was substantially outmatched in resources by Trans Union, a billion-dollar corporation. Fourth, Trans Union engaged in repeated conduct. Minimally, it associated the 8,185 class members with the OFAC list during the seven-month class period using name-only matching logic and denied each of them a clear and accurate disclosure and statement of FCRA rights. But the class members in this case were not the only consumers whose rights were violated by Trans Union's noncompliance with the FCRA. It used name-only matching logic from 2002 to 2013. And for almost the same period it failed to disclose OFAC information. Trans Union's own internal statistics suggest that these policies affected tens of thousands of consumers per year. Ex. 10 at 010-005. Trans Union argues that its behavior was not reprehensible because it was trying to comply with the FCRA. Def. Mem., Dkt. No. 321 at p. 30. Not so. The evidence shows that Trans Union deliberately chose not to comply with the FCRA with respect to its OFAC product, from 2002 until mid-2011, in spite of the FCRA's plain language and the *Cortez* jury verdict. Trans Union took the calculated risk of an appeal, while continuing to use the same procedures. And even after losing, it deliberately continued selling the OFAC product knowing its approach was inadequate and *already* reprehensible. The reprehensibility guidepost is fully satisfied here.

b. The Relationship Between Statutory and Punitive Damages Here Was Constitutionally Appropriate

The jury's measured award of $6,353.08 in punitive damages per class member, representing approximately a 6:1 ratio, is entirely appropriate here.

Multiple cases decided after *Gore* have upheld ratios much greater than 4:1. Indeed, the Fourth Circuit upheld a punitive-compensatory damage ratio of 80:1 in a comprehensive and well-reasoned decision on an FCRA case, following defendant's motion for a constitutional reduction, just like Trans Union's motion here. *See Saunders v. Equifax Information Services, LLC*, 526 F.3d 142 (4th Cir. 2008) (finding that $80,000 in punitive damages for a single consumer who was awarded $1,000 in statutory damages was constitutionally appropriate in light of similar FCRA awards and the need to adequately punish and deter a large, wealthy corporation).[22] But that is only one example, out of many:

- 300,000:1 ratio proper. *Arizona v. ASARCO LLC*, 773 F.3d 1050, 1054-56 (9th Cir. 2014) (affirming punitive damages award of $300,000 which accompanied $1 in nominal damages, in part because strict adherence to *Gore* ratio analysis is not appropriate in the case of limited nominal or statutory damages) (citing *Saunders*).

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[22] *See also Daugherty v. Ocwen Loan Servicing, LLC*, ___ Fed. App'x ___, 2017 WL 3172422, at *12 (4th Cir. 2017) (100:1 ratio appropriate in FCRA case) (citing *Saunders*).

- 125,000:1 ratio proper. *Abner v. Kan. City S. R.R.*, 513 F.3d 154, 165 (5th Cir. 2008) (affirming punitive damages award of $125,000 accompanying nominal damages of $1);
- 75:1 ratio proper. *Willow Inn, Inc. v. Public Service Mut. Ins. Co.*, 399 F.3d 224, 233- 37 (3d Cir. 2005) (upholding punitive damage award of $150,000 in insurer's bad faith case involving property damage where compensatory damages were $2,000).
- 1,500:1 ratio proper. *Stark v. Sandberg, Phoenix & von Gontard, P.C.*, 381 F.3d 793 (8th Cir. 2004) (upholding $6,000,000 arbitration award in FDCPA case of $4,000 in damages).[23]

By contrast, the two cases where the U.S. Supreme Court overturned punitive damage awards *because of their size* are materially different. *Gore* had a verdict of $4,000 in compensatory damages and $2,000,000 in punitive damages, and *State Farm* had a verdict of $2.6 million in compensatory damages and $145 million in punitive damages. Thus the ratios of punitive to compensatory damages in both of those cases, which the U.S. Supreme Court found to be offensive, were 500:1 and 145:1, respectively. *See Saunders* 469 F. Supp. 2d at 349 n. 7. Here, the punitive to compensatory damages ratio is approximately 6:1, well under the singledigit ratio (l0:1 or less) that *State Farm* suggests in appropriate. 538 U.S. at 425.

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[23] *See also Williams v. First Advantage LNS Screening Solutions, Inc.*, ___ F. Supp. 3d ___, 2017 WL 819486, at *17 (N.D. Fla. Mar. 2, 2017) (upholding 13.2:1 ratio of compensatory to punitive damages in FCRA case where a large, wealthy CRA engaged in a "burden-shifting strategy" to assuring accuracy).

Trans Union begins its opposition to punitive damages by claiming that, because the jury awarded statutory damages, any punitive damages at all would offend the constitution because of an "impermissible overlap" between the types of damages. Def. Mem., Dkt. No. 321 at pp. 24- 26. The FCRA, however, specifically provides that statutory damages are an alternate form of compensation to actual damages. 15 U.S.C. § 1681n(a). *See also Bateman*, 623 F.3d at 718-19 (primary purpose of FCRA statutory damages is to compensate individuals without need to prove actual damages).[24] And no such overlap existed here, where the jury heard separate instructions and argument on statutory and punitive damages, deliberately separately, and delivered separate verdicts.

The fact that this is a class action does not change the analysis. *Id.* at 719 ("Despite Congress's awareness of the availability of class actions, it set no cap on the total amount of aggregate damages, no limit on the size of a class, and no limit on the number of individual suits that could be brought" against a single defendant). Trans Union's claims that punitive damages are inappropriate when "class action suit has already brought the relevant universe of potentially affected individuals before the court" and they have been awarded statutory damages. Trans Union cites no supporting authority for this proposition. But even

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[24] The cases under the Copyright Act on which Trans Union relies are irrelevant to the analysis here, in light of the substantial differences between that statute's damages provision and that of the FCRA. Unlike the FCRA's single $100-$1,000 range for willful violations, the Copyright Act provides for multiple levels of statutory damages to account for different levels of culpable conduct. 17 U.S.C. § 504(c).

if it had done so, it is simply untrue that the "relevant universe of affected individuals" is before the court here. The evidence of record is that Trans Union used the same name-only matching logic to associate consumers with the OFAC list from 2002 until 2013, and failed to include OFAC data in disclosures to consumers until July of 2011. Trans Union's records indicate that these practices affected tens of thousands of consumers per year. Thus, the 8,185 class members affected during the sevenmonth class period represent only a small fraction of the "universe of affected individuals."

Trans Union points out that courts have limited punitive damages, including under the FCRA, where substantial compensatory damages have been awarded. Def. Mem., Dkt. No. 321 at pp. 24-25 (citing, *inter alia*, *Bach v. First Union Nat'l Bank*, 486 F.3d 150, 156 (6th Cir. 2007)). But a limited award of $984.22 per class member cannot possibly be considered substantial, and Trans Union provides no authority suggesting that it could. To the contrary, when the Ninth Circuit has upheld reductions in punitive damages because compensatory damages were high, it typically did so when a single consumer was set to receive tens of thousands of dollars. *See, e.g.*, *Bennett v. Am. Medical Response, Inc.*, 226 Fed. App'x 725, 728 (9th Cir. 2007) ($100,000 in compensatory damages was substantial); *Bains LLC v. Arco Prods. Co., Div. of Atlantic Richfield Co.*, 405 F.3d 764, 776 (9th Cir. 2005) ($50,000 to a single plaintiff was substantial).[25]

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[25] Other circuits have defined "substantial" compensatory damages in the range of $300,000 to $4 million. *See Jurinko v.*

Trans Union once again invokes its late-presented and self-serving declaration regarding its alleged revenues to argue that the punitive damages award should be reduced. Def. Mem., Dkt. No. 321 at pp. 28-29 (citing Declaration of David Gilbert). As discussed above and in Plaintiff's Motion to Strike (Dkt. No. 327), the Gilbert Declaration is not properly before the court and should be disregarded. In any event, the best evidence of a defendant's ability to withstand a punitive damages award is exactly what the jury was presented with here: Trans Union's net worth. *Todd v. AT&T Corp.*, 2017 WL 1398271, at *1 (N.D. Cal. Apr. 19, 2017) (in FCRA lawsuit, collecting cases finding that net worth of defendant relevant to punitive damages and holding that only *current* net worth is relevant); *Cortez*, 617 F.3d at 718 n. 37 (relative wealth of defendant in the form of net worth is appropriate evidence of financial condition).

The $984.22 punitive damages award Trans Union's suggests would not be "punitive" at all for a company the size of Trans Union. Given the modest statutory damages award here, the reckless and

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Medical Protective Co., 305 Fed. App'x 13, 28 (3d Cir. 2008) (noting that $1.6 million in compensatory damages is substantial, and collecting cases indicating that compensatory damages of $366,939, $600,000, $1.65 million, $2.3 million, $3.2 million, and over $4 million were sufficiently high to merit reduction in punitive damages); *Boerner v. Brown & Williamson Tobacco Co.* 394 F.3d 594, 603 (8th Cir. 2005) ($4 million compensatory damages award was substantial; contrasting case of $500,000 compensatory damages with another case where compensatory award was "'only $70,000'") (quoting *Morse v. Southern Union Co.*, 174 F.3d 917, 925-26 (8th Cir. 1999)); *Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140, 165-66 (2d Cir. 2014) ($1.32 million in compensatory damages was substantial).

reprehensible nature of Defendant's conduct, the fact that this is a consumer protection case under a remedial statute such as the FCRA, and Defendant's net worth, the approximately 6:1 ratio is appropriate.

c. Civil Penalties Comparison Not Germane

Trans Union also asserts that the difference between the civil penalties available under the FCRA and the jury's punitive damage award suggests that the award is excessive. This argument has no merit. As the *Saunders* court held, "since this limit is not applicable to actions brought under the FCRA by private citizens, it is not particularly helpful in assessing the constitutionality of the punitive damage award. Accordingly, for FCRA cases brought by private citizens, the third guidepost offers little help to this Court's punitive damages analysis." *Saunders*, 469 F. Supp. 2d at 353 (internal quotations and citation omitted). There is, therefore, no truly "comparable" civil penalty that the Court could be guided by.

In determining the size of the punitive damages award here, the jury was certainly within its province to consider the reach of Trans Union's conduct beyond the class members here. Although the jury could not, and did not, compensate non-parties, it could certainly punish Trans Union in a fashion so as to *deter future harm to others* by the same reckless conduct. *See Philip Morris USA v. Williams*, 549 U.S. 346, 356-57 (2007); *Cortez*, 617 F.3d at 723 (punitive damages serve to incentivize Trans Union not to "ignore the requirements of the FCRA each time it creatively

incorporates a new piece of personal consumer information in its reports.").

In sum, the jury's punitive damages verdict was appropriate, and Trans Union offers no valid reason to reduce it.

D. The Class-wide Judgment Is Appropriate

Trans Union once again repeats its argument that this case should not be a class action because Plaintiff is allegedly atypical. The Court should reject this argument again.[26]

The evidence presented at trial was the same evidence before this Court upon class certification, and demonstrated that in all material ways, Plaintiff's experience was typical of all other class member. *Ramirez*, 301 F.R.D. 408, 419-20 (N.D. Cal. 2014). As with Ramirez, Trans Union associated each class member with the OFAC list using name-only matching logic. Tr. Vol. 3 (O'Connell) 468:21-470:21. Trans Union sent Ramirez and all other class members same form of disclosure which did not include OFAC information, and the same unclear separate letter. Tr. Vol. 4 (Walker) 708:6-709:1; Ex. 3. The claims of Ramirez and the class are not based

[26] In citing *Town of Chester v. Laroe Estates, Inc.* 137 S. Ct.1645 (2017), Trans Union simply grasps at straws. *Town of Chester* discusses standing in the context of multiple plaintiffs or litigants, but makes no reference whatsoever to class actions. Further, that opinion makes clear that standing concerns are implicated because an intervenor seeks "relief that is *different* from that which is sought by a party with standing." *Id.* at 1651 (emphasis added). This class action, like all class action, seeks relief that is the *same* for all class members, rendering such analysis inapplicable.

upon a denial of credit. *Ramirez*, 301 F.R.D. at 419 ("Plaintiff would have the same claims even if he had never visited the Nissan Dealer or been denied credit."). Likewise, whether the word "potential" appeared on the credit reports of other class members is irrelevant to the class claims, because as this Court recognized, it is the association with the OFAC list that is misleading, regardless of any qualifying language, and thus "runs afoul of the FCRA." *Id.* The evidence underpinning these conclusions is the same evidence that was presented to the jury here.

