IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHARLOTTE MUHA, CHANING GRABNER, *and* DEBRA GRABNER, *Plaintiff-Appellants*, v. EXPERIAN INFORMATION SOLUTIONS, INC. *Defendant-Respondent*.	Fourth Appellate District Court of Appeal, Div. 3, No. G062621 Super. Ct., County of Orange, Nos. 30-2021-01233648, 30-2021-01233482

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises

ISSUES PRESENTED FOR REVIEW

1. Whether a person who alleges a statutory violation of federal law has standing to sue in California courts, regardless of whether they have standing under Article III of the U.S. Constitution; and
2. Whether the statutory-damages provision in the Fair Credit Reporting Act, 15 U.S.C. § 1681n, allows for recovery of statutory damages without a showing of actual harm.

INTRODUCTION

The questions raised by this case underlie every civil case filed in a California state court. Deepening an emerging split amongst the appellate courts, the Court of Appeal here concluded that—under federal standing principles—plaintiffs who assert well-pled statutory violations without an additional showing of actual harm do not have standing in California courts to prosecute their claims. The Court of Appeal's published decision heightens the comparatively low, flexible requirements for asserting standing to sue in the courts of this state, and rests on a misunderstanding of the jurisdiction of the federal and state judicial systems. Federal standing principles are grounded in and limited by the U.S. Constitution, and they apply to constrain federal courts. California has no analogous constitutional limitations on standing, and determining whether a litigant in a California court has standing has historically been considered solely by reference to the statute under which they sue.[1]

Plaintiffs allege that Experian Information Solutions ("Experian," or "Defendant") violated the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (FCRA) by willfully failing to provide

[1] Plaintiff-Appellants petition for review of the published opinion of the Court of Appeal, Fourth District, Division 3, in *Muha, et al, v. Experian Information Solutions, Inc.* (Oct. 1, 2024, No. G062621) (*Muha*). No petition for rehearing was filed in the Court of Appeal. *Muha* was filed on October 1, 2024, and the Court of Appeal issued an order granting publication on October 29, 2024. The opinion became final on November 28, 2024 (see Cal. Rules of Court, rule 8.264(b)(3)), and this petition is timely filed. (See *id.*, rule 8.500(e)(1).)

them with FCRA-required disclosures in their consumer reports. The FCRA entitles plaintiffs to recover "any actual damages" sustained as a result of a willful nondisclosure, "or damages of not less than $100 and not more than $1,000." (15 U.S.C. § 1681n(a)(1)(A).) Despite recognizing that Plaintiffs had pled a willful FCRA violation entitling them to statutory damages, the Court of Appeal affirmed the dismissal of Plaintiffs' consolidated class complaint on the basis that they had failed to establish a concrete injury sufficient to sue in California courts. This decision requires this Court's review for three, independent reasons:

First, this Court should grant review to resolve a split between the Courts of Appeal as to whether California litigants who assert well-pled statutory violations have standing to sue in state courts, even where their injuries are insufficiently concrete to sue in federal court. Three appellate courts, including *Muha*, have concluded that plaintiffs who allege willful statutory violations of the FCRA do not have a sufficient legal interest in the outcome of their case to sue. (See *Limon v. Circle K Stores Inc.* (2022) 84 Cal.App.5th 671 (*Limon*); *Navarro v. Schell & Kampeter, Inc.* (Mar. 26, 2024, C098432) 2024 WL 1266191 [nonpub. opn.[2]] (*Navarro*).) At least three others have departed from this result, and—analyzing strikingly similar claims—have

[2] The unpublished opinions relied upon in this Petition are used to demonstrate a "recurring issue [that] remains unresolved" or a split of authority on the application of the relevant law; they are not used to support legal propositions or as binding or persuasive precedent for the arguments advanced. (*Mangini v. J.G. Durand International* (1994) 31 Cal.App.4th 214, 219; Cal. Rules of Court, rule 8.500(b)(1).)

assumed the litigants' standing and reached the merits. (*Hebert v. Barnes & Noble, Inc.* (Apr. 19, 2022, D079038) 293 Cal.Rptr.3d 528 [opn. ordered nonpub. Aug. 10, 2022]; *Newman v. ADP Screening & Selection Services, Inc.* (July 31, 2023, No. H049070) 2023 WL 4875174 [nonpub opn.]; *Culberson v. Walt Disney Parks and Resorts* (Apr. 15, 2019, B289488) 2019 WL 1594026 [nonpub. opn.].)

Second, this Court's review is required to maintain California's standing doctrine independent from federal standing law. In affirming the dismissal of Plaintiffs' FCRA claims, *Muha* explicitly imported the federal case-or-controversy requirement and applied a heightened standing requirement to *all* cases brought in California. (See Opn.[3] 9–10 [stating that "*as a general rule*, a plaintiff must allege he or she suffered a concrete 'injury,' as that term is used in Article III standing jurisprudence, to sue in California state court"], italics added.) The California Constitution, however, does not have a case-or-controversy requirement, and this Court's standing jurisprudence indicates that standing in state courts is determined by reference to the statute under which a plaintiff bring their claims. The Court of Appeal departed from this analysis and tied every state-court plaintiff's standing to federal-court standards.

Third, this Court's review is required to determine whether

[3] Citations to the decision issued in the California Court of Appeal are abbreviated as "Opn.," and citations to the record filed in the Court of Appeal are abbreviated as "[Volume]R." A copy of the slip opinion and the order directing its publication are attached to this petition. (Cal. Rules of Court, rule 8.504(e)(1)(A).)

a plaintiff must allege actual harm in order to recoup statutory damages, where a statute allows for recovery of either actual or statutory damages. *Muha* relied on the conclusion reached in *Limon*, *supra*, 84 Cal.App.5th at p. 703, that statutory damages cannot be recovered absent a showing of actual harm. Not only does this decision depart from the plain meaning of the FCRA's recovery provisions, but it also departs from numerous federal courts to have concluded that statutory damages can be recovered absent a showing of harm. The decision threatens to undermine well-established statutory schemes in California that allow for the recovery of either actual or statutory damages; nothing in *Muha* limits the decision to claims arising under the FCRA or any other federal or California statute. The Court of Appeal's decision undermines the purpose of consumer-protection law by threatening to bar plaintiffs with meritorious claims from seeking relief under both state and federal law.

For these reasons, this Court should grant the petition for review.

STATEMENT OF THE CASE

I. Legal Background

A. The Fair Credit Reporting Act

Experian is one of three major credit reporting agencies in the United States (see, e.g., 1R 34 ¶ 10), and it is federally regulated by the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. (FCRA), and its implementing regulations, see 16 C.F.R. §§ 600–698; 12 C.F.R. §§ 1022.1–1022.142.

The FCRA requires credit reporting agencies to, "upon request," "clearly and accurately disclose to the consumer," "[a]ll

information" in their file. (16 U.S.C. § 1681g(a).) Any written disclosure sent by such an agency must be accompanied by a "summary of rights," which includes a description of the rights of consumers to obtain a copy of their consumer report, how consumers may dispute information in their credit files, and the frequency and circumstances under which consumers are entitled to receive free reports, among other things. (*Id.* § 1681g(c)(1)(B).) As relevant here, the summary of rights must also include a state-rights disclosure, stating "that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent thereof) to learn of those rights." (*Id.* § 1681g(c)(2)(D).)

Consumers can directly enforce violations of these disclosure requirements. The Act allows them to bring suit against "[a]ny person who…negligent[ly]," (15 U.S.C. § 1681o(a)), or "willfully," (*id.* § 1681n(a)), fails "to comply with any requirement" imposed under the FCRA. (*Id.* §§ 1681n(a), 1681o(a).) Consumers who establish negligent violations of the Act are entitled to actual damages, and—upon success in the litigation—costs and fees. (See *id.* § 1681o(a)(1)–(2).) For demonstrated willful violations, consumers are entitled either to actual damages or statutory damages (*id.* § 1681n(a)(1)(A) [allowing for recovery of "actual damages" or "damages of not less than $100 and not more than $1,000"]), punitive damages, and costs and fees. (*Id.* § 1681n(a)(1)–(3).) The statutory damages provision is written to redistribute the risk of companies' failures

to print and provide statutory notices that aid consumers: Rather than requiring each consumer that fails to receive the FCRA-required disclosure to connect a long chain of causation establishing that the lack of disclosure caused economic consequences or other compensable harm, the FCRA regulations require only proof that the failure to receive a statutory notice was willful. (See *id.*; see also, e.g., *Nayab v. Capital One Bank (USA), N.A.* (9th Cir. 2019) 942 F.3d 480, 492 ["By providing for statutory damages and [b]y providing a private cause of action for violations of [Sections 1681f and 1681q], Congress has recognized the harm such violations cause, thereby articulating a chain[ ] of causation that will give rise to a case or controversy"], quotation marks omitted and alterations in original.)

