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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Janis Wolf,

No. CV-20-00957-PHX-DLR

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Plaintiff,

ORDER

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v.

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Carpenter Hazlewood Delgado & Bolen
LLP,

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Defendant.

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Plaintiff accuses Defendant of violating the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681b(a), by obtaining her credit report without a legitimate purpose or consent, and prior to obtaining a judgment against her. Her complaint demands statutory and punitive damages. Plaintiff seeks to litigate this case as a class action on behalf of others whose credit reports Defendant obtained under similar circumstances. (Doc. 1.)

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Defendant has moved to stay this action in its entirety, or alternatively to stay briefing and consideration of Plaintiff’s class certification motion, pending a decision by the United States Supreme Court in *TransUnion, LLC v. Ramirez* (“*Ramirez*”), Docket No. 20-297. (Doc. 22.) The Supreme Court recently granted certiorari in *Ramirez*, oral argument is scheduled for March 30, 2021, and a decision likely will issue by the end of this term. Defendant argues that a stay is appropriate because “a ruling in *Ramirez* could have a direct impact on this litigation, and more specifically on this Court’s ability to certify a purported class as Plaintiff requests[.]” (*Id.* at 1-2.) To determine whether a decision in *Ramirez* will have a meaningful impact on this litigation, the Court first must determine

1 what is at issue in *Ramirez*.

2 Sergio Ramirez brought a class action on behalf of himself and other similarly
3 situated consumers, accusing TransUnion of violating the FCRA, §§ 1681e(b), (g)(a)(1),
4 and (g)(c)(2), by incorrectly placing terrorist alerts on the front page of the consumers'
5 credit reports and subsequently sending those consumers confusing and incomplete
6 information about the alerts and how to get them removed. *Ramirez v. TransUnion LLC*,
7 951 F.3d 1008, 1016, 1022 (9th Cir. 2020). A jury found in favor of the class and awarded
8 statutory and punitive damages. *Id.* at 1022. On appeal to the Ninth Circuit, TransUnion
9 argued, among other things, that none of the class members except for Ramirez had Article
10 III standing, and that the district court should not have certified the class because Ramirez's
11 injuries were atypical of those suffered by the class. *Id.* at 1022, 1033.

12 On the first question, the Ninth Circuit held that every class member must have
13 standing to recover damages at the final judgment stage, and that Ramirez and every class
14 member had standing under the facts of the case. *Id.* at 1030. On the second question, the
15 Ninth Circuit acknowledged that Ramirez's injuries were more severe than the injuries
16 suffered by the rest of the class. For example,

17 Ramirez's credit report with the false . . . alert was sent to a
18 third party; Ramirez's alert stated that he was a match instead
19 of a potential match; Ramirez was denied credit because of the
20 alert; he canceled a vacation because of the alert; and he spent
21 significant time and energy trying to remove the alert,
22 including hiring a lawyer. In contrast, only a quarter of the
other class members had their credit reports sent to a third party
during the class period, and there was no evidence regarding
whether other class members had experiences similar to
Ramirez's as a result of the alerts.

23 *Id.* at 1033. But the Ninth Circuit held that these differences did not defeat typicality.
24 Although Ramirez's injuries were "slightly more severe than some class members'
25 injuries," they still arose from the same practice that gave rise to the claims of the other
26 class members, and Ramirez's claims were based on the same legal theory. *Id.* The Ninth
27 Circuit reasoned that Ramirez's "injuries were not so unique, unusual, or severe to make
28 him an atypical representative of the class." *Id.*