This Court should also reject Trans Union's repeated argument that class members were allegedly not harmed. As discussed above, Plaintiff presented sufficient evidence for the jury to conclude that Trans Union incorrectly identified each class member as a potential match to the OFAC list. Incorrect OFAC records put consumers at risk of losing their ability to do business in the United States, as well as emotional and reputation harms that come with being identified as a terrorist or enemy of the state. Tr. Vol. 3 (Ferrari) 413:10-17, 445:11-13; *Ramirez*, 2016 WL 6070490, at *4. Likewise, Plaintiff presented evidence that all class members were denied clear and complete disclosure of the files, and did not receive a statement of FCRA rights. As this Court found, Trans Union's failure to provide this information created "precisely" the risk that "Congress was attempting to prevent when it mandated what disclosures consumer credit reporting agencies must make to consumers: a risk that the consumer is not made aware of material inaccurate information in the consumer's file, nor aware of how to dispute the inclusion of the harmful

information." *Id.* None of Trans Union's cited cases are to the contrary.[27]

Trans Union argues that the fact that it sold a credit report containing an OFAC alert to a third party regarding 25% of class members during the six month class period suggests that other class members were not harmed by its conduct. Def. Mem., Dkt. No. 321 at p. 32. To the contrary, this evidence underscores the risk of harm to class members—if a quarter of the class made an application for credit during only a six month period, this suggests that over the course of two years, *all* of them would have at least one credit application resulting in sale of a report to a third party containing an inaccurate and defamatory OFAC alert.

Finally, Trans Union's request to remove class members whose notices were returned as undeliverable should be denied. Rule 23 does not

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[27] As this Court is aware, *Dreher v. Experian Info. Solutions, Inc.*, 856 F.3d 337 (4th Cir. 2017) deals with an entirely different provision of the FCRA and does not address the harm inflicted when inaccurate information and a statement of rights is entirely omitted from a consumer disclosure.

Smith v. Bank of Am., N.A. is even less applicable here. 679 Fed. App'x 549 (9th Cir. 2017). In *Smith*, the Ninth Circuit upheld dismissal of a claim relating to inaccurate disclosures on IRS forms. *Id.* Unlike the FCRA claims at issue here, which are widely recognized as designed to protect specific consumer rights, the provision at issue *does not provide for a private right of action*. *Smith v. Bank of Am., N.A.*, 2015 WL 12979198, at *3 (C.D. Cal. Feb. 3, 2015) (citing 26 U.S.C. § 6050H).

Medellin v. IKEA U.S.A. West, Inc. is even further afield, given that the plaintiff there actually *conceded* that she failed to allege cognizable harm, which is plainly not the case here. 672 Fed. App'x 782, 783 (9th Cir. 2017).

require that a notice program be perfect—it need only provide "the best notice that is practicable under the circumstances," sent to class members identified through "reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *In re Integra Realty Resources, Inc.*, 354 F.3d 1246, 1260-61 (10th Cir. 2004) (notice which is reasonably calculated to apprise interested parties of pendency of action is sufficient, even when it fails to reach 1,455 of the 6,423 class members) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

Furthermore, as Trans Union points out, Rule 23 requires a class judgment to identify those class members to whom notice was *sent*, and does not limit judgment to those who actually received notice. Fed. R. Civ. P. 23(c)(3)(B).[28]

Here, Trans Union stipulated to the form and method of notice to class members, and has thus waived any argument that notice was improper. Dkt. No. 165 (stipulation of the parties setting the form and method of notice). Specifically, the parties agreed that individual notice would be mailed to each of the 8,185 certified class members at identified by Trans Union on the class list. *Id.*; Ex. 8 (class list).

Trans Union cites no authority suggesting that class members whose notices were returned as undeliverable must be excluded from the judgment, and Plaintiff is aware of none. Indeed, the only authority Trans Union cites for this proposition, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 794 (1985),

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[28] Plaintiff does not object to any amendment to the judgment that this Court deems necessary to comply with the formalities of Rule 23(c)(3)(B).

demonstrates that the class notice program followed here was proper. The High Court found that the procedure at issue in *Shutts*, "where a fully descriptive notice *is sent* by first-class mail to each class member, with an explanation of the right to 'opt out,' satisfies due process." *Id.* at 798 (emphasis added). This is exactly the procedure followed in giving notice to the class here.

While the notice program here clearly complied with Rule 23 and due process requirements, Plaintiff is committed to ensuring that as many class members as possible receive the statutory and punitive damages awarded by the jury, including undertaking additional skiptracing efforts in order to locate the most up-to-date addresses of class members. Furthermore, given that Trans Union itself maintains and regularly updates a credit file on each class member which includes current mailing address, the means to do so is within Trans Union's power. Plaintiff submits that when checks are to be delivered to class members, Trans Union should be required to provide the most up-to-date address data for class members, rather than exclude any class member from recovery.

IV. CONCLUSION

For all the foregoing reasons, Defendant's motion should be denied in full.

Dated: August 18, 2017

s/John Soumilas
s/John Soumilas

Attorney for Plaintiff Sergio L. Ramirez and the Certified Class

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Excerpts from Transcript of Hearing on Motion for Retrial and Motion for Judgment as a Matter of Law (Oct. 5, 2017)

* * *

[3] me to look at and try to give me some pause.

MR. NEWMAN: Well, I think for today, your Honor -- and I appreciate that comment -- I think it's perhaps most productive if we talk about the Ninth Circuit's recent decision in *Robins v. Spokeo*, and also if we talk about *Six Mexican Workers* and review of the statutory damages for excessiveness, and *State Farm* and the cases following *State Farm* involving review of the punitive damages for excessiveness.

THE COURT: Okay.

MR. NEWMAN: So if your Honor's happy with -- or accepting of that presentation --

THE COURT: I appreciate that.

MR. NEWMAN: Okay, thank you, your Honor. And I think -- this a monumental verdict, your Honor, and completely unexpected, and in our view, it's completely untethered to what the evidence showed about impact to the class or even risk of impact, and I think there is where the new guidance we have from the Supreme Court in the *Spokeo* case has come in.

And I know during the course of the case we've had a lot of discussions --

THE COURT: Yes, it was not so new. We talked about it.

MR. NEWMAN: No, no, I understand, but what the Ninth Circuit has done is new, and is post-verdict, and I think [4] what we have out of the Ninth Circuit,

in a fair reading of that opinion, is tremendous skepticism about whether standing exists for violations of the Fair Credit Reporting Act that do not result in publication of a false report, and you have 80 percent of the class here where there is no publication.

So 80 percent of the class that has no harm, and Rule 23 --

THE COURT: Well, I'm going to stop you for a second. So if I -- I'm sitting there and I get my letter, my two letters from Trans Union. I get my credit report and I get -- then I get the courtesy letter. And so then, I call up Trans Union, I've got to get on the phone and I have to spend time and I have to get them to now remove me from the OFAC alert, no standing, no Article III standing.

MR. NEWMAN: Well, there is no publication of a report, and --

THE COURT: Okay, so I just want to make it clear that it's your -- Trans Union's position that even doing something that then requires a consumer to call up Trans Union, to sit on the phone to take those affirmative acts, there's no standing at all. That's not injury, no harm.

MR. NEWMAN: Well, there's -- let's back up and talk about that transaction your Honor has just described. There's no report that's been sold on that consumer that has the OFAC information on it yet. It is --

[5] **THE COURT**: And in part, for many of these, that will be because they called up and got their name removed from Trans Union's OFAC alert before that. So the reason that didn't happen -- for some, not all

class members -- is because the consumer took the step of doing that.

Is it your position -- because you said 80 percent of the class has no harm -- is it your position they have no standing constitutionally, that they suffered no harm?

MR. NEWMAN: Well, remember, we don't know why these people contacted Trans Union to get their credit file, but we do know that the OFAC alert is not always sold. So something else, for whatever reason, people are allowed to get a free copy of their report once a year. So it could be someone has been, you know, going along their life; Trans Union has never sold any OFAC, anything about this person. The only thing that triggers the letter is the hypothetical possibility that you -- at some point in the future, someone might buy a report from Trans Union that has the name screen add-on attached to it.

So you don't know, for this 80 percent of the population, if OFAC information of any kind had ever been sold, or will ever be sold in the future.

THE COURT: Well --

MR. NEWMAN: So --

THE COURT: -- ever be sold -- look, your company makes money because it all sold, because people have to apply [6] for credit. So I don't accept that. You want me to assume that it's never going to be sold?

So by the way, they should have done nothing, and they should have waited until they applied for credit, and then once they applied for credit, then call up

Trans Union and say, get me removed from the OFAC alert?

I guess I'll just stop you there. There is no way that this Supreme Court, even in its current composition, would agree with you that if what you do requires me to have to call you up and get my name removed from something that should never be there in the first place, that that is not injury and standing. So if you have some other subset you want to talk about, we can talk about that.

MR. NEWMAN: Okay, well, again, your Honor, what the Ninth Circuit said is that when you're talking about -- they didn't say anything about the disclosure claim other than to say it wasn't before them, and there was, you know -- there was tremendous concern about finding standing except in the case of publication, and if your Honor -- and we cited this to your Honor before, the *Dreher* case, and I know your Honor's view on the case, also recent authority of the *Groshek* case out of the Seventh Circuit, and there has to be something more. Just perceiving a bad disclosure is not enough. There has to be something else.

And you don't know -- there is no evidence of what [7] happened to this population, and certainly there was evidence that many of these people might not have to do anything at all because of the process of clearing, and by --

THE COURT: Why would they not have to do anything at all?

MR. NEWMAN: Well, again, because many people are cleared, it is possible, because Trans Union doesn't always sell the OFAC alert, right? Even in

cases where a report is sold, the OFAC is an add-on product, not everyone buys it, and even cases where it is sold, there are many people who are just cleared because, okay, the name is -- the first name, last name is the same, but we see it's not the person.

THE COURT: Why are we talking about anyone other than Mr. Ramirez in the first place?

MR. NEWMAN: Well, because, your Honor, Rule 23 obviously is an aggregation of claims --

THE COURT: But we had this issue. I addressed this issue, and isn't there binding Ninth Circuit opinion, based, I think, on Supreme Court opinion, that says you only need to find standing as to the named class rep? Yes or no.

MR. NEWMAN: Well, your Honor has made that ruling before, and your Honor's made that ruling under *Bateman*, but --

THE COURT: Is that what *Bateman* says?

MR. NEWMAN: *Bateman* didn't involve what happens at trial, and you get all the way through trial, and there's no --

* * *

[16] also evidence that Trans Union took steps to reduce the hit rate.

And so in terms of the scale of reprehensibility, it's not as if they did nothing; so they didn't do enough. So that is something to be taken into account, that pushes that number back towards that *Exxon* presumptive one-to-one.

Impact on the class is also a factor to be considered under *State Farm*, and again, there was no

proof of actual impact, and there you had a differential impact that the reports sold population is a much smaller percentage of the class, and again, even within that population, you don't know of anyone who was actually denied credit as a result of this, and again, I think that should push the analysis further down the reprehensibility scale.

And now talking about the actual ratio, what's the denominator in the fraction here? To the extent the statutory damages award already has a punishing component, you're really not just dividing the punitives by the statutory damages. The ratio, really, in terms of the punitive damages to the value of the harm, it's something more than six and-a-half to one, and I would suggest it's --

THE COURT: I don't -- I don't know, and I guess, Mr. Newman, I think what -- you know, those eight people sat there, right? It's not just me. Those eight people sat there and listened and they came to that conclusion, actually [17] relatively quickly, and I think what Trans Union is doing, it's actually undervaluing the harm that when someone gets a letter and says, you know, you may be on this Terrorist Watchlist, that post-9/11, post-2001, that means a lot. That's actually a pretty heavy thing, and serious thing, and maybe what the jury was saying, they didn't think Trans Union took that serious.

And I don't know how you can say that's worth less than 900, or whatever -- I assume you guys have figured -- I mean, I'm sure there was some rationale for that particular number. I don't know what it is, but how could I possibly sit here and say, no, not worth that, not worth that? Especially given Mr. Ramirez's

testimony, which was quite compelling as to what that means to be so identified.

MR. NEWMAN: Okay, but there is -- the people involved, they still have the first name and last name as someone who's on the list. If someone goes to that OFAC website, they may still pop up.

THE COURT: No, they won't, because there's other information that's there.

MR. NEWMAN: No, your Honor saw the evidence that if you just put in the name, you know, Donald Trump, it comes up. You can't strain for date of birth on the OFAC site.

But I understand your Honor's point. You can certainly understand why someone might read the letter and have a concern, as Mr. Ramirez did. That's different from there

* * *

[27] think it was wrong, I can't disagree -- viewed the conduct differently than Trans Union did, obviously. They took it to term.

MR. NEWMAN: As we've mentioned before, it's a difficult case, because we were put into a trial against a population that was significantly -- it was really different from Mr. Ramirez's experience in just about every way. You had the -- even setting aside the issue of reports sold versus not reports sold, the fact that it came through a reseller, that the fact that the person at the dealership didn't follow his training, and we've -- the jury did not have an accurate picture of the class as a whole and was basically instructed, you must assume Mr. Ramirez's experience across the entire class.

THE COURT: Well, I'm going to disagree -- I'm not going to accept your words. You can make that argument. I don't think that's correct at all. I made my rulings as to why you have your rights on appeal as to that.

I think the jury -- again, I just think, to this day, Trans -- I'm sure you're glad you tried the case when you did and not this month -- that Trans Union just didn't really understand, like, what an impact it is, and what it could mean to actually get something in the mail that says you're a potential match to a Terrorist Watchlist. That would be terrifying, terrifying to anyone, whether it had some economic [28] impact on you or not.