B. The U.S. Supreme Court's decision in *TransUnion v. Ramirez*

The U.S. Supreme Court addressed standing for FCRA plaintiffs in *TransUnion LLC v. Ramirez* (2021) 594 U.S. 413 (*TransUnion*). The Court's decision in the case "changed" "the legal landscape for Article III standing." (*Winter v. Resurgent Capital Services L.P.* (D.N.J. May 12, 2023, No. 22CV00772) 2023 WL 3431215, at p. 3.). Prior to its decision, the Court had, for decades, taken the position that the deprivation of a statutorily created right or entitlement "can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute." (*Warth v. Sedlin* (1975) 422 U.S. 490, 514.) *TransUnion* eroded that position, requiring plaintiffs to allege a heightened concrete harm in addition to establishing a prima facie statutory violation.

The case was brought against another of the three major credit reporting agencies, TransUnion. The plaintiffs alleged that the agency had violated the FCRA by failing to use reasonable procedures to ensure the accuracy of their credit files. (*TransUnion*, *supra*, 596 U.S. at p. 417.) Using an add-on product ("OFAC Name Screen Alert"), TransUnion compared consumers' information against a list of individuals labeled as national security threats by the U.S. government, and placed alerts on the credit reports of any consumers that OFAC determined were potential matches. (*Id.* at p. 419.) OFAC, however, was also "erroneously flagg[ing] many law-abiding people as potential terrorists and drug traffickers" (*id.* at p. 443 (dis. opn. of Thomas, J.)); in some cases, that information was disseminated to third parties. (*Id.* at pp. 420–422.) A certified class of consumers sued TransUnion under the FCRA, arguing that TransUnion's usage of the OFAC add-on failed to meet the agency's obligation to use "reasonable procedures" to assure the "maximum possible accuracy" of consumer credit files, and that formatting defects in certain mailings sent to them by TransUnion had also violated the FCRA. (*Id.* at pp. 418, 440.)

The U.S. Supreme Court held that only consumers who had both received the OFAC flag and established that their incorrect reports had been disseminated to third parties had established a concrete harm sufficient for standing. (*Id.* at p. 433.) Neither the consumers who had only received the OFAC flag—i.e., those consumers who had received an incorrect credit report but did not demonstrate that the incorrect information had been sent to any

third party—nor the consumers who had received the mailers in an improper format had established standing under Article III. (*Id.* at pp. 417–418.) The Court held that Congress's view regarding cognizable statutory harms was, at best, persuasive: Congress can "elevate harms that exist in the real world…to actionable legal status" (*id.* at p. 426, quotation marks omitted), but plaintiffs may now sue in federal court only if they can also demonstrate "downstream consequences" or "adverse effects" of the alleged violation. (*Id.* at p. 442.) The Court concluded that this analysis left room for seeking redress for "intangible harms" like "reputational harms" or "disclosure of private information," because such injuries bear a "close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." (*Id.* at p. 425.)

In dissent, Justice Thomas, joined by Justices Breyer, Sotomayor, and Kagan, labeled the majority's opinion as "remarkable," noting that the Supreme Court had "[n]ever before" "declared that legal injury is *inherently* insufficient to support standing." (*Id.* at pp. 454–455, italics in original.) He went on to predict that the decision would leave "state courts—which 'are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law,' [citation]—as the sole forum" for cases alleging legal or statutory injuries. (*Id.* at p. 459, fn. 9.)

C. The California Court of Appeal adopts *TransUnion*'s reasoning in *Limon v. Circle K Stores*

Limon, *supra*, 84 Cal.App.5th 671, was the first California

appellate court confronted by the question of whether and how the standing principles articulated in *TransUnion* applied to FCRA claims brought in state court. The plaintiff in *Limon* alleged that the defendant had violated the FCRA by seeking and obtaining his authorization to pull his credit report in connection with his application for employment, without providing him with the proper FCRA-required disclosures before doing so. (*Id.* at p. 680.) Relying on and adopting the Article III analysis in *TransUnion*, the Court of Appeal concluded that Limon had not alleged a sufficient injury to his legally protected interests under the FCRA and lacked standing to sue in California courts (*Id.* at p. 707.)

II. Factual Background and Procedural History

This action flows from Experian's alleged failure to comply with the FCRA's disclosure requirements. In two separate class complaints filed in Orange County Superior Court, Plaintiffs allege that they requested their consumer reports from Experian, and that the reports they received violated the FCRA because they did not contain the state-rights disclosure. (See 15 U.S.C. § 1681g(c).) The consumers alleged that "Experian knowingly and willfully made the decision to remove" the state-rights disclosure (see Opn. 2; see also 1R. 39 ¶ 28), and "could have simply used the standard-form Summary of Rights that is found in Appendix K of Regulation V." (1R. 40 ¶ 29.) Experian's failure to provide the notice was "so that consumers would be less likely to contact their State or local consumer protection agencies and State attorneys general." (1R. 40 ¶ 29.) As relief, the consumers sought "actual damages, statutory damages, and punitive damages,"

along with costs, fees, and any other relief deemed proper. (Opn. 2; 1R. 42.)

Experian removed the consolidated case to the U.S. District Court for the Central District Court of California. (Opn. 2; 1R. 56, 60–61.) In response, the Plaintiffs moved to remand on the basis that they had not identified a "concrete harm" sufficient to establish Article III standing in federal court. (See Opn. 2–3; see also, e.g., *Golden v. Intel Corporation*, (N.D.Cal. 2022), 642 F.Supp.3d 1066, 1070 [describing Article III requirements].) Relying on the majority's analysis in *TransUnion*, the U.S. District Court concluded that, "[l]ike the plaintiffs in *TransUnion*, Plaintiffs do not allege any concrete action Defendant's statutory violation prevented them from taking." (3R. 202–203; see also *id.* 217–218.)

Once back in Superior Court, Experian moved for judgment on the pleadings. While the motion was pending, the California Court of Appeal issued its decision in *Limon*, *supra*, 84 Cal.App.5th 671. Bound by *Limon*, the Superior Court finalized its ruling and granted Experian's motion for judgment on the pleadings. (Opn. 6.) The Plaintiffs appealed, arguing that *Limon* was wrongly decided, and that the federal court's determination of their Article III standing did not preclude them from vindicating their rights in state court. (Opn. 4.) Relying on *Limon* and *TransUnion*, the Court of Appeal adopted the Plaintiffs' arguments before the U.S. District Court and concluded that they had not "suffered any downstream consequences," did not "suffer an injury in fact under Article III," and "therefore, do not have a

beneficial interest" needed to vindicate a right "under California standing law." (Opn. 12.) Plaintiffs now petition for review.

REASONS FOR GRANTING REVIEW

I. This Court's Review is Required to Establish Uniformity of California Standing Doctrine.

In the three years since the issuance of *TransUnion*, California Courts of Appeal have divided on its application to FCRA claims brought in California state court. Some appellate courts have applied *TransUnion* and concluded that litigants asserting statutory FCRA claims do not have standing. Others, analyzing nearly identical claims, have instead assumed standing, and resolved the plaintiff's action on the merits. This Court's review is needed to establish uniformity among the Courts of Appeal and clarify the extent to which California standing doctrine allows litigants asserting statutory violations to litigate the merits of the actions they present.

