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## Calif. FCRA Ruling Boosts Technical Claim Defense

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A significant decision from a California state appeals court has shifted the legal landscape for technical Fair Credit Reporting Act claims brought in California state court in favor of defendants.

In October, the Fifth Appellate District held the FCRA does not confer standing on plaintiffs to sue in California state court, absent any allegation of concrete injury. The case is styled Limon v. Circle K Stores Inc.

In January, the California Supreme Court denied both the plaintiff's petition for review and several requests for depublication of the opinion, meaning that the court of appeal's opinion will stand for now.

In Limon, the plaintiff alleged the defendant violated the "standalone disclosure" and "clear and conspicuous" requirements of the FCRA by including extraneous information in a background check disclosure.

Under the FCRA, a prospective employer that intends to use a background check on a candidate must first disclose to the candidate the employer's intention to procure such a report and obtain the candidate's authorization in writing.

The disclosure must be clear and conspicuous and appear in a document that consists solely of the disclosure.

The allegedly extraneous information in the Limon disclosure included both a liability release and state disclosures. Limon also alleged he "was confused regarding the nature of his rights under the FCRA."

Limon had initially been filed in the U.S. District Court for the Eastern District of California in 2018, but was dismissed in 2020 without prejudice for lack of Article III standing.

The case was subsequently refiled in California state court, where the defendant demurred on the grounds that the plaintiff lacked standing because he suffered no concrete injury or harm.

The trial court sustained the demurrer without leave to amend and entered judgment in favor of the defendant. The Fifth Appellate District affirmed the trial court's ruling.

The Fifth Appellate District decision provided a detailed analysis of the framework for standing in California. The court first acknowledged the California Legislature does have the "power to confer standing on a class of persons

irrespective of whether they suffered injury.” However, if that right is not provided by statute, then concrete injury may be required.

The court explained while California courts are not constrained by the case or controversy provisions of Article III of the U.S. Constitution, they have equated the “beneficially interested” test for standing in California to the Article III requirement.

As a general matter, to have standing to pursue a claim for damages in California state court, a plaintiff must be beneficially interested in the claims they are pursuing.

Accordingly, a plaintiff lacks standing if she does not have a real interest in the ultimate adjudication of a case because she has neither suffered, nor is about to suffer, an injury of sufficient magnitude reasonable to assure that all the relevant facts and issues will be adequately presented.

Thus, the purpose of a standing requirement is to ensure California courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press a case with vigor.

Next, the Fifth Appellate District explained the FCRA does not eliminate the requirement that a plaintiff be beneficially interested — suffer an injury-in-fact — to have standing because the FCRA’s statutory damages provision is intended to compensate a plaintiff for actual injury. It is designed to provide redress where damages are “difficult or impossible to quantify or prove,” according to the decision.

It is not intended to penalize a company for violation of the FCRA. Additionally, the FCRA does not confer public interest standing on a plaintiff.

Instead, the FCRA expressly confers authority upon federal and state agencies and officials — not private litigants — to vindicate the public’s interest in ensuring compliance with the FCRA. As such, to have standing to pursue his claims, a plaintiff must allege a concrete injury.

Under this framework, the court held Limon had not suffered a sufficient injury to sue based on the alleged technical violations of the FCRA’s background check disclosure requirements.

The Fifth Appellate District explained Limon did not allege:

- He did not receive a copy of the consumer report that the defendant obtained;
- The consumer report obtained by the defendant contained any defamatory content or other *per se* injurious content;
- The consumer report contained false or inaccurate information; and
- Any exposure to a material risk of future harm, imminent or substantial.

Accordingly, the court held there was no injury to Limon's protected interest in ensuring fair and accurate credit reporting, nor was there any injury associated with any adverse employment decision based on false or inaccurate reporting.

The court also explained the alleged "extraneous language" was not extensive and the disclosure notices otherwise appeared to comply with the FCRA.

Further, Limon undoubtedly understood he was willing to have a background check conducted on him prior to being hired and knew he could withhold his consent.

In light of the above facts, the court held that Limon had not alleged a concrete or particularized injury to his privacy interests in connection with his claim of informational injury. Thus, Limon did not have standing to pursue his claim in California state court.

The court's ultimate conclusion was that, 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.

This decision is important because, for decades, plaintiffs have pursued technical FCRA cases in certain state courts, given their lack of Article III standing requirement.

This is particularly true following the U.S. Supreme Court's 2021 *TransUnion LLC v. Ramirez* decision on standing, which held a concrete injury requires more than the existence of a risk of harm, and which led to a substantial increase in state court filings.

California has been a particularly popular forum for these types of cases, given the generally pro-consumer mindset of California courts, the traditionally broad justiciability requirements for standing, and the sheer number of individuals that reside in the state.

However, the Fifth Appellate District has now foreclosed plaintiffs from pursuing such claims in California state courts under its interpretation of California's standing doctrine, and the California Supreme Court has decided not to accept the petition for review and to decline requests for depublication.

Accordingly, for now, and this interpretation of legal standing in California will drastically limit FCRA plaintiffs' ability to bring lawsuits alleging technical, no-harm violations in any forum.

At least one federal district court has already said as much. The [U.S. District Court for the Northern District of California](#) explained last month in *Aguilar v. Laboratory Corp. of America* that,

normally, a lack of subject matter jurisdiction over a removed claim would result in remand, but in the Ninth Circuit there is an exception when it is an 'absolute certainty' that the state court would immediately dismiss the case on remand ... While it is theoretically possible that there could be standing to pursue the FCRA claim in state court even if no federal standing exists, California courts also require a 'concrete injury' for standing to pursue a FCRA claim.

Undoubtedly, the Limon decision will bolster FCRA defendants' ability to assert lack of standing as a defense in FCRA cases filed in California state court, where plaintiffs have not suffered any concrete harm.

And, for now, this opinion will likely drive down settlement values for these kinds of technical FCRA cases, given the risk that the litigation stands to be dismissed based on lack of standing, perhaps even at the pleading stage.

Ultimately, however, plaintiffs will surely look for ways to fight and/or distinguish this decision. Also, given the lack of horizontal stare decisis among sister appellate districts in California, plaintiffs attorneys will likely work to have other California appellate courts examine the standing issue under FCRA.

Accordingly, while this decision will offer a short-term boost to defendants, the long-term impact of Limon remains to be determined.

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***Disclosure: Troutman Pepper filed an an amicus curiae letter on behalf of the Professional Background Screening Association opposing the plaintiff's petition for the California Supreme Court to review Limon v. Circle K Stores.***

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