MR. NEWMAN: I -- your Honor, I was once pulled over for speeding and, like, held by a police officer because there happened to be, like, a warrant out for murder for a guy named Stephen Newman, okay? That was unsettling. It was not emotionally distressing. I mean, it was -- I mean, like, I'm a person this actually happened to, and I got through it just fine, and this is not to say that everyone would have --

THE COURT: But there were eight people sitting there. It was if it was a bench trial, fine, but there were eight. That's why we have jury trials. And it wasn't even six, it was eight, and they were unanimous, because they were in federal court.

MR. NEWMAN: And this is why -- and because juries can reflect the anger and outrage of the community, this is where judges come in and this is why, in *Six Mexican Workers*, the Ninth Circuit has said, when the class size is large, the individual award

will be reduced so that the total award is not disproportionate.

THE COURT: I get -- okay, I know that --

MR. NEWMAN: And this --

THE COURT: -- and I don't agree that it's disproportionate, I have to tell you. I don't. I see what they did. I don't know why that letter said, "as a courtesy." That was just a farce. It wasn't as a courtesy. They knew, [29] following Cortez, that they were required. Why did it say that, right? I get that.

Why wasn't it in the credit report? It should be. Why didn't they, in 2011, why didn't they go hire some outside vendors? Why did they only say -- there was no one who sat on the stand and said, "We did everything possible, we spent millions of dollars or whatever it would take to do something." Nothing, no evidence. The one guy sat there, said, "Well, I couldn't figure out how to do it, so we didn't do it. We did it in separate letters, but six months later, we were able to do it."

Why? Why was Experian -- Experian -- able to do a credit report or an OFAC alert that cleared Mr. Ramirez and not Trans Union? Why -- why, in fact, did -- when Mr. Ramirez just wrote a note that said, "Take me off," they took him off? Clearly, clearly, what they did was not the most accurate or what's reasonable -- what -- reasonable, most -- whatever, you know, I can't remember now.

If it so easily could be changed, it wasn't very accurate to begin with. No verification of it. You just write the handwritten note.

MR. NEWMAN: So how does all that get to a six and-a-half to one when you have Exxon, which crashes an oil tanker into, you know, into like the shore, and spills oodles and oodles of gallons of sludge, completely messing up the

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Brief of Appellee (9th Cir. May 25, 2018)

I. INTRODUCTION

For 48 years, the Fair Credit Reporting Act (FCRA) has required accuracy in credit reporting and clear disclosure to consumers about the information that may be sold about them. 15 U.S.C. §§ 1681e(b) & 1681g(a). Approximately 8 years ago, the U.S. Court of Appeals for the Third Circuit found that TransUnion's reporting was "reprehensible" when it used only a name to associate an innocent consumer with a drug trafficker on the Department of Treasury's Office of Foreign Assets Control (OFAC) list, despite the fact that the dates of birth and other available personal identifiers of the two individuals were different. *Cortez v. TransUnion, LLC*, 617 F.3d 688, 723 (3d Cir. 2010). The Third Circuit in *Cortez* also found that TransUnion willfully violated the FCRA when it failed to clearly disclose to that consumer the OFAC information it had in her file and thus might sell about her. *Id*.

It is therefore unsurprising that the jury in this case found TransUnion was still willfully violating the FCRA because, even after the warnings of *Cortez*, it essentially did the same thing again—it used a "name-only" procedure to associate Sergio L. Ramirez and more than 8,000 other innocent American consumers with terrorists, drug traffickers and other criminals who are actually on the OFAC list. As in *Cortez*, the jury here also found that TransUnion's continued failures to clearly disclose to those adversely-impacted consumers all information in their files (as well as their FCRA right to dispute inaccurate information,

and have it corrected) were willful violations of the FCRA.

TransUnion now contends that Ramirez and the class here pursued "novel liability theories" and "do not even state viable FCRA violations." Appellant's Br. at 2. To the contrary, these are basic and well-recognized FCRA violations. The accuracy and disclosure requirements TransUnion repeatedly violated are black letter law. The FCRA's statutory language and the Third Circuit's *Cortez* opinion involving this very defendant are precisely on point.

TransUnion's reckless disregard of the law is explained by its profit motive. For approximately 99.5% of its OFAC screening transactions, TransUnion profited from the sale of no data at all, only a "clear" message. For the 0.5% of transactions that resulted in a "hit," the OFAC data TransUnion provided was inaccurate 100% of the time. TransUnion included disclaimers in its contracts and calculated its risk/reward ratio to be acceptable. So it did the minimum and continued with business as usual, even after *Cortez*.

Now, after another loss at trial, TransUnion appeals again, challenging every major ruling made by the District Court: Article III standing, Rule 23 certification, the merits of all three FCRA claims, as well its decision upholding the jury's statutory and punitive damages awards. As will be discussed below, the District Court made no errors. This Court should therefore affirm.

II. STATEMENT OF THE CASE[1]

A. The OFAC List And TransUnion's OFAC Product

TransUnion is one of the largest consumer reporting agencies (CRAs) in the U.S. Supplemental Excerpts of Record (SER)0835. It sells reports about consumers to creditors which include personal identifying information, data about credit accounts, and public records such as civil judgments and bankruptcies. SER0835; SER0837; SER0840-42; SER1580; SER1585-86.

In 2002, TransUnion saw an opportunity to sell additional information to its existing customers from the Department of the Treasury's (Treasury) OFAC list of Specially Designated Nationals (SDN). SER0846; SER0851; SER0854; SER0955- 56. OFAC is responsible for enforcing economic sanctions in order to address threats to national security, foreign policy, and the U.S. economy, including terrorists, international drug traffickers, proliferators of weapons of mass destruction, and other threats. SER0955-56. SNDs on the OFAC list are legally ineligible for credit in the U.S. SER0962-64.

The OFAC list includes a wide variety of information about SDNs, including name, address, date of birth, and social security number. SER0959. Approximately 80% percent of OFAC entries include a

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[1] TransUnion's statement of the case gives the impression of a sparse factual record and a case dominated by legal argument. In reality, the factual record here includes the testimony of 14 trial witnesses and 45 exhibits. Review of the complete record is necessary in order to understand the issues presented on appeal.

date of birth. SER1032. No OFAC list entries consist of only a name. SER0959.

Creditors doing business with SDNs are subject to severe penalties, including fines of up to $10 million and up to 30 years in prison. SER0961-62. In order to avoid these penalties, businesses use "interdiction software" to identify SDNs before engaging in transactions with them. SER0964-65. TransUnion informed its existing customers that TransUnion's OFAC alerts would help them avoid doing business with terrorists and other OFAC list criminals. SER1571.

Large creditors, such as national banks and broker-dealers that handle a small number of high-value transactions, typically develop their own interdiction programs. SER0884; SER1182-83; SER1187. But TransUnion saw a business opportunity to sell its OFAC alerts to smaller businesses such as car dealerships. SER0884.

In the early 2000s, TransUnion began purchasing OFAC information from a third-party data broker (rather than directly from the government), and elected to use only the consumer's first and last name to associate the consumer to an SDN. SER0850-52; SER0859; SER1007-08.[2] TransUnion charged its customers for each OFAC search it conducted, and approximately 99.5% of the time returned no results, just a clear message. SER1547; SER1593.

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[2] TransUnion's vendor for OFAC information is Accuity, Inc. SER0850-51; SER1008; Appellant's Excerpts of Record (ER) 283. TransUnion had control over how to configure the software and what filters to use. ER285-86.

When the name-only matching logic did return a hit, TransUnion placed an OFAC alert on a consumer's credit report without any further process to assure that the OFAC alert related to the consumer about whom the report was prepared. SER1019; SER0854-55; SER1551. TransUnion has substantial personal identifying information, including middle names, dates of birth, social security numbers, and addresses in its database, but failed to use this information to eliminate false positives. ER324; SER0838; SER0859-60; SER1014; SER1551. Since it began selling the OFAC product, TransUnion's automated process has incorporated OFAC alerts directly onto credit reports. SER1551; SER0859-60; SER1019.

This name-only matching process contrasts sharply with TransUnion's procedure for matching traditional credit data and public record information. That procedure requires, at a minimum, the match of additional identifying information, such as address, date of birth, or social security number. SER0852-54; SER1010. TransUnion does not use name-only matching for any other type of information it places on credit reports. SER1010.

Before rolling out its OFAC product, TransUnion's lawyers and compliance personnel decided that TransUnion would not attempt to comply with the FCRA with respect to OFAC information. SER0846; SER0860. As a result, TransUnion intentionally omitted OFAC information from file disclosures sent to consumers. SER0862; SER1252.

B. TransUnion Failed To Change Its Treatment Of OFAC Data Despite The Clear Warning Of *Cortez* And Other Notice

TransUnion continued this policy of noncompliance with the FCRA and nondisclosure to consumers despite receiving numerous inquiries and disputes from consumers about OFAC as early as 2006 and 2007. SER1691.

TransUnion was sued for these practices in October 2005 by Sandra Cortez. SER1580. Cortez claimed that TransUnion inaccurately included an OFAC alert on her credit report sold to a car dealership, and that it failed to properly disclose OFAC information to her upon her request. *Id*.; SER1551. The district court ruled that OFAC data is covered by the FCRA and the case went to trial. SER1604. The jury found that TransUnion violated the FCRA by failing to follow reasonable procedures to assure the maximum possible accuracy of OFAC information on Cortez's report, and by failing to disclose OFAC information when Cortez requested her file. *Id*.

Despite the 2007 findings of the *Cortez* jury and trial court, TransUnion continued to use name-only matching logic to associate consumers with the OFAC list. SER1030-31; SER0866-67. It also continued to omit OFAC data information from the file disclosures it sent to consumers. SER0866-67; SER1252. TransUnion made no changes whatsoever to its practices while it appealed the *Cortez* decision. *Id.*; SER1030-31. In August 2010, the Third Circuit affirmed the trial court's decision in a 90-page opinion. *Cortez*, 617 F.3d 688.

Even after the Third Circuit's decision, TransUnion continued to use nameonly matching logic. SER1015; SER1030-31. TransUnion waited—for two years—for its vendor Accuity to offer it new matching software. SER1081-82. TransUnion never considered using a different vendor to obtain OFAC information or halting its sale of OFAC data. SER1027-28.

TransUnion received even further notice of problems with its OFAC data directly from Treasury, which maintains the OFAC list. Treasury contacted TransUnion on October 27, 2010 in a letter addressing its continuing concerns regarding TransUnion's treatment of OFAC information. SER1575 (referencing prior meetings and correspondence in 2007 and 2008). Treasury specifically expressed concerns with placing OFAC records on credit reports using name-only matching alongside traditional credit data subject to multi-factor matching, stating that "[w]e remain concerned that *name-matching services* … that [do] not include rudimentary checks to avoid false positive reporting can create more confusion than clarity and cause harm to innocent consumers." *Id.* (emphasis added).

TransUnion took over three months to respond to Treasury's concerns. SER1576. At that time, OFAC information was still not included on the "personal credit reports" TransUnion sent to consumers who requested their files. SER1254- 55; ER322; ER328. Instead, in January 2011, TransUnion began sending consumers it associated with the OFAC list and who requested a file disclosure a separate form letter. SER1518; SER1230; SER1254-55. The letter defined

itself in opposition to TransUnion's response for the consumer's request for a file or "personal credit report," stating "*That* report has been sent to you *separately*." SER1518 (emphasis added). The separate letter furthermore indicated that TransUnion provided the OFAC information as a "courtesy," and did not state that it included information contained within the recipient's file. *Id*. Most importantly, the separate letter failed to inform consumers of their rights, including their right to know that OFAC information is part of their "file" and that such information may be disputed and must be promptly corrected when inaccurate. *Id*.

TransUnion's response to Treasury, sent shortly after the separate letter procedure was adopted, misrepresented its actual procedures and communications with consumers. SER1576-78; SER1131. TransUnion's General Counsel stated that TransUnion provided "instructions on how the consumer can request TransUnion block the return of a potential match message on future transactions." SER1578. This is a plain misrepresentation—the separate letter to consumers contained no such instructions. SER1518; SER1080-81.

C. TransUnion Falsely Associated Ramirez With The OFAC List

On February 27, 2011, Sergio L. Ramirez, with his wife and father-in-law, went to a Nissan dealership in Dublin California to try to purchase a car. SER0683-84. Ramirez submitted a credit application which contained his name, address, social security number and date of birth. SER0685-86; SER1520-21. The dealer used the identifying information on the

application to pull a TransUnion credit report about Ramirez. SER0796-97. Although some TransUnion witnesses attempted to argue at trial that the report was not actually a TransUnion credit report, it appeared under the heading "TransUnion Credit Report," and multiple witnesses, including a third party and other TransUnion witnesses, testified that it was a TransUnion credit report. SER1507; SER1301; SER1303; SER0760; ER323.[3]

Pursuant to its name-only matching logic, TransUnion included the OFAC records of two separate SDNs on the credit report it delivered to Dublin Nissan, falsely stating that Ramirez was a "match." SER1507. TransUnion associated Ramirez with an unrelated Mexican national, "Sergio Humberto Ramirez Aguirre" who had a birth date of 11/22/1951, and also to an unrelated Colombian national, "Sergio Alberto Ramirez Rivera" who was reported with a birth date of 01/14/196*. *Id.* By contrast, TransUnion's own file showed that Ramirez was born in April of 1976, and his middle initial is "L" (for "Luna"). *Id.* He uses only "Ramirez" as his last name, not "Rivera" or "Aguirre." SER0689; SER0704-05; SER1507; SER1511.