The Courts of Appeal have relied on *TransUnion* to dismiss FCRA statutory-violation claims in at least two other cases, apart from the present case. *Limon* was the first California court to adopt *TransUnion* in its standing analysis. (See 84 Cal.App.5th at p. 705.) Even though Limon had pled that his employer had been "willful" (*id.* at p. 683) in "failing to provide him with proper FCRA disclosures" (*id.* at p. 680)—which would entitle him to statutory damages under the FCRA (see 15 U.S.C. § 1681n(a)(1)(A))—the Court of Appeal concluded he had "not alleg[ed] a sufficient injury to his legally protected interests under the FCRA to confer standing upon him." (84 Cal.App.5th at p. 707.)

The same result was reached in *Navarro v. Schell & Kampeter, Inc.* (Mar. 26, 2024, C098432) 2024 WL 1266191 [nonpub. opn.]. The plaintiff filed a class complaint against her employer under the FCRA, on the basis that her employer had provided her with a disclosure form that willfully contained "extraneous language" before conducting a background check on her. (*Id.* at p. 1; see also, e.g., *Syed v. M-I, LLC* (9th Cir. 2017) 853 F.3d 492, 496 ["a prospective employer's violation of the FCRA is 'willful' when the employer includes terms in addition to the disclosure"].) Relying on *Limon*, *Navarro* concluded the plaintiff had failed to "allege" that "she suffered any injury." (*Navarro*, *supra*, at p. 2.)

In a third case currently pending before the Sixth Appellate District, *Chai v. Velocity*, No. H051485, the defendant (Velocity) successfully argued in the superior court that *TransUnion*'s holding should extend into standing requirements in the Fair Debt Buying Practices Act, Civil Code sections 1788 et seq. (FDBPA). Velocity conceded that the plaintiff and other class members had not received a notice required by the Act, (see App. Br., filed Feb. 13, 2024, at p. 14), but—despite that the lack of FDBPA-required notices entitle class members to statutory damages (see Civ. Code § 1788.62, subd. (a)(2))—the superior court agreed with the defendant and dismissed the case on standing grounds. Oral argument was heard in the case on December 5, 2024.

In cases presenting strikingly similar facts, other pre- and post-*TransUnion* decisions by the Courts of Appeal have instead

assumed that the litigants have standing and reached the merits of the FCRA cases presented. In *Hebert v. Barnes & Noble, Inc.* (Apr. 19, 2022, D079038) 293 Cal.Rptr.3d 528 [opn. ordered nonpub. Aug. 10, 2022], for example, the plaintiff asserted that his employer, Barnes & Noble, had willfully violated the FCRA by providing job applicants with disclosures that contained extraneous language unrelated to the topic of consumer reports. (*Id.* at p. 531; see 15 U.S.C. § 1681b(b)(2)(A)(i) [persons may not procure consumer reports unless they provide "a clear and conspicuous disclosure…in writing…in a document that consists solely of the disclosure"].) Reversing the superior court's grant of summary judgment to the employer, the Court of Appeal concluded that there was a triable issue of fact related to whether Barnes & Noble's inclusion of the additional language on the form was indeed willful. (*Hebert v. Barnes & Noble, Inc.*, *supra*, at pp. 537–538.)

In *Newman v. ADP Screening & Selection Services, Inc.* (July 31, 2023, No. H049070) 2023 WL 4875174 [nonpub opn.], the plaintiff alleged that the defendant had violated the FCRA by providing the results of her background investigation to a prospective employer without first obtaining a certification from her prospective employer that it had complied with the FCRA's standalone disclosure requirement. (*Id.* at pp. 1–2; see also 15 U.S.C. § 1681b(b)(1)(A)(i) [requiring a person furnishing a consumer report to another for employment purposes to certify that the person provided FCRA-required disclosures to the subject of the consumer report].) The Court of Appeal affirmed

the superior court's grant of summary judgment to the defendant on the basis that the plaintiff had failed to raise a triable issue regarding whether the defendant knew or had reason to know that the certification of the employer had been false. (*Id.* at p. 9.)

Finally, in *Culberson v. Walt Disney Parks and Resorts* (Apr. 15, 2019, B289488) 2019 WL 1594026 [nonpub. opn.]—issued before *TransUnion*—the Court of Appeal concluded that a class of prospective employees had failed to establish that any purported FCRA violations by the defendant during their application process had been willful, without discussing whether the plaintiffs had standing to prosecute their statutory claims. (*Id.* at pp. 1, 8.) In addition to these three cases, at least two other decisions, issued after *TransUnion*, resolved statutory FCRA claims on timeliness grounds, without discussing standing. (See *Scott v. Golden State FC, LLC* (Aug. 8, 2024, No. A167221) 2024 WL 3732035 [nonpub. opn.]; *Rodriguez v. U.S. Healthworks, Inc.* (Sept. 17, 2024, No. A168143) 2024 WL 4220385 [nonpub. opn.].)

That the latter set of these decisions imply—rather than explicitly hold—that the FCRA litigants have standing does not make this division any less stark. "[C]ontentions based on a lack of standing involve jurisdictional challenges" (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 438), and courts are "duty-bound" to consider jurisdictional issues even when no party raises them. (*Olson v. Cory* (1983) 35 Cal.3d 390, 398.)

The results reached in these two sets of cases cannot be squared. They send muddled messages to litigants with

meritorious statutory claims and, as discussed below, they do not comport with California standing doctrine, which imposes a low, flexible burden. Half of these decisions have upended California standing doctrine and left whether a litigant may reach the merits of their statutory claim to a product of chance. This Court should grant review to resolve the split in authority on this issue.

II. This Court's Review is Required to Repudiate the Applicability of *TransUnion* to California's Standing Doctrine.

Underlying the split in these cases is a broader, important question of law that is ripe for this Court's review: whether, and to what extent, the development of federal standing law and the U.S. Supreme Court's decision in *TransUnion* shapes standing in California courts. This Court has previously cited and relied upon federal-court standing decisions only for their "persuasive value in determining what California standing law should be, without any assumption that standing in the two systems is identical." (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 936, fn.11.) Relying on *Limon* and *TransUnion*, the Court of Appeal here departed from that practice, tying every plaintiff's standing to federal-court standards.

The Court of Appeal's decision departs from well-settled California standing law by (A) injecting the heightened federal case-or-controversy requirement to *all cases* brought in California and departing from California's own, well-established case-by-case standing rules, and (B) applying the "beneficial interest" standard to Plaintiff's claims, which applies only to writs of review, mandate, or prohibition, and is irrelevant to the standing

analysis for FCRA claims. Either error raises a question sufficiently significant for this Court's review: as is discussed in part III, *infra*, nothing cabins *TransUnion* or the Court of Appeal's analysis to the FCRA context, and these conflations threaten the viability of litigants' claims and the development of substantive law across the board.

A. The Court of Appeal Erred by Importing Article III into California's Standing Doctrine.

This Court should grant review to revisit and clarify the independence of California's standing doctrine. Federal standing principles are grounded in and limited by the U.S. Constitution; California has no analogous limitations, and standing in California courts is typically determined solely by reference to the statute under which litigants bring their claims. No more is required for judicial review, and the Court of Appeal erred by so concluding.

1. Article III of the U.S. Constitution limits federal courts to "cases" and "controversies."

Federal standing law is derived from the U.S. Constitution, which sets threshold requirements from which courts cannot depart. Article III of the U.S. Constitution limits jurisdiction in federal courts to adjudicate "Cases," and "Controversies," (U.S. Const., art. III, § 2), interpreted to mean that in each case, litigants must establish "an actual or imminent injury that is fairly traceable," to the parties named, and "could be redress[ed] by a favorable ruling." (*Food Marketing Institute v. Argus Leader Media* (2019) 588 U.S. 427, 432–433, quotation marks omitted

and alterations in original.) And, after *TransUnion*, it now also requires parties to establish that the injuries they allege caused tangible "downstream consequences" or "adverse effects," or that they have a "close historical or common-law analogue[.]" (*TransUnion*, *supra*, 594 U.S. at pp. 442, 424.) Article III's strict jurisdictional requirements are grounded in the view that federal courts, unlike state courts, play a "limited" role, and "[r]efus[e] to entertain generalized grievances." (*Hollingsworth v. Perry* (2013) 570 U.S. 693, 715, quotation marks omitted.) Adjacent to Article III lie additional justiciability and prudential requirements that, if not met, will also bar litigants from prosecuting their claims. (See, e.g., *Ohio Forestry Association, Inc. v. Sierra Club* (1998) 523 U.S. 726, 732–733) [discussing ripeness]; *Powell v. McCormack* (1969) 395 U.S. 486, 496–497 [mootness]; *Gladstone, Realtors v. Village of Bellwood*, (1979) 441 U.S. 91, 99–100 [prudential principles].)