1 TransUnion successfully petitioned the Supreme Court for a writ of certiorari. The
2 question TransUnion has presented to the Supreme Court is “[w]hether either Article III or
3 Rule 23 permits a damages class action where the vast majority of the class suffered no
4 actual injury, let alone an injury anything like what the class representative suffered.” Brief
5 for Petitioner in *Ramirez*, available at
6 [https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-297.html)
7 [297.html](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-297.html). This, however, is a textbook example of a loaded question, in that its premise
8 presumes (inaccurately) that the Ninth Circuit held that Article III permits a damages class
9 action where the vast majority of the class suffered no actual injury, and that Federal Rule
10 of Civil Procedure 23 permits a damages class action where the vast majority of the class
11 suffered injuries unlike anything that the class representative suffered. But the Ninth
12 Circuit held no such thing. To the contrary, the Ninth Circuit held that every member of
13 the class did, in fact, suffer an actual injury for purposes of Article III, and that Ramirez’s
14 injuries were sufficiently typical of those suffered by the class for purposes of Rule 23.
15 TransUnion’s merits brief before the Supreme Court argues that these holding were wrong;
16 it does not argue against holdings that the Ninth Circuit never made. Accordingly, in
17 *Ramirez*, the Supreme Court will be deciding whether the Ninth Circuit erred when it
18 concluded that (1) the class members suffered Article III injuries and (2) the class
19 representative’s injuries were typical of those suffered by the class.

20 The Supreme Court’s resolution of the first question will not meaningfully impact
21 this litigation. *Ramirez* does not concern alleged violations of § 1681b(a) (which is at issue
22 here) and therefore does not speak to whether consumers suffer Article III injuries when
23 that section is violated. This precise issue instead is addressed by an earlier Ninth Circuit
24 decision, *Nayab v. Capital One Bank (USA), N.A.*, 942 F.3d 480 (9th Cir. 2019). There,
25 the Ninth Circuit held § 1681b(a) protects a consumer’s substantive right to privacy, and
26 therefore a consumer “has standing to vindicate her right to privacy under the FCRA when
27 a third-party obtains her credit report without a purpose authorized by the statute,
28 regardless whether the credit report is published or otherwise used by that third-party.” *Id.*

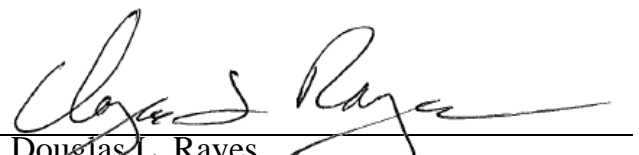
1 at 490-93. Defendant argues that *Nayab*'s holding has been undermined by the Supreme
2 Court's decision last term in *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615 (2020), but that's an
3 argument Defendant can make now, either in a dispositive motion or in a brief opposing
4 class certification. Whether *Nayab* remains good law after *Thole* does not depend on the
5 Supreme Court's impending decision in *Ramirez*.

6 Nor is the Court persuaded that the Supreme Court's resolution of the second
7 question will meaningfully impact this case. Even if the Supreme Court were to reverse
8 the Ninth Circuit and hold that Ramirez's injuries were atypical of those suffered by the
9 class as a whole, here there is far less daylight between the injuries alleged by Plaintiff and
10 those allegedly suffered by the putative class. Defendant highlights that, unlike the putative
11 class members, Plaintiff claims that Defendant's hard credit inquiries might have caused
12 her to be denied an improved interest rate on a credit card (though she is not certain if a
13 causal relationship exists between the two). (Doc. 21-1 at 29-30.) This discrepancy is
14 minor when compared to the differences between Ramirez's injuries and those suffered by
15 the class in that case. To be clear, the Court is not prejudging the typicality question.
16 Defendant remains free to argue in opposition to class certification that Plaintiff's injuries
17 are atypical of those suffered by the putative class, and the Court will resolve that question
18 on its merits in the specific context of this case. The Court merely finds that the allegations
19 in this case are sufficiently distinguishable from the facts in *Ramirez* that the Supreme
20 Court's forthcoming decision, even if favorable to TransUnion, will not meaningfully
21 impact this litigation.

22 **IT IS ORDERED** that Defendant's motion to stay (Doc. 22) is **DENIED**.

23 **IT IS FURTHER ORDERED** that Defendant has **7 days** from the date of this order
24 in which to file a response to Plaintiff's motion for class certification (Doc. 21).

25 Dated this 10th day of February, 2021.

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Douglas L. Rayes
United States District Judge