In addition to obtaining a TransUnion report about Ramirez, the car dealership also ran his name through the OFAC interdiction software of two other companies: Experian, another of the "Big Three"

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[3] Dublin Nissan pulled the report through DealerTrack, which provides a secure channel of communication between CRAs and car dealerships. SER0755-58. DealerTrack made no changes to the substance of the report, which came from TransUnion. SER0762-63.

nationwide CRAs, and DealerTrack, a credit data reseller. SER1524; SER1526. Experian and DealerTrack each found no potential match between Ramirez and the OFAC list. *Id.*

Ramirez was shocked and confused when the car dealer informed him that he could not buy a car because he was on a "terrorist list." SER0686; SER0689. He was embarrassed, frightened, and did not know how to proceed. SER690. As is typical with the small, high-volume lenders that are the intended users of TransUnion's OFAC product, Dublin Nissan refused to sell Ramirez the car because of the OFAC alert on his credit report. SER0689-90; SER884; SER970-71.

D. TransUnion Failed To Disclose OFAC Information To Ramirez And Did Not Inform Him Of His FCRA Rights

The next day Ramirez called Treasury to try to address the problem of TransUnion's inaccurate attribution of OFAC information to him. SER0692-93. Treasury's representative told Ramirez to contact TransUnion. *Id.* Ramirez next called TransUnion, which told him that there was no OFAC alert on his file. SER0693-94. TransUnion's representative said TransUnion would mail him a copy of his personal credit report that would confirm that he was not on the OFAC list. *Id*. TransUnion then sent Ramirez a copy of his "personal credit report" or file disclosure. SER0695; SER1509-14. The file that TransUnion sent to Ramirez, in fact, did not include anything about OFAC, which was TransUnion's standard practice at the time. SER1509-14; SER1254-55.

A day later, Ramirez received the separate OFAC letter described above. SER0696-97; SER1518. He was again shocked and confused: TransUnion had just told him that he was *not* on the OFAC list, and had confirmed this by sending his personal credit report that had no reference to OFAC. SER0697. Because the separate letter did not give any instructions, Ramirez did not know how to fix the problem, or even if it could be fixed. *Id.*

Ramirez did not learn about his FCRA rights, or submit a dispute to TransUnion, until after he consulted with a lawyer. SER0699-700; SER1519 (dispute dated March 16, 2011). Ramirez had continuing concerns regarding the effect of TransUnion's use of OFAC information—he worried that this damaging information would be associated with him again, and as a result canceled plans to travel to Mexico on a family vacation. SER0698.

E. The Certified Class Consumers Affected By TransUnion's Practices

Between January and July of 2011, TransUnion sent the same confusing and misleading separate letter regarding OFAC that it sent Ramirez to 8,184 other consumers. ER418; SER1223; SER1230. TransUnion associated each of these consumers with the OFAC list using the same name-only matching logic it used with respect to Ramirez. ER327; SER1013-15; SER1231. Each of these consumers requested his or her personal credit report by mail,

and TransUnion sent each a file disclosure that contained no reference to OFAC. SER1254-55.[4]

F. TransUnion Disregarded Available Alternative Procedures

From at least 2010, Accuity had customizable match logic options that could search OFAC data using different items of personal identifying information, including date of birth. ER285-88. TransUnion could also have used a variety of other interdiction software options beyond Accuity. SER0965-66 (naming three other providers of screening software). The recommended best practice for OFAC interdiction software is to search with a name plus at least one additional item of personal information, a practice that TransUnion did not follow. SER0968.

More accurate alternative matching procedures were available in 2011. Two other CRAs, Experian and DealerTrack, screened Ramirez against the OFAC list on the very same day as TransUnion. SER1524; SER1526. They both accurately found that he was not associated with any SDN. *Id.* Ramirez's expert, who has consulted with financial institutions concerning

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[4] The OFAC letter was used to identify the class. Other unidentified consumers were affected as well. TransUnion's OFAC product was on the market for over a decade using name-only matching logic to associate consumers with criminals on the OFAC list. SER1007-08; SER1013-15. In a single year, TransUnion used this name-only matching procedure to place OFAC alerts more than 200,000 consumers' credit reports. SER1593 (17,557 in July 2012 alone). During the first eight years TransUnion sold OFAC data, it disclosed *no information at all* about OFAC to consumers. *Id.*; SER0862-63; SER1252.

proper filters for detecting possible OFAC matches, explained that in ten years of experience with OFAC compliance, the minimum number of identifiers he has ever recommended to properly identify SDNs is two—at least name plus one other identifier, such as date of birth. SER0949-50; SER0968.

TransUnion nonetheless chose not to implement several matching procedures with more demonstrated accuracy. Its own internal research showed that it could have eliminated false positive results *entirely* by disqualifying potential matches where the date of birth on the OFAC file was more than ten years different from the consumer's date of birth. SER1031-32; SER1595-96 (two different rule options which included "DOB>10 Yrs" reduced false positives to 0%). But TransUnion did not implement any of these additional procedures or use date of birth in its matching logic until 2013. SER1034; SER1078-79.

Human review of OFAC records to avoid inaccurate attribution was also feasible—indeed, TransUnion established a human review process, whereby an employee checked the disputing consumer's identifying information against the data on the OFAC list. SER0869-70. TransUnion conceded that *every one* of the OFAC alerts reviewed in this human review process was inaccurate, and thus blocked each one. SER0875.

Indeed, TransUnion has never identified a single instance since 2002 in which its OFAC alert procedure identified a person actually on the OFAC SDN list. SER1036. Yet TransUnion insisted at trial that its procedures regarding OFAC in fact "benefitted" class members. SER1090. TransUnion furthermore claimed

at trial that it was *TransUnion's* reputation at stake, not the reputation of consumers whose data it sells and whose reputations the FCRA is designed to protect. SER1445-46.

III. SUMMARY OF ARGUMENT

Appellant raises four basic arguments, each of which fails. First, TransUnion argues that the District Court erred in finding that Ramirez and the class had Article III standing. This argument is simple denial—Appellant cannot accept the fact that its OFAC practices caused real harm. Harm to reputation, the inability to access credit, distress, the deprivation of information and wasted time correcting an inaccuracy are the types of harms that flowed from TransUnion's OFAC practices. *See Cortez*, 617 F.3d at 720, 723. The evidence at trial showed harm to Ramirez and every class member. It almost goes without saying that being falsely associated with a terrorist watch-list and being deprived of congressionally-mandated information about how to correct such a false association is harmful.

Next, TransUnion changes its tune, and argues that it actually did cause real harm—in fact, such "severe" harm to Ramirez that his claim is atypical. Appellant's Br. at 39. The District Court, however, did not abuse its discretion in finding that Ramirez satisfied the typicality requirement of Rule 23. The evidence showed that Ramirez and every class member were falsely associated by TransUnion with OFAC criminals because of the same "name-only" procedure; they all were legally ineligible to obtain credit; they all ran the risk of being denied credit; they were all deprived of the very same file disclosure

information; and they were all misinformed about their FCRA rights, such as the right to dispute and to have the false OFAC information blocked or deleted from their files.

Third, Appellant contends that the District Court erred in allowing the jury to decide whether TransUnion violated the FCRA *willfully*. Under the facts of this case, however, any reasonable jury could have found a willful violation on any of the class's three FCRA claims, especially given TransUnion's brazen trial strategy. Essentially the same issues went to the jury in *Cortez*, which found willful violations in three of four counts, all of which were upheld by the Third Circuit. No FCRA jurisprudence supports TransUnion's argument that it is entitled to judgment as a matter of law here. As the District Court found, there was overwhelming evidence of liability at trial. ER4.

Finally, TransUnion argues that $7,337 in statutory and punitive damages to Ramirez and each class member is so exceedingly high that it violates the U.S. Constitution. Again, no precedent supports TransUnion's position. Appellant largely ignores both the facts of record and the recalcitrant nature of its defenses.

The jury's punitive damages verdict was completely in line with the evidence of three willful FCRA violations in the face of clear warnings, including from *Cortez*. The reality is that TransUnion chose to keep reaping the benefits of its OFAC reporting, even though the product never resulted in a single true hit. Despite ensnaring thousands of innocent Americans into its web of false hits,

TransUnion's corporate representative testified at trial that the OFAC reporting *benefitted* class members. TransUnion's misleading statements to Treasury, misadvising that its consumer disclosures instructed consumers on how to dispute and block false OFAC alerts, reinforced the need for punitive damages. TransUnion witnesses at trial blamed their failure to comply with the FCRA after *Cortez* on the supposed unavailability of technology, but the jury did not accept this far-fetched defense, especially when TransUnion's competitors had no problems in finding that Ramirez did not match any SDN. Nor did the jury appreciate other far-fetched defenses, including the testimony by some TransUnion witnesses that the "TransUnion Credit Report" sold about Ramirez to Dublin Nissan was not really a TransUnion credit report, and the argument of defense counsel that TransUnion was actually the victim in this case.

In sum, the jury's verdict is supported by detailed evidence of harm, proportional to the scope of TransUnion's widespread violations of the FCRA, and necessary to send a message to a recalcitrant and unapologetic defendant. The verdict should be upheld in full.

IV. STANDARDS OF REVIEW

Appellee agrees that the standard of review for class certification rulings is abuse of discretion, and for constitutional issues and judgment as matter of law rulings the standard is *de novo* review. This Court has also held that "[a] jury's verdict must be upheld if it is supported by substantial evidence, which is evidence adequate to support the jury's conclusion, even if it is also possible to draw a contrary

conclusion." *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1066 (9th Cir. 2016) (*en banc*). A verdict can be overturned if that evidence permits "only one reasonable conclusion, and that conclusion is contrary to that of the jury…." *Id.* (quoting *Estate of Diaz v. City of Anaheim*, 840 F.3d 592, 604 (9th Cir. 2016)).

V. ARGUMENT

A. The District Court Did Not Err In Denying TransUnion's Repeated Article III Standing Challenges

This Court recently discussed Article III standing in the FCRA context following the decision of the U.S. Supreme Court in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) ("*Spokeo II*"), and found that FCRA statutory violations, alone, establish concrete injury where such violations present a "risk of real harm" to the concrete interests the statute was enacted to protect. *Robins v. Spokeo, Inc.*, 867 F.3d 1108 (9th Cir. 2017) ("*Spokeo III*").[5]

Spokeo II recognized that both tangible and intangible injury can satisfy the requirement of concreteness. *Id.* at 1549. Although often more difficult to recognize, intangible injuries (such as harm to one's reputation) may nevertheless be concrete. *Id.* As the Supreme Court explained, "[i]n determining whether an intangible harm constitutes injury in fact,

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[5] Rather than changing the law, *Spokeo II* confirmed the long-established principle that standing consists of three elements. *Spokeo II*, 136 S. Ct. at 1547 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.*

both history and the judgment of Congress play important roles." *Id.* Indeed, "because Congress is well-positioned to identify intangible harms that meet minimum Article III requirements, its judgment is … instructive and important." *Id.* "Congress may identify and 'elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.'" *Id.* (quoting *Lujan*, 504 U.S. at 578).

Spokeo II further instructs that the concreteness requirement is satisfied if alleged violations of procedural rights present a "risk of real harm" to the concrete interests Congress sought to protect by enacting the statute. *Spokeo II*, 136 S. Ct. at 1549. In such a case, a plaintiff "need not allege any *additional* harm beyond the one Congress has identified." *Id.* (emphasis in original).

In *Spokeo III*, this Court confirmed that Congress has the power to "'articulate chains of causation that will give rise to a case or controversy where none existed before.'" 867 F.3d at 1112-13. "In some areas—like libel and slander *per se*—the common law has permitted recovery by victims even where their injuries are 'difficult to prove or measure,' and Congress may likewise enact procedural rights to guard against a 'risk of real harm,' the violation of which may 'be sufficient in some circumstances to constitute injury in fact.'" *Id.* (quoting *Spokeo II*). Thus, "an alleged procedural violation [of a statute] can by itself manifest concrete injury where Congress conferred the procedural right to protect a plaintiff's concrete interests and where the procedural violation presents 'a risk of real harm' to that concrete interest."

Spokeo III, 867 F.3d at 1113 (quoting *Strubel v. Comenity Bank*, 842 F.3d 181, 190 (2d Cir. 2016)).

1. All Class Members Have Standing For The Accuracy Claim

As the High Court recognized in *Spokeo II*, a central purpose of the FCRA is "to ensure 'fair and accurate credit reporting.'" 136 S. Ct. at 1545. Through the FCRA, "Congress plainly sought to curb the dissemination of false information by adopting procedures designed to decrease that risk." *Id.* at 1550.