The Article III requirements for judicial review in federal court are a floor: a statute can impose additional threshold requirements for plaintiffs seeking to bring causes of action in court (e.g., require administrative exhaustion), but it cannot diminish the burden imposed by Article III, as interpreted by the federal judiciary. (See, e.g., *Raines v. Byrd* (1997) 521 U.S. 811, 820, fn. 3 ["Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing"], quotation marks omitted.)

2. California's standing analysis asks only whether there is a valid cause of action under which the plaintiff can sue.

Muha's conclusion that the Article III injury test applies "as a general rule" (Opn. 9–10) to all well-pled complaints filed in California courts cannot be squared with the development and source of California standing principles.

Article III's requirements do not have an analogous basis in California's constitution or law. The California Constitution instead vests appellate courts with the power to hear enumerated "proceedings," and superior courts with the power to hear all other "causes." (Cal. Const., art VI, § 1; *id.* art VI § 10.) To meet the subject-matter-jurisdiction requirements of the California judiciary, all that is required by the California Constitution is a cause of action.[4] (See, e.g., *Parker v. Bowron* (1953) 40 Cal.2d 344, 351 ["The right to relief…goes to the existence of a cause of action".) For that reason, state courts—unlike federal courts—are considered courts of "general jurisdiction, and the presumption is that they have subject matter jurisdiction over any controversy unless a showing is made to the contrary."[5] (13 Wright & Miller,

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[4] One caveat: some jurisdictional bars prevent certain categories of action from being heard in California courts. For example, California courts cannot hear state-law claims that have been preempted by federal law (see, e.g., *Screen Extras Guild, Inc. v. Superior Court* (1990) 51 Cal.3d 1017), or federal-law claims where jurisdiction has been vested exclusively in the federal judiciary. (See, e.g., 28 U.S.C. §§ 1338(a), 1333.)

[5] For that reason, state courts routinely exercise discretion to adjudicate cases that federal courts cannot. California courts have, for example, issued decisions in cases mooted by subsequent events, where those cases raised a question of

Federal Practice & Procedure (3d ed. 2023) Courts of Limited Jurisdiction § 3522; *Wood v. Thompson* (1907) 5 Cal.App. 247, 247–248 ["The superior courts are courts of general jurisdiction, and their process extends to all parts of the state unless expressly limited by the statute or the Constitution"].)

Whether a plaintiff has standing to sue in California is determined by reference to the statute under which they bring their claims; unlike Article III's requirements, which apply to all federal cases, California "[s]tanding requirements will vary from statute to statute based upon the intent of the Legislature and the purpose for which the particular statute was enacted." (*Midpeninsula Citizens for Fair Housing v. Westwood Investors* (1990) 221 Cal.App.3d 1377, 1385; *Jasmine Networks, Inc. v. Superior Court* (2009) 180 Cal.App.4th 980, 992 [stating that

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significant public interest. (See, e.g., *In re William M.* (1970) 3 Cal.3d 16, 24; *Midpeninsula Citizens for Fair Housing v. Westwood Investors* (1990) 221 Cal.App.3d 1377, 1380 [reaching merits despite mootness because the case raised "an issue of 'continuing public interest'"], quoting *John A. v. San Bernardino City Unified School District* (1982) 33 Cal.3d 301, 307.) They have also strayed from the prohibition against advisory opinions, particularly where the parties can demonstrate that delaying a judgment would cause them "significant hardship." (*Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433, 442; *Farm Sanctuary, Inc. v. Department of Food & Agriculture* (1998) 63 Cal.App.4th 495, 502; *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 887–888 [plaintiff requesting declaratory relief need not prove "prejudice, substantial injury to the complaining party, and probability of a different result" in order to receive a judgment; merely seeking a "declaration on the proper interpretation" of relevant statutes is sufficient].)

some usages of the term "standing" "obscures the real question in those cases, which is whether the plaintiff has pled, or can prove, one or more *elements of his cause of action*—typically the breach of a duty owed to him, or consequent damages sustained by him"].)

State statutes creating private rights of action make this clear; they authorize judicial review and often impose their own requirements for what constitutes a cognizable injury to sue. (See, e.g., Cal. Pub. Res. Code, § 30801, subd. (b) [defining an "aggrieved person" entitled to judicial review as a person who first raises their concerns before a local government body, or has good cause for failing to do so]; Bus. & Prof. Code, § 17204 [authorizing a private right of enforcement when a party "has suffered injury in fact and has lost money or property as a result of the unfair competition"]; Code Civ. Proc., § 526a [authorizing taxpayers to seek judicial review of unlawful usages of public funds].)

When a statute creating a cause of action is silent with respect to its standing requirements, California has a catch-all statute that applies. Section 367 of the Code of Civil Procedure requires actions brought in court to be "prosecuted in the name of the real party in interest, except as otherwise provided by statute." A "real party in interest" can be anyone who can assert some interest in the outcome of the suit. (See, e.g., *Jasmine Networks, Inc. v. Superior Court*, *supra*, 180 Cal.App.4th at 991 [stating that "section 367 simply requires that the action be maintained *in the name of* '[t]he person who has the right to sue

under the substantive law"], quoting 4 Witkin, Cal. Procedure (5th ed. 2008) Pleading § 121, p. 187.) That person can be the party who has title to the cause of action—i.e., the party who directly suffered the wrongs asserted in the litigation (see, e.g., *Robinson v. Crescent City Mill & Transp. Co.* (1892) 93 Cal. 316, 319)—or it can "any person or entity whose interest will be directly affected by the proceeding." (*Connerly v. State Personnel Board* (2006) 37 Cal.4th 1169, 1178, quotation marks omitted.) Establishing an "interest" in a suit under section 367 is far less burdensome than establishing a *TransUnion* injury-in-fact: an "interest" can be demonstrated by showing only that the party "has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator." (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 689, quotation marks omitted.) "Injury" is defined by reference to a legal interest, not a concrete harm. This Court has described it broadly, as "some invasion of the plaintiff's legally protected interests." (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 175, quotation marks omitted.)

The Court of Appeal's conclusion that, "as a general rule, a plaintiff must allege he or she suffered a concrete 'injury,' as that term is used in Article III standing jurisprudence, to sue in California state court" (Opn. 9–10), is wrong. It contradicts with the guidance issued by this Court, it imposes a constitutional floor that does not exist in the California constitution, and it overwrites legislatures' abilities to define an interest by reference

to statutory requirements.

3. Plaintiffs have standing to seek statutory damages under the FCRA.

Because California applies a statute-by-statute analysis, and Plaintiffs asserted an interest in the outcome of their FCRA claims, they have sufficiently established standing to sue in California courts.

First, looking to the text of the FCRA and the intent of the legislature that passed the FCRA's disclosure requirements, Plaintiffs have "allege[d] facts that can bring [them] within the statutory language" of the statute. (*Librers v. Black* (2005) 129 Cal.App.4th 114, 125). Whether plaintiffs have alleged an injury under the terms of the statute is not determined—as the Court of Appeal stated—by reflexively looking to the intent of the California legislature (see Opn. 10 ["Plaintiffs do not claim the California Legislature expressly authorized FCRA claims by plaintiffs who have not been injured by the FCRA violations"]); it is determined by reference to the legislature that enacted the statute. (See, e.g., *White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1024–1025 [looking to California legislature to determine California legislative intent and stating, "[s]tanding rules for statutes must be viewed in light of the intent of the Legislature and the purpose of the enactment"].)