The risk of dissemination of inaccurate information impacting a person's reputation is the exact type of harm Congress sought to prevent through the FCRA's accuracy provisions. 116 Cong. Rec. 36570 (1970) (Representative Sullivan remarking that the "unthinking machine" of modern CRAs "can literally ruin [an individual's] reputation without cause."). The Third Circuit in *Cortez* found that "the gravity of harm that could result" from association with a terrorist watch list "cannot be overstated" in light of "the severe potential consequences of such an association." 617 F.3d at 723.

By continuing to use its grossly inadequate name-only matching procedure to associate innocent consumers with the OFAC list, especially after *Cortez*, TransUnion exposed the class here to the serious risk of defamation and credit denial as Ramirez experienced, regardless of any subsequent, additional consequences.

The trial evidence demonstrated that TransUnion incorrectly identified each class member as a potential match to the OFAC list, putting them all at risk of losing their ability to obtain credit and exposing them

to the reputational harms that come with being identified as a terrorist. SER1013-15; SER1231; ER327; SER0958; SER0990.[6]

TransUnion incorrectly argues that the selling of an inaccurate report to a third party is required in order for a plaintiff to have standing to bring a claim under FCRA section 1681e(b). Appellant's Br. at 31. *Spokeo III* Court specifically declined to address such a situation (867 F.3d at 1116 n.3), and instead focused on the gravity of harm that can be caused "by the very existence of inaccurate information in his credit report and the likelihood that such information will be important to one of the many entities who make use of such reports … especially in light of the difficulty the consumer might have in learning exactly who has accessed (or who will access) his credit report." 867 F.3d at 1114. All class members here experienced this very same risk of harm.[7]

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[6] *Wheeler v. Microbilt Corp.*, 700 Fed. App'x 725 (9th Cir. 2017) has no applicability to this case. There, the Ninth Circuit affirmed the dismissal of a complaint which contained "mere conclusions for which he provided no support." 700 Fed. App'x at 727. The allegations required to survive a Rule 12(b)(6) motion to dismiss have nothing to do with whether a set of facts adduced a trial demonstrate that a practice exposed consumers to harm giving rise to Article III standing.

[7] TransUnion claims that dispute statistics demonstrate that consumers understood their rights regarding OFAC data. To the contrary, it is unsurprising that so few consumers disputed OFAC data as a result of TransUnion's separate letter, since TransUnion failed to tell consumers that such disputes were possible.

Furthermore, the evidence of record, that TransUnion disseminated an OFAC alert to third parties regarding 25% of class members during the six-month class period suggests that over the course of two years, *all* of them would have had a credit application resulting in the sale of an inaccurate and defamatory OFAC alert to a potential creditor. ER418.[8]

2. All Class Members Have Article III Standing For The Disclosure Claims

With respect to the disclosure claims, this Court has found that failure to provide disclosure mandated by the FCRA is itself sufficient to establish standing. *Syed v. M-I, LLC*, 853 F.3d 492, 499-500 (9th Cir. 2017). By creating a private right of action to address failure to provide a clear disclosure of the information in a consumer's file, and the consumer's right to dispute and have it corrected, Congress recognized the harm caused by these actions and giving rise to standing. *Id.*; *see also Spokeo III*, 867 F.3d at 1114.

The disclosure requirements of FCRA sections 1681g(a) and 1681g(c) advance consumers' concrete interest in accurate credit report by providing a mechanism for consumer oversight, empowering consumers to monitor their files for inaccurate data. *Patel v. TransUnion, LLC*, No. 14-cv-00522-LB, 2016

[8] Although the class period here was defined by the 6-month window when TransUnion used the separate OFAC letter, TransUnion was selling these same false OFAC records in the years before and after the class period about class members using the same name-only match logic, and the period to recover damages under the FCRA is minimally two years. SER1034; SER1078-79; 15 U.S.C. § 1681p.

WL 6143191, at *4 (N.D. Cal. Oct. 21, 2016). Thwarting a consumer's ability to monitor her file and correct inaccurate data "can itself satisfy the requirement of concreteness" because doing so "presents a 'real risk of harm' of exactly the type that [the] FCRA seeks to prevent …." *Id.* Put another way, it is not a bare procedural violation; it is the hindering of a consumer's ability to monitor her file and correct inaccurate data about herself that results in concrete injury. *Id.* at *4-5.

The evidence here demonstrates that all class members requested and were sent a "personal credit report" that did not contain reference to OFAC information although TransUnion in fact associated an OFAC record with them; and that TransUnion sent each class member a separate letter identifying the OFAC record associated with them, but failed to include any information about how to dispute or block the record. SER1518. The separate OFAC letter made no indication that the OFAC information was part of the consumer's file, and in fact indicated the opposite by stating that "[t]hat report has been sent to you separately." *Id.* Even the author of the separate letter conceded that it is unclear. SER1152. The separate letter did not make any reference to the summary of rights contained in the personal credit report, or state that those rights applied to the information in the letter. SER1518.[9] Indeed, the separate letter stated

[9] TransUnion's assertion that Ramirez understood the separate letter sufficiently to dispute the OFAC information is contradicted by the evidence of record. Ramirez testified that he was confused after receiving the separate letter and did not contact TransUnion to dispute the OFAC information until after he consulted with a lawyer. SER0697; SER0699-700; SER1519.

that the information was being provided as a "courtesy," not as required by law. *Id.*

TransUnion's suggestion that Ramirez must prove that class members were "confused by the disclosure[s]" misstates the requirements of FCRA section 1681g, which contains no element or requirement of actual confusion or reliance. Rather, a violation of section 1681g "is predicated on the character of the allegedly misleading information the credit reports disseminated to [the plaintiff] and absent class members, not on [the plaintiff] or absent class members' subjective interpretation of that information. *Larson v. TransUnion, LLC*, 201 F. Supp. 3d 1103, 1109 (N.D. Cal. 2016) (rejecting "consumer confusion" argument and finding that class has standing for 1681g claim for failure to properly disclose OFAC information). *Spokeo II* also recognized that this type of "informational" injury supports Article III standing. 135 S. Ct. at 1553 (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-75 (1982)). All class members were deprived of the information required by FCRA section 1681g(a) and 1681g(c), and that deprivation of information is their concrete injury regardless of any additional consequence.

3. Ramirez's Article III Standing Is Sufficient To Confer Standing On All Absent Class Members

For the reasons set forth above, the District Court properly concluded that Ramirez and all class members independently have Article III standing

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A disclosure that requires legal advice to decipher cannot possibly be what the FCRA contemplates.

here. However, class members' ability to recover statutory and punitive damages is underscored by the reality that under Ninth Circuit precedent the fact that a class representative has Article III standing is sufficient by itself to invoke federal court jurisdiction. "In a class action, standing is satisfied if at least one named plaintiff meets the requirements …. Thus, we consider only whether at least one named plaintiff satisfies the standing requirements[.]" *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (*en banc*). For the reasons set forth above and proven at trial, Ramirez has standing to bring his claims in federal court, and under Ninth Circuit precedent this is sufficient for him to pursue these claims on behalf of the class.[10]

TransUnion's attempt to limit the holding of *Bates* to injunctive relief is unpersuasive. *Bates* discusses the requirements of standing in connection with

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[10] *Town of Chester v. Laroe Estates, Inc.,* 137 S. Ct. 1645 (2017), has no relevance here. It makes no mention of class actions, and makes clear that standing concerns are implicated where an intervenor sough "relief that is *different* from that which is sought by a party with standing." *Id.* at 1651 (emphasis added).

Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036 (2016), a wage-and-hour collective action seeking unpaid overtime, has even less to say about standing here. The Supreme Court approved the use of statistical techniques to determine an average amount of overtime pay based upon a sample of employee record, but explicitly declined to reach any decision regarding the appropriateness of certification of a class containing members who admitted they were not owed any overtime pay and thus had no right to recovery. *Id.* at 1048-50.

These two cases have no binding or persuasive impact in this class action in which class members were awarded identical relief by a jury.

equitable relief simply because that was the only type of relief sought in that litigation. 511 F.3d at 985. The *Bates* discussion of standing, however, plainly states that only named plaintiffs need established standing in a class action without any limitation on the relief sought. *Id.* This rule has been repeatedly echoed by the Ninth Circuit in cases seeking damages. *In re Zappos.com, Inc.*, ___ F.3d ___, 2018 WL 1883212, at *6 n.11 (9th Cir. Apr. 20, 2018) (where plaintiffs sought damages "only one Plaintiff needs to have standing for a class action to proceed"); *Ollier v. Sweetwater Union High School Dist.*, 768 F.3d 843, 865 (9th Cir. 2014); *Gutierrez v. Wells Fargo Bank, NA*, 704 F.3d 712, 728 (9th Cir. 2012).

TransUnion's citation to *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 594 (9th Cir. 2012), does nothing to overcome this long-established precedent. In *Mazza*, the court in fact *rejected* the argument that class members who did not provide individualized proof of injury lacked standing. 666 F.3d at 596. The court gave no indication of an intent to overrule *Bates*. *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1137 n.6 (9th Cir. 2016) (commenting that *Mazza* only signifies "that it must be possible that class members have suffered injury, not that they did suffer injury, or that they must prove such injury at the certification phase" and citing *Bates*).[11] The District Court properly found,

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[11] *In re Hyundai and Kia Fuel Economy Litig.*, 881 F.3d 679 (9th Cir. 2018) has even less to do with standing considerations here. The court in *In re Hyundai* rejected a settlement which it considered overbroad because it dealt, with a class of consumers that included individuals who had not been exposed to the allegedly improper practice. *Id.* at 703-05. Despite TransUnion's

based upon a wealth of Ninth Circuit precedent on point, that Article III standing is satisfied here.

B. Ramirez's Claims Were Typical Of The Class's Claims

TransUnion next contends that Rule 23 certification of the class here was inappropriate, allegedly because Ramirez's claims were "fatally atypical." Appellant's Br. at 38. Although at several stages of this case (*see* ER375, ER440- 46, Dkt. No. 128 at p. 4), TransUnion argued that Ramirez was not really injured at all, now TransUnion asserts that "his injuries are atypically *severe*." Appellant's Br. at 39. (emphasis added).

Contrary to TransUnion's new severity of injury argument, the District Court did not abuse its discretion in finding that Ramirez satisfied the typicality element of Rule 23, which requires only that *claims* be typical, not that class members suffer identical injuries.[12]

Typicality is fulfilled if "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The typicality test is "whether other members have the

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citation, the case does not so much as mention Article III standing. *Id.*

[12] TransUnion has made multiple attempts to reverse the District Court's class certification decision, including a "Motion for Clarification" (Dkt. No. 163), a petition to appeal pursuant to Fed. R. Civ. P. 23(f), which this Court denied (No. 14- 80109 (9th Cir.) at Dkt. Nos. 1-1, 8), and its motion for decertification following *Spokeo II. Ramirez v. TransUnion, LLC*, 2016 WL 6070490 (N.D. Cal. Oct. 17, 2016). Each of its attempts have failed, and this one fails as well.

same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted).

TransUnion's only argument with respect to the Rule 23 element of typicality is that Ramirez allegedly had a "unique experience." Appellant's Br. at 38. Yet the evidence established that this action *was not* based on conduct unique to the named plaintiff. *Hanon,* 976 F.2d at 508.

With respect to the FCRA section 1681e(b) claim, the evidence shows that Ramirez was falsely associated with the OFAC list because of corporate-wide practices at TransUnion and its "name only" matching procedure. This was the case for every class member. All class members were thus put at risk for the same harm by that false association—the risk of being defamed and declined credit.

Whether Ramirez or any class member sought a Nissan for a spouse or a Toyota for one's self is of no moment. The claim here was for statutory damages of $100- $1,000 permitted by FRCA section 1681n, not for a specific monetary loss or for denial of a specific type of credit. Thus the class-wide risk of harm and relief sought for such harm is the "the same or similar" for Ramirez and each class members. *Hanon,* 976 F.2d at 508. To argue otherwise is to argue that no FCRA statutory damages class action should ever be certified because people have different shopping habits.

TransUnion insists that only 25% of class members applied for new credit during a 6-month

window, but the jury could have reasonably concluded from this that every class member would have used their credit in the 2010-2013 timeframe when TransUnion associated class members with the OFAC list. Nowhere did Ramirez claim a 6-month damages or publication window. At any rate, FCRA allows the recovery of statutory damages dating back at least two years from the date of the violation, even without a credit denial.[13] So TransUnion's insistence on a uniform-type credit denial is irrelevant both for Rule 23 purposes and for purposes of establishing an FCRA section 1681e(b) claim.

Ramirez's FCRA section 1681g(a) and 1681g(c) disclosure claims are even more cohesive with those of the class. All class members requested their TransUnion files; all were provided a TransUnion "personal credit report" (the file) that disclosed nothing about OFAC even though TransUnion had them all associated with some OFAC list entry; all were deprived of data about the most harmful item information in their files, or how they could dispute it and have it blocked; all were sent the separate OFAC letter that compounded the problem by being unclear and by not including any statement of FCRA rights.