Plaintiffs alleged that Experian is a consumer reporting agency under the FCRA (1R 34 ¶ 9; 2R. 136 ¶ 11); the FCRA requires the inclusion of the state-rights disclosure in consumers' credit file (1R. 36 ¶¶ 15–16; 2R 138–139 ¶¶ 17–18); they failed to receive the disclosure upon requesting their credit files (1R 37–38

¶¶ 18, 23; 2R 139–140 ¶¶ 20, 22. 27); and that omission of the state-rights disclosure was "knowing and willful" (1R. 42 ¶ 45; 2R 144 ¶ 49), because Experian "remove[d]" the disclosure from the "standard-form Summary of Rights" before mailing the requested credit files to the consumers (1R. 39–40 ¶¶ 28–29; 2R 142 ¶¶ 32–33.) If the consumers are successful in proving these allegations, the omission of the FCRA-required disclosures entitle them to "actual damages…or damages of not less than $100 and not more than $1,000." (15 U.S.C. § 1681n.) This outcome squares with the intent of the FCRA's disclosure requirements, which were passed to ensure that consumers had complete access to information related to their credit and personal file and were apprised of their rights to take action based on that information. (See Sen.Rep. No. 104-185, 1st Sess., pp. 18, 49 (1995); see also Omnibus Consolidated Appropriations Act, Pub.L. No. 104–208 (September 30, 1996) 110 Stat 3009; 16 U.S.C. § 1681g).)

Second, Plaintiffs have met their burden for establishing standing in California courts because they have demonstrated they are real parties in interest to their FCRA action. (See Code Civ. Proc., § 367.) As recipients of requested consumer reports, Plaintiffs are the intended beneficiaries of the FCRA's disclosure requirements (see *Jasmine Networks, Inc. v. Superior Court*, *supra*, 180 Cal.App.4th at p. 991; 15 U.S.C. § 1681a(c)), and entitlement to statutory damages under the FCRA evinces sufficient "interest" in the outcome of their suit. (See *Teal v. Superior Court*, *supra*, 60 Cal.4th at p. 689; see also, e.g., *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 84–91

[concluding that plaintiff had standing under Labor Code Private Attorneys General Act (PAGA), Lab. Code § 2698 et seq., to pursue penalties on the state's behalf]; *Ribas v. Clark* (1985) 38 Cal.3d 355, 365 [allowing for recovery of damages for invasion of privacy in the absence of "actual injury"]; *Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582, 606, 613–614 [sanctioning, under PAGA, a plaintiff-representative's standing to sue an employer for civil penalties, even where the representative was not personally subjected to the violations alleged].)

Plaintiffs have met the statutory requirements for standing to sue in California courts: they have suffered the sort of harm the FCRA intended to redress, and they are real parties in interest to their FCRA action. This Court should grant review to clarify the independence of California standing principles and repudiate the applicability of Article III in state court.

B. The Court of Appeal Erred by Applying the "Beneficial Interest" Requirement to Plaintiffs' Claims.

Muha separately erred by applying the "beneficial interest" requirement to Plaintiff's claims and holding that the requirement applies to all actions for damages. (Opn. 9 [relying on language in *Limon* stating that "'as a general matter, to have standing to pursue a claim for damages in California, a plaintiff must be beneficially interested in the claims he is pursuing.' (*Limon*, *Supra*, 84 Cal.App.4th at p. 700"].) Relying on cases by this Court concluding that the "beneficial interest" standard imports the Article III injury-in-fact test into standing analysis in state court (see Opn. 9, citing to *Associated Builders and*

Contractors, Inc. v. San Francisco Airports Commission (1999) 21 Cal.4th 352, 362), the Court of Appeal here concluded that this heightened standard applies to *all* civil claims arising in California state courts.

The "beneficial interest" standard used by *Muha* and *Limon* derives from section 1086 of the Code of Civil Procedure, and applies only to writs of review, mandate, and prohibition. It is not, like section 367, a catch-all statute informing standing in civil cases. A section 1086 writ affords only equitable relief; it does not authorize an action for damages, and it may be issued only "in cases where is not a plain, speedy, and adequate remedy." (Code Civ. Proc., § 1086.) Because of the "extraordinary" remedy it provides (*Peery v. Superior Court* (1981) 29 Cal.3d 837, 841), the statute requires a heightened interest, separate and apart from the interest normally required in a case. (See *Carsten v. Psychology Examining Committee* (1980) 7 Cal.3d. 793, 796 [requiring "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large"].) The interest must be "direct and substantial." (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.)

There is no indication in the text of section 1086, its history, or in the cases relying upon it that the requirement was intended to apply outside of the circumstances delineated in the statute itself. The Supreme Court cases on which *Limon* relied for the proposition that the heightened beneficial-interest test applies to all actions bear no support for that position. Those

decisions rely, properly, on the statutory exception to minimal standing contained in section 1086. (See *Limon*, *supra*, 84 Cal.App.5th at pp. 696–700, citing *Associated Builders and Contractors, Inc. v. San Francisco Airports Commission*, *supra*, 21 Cal.4th 352; *People v. El Dorado County* (2005) 36 Cal.4th 971.)

The only support *Limon* and *Muha* have for the proposition that section 1086's beneficial-interest test is a broad standing principle of general applicability is an isolated line of other decisions by Courts of Appeal, all of which made the same error that *Limon* and *Muha* made. *Holmes v. California National Guard* (2001) 900 Cal.App.4th 297 was the first to apply language from Supreme Court decisions interpreting section 1086 outside of the writ context, and gave rise to the cases on which *Limon* and *Muha* rely. Without citing to section 1086, *Holmes* relied on the Supreme Court's beneficial-interest jurisprudence to conclude that the plaintiff there did have standing. From there, other Courts of Appeal cited to the language excerpted in *Holmes* and imported section 1086's standing requirements to other contexts.

The problem is that section 1086 is a heightened standing requirement for an extraordinary remedy. It is statutorily prescribed to apply to one form of relief. *Limon* and *Muha* both erred by wielding that doctrine to deny standing to a plaintiff in a general damages action, and this Court's review is required to maintain divisions between the beneficial-interest test and general principles of standing.

III. This Court's Review is Required to Determine Whether Actual Harm is Required to Recover Statutory Damages.

This Court's review is required for a third, entirely independent reason: *Limon* and *Muha* incorrectly held that plaintiffs cannot recover statutory damages in the absence of a showing of actual harm. (*Limon*, *supra*, 84 Cal.App.5th at p. 703; see also *Navarro*, *supra*, 2024 WL 1266191, at pp. 4–7 [discussing *Limon*].)

First, *Limon*'s reading runs counter to the plain language of the FCRA. Upon a showing that another person has "willfully fail[ed] to comply with any requirement" under the FCRA, the statute allows a consumer to recover "[a]ny actual damages," "*or* damages of not less than $100 and not more than $1,000[.]" (15 U.S.C. § 1681n(a)(1), italics added.) The only plain interpretation of these provisions, read together, is that a consumer who establishes a willful violation of the FCRA may recover *either* actual damages—meaning, compensation for actual harm—or, in the alternative, statutory damages, capped at $1,000 per violation. Any other reading would render one of the two clauses in the statutory damages provision—either "actual damages sustained," or "damages of not less than $100 and not more than $1,000"—redundant, and together, it makes them impossible to reconcile.

Second, *Limon*'s decision departs from federal courts to have decided the issue, and to have concluded—pre-*TransUnion*—that plaintiffs do not need to demonstrate concrete harm to recoup statutory damages. (See, e.g., *Daniel v. National*

Park Service (9th Cir. 2018) 891 F.3d 762, 775 [describing "statutory damages" under the FCRA as "an alternative to 'any actual damages' for each willful violation of the FCRA"']; *Alston v. Countrywide Financial Corporation* (3d Cir. 2009) 585 F.3d 753, 763 [pre-*TransUnion*, recognizing that because Article III injury could be predicated on a violation of statutory rights, "[a] plaintiff need not demonstrate that he or she suffered actual monetary damages" to have standing]; see also *Safeco Insurance Company of America v. Burr* (2007) 551 U.S. 47, 54 [describing a plaintiff's claim alleging "willful failure" to give an actual FCRA notice as an action that "claimed no actual harm, but sought statutory and punitive damages under § 1681n(a)]; *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A.* (2010) 559 U.S. 573 [stating that the penalties provided by statutes like the FDCPA and the FCRA reflect "Congress'[s] policy choice, embodied in statutory text, to authorize private rights of action and recovery of attorney's fees" even where "no actual harm has occurred" (*Id.* at p. 597, fn. 15, responding to *id.* at 616 (dis. opn. of Kennedy, J).) *Limon*'s holding that statutory damages under the FCRA compensate for actual harm departs even from the dicta in *TransUnion*, which assumed that the FCRA allows for the recovery of statutory damages without proving actual harm. (See 594 U.S. at 428 [stating that a litigant who sues to recoup only statutory damages "is, by definition, not seeking to remedy any harm to herself but instead is merely seeking to ensure a defendant's 'compliance with regulatory law'"].)

Third, *Limon*'s and *Muha*'s reading of the FCRA runs

counter to this Court's own interpretation of the statute. *Limon*'s holding that the statutory damages provision of the FCRA required a showing of actual harm was based in part on its conclusion that the section was "intended to compensate a plaintiff for injury," rather than "designed to punish a wrongdoer," which would "not require the existence of an injury." (*Limon*, *supra*, 84 Cal.App.5th at pp. 700, 704.) That reading conflicts with language in a later decision of this Court. Analyzing an intentionality requirement in another statute, this Court categorized section 1681n of the FCRA as a "penalty provision," on the basis that the statute allows for the recovery of statutory fees upon a showing of "willful[]" noncompliance. (*Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1073; see also *Greeneberg v. Western Turf Assn.* (1903) 140 Cal. 357, 364 [allowing for the recovery of both punitive damages and a civil penalty awarded to the plaintiff because the "law has been violated and its majesty outraged"]; cf. *Nationwide Biweekly Administration, Inc. v. Superior Court of Alameda County* (2020) 9 Cal.5th 279, 326 [stating that civil penalties awarded under two California statutes are "noncompensatory in nature" because they "require no showing of actual harm to consumers and are not based on losses incurred"].)

Fourth, and finally, reading the FCRA's statutory damages provision to require actual harm threatens to disrupt well-settled statutory schemes in this state. Other California statutes contemplate standing to sue and authorize damage awards in specified sums, without requiring a showing of actual damages.

(See, e.g., Welf. & Inst. Code., § 5330, subd. (a) [allowing for the recovery of the greater of $10,000 or "[t]hree times the amount of actual damages, if any, sustained by the plaintiff"]; Pen. Code, § 593d, subd. (f) [authorizing a civil action for the greater of $5,000 or, if actual damages are shown, treble damages and attorney's fees]; Bus. & Prof. Code, § 22386 [authorizing recovery for the greater of $3,000 or treble damages]; Pen. Code, § 637.2 [authorizing a civil invasion-of-privacy suit for the greater of $5,000 or treble damages]; see also, e.g., Bus. & Prof. Code, §§ 17206, 17536; Civ. Code, § 789.3; Pen. Code, §§ 490.5, subd. (c), 825.) Nothing in *Muha*'s standing analysis is limited to the FCRA, and therefore nothing prevents the opinion from applying to future actions under any of these statutes.

Limon's incorrect reading of the damages provision of the FCRA does more than deprive plaintiffs of small amounts of statutory damages: it disrupts a comprehensive regulatory scheme and threatens other schemes crucial to the governance and regulation of this state. This Court should grant review to revisit *Limon*'s and *Muha*'s conclusions that entitlement to statutory damages does not confer standing in California courts.

* * *

TransUnion's holding disrupts standing for consumers, and it subverts a well-designed statutory scheme. In federal courts, the case has been applied outside the FCRA context. It has been used to deny standing to consumers bringing actions under the Fair Debt Collection Practices Act, arguing that they received letters attempting to collect debts they did not owe (see *In re*

FDCPA Mailing Vendor Cases (E.D.N.Y. 2021) 551 F.Supp.3d 57, 62–66); to civil engagement organizations, challenging their denials for request for voter registration records under the National Voter Registration Act (see *Campaign Legal Center v. Scott* (5th Cir. 2022) 49 F.4th 931, 936–937); to intervenors seeking to unseal documents a private prison operator produced in discovery (see *Grae v. Corrections Corporation of America* (6th Cir. 2023) 57 F.4th 567, 568–570); and to a hospital patient seeking redress under the Healthcare Insurance Portability and Accountability Act (HIPAA) for the disclosure, without his consent, of anonymized health records. (See *Dinerstein v. Google, LLC* (7th Cir. 2023) 73 F.4th 502, 509, 511–516.) If left to stand, the decision below, in conjunction with *Limon*, would have the same effect. This Court should grant review and prevent the same from occurring in California courts.

CONCLUSION

For the foregoing reasons, the Court should grant this Petition for Review.

Dated: December 9, 2024

Respectfully submitted,

PUBLIC JUSTICE

ADEMI LLP

MONTEVERDE & ASSOCIATES

By: /s/ Lucia Goin

Attorneys for Plaintiff-Appellants

CERTIFICATION OF WORD COUNT

Pursuant to Rule 8.504(d)(1) of the California Rules of Court, the undersigned hereby certifies that Plaintiffs-Appellants' Brief is produced using 13-point Century Schoolbook type and contains 8,015 words, according to the word count generated by the computer program used to produce the brief.

Dated: December 9, 2024 By: /*s*/ Lucia Goin

PROOF OF SERVICE

I am an active member of the State Bar of California, above the age of eighteen years, and not a party to the within action. My business address is 1620 L St. NW, Ste. 630, Washington, DC, 20036.

On December 9, 2024, I served the persons and/or entities listed on the **Service List** on the following page with a true and correct copy of the document titled **Petition for Review** by the method indicated:

For those marked "Served Electronically," I transmitted the **Petition for Review** by the TrueFiling electronic service. Where an email is listed, I also transmitted a PDF version of the same by email.

For those marked "Served by Overnight Delivery," I requested, through FedEx Office's print and mail function, that the **Petition for Review** be printed, enclosed in an envelope, and sent to the addresses provided. I reviewed the final product before it was printed, and I am readily familiar with FedEx's practice for printing, collecting, and processing correspondence for mailing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 9, 2024, at Washington, DC.

By: /*s*/ Lucia Goin

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Superior Court, County of Orange (Hon. Claster) Civil Complex Center 751 West Santa Ana Blvd. Santa Ana, CA 92701 Superior Court, County of Orange P.O. Box 22028 Santa Ana, CA 92702-2028 **X Served by overnight delivery**	Court of Appeal, Fourth Appellate District, Division Three **X Served electronically, pursuant to Cal. Rule of Court 8.550(f)(1).**

ATTACHMENT: DECISION OF THE COURT OF APPEAL

in *Muha v. Experian Information Solutions* (No. G062621)

Filed 10/1/24; certified for publication 10/29/24 (order attached)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CHARLOTTE MUHA et al., Plaintiffs and Appellants, v. EXPERIAN INFORMATION SOLUTIONS, INC., Defendant and Respondent.	G062621 (Super. Ct. Nos. 30-2021-01233648; 30-2021-01233482) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William D. Claster, Judge. Affirmed.

Ademi, John D. Blythin, and Monteverde & Associates, and David E. Bower, for Plaintiffs and Appellants.

Jones Day, John A. Vogt, Ryan D. Ball, David A. Phillips, Nathaniel P. Garrett, for Defendant and Respondent.

Charlotte Muha, Chaning, Graber, and Debra Graber (collectively "Plaintiffs") appeal from a judgment of dismissal entered after the superior court granted a motion for judgment on the pleadings brought by Experian Information Solutions, Inc. ("Experian"). The superior court granted Experian's motion based on *Limon v. Circle K Stores Inc.* (2022) 84 Cal.App.5th 671 (*Limon*), which generally held that a plaintiff must allege a concrete injury to sue in state court. Plaintiffs contend *Limon* was wrongly decided. As discussed below, we find *Limon* persuasive, and conclude that Plaintiffs lacked standing to sue. Accordingly, we affirm.

PROCEDURAL HISTORY

I.