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[13] *See* 15 U.S.C. §1681p (FCRA statute of limitations). Further, and contrary to Appellant's assumption, under Ninth Circuit case law, transmission of a consumer report to a third party is not a prerequisite to establishing liability under section 1681e(b). *Guimond v. TransUnion Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995); *Ottiano v. Credit Data Sw., Inc.*, 54 F. App'x 640 (9th Cir. 2003) ("neither the transmission of the report to third parties, nor a denial of credit, is a prerequisite to recovery under the FCRA").

Failure to provide a congressionally-mandated FCRA disclosure naturally results in the deprivation of the very information that the disclosure was supposed to provide; no additional harm or consequence is required. The harm to Ramirez is thus the same for every class member and stems from the violation—a deprivation of information resulting from uniform corporate practices.

Ramirez's reaction to TransUnion's disclosure is relevant to provide context and to show the risk of harm and other relevant matters, such as to establish liability. Moreover, TransUnion did not object to that transaction-specific evidence that was proffered at trial. Indeed, as a trial witness, Ramirez had to lay a foundation and testify with respect to specific dates, records and transactions of which he had firsthand knowledge. There was nothing inappropriate about his testimony, and TransUnion's appeal does not raise any issues about the trial court's evidentiary rulings.

The fact that class counsel mentioned Ramirez's reaction, based upon properly admitted and relevant evidence, for a few seconds during a one-hour closing argument does not make Ramirez's claims "fatally atypical." Nor is the reference by class counsel to Ramirez's teenage daughter germane, other than to explain to the jury who was sitting next to Ramirez in the back of the courtroom during part of the trial. The full closing argument makes it clear that Ramirez and the class have the same claims and seek the same damages. SER1379-1415.

The District Court here saw that the basic facts and evidence related to all three FCRA claims, including the statutory damages sought by Ramirez

and all class members, were the same or similar, thus satisfying the typicality element of Rule 23. TransUnion has failed to show that Ramirez's experience is "unique," or that the District Court abused its discretion in finding that the relatively low typicality threshold of Rule 23 was satisfied in this case.

C. Given *Cortez* And The Facts Presented At Trial Here, Any Reasonable Jury Could Have Found A Willful Violation

Three distinct FCRA claims were submitted to the jury here. ER 22-23. If the jury had found liability on any one of the three claims, it would have been entitled to award $100-$1,000 in statutory damages to each class member. *Id.*; 15 U.S.C. § 1681n(a) (statutory damages available upon willful violation of "any requirement imposed" by FCRA). Because each of the three violations independently supports the statutory damages award here, Appellant would need to prove that no reasonable jury could find a willful violation on any of the claims. As the District Court properly found, there was substantial evidence supporting the jury's liability findings.

1. Substantial Evidence Supports The Jury's Finding That The Accuracy Violations Were Willful

The FCRA requires TransUnion to follow "reasonable procedures to assure the maximum possible accuracy of the information concerning the individual about whom the report relates" whenever it prepares any consumer report. 15 U.S.C. § 1681e(b). FCRA accuracy claims center on whether the CRA's procedures included reasonable procedures to prevent

inaccuracies in preparing the report(s) at issue. *Guimond*, 45 F.3d at 1333-34. "The reasonableness of the procedures and whether the agency followed them will be jury questions in the overwhelming majority of cases." *Id.* at 1333.

A report is inaccurate when information in it is "patently incorrect" or when it is "misleading in such a way and to such an extent that it can be expected to [have an] adverse" effect. *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890-91 (9th Cir. 2010) (citing and quoting *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1157 (9th Cir. 2009)).

Willful violations of the FCRA include "action taken in 'reckless disregard of statutory duty,' in addition to actions 'known to violate the Act.'" *Syed*, 853 F.3d at 503 (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 56-57 (2007)). A CRA can willfully violate the FCRA even in the absence of prior authoritative guidance. *Id.* at 504. Indeed, "in the FCRA context, a 'lack of definitive authority does not, as a matter of law, immunize [a party] from potential liability' for statutory damages." *Id.* (quoting *Cortez*, 617 F.3d. at 721). Where the FCRA is clear, a defendant's subjective belief that its actions are proper is immaterial. *Id.* at 505. Blanket policies can also underpin a willfulness finding under the FCRA even in the absence of guidance. *Seamans v. Temple Univ.*, 744 F.3d 853, 868 (3d Cir. 2014).

The jury's determination that TransUnion willfully failed to follow reasonable procedures to assure the maximum possible accuracy of OFAC alerts is supported by the following substantial evidence presented at trial:

- TransUnion used identical name-only matching logic for all class members, disregarding available middle names, dates of birth, social security numbers, places of birth, and other information. SER1013-15; SER1231; ER327; SER0838; SER0859-60.
- TransUnion's name-only matching logic for OFAC information used lower standards than used for all other items of information included on reports, which required additional identifying information, such as a date of birth or social security number. SER0852-54; SER1010.
- The recommended best practice for OFAC interdiction software is to use at least one item of identifying information *in addition* to name. SER0968.
- The smaller businesses to which TransUnion's OFAC product was marketed were unlikely to run the risk of doing business with a person associated with the OFAC list and would prefer to move on to the next transaction, regardless of TransUnion's contractual language. SER0884; SER0970-71; SER0689-90.
- TransUnion's vendor had filtering options which included searching the OFAC database by date of birth since at least 2010, and TransUnion controlled the filters used for OFAC "hits." ER285-88.
- Experian and DealerTrack screened Ramirez against the OFAC list in February 2011 and were able to accurately determine that he was not a match to any SDN. SER1524; SER1526.
- TransUnion had repeated notice of problems with its procedures regarding OFAC between 2005 and

2011, including the *Cortez* verdict in 2007, frequent consumer inquiries in 2006 and 2007, and communications from Treasury in 2010, which referenced earlier communications from 2007 and 2008. SER1603; SER1601; SER1575.

- TransUnion's internal statistics for the relevant time period show that over 75% of OFAC records matched to consumers using only first and last name had a date of birth *more than ten years different* than that of the allegedly matching consumer. SER1599.
- TransUnion continued to use name-only matching logic for OFAC information until 2013. SER1034; SER1078-79.
- After TransUnion began accepting disputes of OFAC information, it employed a manual review process which found that each one of the disputed OFAC alerts were inaccurate. SER0869-72; SER0875.
- TransUnion did not consider using a different vendor or stopping the sale of OFAC information. SER1027-28.
- TransUnion is unable to identify a single instance since 2002 in which its OFAC alert procedure identified an SDN actually on the OFAC list. SER1036.
- TransUnion conceded no mistakes at trial, and admitted that its reporting in this case was done in accordance with its usual policies and practices in 2011, boldly testifying that such practices benefited the class. SER1013-15.

See also ER3-4. Viewing this evidence, and all inferences therefrom, in the light most favorable to the class, a reasonable jury could conclude that

TransUnion willfully violated FCRA section 1681e(b). This is not a case where the evidence permits "only one reasonable conclusion, and that conclusion is contrary to that of the jury." *Dunlap v. Liberty Nat. Prods., Inc.*, 878 F.3d 794, 797 (9th Cir. 2017).

TransUnion's arguments to the contrary fail. Brazenly, and as it did unsuccessfully at trial, TransUnion asserts that its OFAC alerts were accurate, relying upon the disclaimers in its contracts and the addition of the word "potential" in front of the word "match" to argue that it was neither inaccurate nor misleading to associate innocent consumers with the OFAC list. Appellant's Br. at 45. This assertion is contradicted by TransUnion's own testimony conceding that it has never been able to confirm the actual accuracy of a single OFAC hit. SER1036. Furthermore, each time any consumer disputed the accuracy of an OFAC alert, TransUnion conceded its inaccuracy. SER0869-72; SER0875.

TransUnion was on clear notice that disclaimers and qualifications regarding the accuracy of OFAC alerts were insufficient to provide a defense to FCRA claims, or transform inaccurate information into accurate information. The Third Circuit in *Cortez*, in response to the same argument asserted here, held that "[w]e are not persuaded that [defendant's] private contractual arrangements with its clients can alter the application of federal law, absent a statutory provision allowing this rather unique result." *Cortez*, 617 F.3d at 708.[14] *Cortez* emphasized the importance the

[14] Trial courts are in accord. *Smith v. E-Backgroundchecks.com, Inc.*, 81 F. Supp. 3d 1342, 1348-49 (N.D. Ga. 2015); *Henderson v.*

FCRA's requirement of *maximum possible* accuracy, declaring that this standard "requires more than merely allowing for the possibility of accuracy." *Id.* at 709. *Cortez* furthermore warned TransUnion of the "inherent dangers in including any information in a credit report that a credit reporting agency cannot confirm is related to a particular consumer." *Id.* at 710.[15]

If TransUnion's argument is accepted, CRAs could place any completely false information on credit reports and escape liability for inaccuracy simply by adding disclaimers requiring the purchasers of reports to confirm the information before using it. FCRA section 1681e(b)'s requirement of maximum possible accuracy does not allow such a result. As stated in *Cortez*, "[a]llowing a credit agency to include misleading information as cavalierly as TransUnion did here negates the protections Congress was trying to afford consumers" in enacting the FCRA. *Id.*

TransUnion also seeks to shift the burden of assuring accuracy to its customers by arguing that it was the end user's responsibility to determine

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Corelogic Nat'l Background Data, LLC, 178 F. Supp. 3d 320, 336 (E.D. Va. 2016).

[15] *Cortez* also identified the very information TransUnion could use to confirm that an OFAC alert is related to a particular consumer: the middle names and dates of birth which appear on the face of OFAC records. *Id.* at 710. The Third Circuit called TransUnion's failure to "at the very least" use date of birth where available "reprehensible." *Id.* at 723. Nevertheless, TransUnion continued to ignore dates of birth on the OFAC list until 2013. SER1034; SER1078-79.

whether the subject of a report was actually a match with the OFAC list. Appellant's Br. at 46. This argument fails because, as TransUnion was made aware in *Cortez*, contractual language does not alter the application of the FCRA. This argument also fails to account for the realities of the credit transactions in which TransUnion's OFAC product is involved. The evidence of record demonstrates that the small businesses—TransUnion's target customers for OFAC alerts—are unwilling to run the risk of extending credit to consumers who are associated with the OFAC list. The car dealership that purchased TransUnion's report about Ramirez did nothing more than review the report and refused to extend Ramirez credit because of the OFAC alert. SER0689-90. Lenders who deal in low-dollar, high-volume transactions are more likely to end the transaction rather than running the risk of incurring a multi-million dollar fine. SER0970-71; SER0961-62.[16]

The evidence also contradicted TransUnion's contention that better technology was not available in 2011. Two other CRAs screened Ramirez against the OFAC list on the same day TransUnion did, and both correctly found that he was not a match, or even a

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[16] TransUnion claims that the "uncontradicted" record shows that "most lenders understand what to do when confronted with OFAC alerts," but that is not true. Appellant's Br. at 46. The testimony TransUnion cites provides a snapshot of the behavior of certain large financial institutions, conducting only 15-20 transactions per month, not the small, high-volume lenders who are the target customer for TransUnion's OFAC product. SER1212-14. A reasonable jury could rely on the contrary testimony, that small lenders are unwilling to take the risk of doing business with an SDN. SER0970-71.

potential match. SER1524; SER1526. TransUnion's argument that such technology was not "production-ready" in 2011 falls flat given the evidence that TransUnion made absolutely no effort to make any changes whatsoever to its matching logic in the months and years following *Cortez*. SER1015; SER1030-31. TransUnion's existing vendor already offered match logic options which included date of birth. ER285-88. TransUnion chose not to use these options, or to explore using a different vendor for OFAC data. O'Connell at 482:21- 24. It also never even considered halting sales of OFAC alerts. *Id*. at 482:25-483:4.[17]

TransUnion further claims that the *Cortez* decision suggests that its continued use of name-only matching logic could not be willful because of the addition of the word "potential" in front of the word "match" in connection with OFAC alerts. Appellant's Br. at 48. To the contrary, *Cortez rejected* TransUnion's argument that OFAC alerts are only "possible" matches to be screened by the end user. *Ramirez v. TransUnion, LLC*, No. 12-cv-632-JSC, 2017 WL 1133161, at *5 (N.D. Cal. Mar. 27, 2017). Instead, *Cortez* focused on TransUnion's actual procedures, and identified the very information TransUnion could use to confirm the accuracy of OFAC alerts: available middle names and dates of birth. *Id.* at 710. The Third Circuit called

[17] TransUnion also repeats its typicality argument, addressed above, that transmission of a consumer report to a third party is required in order to state a claim under FCRA section 1681e(b). Ninth Circuit authority, both longstanding and recent, forecloses this position. *See* fn. 13, *supra*.

TransUnion's failure to "at the very least" use date of birth "reprehensible." *Id.* at 723. TransUnion, of course, continued to ignore dates of birth on the OFAC list until 2013, despite its own research showing that using date of birth, or even year of birth, could entirely eliminate false positives. SER1031-32; SER1592; SER1599.[18]

2. Substantial Evidence Supports The Jury's Conclusion That TransUnion Willfully Failed To Clearly And Accurately Disclose OFAC Information

Whenever a consumer requests a copy of his or her file, the FCRA requires CRAs to "clearly and accurately disclose to the consumer all information in the consumer's file" at the time of the request. 15 U.S.C. § 1681g(a). The FCRA defines a consumer's file to include "all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored." 15 U.S.C. § 1681a(g). Unambiguous statutory language like this, which is "not subject to a range of plausible interpretations," renders a defendant's subjective interpretation of the law irrelevant and supports a finding of willfulness. *Syed*, 853 F.3d at 505. As the Third Circuit found in upholding the jury's willfulness finding on the disclosure claim in *Cortez*, the broad

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[18] The minor logic change TransUnion references—the elimination of "synonyms" function (which led to TransUnion reporting the OFAC record of "Sandra Cortes Quintero" about Ms. Cortez)—did nothing to affect the fundamental problem with TransUnion's name-only matching procedure, which is the procedure that negatively affected every class member here. SER1013-15; *Cortez*, 617 F.3d at 723.

reach of FCRA section 1681g(a) is "obvious." 617 F.3d at 711.

The jury found that TransUnion willfully failed to clearly and accurately disclose OFAC information to class members upon request. ER22-23. This determination was fully supported by the substantial evidence presented at trial:

- Ramirez requested a copy of his TransUnion file, and received his file or "personal credit report" which identified itself as the response to his request, and contained no reference to OFAC. SER1509-17.
- The form of the "personal credit report" was the same for all class members in 2011, and was the same form sent to Cortez in 2005. SER1254-55; SER1509-17; SER1554-63; ER321-22.
- TransUnion sent Ramirez and all other class members a separate letter regarding the OFAC record that "is considered a potential match" to the consumer's name. The author of the letter admitted that it is unclear. SER1230; SER1518; SER1150.
- The separate letter is not identified as a file, and says that the requested file "has been mailed to you *separately*." The letter also states that it is being provided as a "courtesy," and does not inform the consumer that the OFAC information can be disputed if inaccurate. SER1518.
- Ramirez did not know that he could dispute the OFAC information associated with him, or how to do so, until after he consulted with counsel. SER0699-700; SER1519.

- Since it introduced the product in 2002, TransUnion had the capability to incorporate OFAC information on the credit reports sold to customers. SER0854-55; SER1551; ER324.
- TransUnion was on notice that OFAC information should be disclosed in the form of the plain language of the FCRA, the *Cortez* complaint in 2005, the *Cortez* jury verdict in 2007, and numerous consumer inquiries regarding OFAC in 2006 and 2007. SER1604; SER1601.
- TransUnion did not begin to disclose OFAC information to consumers in any manner until 2011, and never considered stopping sales of OFAC alerts. SER1252-53; ER328-29; SER0862-63; SER1027-28.
- TransUnion misrepresented the content of the separate OFAC letter in correspondence to Treasury, falsely claiming that it instructed consumers about their right to dispute/block OFAC information. SER1518; SER1576-78.

This substantial evidence was sufficient for a reasonable jury to conclude that TransUnion willfully failed to clearly and accurately disclose OFAC information upon request.

TransUnion contends that this claim fails as a matter of law. Appellant's Br. at 42-43. TransUnion argues that it satisfied its disclosure obligations with respect to OFAC information because it sent the file and the separate letter "contemporaneously." *Id.* This argument is foreclosed by the documents themselves. Nothing about TransUnion's "personal credit report" and the separate OFAC letter indicate that they should be read together: the "personal credit report" does not say that it is incomplete and will be

supplemented, and the separate letter defines itself in opposition to a file disclosure, saying that the consumer's file has been sent "separately." SER1518. Thus, even taken together, the two documents do not clearly and accurately disclose all of the information in a consumer's file.

Indeed, the letter's statement that the OFAC data was provided as a "courtesy" and not as required by law supports an inference that TransUnion did not want consumers to know that the information was part of their file and could be disputed. SER1518. This inference is bolstered by TransUnion's misrepresentation to Treasury about the contents of the letter. SER1578.

As *Cortez* held, the fact that the OFAC data was housed separately from TransUnion's traditional credit data has no relevance to TransUnion's obligation to disclose it to consumers. 617 F.3d at 711-12. Furthermore, TransUnion's claim that the OFAC information "had to be sent" separately because it was housed separately (Appellant's Br. at 43) lacks credibility: TransUnion was able to incorporate and send the same OFAC data directly in reports sold to its paying clients as early as 2002. ER324; SER1551. A reasonable jury could infer that TransUnion had the ability to do the exact same thing for disclosures sent to consumers free of charge.

TransUnion asserts that there was no "precedent or authoritative guidance in 2011 even suggesting that TransUnion's two-mailings-instead-of-one practice violated FCRA." Appellant's Br. at 44. But, as the District Court found, this inaccurate legal standard is entirely TransUnion's self-serving

creation: "no court has held that a defendant can be found to have willfully violated the FCRA only when its conduct violates clearly established law." *Ramirez*, 2017 WL 1133161, at *2. Indeed, TransUnion's approach is entirely foreclosed by the binding precedent of *Syed*, which makes clear that when a statute is unambiguous, no prior guidance is necessary to find a willful violation. *Syed*, 853 F.3d at 504-05. FCRA section 1681g(a) is pellucidly clear that *all* information in the consumer's file must be disclosed. The evidence of record was sufficient for any reasonable jury to conclude that TransUnion failed to disclose all information to the class that was in their files.

3. Substantial Evidence Supports The Jury's Verdict That TransUnion Willfully Failed To Include A Statement Of Rights With Its Disclosure Of OFAC Information

In addition to providing clear and accurate file disclosures upon request, the FCRA also unambiguously requires CRAs to "provide to a consumer *with each written disclosure*…the [FTC's] summary of rights…." 15 U.S.C. § 1681g(c) (emphasis added). This mandate is not subject to multiple plausible interpretations, rendering any alternate reading unreasonable. *Syed*, 853 F.3d at 505.

The same evidence listed in section V.C.2 above permits a reasonable jury to conclude, as the jury did here, that TransUnion willfully failed to provide the FCRA summary of rights with each written disclosure made to consumers. ER22-23.

TransUnion asserts that there was "only one written disclosure here," and that the statement of FCRA rights contained in the personal credit report applied equally to the information in the separate OFAC letter. Appellant's Br. at 43. This argument strains credulity given that the OFAC letter contains no reference at all to the summary of rights or to the FCRA at all. SER1518. The letter does not state that the OFAC data is part of the consumer's file, and states that it is provided as a "courtesy." *Id.*

If, as TransUnion asserts, the separate letter is a written file disclosure to consumers, then TransUnion was required to provide the summary of rights with that mailing. The unambiguous language of FCRA section 1681g(c) requires the inclusion of the summary of rights with "each written disclosure." 15 U.S.C. § 1681g(c). There is no plausible interpretation of this language that permits sending the summary of rights with a separate piece of mail. *Syed*, 853 F.3d at 505. A reasonable jury could therefore easily conclude that TransUnion's violation of FCRA section 1681g(c) was willful.

D. The Damages Verdict Was Justified By The Facts, By TransUnion's Brazen Defense At Trial, And Was Completely In Line With Constitutional Standards

Finally, TransUnion seeks to eliminate or reduce the statutory damages award of $984.22 and the punitive damages award of $6,353.08 per class member. Appellant's arguments fail.

1. The Statutory Damages Award Was Proper

Upon a finding of any willful violation, the FCRA permits a statutory damages award of $100-$1,000, and uncapped punitive damages. 15 U.S.C. § 1681n(a)(2). The parties agreed to submit a jury verdict form which asked for damages, if any, to be awarded *per class member*. ER22-23. The jury instruction concerning statutory damages was entirely consistent with the plain language of the FCRA, permitting a recovery $100-$1,000 per consumer. ER351.

The jury found three separate willful violations of the FCRA and assessed statutory damages at $984.22 per class member. ER23. The District Court upheld the award. ER8-12. TransUnion now argues that the statutory damages verdict was allegedly improper.

First, TransUnion contends that class members should not recover any statutory damages because they allegedly lack Article III standing. Appellant's Br. at 49. This argument fails for the same reasons that TransUnion's previous standing argument fails. *See supra* at pp. 17-26.

Next, TransUnion regurgitates its argument that class members have allegedly not established willful violations of the FCRA. Appellant's Br. at 49. Appellant is mistaken about the merits of the class's claims, as discussed above. *See supra* at pp. 31-43.

Further, the FCRA permits statutory damages for *any one* violation, and TransUnion agreed that the jury may award up to $1,000 if it found in favor of the class on any one of the three FCRA claims. ER22-23; SER1609. TransUnion waived it argument that "there

is no way to know what the jury would have awarded" (Appellant's Br. at 49-50) had the jury found for the class on two claims or if one class size was smaller by agreeing to a verdict form which allowed an award of statutory damages for any of the three claims. SER1609.

Further, TransUnion argues that the fact that statutory damages here were 98% of the maximum $1,000 offends due process allegedly because they were "wholly disproportionate to the offense." Appellant's Br. at 50-51. But this Court has held that statutory damages award can only violate constitutional due process protections when they are "'so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.'" *U.S. v. Citrin*, 972 F.2d 1044, 1051 (9th Cir. 1992) (quoting *St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66 (1919)).

That is not the case here. Indeed, TransUnion cannot, and does not, even argue that the statutory damages award was either severe or oppressive. Even the aggregate statutory damages award was miniscule for one of the "Big Three" credit reporting agencies in the U.S. SER1607. Moreover, given the verdict of three separate violation for every class member here, the defamatory nature of false OFAC information, and the degree of TransUnion's recklessness, a statutory damages award approaching the $1,000 cap is warranted.

TransUnion also complains that the District Court affirmed the statutory damages award by citing to a recent Ninth Circuit FCRA case, rather than to Appellant's preferred Farm Labor Contractor

Registration Act ("FLCRA") case. *Six Mexican Workers*, 904 F.2d 1301, 1309-10 (9th Cir. 1990). Given that the FLCRA has been repealed, it is questionable whether *Six Mexican Workers* has a proper application in any context. Regardless, that decision is not helpful here since it makes no reference to constitutional due process, instead following an analysis specific to liquidated damages under the FLCRA. *Id.*

The District Court committed no error in citing to *Bateman v. Am. Multi- Cinema, Inc.*, 623 F.3d 708, (9th Cir. 2010). Although decided at the class certification stage, *Bateman* is a recent FCRA decision that makes clear that "[t]here is no language in the [FCRA], nor any indication in the legislative history, that Congress provided for judicial discretion to depart from the $100 to $1000 range where a district judge finds that damages are disproportionate to harm…. the plain text of the statute makes absolutely clear that, in Congress's judgment, the $100 to $1000 range is proportionate and appropriately compensates the consumer." *Id.* at 718-19.

Finally, juries have substantial discretion in making damages determinations, particularly in light of what this Court called the "inherent difficulty in quantifying damages for injury to creditworthiness or reputation" under the FCRA. *Kim v. BMW Fin. Servs. NA, LLC*, 702 Fed. App'x 561, 563 (9th Cir. 2017). That is one of the reasons the FCRA allows for statutory damages in cases like these. Nothing about this verdict is wholly disproportionate or obviously unreasonable in the circumstances of this case.

2. The Punitive Damages Award Was Within Constitutional Limits

TransUnion's final erroneous argument is that the jury's punitive damages award of $6,353.08 to each class member has "constitutional problems." Appellant's Br. at 52.

First, TransUnion argues that the verdict allegedly suffers from a "double punishment" problem, apparently complaining that the jury did not understand the different functions of statutory and punitive damages under the FCRA. *Id.* at 53. TransUnion's position is sheer speculation.

The jury instructions here were proper, and TransUnion does not argue otherwise in this appeal. The punitive damages phase of the trial was entirely separated from the liability phase, with separate and equally proper instructions and a separate verdict form. SER1487-88; ER21. The closing arguments during the liability/statutory damages phase made it clear that statutory damages compensate for intangible harm that is difficult to monetize. SER1410-SER1413; *Bateman*, 623 F.3d at 718-19. Nor did TransUnion object during closing argument or after. To reverse a jury verdict based on *post hoc* speculation is unprecedented.

TransUnion next argues that the jury must have misunderstood that the punitive damages were not only for class members but also for non-parties. Appellant Br. at 54-55. This argument completely ignores the jury instructions and what class counsel actually said at closing.

The jury charge was clear. The District Court's punitive damages instruction was in accordance with

the Ninth Circuit's Model Civil Jury Instruction 5.5 (2007), and correctly described the standard for awarding punitive damages under the FCRA. SER1487-88. Again, TransUnion did not object to the jury charge as causing any confusion about punitive damages or for whom they were intended.

Class counsel's closing argument for punitive damages was also clear, going as far as to tell the jury who punitive damages were intended for: "Mr. Ramirez and other class members. And nobody else." SER1490. When class counsel stated truthfully that there was evidence of much broader misreporting of OFAC alerts by TransUnion,[19] he followed that by accurately stating, "you could consider that evidence, not because anyone besides this class could recover any money in this case, but in order to figure out how frequently the law is being violated, how [a] frequent and a repeat offender TransUnion is." SER1490. Again TransUnion did not object.