COMPLAINTS

On November 24, 2021, Plaintiffs' counsel filed two class action complaints against Experian in Orange County Superior Court under the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq*. Charlotte Muha was the sole named plaintiff in one complaint, while Chaning Graber and Debra Grabner were the named plaintiffs in the other. As the superior court noted, aside from the different named plaintiffs, the allegations in both cases are identical. Subsequently, both cases were consolidated, with the *Muha* action deemed the lead case.

The complaints alleged that Plaintiffs are residents of the State of Wisconsin. In 2020, they requested copies of their consumer report from Experian, which is a consumer reporting agency ("CRA") as defined by the FCRA (15 U.S.C. § 1681(a)). In response, Experian mailed a copy of their consumer report to each respective Plaintiff. The complaints alleged the "Summary of Rights" portion of the consumer reports was "inconsistent with 15 U.S.C. § 1681g(c) and Appendix K of Regulation V because it [did] not

include 'a statement that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent thereof) to learn of those rights,'" in violation of 15 U.S.C. § 1681g(c)(2)(D). Plaintiffs asserted, on information and belief, that "Experian knowingly and willfully made the decision to remove th[at] portion of the Summary of Rights." They prayed for actual damages, statutory damages, and punitive damages on behalf of themselves and the purported class.

II.

REMOVAL

Experian removed the actions to federal district court. In federal court, Plaintiffs moved to remand the actions back to state court on the basis that they lacked standing to sue in federal courts. They note that in the context of claims almost identical to their FCRA claims, the United States Supreme Court has held that "[t]o have Article III standing to sue in federal court, plaintiffs must demonstrate, among other things, that they suffer a concrete harm." (*TransUnion LLC v. Ramirez* (2021) 594 U.S. 413 (*TransUnion*).) Plaintiffs argued, that "[e]ven when a plaintiff alleges a defendant's failure to disclose information required by statute caused them an 'informational injury,' that statutory violation does not provide standing unless the plaintiff identifies 'downstream consequences" because "[a]n asserted informational injury that causes no adverse effects cannot satisfy Article III." (*Id.* at p. 442.) Plaintiffs argued they lacked standing under section 2 of Article III of the United States Constitution (Article III standing) because they "clearly do[] not allege" that they "suffered any 'downstream consequences'" as a result of Experian's alleged misconduct. Thus, they claimed, their actions merely seek to "'vindicate procedural violations of

applicable credit reporting laws', and therefore the alleged harm does not establish Article III standing." (*Winters v. Douglas Emmett, Inc.* (C.D. Cal. 2021) 547 F.Supp.3d 901, 908.) Plaintiffs argued remand rather than dismissal was proper because "'a lack of Article III standing does not necessarily preclude a plaintiff from vindicating a federal right in state court.' [Citations.]"

The federal district court granted Plaintiffs' remand motion on the basis that Plaintiffs' allegations did not establish Article III standing. The court explained that "Plaintiffs' FCRA claim is straightforward: they submitted requests to [Experian] for a copy of their consumer reports and [Experian] produced reports that were missing information required by law." However, "Plaintiffs do not allege that such non-disclosure resulted in any particular harm to them." "Plaintiffs have not alleged that they had some reason to contact state authorities, would have done so if the requisite information was provided, and incurred some harm or face the substantial risk of some harm arising from the missed opportunity to contact state authorities."

III.

JUDGMENT ON THE PLEADINGS

Following remand, on October 5, 2022, Experian moved for judgment on the pleadings, arguing Plaintiffs' FCRA allegations did not state a cause of action because: (1) Plaintiffs lacked standing under Wisconsin law since they did not suffer a concrete injury; and (2) their FCRA claim does not fall within the "zone of interests" that FCRA is designed to protect. In response, Plaintiffs argued, among other grounds, that California law should apply and they have standing to sue under California law.

Before the trial court decided Experian's motion for judgment on the pleadings, the Court of Appeal for the Fifth District issued its opinion in *Limon*, *supra,* 84 Cal.App.5th 671. *Limon* generally held that a plaintiff must allege or suffer a concrete or particularized injury to bring a claim under the FRCA in California state courts. (*Id.* at p. 706.) Thereafter, on November 10, 2022, Experian filed a notice of supplemental authority, in which it asserted that *Limon* demonstrates Plaintiffs lack standing under California law.

On November 21, 2022, the superior court continued the hearing on Experian's motion for judgment on the pleadings until January 13, 2023. On January 6, 2023, in a Joint Status Conference Statement Plaintiffs stated their belief that the superior court should stay Experian's motion in light of a petition for review filed in *Limon* with the California Supreme Court, as well as Plaintiffs' own request to depublish the *Limon* opinion. Plaintiffs argued that a stay was warranted because "the issue in *Limon* is similar to the issue raised in this consolidated action – whether a consumer has standing under California law to sue when the defendant is alleged to have willfully violated the plaintiff's statutory rights, where the plaintiff has not alleged injury beyond injury to her statutory rights."

On January 13, 2023, the superior court heard oral argument and issued a tentative ruling granting Experian's motion for judgment on the pleadings. In its tentative ruling, the court explained that, "[l]ike the employee in *Limon*, Plaintiffs admitted in federal court that they suffered no concrete injury as a result of the alleged FCRA violations. They argued they suffered no 'downstream consequences' of the alleged FCRA violations." Thus, under California law as set forth in *Limon*, they lack standing to sue. Because *Limon* was still under review at the Supreme Court, however, the superior court deferred making its tentative ruling its final ruling.

After the California Supreme Court denied the petition for review and request for depublication of *Limon*, on January 31, 2023, Plaintiffs filed a response to Experian's notice of supplemental authority. Plaintiffs argued that *Limon* does not compel dismissal because *Limon* erred when it held that consumers who seek purely statutory damages must prove actual injury. They contend that because they are entitled to recover statutory damages, "[t]his is all the 'beneficial interest' necessary for standing in California, notwithstanding *Limon*."

The superior court held a second hearing on Experian's motion for judgment on the pleadings on March 1, 2023. After the hearing, the court confirmed its tentative ruling and granted Experian's motion for judgment on the pleadings. Judgment in favor of Experian was entered on March 14, 2023. Plaintiffs timely appealed.

DISCUSSION

I.

DUE PROCESS

As an initial matter, we address Plaintiffs' request that this court should, "[a]t a bare minimum," vacate the judgment and remand the matter because the superior court did not allow the parties to brief *Limon*. Although the parties completed their briefing on Experian's motion before *Limon* was issued, the record shows the parties submitted written argument on *Limon* before the superior court issued its final ruling. Accordingly, the parties were afforded due process and remand is not warranted.

II.

STANDING TO SUE

Turning to the sole substantive issue in this matter, Plaintiffs argue the superior court erred in granting Experian's motion for judgment on

the pleadings based on lack of standing because *Limon* was wrongly decided. We review the grant of judgment on the pleadings de novo. (*Greif v. San*in (2022) 74 Cal.App.5th 412, 426; see *People for Ethical Operation of Prosecutors and Law Enforcement v. Spitzer* (2020) 53 Cal.App.5th 391, 408 ["standing is typically a question reviewed de novo"].)

A. The FCRA

"Congress enacted [the] FCRA in 1970 to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy." *(Safeco Ins. Co. of America v. Burr* (2007) 551 U.S. 47, 52.) The FCRA requires CRAs to disclose certain information to the consumer upon request. (15 U.S.C. § 1681g.) As relevant in this case, a disclosure to the consumer must include, inter alia, a generic "statement that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent thereof) to learn of those rights." (15 U.S.C. § 1681g(c)(2)(D).) The FCRA also provides certain enforcement mechanisms. If a CRA willfully fails to comply with its obligations, including its disclosure obligations, the FCRA grants a cause of action for actual or statutory damages. (See 15 U.S.C. § 1681n(a).) Specifically, section 1681n(a)(1)(A) provides that any person who willfully fails to comply with any requirement imposed by the FCRA is liable to a consumer in an amount equal to "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." (*Ibid.*)

In *Limon*, *supra*, 84 Cal.App.5th 671, the plaintiff (Ernesto Limon) alleged his employer violated the FCRA "by failing to provide him with proper FCRA disclosures when it sought and received his authorization to obtain a consumer report about him in connection with his application for

employment, and by actually obtaining the consumer report in reliance on that authorization." (*Limon*, 84 Cal.App.5th at p. 680, fn. omitted.) Limon initially filed a complaint in federal district court, but after the district court dismissed the complaint for lack of Article III standing, Limon filed the complaint in state court. The employer demurred to the complaint on the ground, among others, that Limon lacked standing to sue because he "did not allege or suffer any resulting, cognizable harm or injury." (*Ibid.*) The trial court sustained the demurrer, and the appellate court affirmed.