Although the jury could not, and did not, compensate non-parties, it could certainly punish TransUnion in a fashion so as to *deter future harm to others* by the same reckless conduct. *Philip Morris USA v. Williams*, 549 U.S. 346, 356-57 (2007); *Cortez*, 617 F.3d at 723 (punitive damages serve to incentivize

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[19] The evidence of record is that TransUnion used the same name-only matching logic to associate consumers with the OFAC list from 2002 until 2013, and failed to include OFAC data in disclosures to consumers until July of 2011. SER1013-15; SER1231; ER327-29; SER1252-53. TransUnion's records indicate that these practices affected tens of thousands of consumers per year. SER1593. The class that could be ascertained and certified, however, was much smaller.

CRAs not to "ignore the requirements of the FCRA each time it creatively incorporates a new piece of personal consumer information in its reports."). To argue now that the jury must have been awarding punitive damages for non-class-members is too late, as that argument was waived at trial, and clearly incorrect in any event.

TransUnion's contention that the punitive damages were constitutionally excessive, allegedly because they do not satisfy any of the three *State Farm* guideposts, is also mistaken. *See State Farm Mut. Auto Ins. Co. v Campbell*, 538 U.S. 408, 418 (2003).

Under *State Farm*, there is no "bright line ratio that a punitive damages award cannot exceed." 538 U.S. at 425. The U.S. Supreme Court has identified three "guideposts" for assessing punitive damages: (1) the reasonableness of the punitive damages in relation to the reprehensibility of defendant's actions; (2) the disparity between the punitive damages awarded and the compensatory damages awarded (the "ratio"), and (3) the difference between the punitive damages awarded by the jury and civil penalties authorized in comparative cases. *Id.* at 418 (*citing Gore*, 517 U.S. 559).

a. The Punitive Damages Verdict Here Is Reasonably Related To The Reprehensibility Of TransUnion's Conduct

As far as fair credit reporting cases are concerned, TransUnion's conduct here was highly reprehensible. TransUnion was well aware of its longstanding and unambiguous responsibility under FCRA section 1681e(b) to assure the maximum possible accuracy of

records it reports, and under FCRA section 1681g to make clear and complete file disclosures to consumers, including information about their rights under the FCRA. *Guimond*, 45 F.3d at 1332-33; *Cortez*, 617 F.3d at 709-12.

As the jury heard, TransUnion was on notice of problems with its practices regarding OFAC data as early as the commencement of the *Cortez* litigation in 2005, and the jury's verdict finding violations of the FCRA's accuracy and disclosure provisions in 2007. The Third Circuit in *Cortez* found that TransUnion's failure to use dates of birth when available to match consumers to the OFAC list was reprehensible. *Id.*

TransUnion's behavior was reprehensible then, and it became only more so when TransUnion ignored the Third Circuit's warning by continuing to use nameonly matching logic to associate consumers with the OFAC list, and continuing to fail to provide clear file disclosures of OFAC data.

The evidence in this case is that TransUnion's policies with respect OFAC information as applied to the class were substantively the same as those found to be reprehensible by the *Cortez* jury in 2007 and the Third Circuit in 2010: TransUnion still used name-only matching logic, disregarding all additional identifiers including dates of birth. TransUnion's file disclosures to consumers it associated with the OFAC list continued to make no mention whatsoever of OFAC information. And despite the clear warning of *Cortez*, TransUnion never even considered pausing sales of OFAC data in order to reform its practices. Instead, it misled Treasury by falsely stating that it

informed consumers that they could block false OFAC alerts.

The depth of TransUnion's disregard for U.S. federal court rulings against it and also of consumer rights with respect to OFAC was put on stark display at the trial in this matter, where certain TransUnion witnesses would not even admit that they sold a credit report about Ramirez, where a corporate representative insisted that TransUnion's procedures *benefitted* class members, and where TransUnion's counsel claimed that it was *TransUnion's* reputation at stake, not the reputations of consumers. SER1090.

TransUnion's conduct plainly satisfies this "reprehensibility" standard, and an award of $6,353.08 per class member is reasonable.

The circumstances underlying *State Farm*, a bad faith insurance claim matter stemming from a fatal car accident, led the Court to discuss five factors as to "reprehensibility," factors which are not a meaningful match for FCRA consumer cases. *See Saunders v. Equifax Info. Svcs., LLC*, 469 F. Supp. 2d 343, 351 (E.D. Va. 2007) ("*Saunders v. Equifax*"). Specifically, the first two of the *State Farm* reprehensibility factors should be given less weight in consumer actions since FCRA actions typically will not involve physical injury of the type in *State Farm*. *Id*. *See also Kemp v. American Telephone & Telegraph Co*., 393 F.3d 1354, 1363 (11th Cir. 2004) (upholding district court's finding that first two factors of State Farm reprehensibility analysis did not apply to consumer overcharging case).

Additionally, the final factor can also be discounted since malice is not necessary in FCRA

cases to recover punitive damages. *See Saunders v. Equifax*, 469 F. Supp. 2d at 351; *Cousin v. TransUnion Corp.*, 246 F.3d 359, 372 (5th Cir. 2001) ("Malice or evil motive need not be established for a punitive damages award [in FCRA cases]") (citation omitted).

Moreover, the Supreme Court stated that the reprehensibility considerations are not a mandatory checklist that must be satisfied in full, but that the absence of all five factors renders a punitive damages award "suspect," although not necessarily unconstitutional. *State Farm*, 538 U.S. at 418. This analysis is bolstered by the Ninth Circuit's conclusion that when punitive damages are awarded pursuant to a statutory regime, as opposed to under state common law, "rigid application of the [*State Farm*]/*Gore* guideposts is less necessary or appropriate." *Arizona v. ASARCO LLC*, 773 F.3d 1050, 1056 (9th Cir. 2014). Nevertheless, the evidence of record satisfies the factors applicable to the case at bar.

First, the harm here was neither purely "economic" nor "physical." A major part of the harm was reputational and informational in nature—TransUnion associated class members with terrorists and deprived them of the information they needed to correct the problem. Second, this was not a case that involved the "health or safety of others." Third, the evidence demonstrated that the OFAC information associated with class members could result in them being cut off from the U.S. financial system, rendering them "financially vulnerable," particularly in comparison to TransUnion, a billion-dollar corporation. SER0964; SER0970-71; SER1607. Fourth, TransUnion engaged in repeated conduct.

Minimally, it associated the 8,185 class members with the OFAC list during the six-month class period using name-only matching procedure and denied each of them a clear file disclosure and statement of FCRA rights, and the evidences shows that these same practices affected many other unidentifiable consumers. SER1593.

The evidence shows that TransUnion deliberately chose not to comply with the FCRA with respect to its OFAC product in spite of the FCRA's plain language and *Cortez*. TransUnion took the calculated risk of an appeal, while continuing to use the same procedures. And even after losing the *Cortez* appeal, it deliberately continued selling the OFAC product knowing its approach was inadequate and *already* reprehensible. The reprehensibility guidepost is fully satisfied here.

b. The Relationship Between Statutory And Punitive Damages Here Was Constitutionally Appropriate

The jury's measured award of $6,353.08 in punitive damages per class member, representing approximately a 6:1 ratio, is entirely appropriate here. TransUnion calls it a ratio "50,000 times higher" (Appellant Br. at 56), but that simply demonstrates that TransUnion's unwillingness to listen to any court or jury which tells it that its OFAC reporting practices are harmful to consumers.

Multiple cases decided after *Gore* have upheld ratios much greater than 6:1. Indeed, the Fourth Circuit upheld a punitive-compensatory damage ratio of 80:1 in a well-reasoned decision on an FCRA case, following defendant's motion for a constitutional

reduction, just like TransUnion's motion here. *See Saunders v. Branch Banking and Trust Co. of VA, LLC*, 526 F.3d 142 (4th Cir. 2008) ("*Saunders v. BB&T*") (finding that $80,000 in punitive damages for a single consumer who was awarded $1,000 in statutory damages was constitutionally appropriate in light of similar FCRA awards and the need to adequately punish and deter a large, wealthy corporation).[20] But that is only one example, out of many:

- 300,000:1 ratio proper. *Arizona v. ASARCO*, 773 F.3d at 1054-56;
- 125,000:1 ratio proper. *Abner v. Kan. City S. R.R.*, 513 F.3d 154, 165 (5th Cir. 2008);
- 75:1 ratio proper. *Willow Inn, Inc. v. Public Service Mut. Ins. Co.*, 399 F.3d 224, 233-37 (3d Cir. 2005);
- 1,500:1 ratio proper. *Stark v. Sandberg, Phoenix & von Gontard, P.C.*, 381 F.3d 793 (8th Cir. 2004).[21]

By contrast, the only two cases where the U.S. Supreme Court overturned punitive damage awards *because of their size* are materially different. *Gore* had a verdict of $4,000 in compensatory damages and $2,000,000 in punitive damages, and *State Farm* had a verdict of $2.6 million in compensatory damages and $145 million in punitive damages. Thus the ratios of

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[20] *See also Daugherty v. Ocwen Loan Servicing, LLC*, 701 Fed. App'x 246, 261- 62 (4th Cir. 2017) (100:1 ratio appropriate in FCRA case) (citing *Saunders v. BB&T*).

[21] *See also Williams v. First Advantage LNS Screening Solutions, Inc.*, 231 F. Supp. 3d 1333, 1357 (N.D. Fla. 2017) (upholding 13.2:1 ratio of compensatory to punitive damages in FCRA case where a large, wealthy CRA engaged in a "burdenshifting strategy" to assuring accuracy).

punitive to compensatory damages in both of those cases, which the U.S. Supreme Court found to be offensive, were 500:1 and 145:1, respectively. *See Saunders v. Equifax*, 469 F. Supp. 2d at 349 n. 7.

Here, the punitive to compensatory damages ratio is approximately 6:1, well under the single-digit ratio (10:1 or less) that *State Farm* suggests is appropriate. 538 U.S. at 425.

TransUnion argues that in the aggregate the punitive damages award is "substantial." Appellant's Br. at 56. It provides no analysis at all as to what that means.[22] Moreover, the entire punitive damages verdict is a small fraction (3.3%) of TransUnion's net worth. SER1607. Usually, the best evidence of a defendant's ability to withstand a punitive damages award is exactly what the jury was presented with here: TransUnion's net worth. *Cortez*, 617 F.3d at 718 n. 37 (net worth is appropriate evidence of financial condition).

In the aggregate the punitive damages verdict is $52 million only because TransUnion repeatedly violated the rights of over 8,000 consumers. TransUnion's argument is not under *State Farm*, it is

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[22] A limited award of $984.22 per class member cannot be considered substantial, and TransUnion provides no authority suggesting that it could. To the contrary, when the Ninth Circuit has upheld reductions in punitive damages because compensatory damages were high, it did so when a single consumer was set to receive tens of thousands of dollars. *See, e.g.*, *Bennett v. Am. Medical Response, Inc.*, 226 Fed. App'x 725, 728 (9th Cir. 2007) ($100,000 in compensatory damages was substantial); *Bains LLC v. Arco Prods. Co., Div. of Atlantic Richfield Co.*, 405 F.3d 764, 776 (9th Cir. 2005) ($50,000 to a single plaintiff was substantial).

a regurgitation of its belief that the District Court abused its discretion in certifying this case as a class action. But it did not, as discussed above. Not surprisingly, TransUnion cites to no authority at all for its proposition that the proportionality analysis is different for class actions.

Indeed, the fact that this is a class action does not change the analysis. *Bateman*, 623 F.3d at 719 ("Despite Congress's awareness of the availability of class actions, it set no cap on the total amount of aggregate damages, no limit on the size of a class, and no limit on the number of individual suits that could be brought" against a single defendant). Given the modest statutory damages award here, the reckless and reprehensible nature of Appellant's conduct, the fact that this is a consumer protection case under a remedial statute, and TransUnion's net worth, the approximately 6:1 ratio is appropriate.

c. Civil Penalties Comparison Not Germane

TransUnion also asserts that the difference between the civil penalties available under the FCRA and the jury's punitive damage award make the award is excessive. This argument has no merit. As the *Saunders* court held, "since this limit is not applicable to actions brought under the FCRA by private citizens, it is not particularly helpful in assessing the constitutionality of the punitive damage award. Accordingly, for FCRA cases brought by private citizens, the third guidepost offers little help to this Court's punitive damages analysis." *Saunders v. Equifax*, 469 F. Supp. 2d at 353 (internal quotations and citation omitted). There is, therefore, no truly

"comparable" civil penalty that the Court could be guided by.

In sum, the jury's punitive damages verdict was appropriate, and TransUnion offers no valid reason to reduce it.

VI. CONCLUSION

For all the foregoing reasons, Appellee respectfully submits that the District Court's orders being appealed should be affirmed in all respects.

Respectfully submitted,

Dated: May 25, 2018

/s/ John Soumilas
John Soumilas

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