The *Limon* court held that, "as a general matter, to have standing to pursue a claim for damages in the courts of California, a plaintiff must be beneficially interested in the claims he is pursuing." (*Limon, Supra*, 84 Cal.App.4th at p. 700.) Although California courts are not constrained by the case or controversy provisions of Article III of the U.S. Constitution, "they have also equated the 'beneficially interested' test for standing in California to the injury-in-fact prong of the Article III test for standing in the federal courts." (*Id.* at pp. 697-698 [collecting cases].) The *Limon* court concluded Limon "has not alleged a concrete or particularized injury to his privacy interests sufficient to afford him an interest in pursuing his claims vigorously." (*Id.* at p. 706.) Although Limon alleged an informational injury, he "failed to allege any concrete injury in connection with his claim of informational injury." (*Id.* at p. 707.) "[U]nder California law, . . . an informational injury that causes no adverse effect is insufficient to confer standing upon a private litigant to sue under the FCRA." (*Ibid.*) "Thus, his alleged informational injury is insufficient under California law to confer upon him standing to pursue his claim in state court." (*Ibid.*)

B. Beneficial Interest

Plaintiffs do not challenge "the *general principle* that a plaintiff must *have* a beneficial interest in the outcome of litigation," but they argue the "statutory damages under 15 U.S.C. § 1681n for willful conduct directed at the consumer *are* both an interest and a remedy due to the consumer." Plaintiffs contend they need not allege actual injury to recover statutory damages under 15 U.S.C. § 1681n, and argue the *Limon* court erred in so concluding. We are not persuaded that *Limon* was incorrectly decided. (See *The MEGA Life & Health Ins. Co. v. Superior Court* (2009) 172 Cal.App.4th 1522, 1529 [although we "are not bound by the decision of a sister Court of Appeal," "'we ordinarily follow the decisions of other districts without good reason to disagree'"].)

A beneficial interest means the party has a special interest over and above the interest of the public at large. (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 829.) This standard "is equivalent to the federal 'injury in fact' test, which requires a party to prove by a preponderance of the evidence that it has suffered 'an invasion of a legally protected interest that is "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical."' [Citation.]" (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com*. (1999) 21 Cal.4th 352, 362.) Although the California Supreme Court used the term "concrete interests" rather than "concrete injury" in *Teal v. Superior Court* (2014) 60 Cal.4th 595, the high court there reaffirmed that standing to sue requires a beneficial interest. (See *id.* at p. 599 [To have standing, "'[t]he party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical'"].) Thus, as a general rule, a plaintiff must allege he or she suffered a concrete "injury," as

that term is used in Article III standing jurisprudence, to sue in California state court.

The general rule that a concrete injury is required before a plaintiff can bring a claim in state court may be modified by the Legislature. Under California law, "[t]he prerequisites for standing to assert statutorily based causes of action are determined from the statutory language, as well as the underlying legislative intent and the purpose of the statute." (*Boorstein v. CBS Interactive, Inc.* (2013) 222 Cal.App.4th 456, 466 (*Boorstein*); see *White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1024 ["Standing rules for statutes must be viewed in light of the intent of the Legislature and the purpose of the enactment"].) Thus, as the *Limon* court noted, "the Legislature may authorize public interest lawsuits by a plaintiff even if that plaintiff has not been injured by the claimed violation." (*Limon*, *supra*, 84 Cal.App.5th at pp. 693-694.) Plaintiffs do not claim the California Legislature expressly authorized FCRA claims by plaintiffs who have not been injured by the FCRA violations. Nor do they claim that the FCRA conferred public interest standing on them. (See *Limon*, p. 703 ["We discern no basis upon which to conclude the FCRA was intended to confer public interest standing upon a private litigant"].)

Rather, Plaintiffs allege they have a beneficial interest because they suffered an informational injury—the failure to include one required disclosure—that entitles them to statutory damages. However, as the *Limon* court noted, "under California law, . . . an informational injury that causes no adverse effect is insufficient to confer standing upon a private litigant to sue under the FCRA." (*Limon*, *supra*, 84 Cal.App.5th at p. 707.) *Boorstein*, *supra*, 222 Cal.App.4th 456, is illustrative. There, the plaintiff sued a business for failing to include certain disclosures on its website as required by the Shine the Light law (the STL law), Civil Code section 1798.83 *et seq*. (*Boorstein*, 222

Cal.App.4th at pp. 460-461.) With respect to his standing to sue under the STL law, "Plaintiff contend[ed] that he suffered a cognizable injury—an 'informational injury'—because he did not receive information to which he was statutorily entitled." (*Id.* at p. 472.) The appellate court noted that "Plaintiff has not cited any California cases recognizing 'informational injury,' and we are not aware of any such cases." (*Ibid.*) However, to the extent "informational injuries may be cognizable in some cases, under the STL law, a defendant's failure to post information on its Web site in the manner the statute requires, *without more*, does not give rise to a cause of action." (*Ibid.*)

Federal law is in accord. In *TransUnion, supra,* 594 U.S. 413, the U.S. Supreme Court analyzed a claim brought under the FCRA for failure to include required information in a single mailing of the plaintiffs' credit files. The high court noted the plaintiffs identified no "downstream consequences" from failing to receive the required information, and it concluded that an "'asserted informational injury that causes no adverse effects cannot satisfy Article III.' [Citation.]" (*Id.* at p. 442.)

The fact that a plaintiff may recover statutory damages without alleging or proving "actual harm" under the FCRA is irrelevant. As noted, the FCRA provides that under certain circumstances a plaintiff may recover actual damages or statutory damages or both. Actual damages require "proof of actual harm." (*Syed v. M-I, LLC* (9th Cir. 2017) 853 F.3d 492, 498, citing *Crabill v. Trans Union, L.L.C.* (7th Cir. 2001) 259 F.3d 662, 664 (*Crabill*).) Although proof of actual harm is not required to recover statutory damages, this does not obviate the need for an "injury in fact" when bringing an FCRA claim purely for statutory damages. As the *Crabill* court stated: "Many statutes, notably consumer-protection statutes, authorize the award of

damages (called 'statutory damages') for violations that cause so little measurable *injury* that the cost of proving up damages would exceed the damages themselves, making the right to sue nugatory." (*Crabill*, *supra*, 259 F.3d at p. 665, italics added.) "Injury in fact" is required because "if no injury is alleged (or, if the allegation is contested, proved, [citation]), . . . there is no case or controversy between the parties within the meaning of Article III of the Constitution." (*Ibid.*)

Like the plaintiff in *TransUnion, supra,* 594 U.S. 413, Plaintiffs in this case represented in federal district court they had not "suffered any 'downstream consequences'" as a result of Experian's alleged misconduct. Accordingly, they did not suffer an "injury in fact" under Article III, and therefore, they do not have a beneficial interest under California standing law. Without a beneficial interest, Plaintiffs lack standing to sue in state court. The superior court properly granted Experian's motion for judgment on the pleadings.

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.

DELANEY, J.

WE CONCUR:

SANCHEZ, ACTING P.J.

MOTOIKE, J.

Filed 10/29/24

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CHARLOTTE MUHA et al., Plaintiffs and Appellants, v. EXPERIAN INFORMATION SOLUTIONS, INC., Defendant and Respondent.	G062621 (Super. Ct. Nos. 30-2021-01233648; 30-2021-01233482) O R D E R

Trader Joe's Company has requested that our opinion, filed on October 1, 2024, be certified for publication. It appears that our opinion meets the standards set forth in California Rules of Court, rule 8.1105(c). The request is GRANTED.

The opinion is ordered published in the Official Reports.

DELANEY, J.

WE CONCUR:

SANCHEZ, ACTING P. J.

MOTOIKE, J.