



Business Litigation Update

March 2026

Ninth Circuit Clarifies Standing Requirements for Absent Class Members

In the important 2021 standing decision [*TransUnion LLC v. Ramirez*](#), the U.S. Supreme Court instructed that every member of a class certified under Federal Rule of Civil Procedure 23(b)(3) “must have standing in order to recover individual damages.” 594 U.S. at 431. Since *Ramirez*, courts have confronted several issues arising from the intersection of Article III’s standing requirements and the procedural requirements of Rule 23. The Ninth Circuit addressed one such issue in *Healy v. Milliman, Inc.*, ___ F.4th ___, 2026 U.S. App. LEXIS 554 (9th Cir. Jan. 9, 2026): Must absent class members demonstrate standing at summary judgment or only upon submitting a claim for money damages after a judgment or settlement? The Ninth Circuit held that absent class members must demonstrate standing at the summary judgment stage. This holding creates a potentially useful tool for class action defendants, but the court’s emphasis on the fairly liberal standard for creating a genuine issue of material fact at summary judgment means the practical consequences of the decision may not be significant.

In *Healy*, the plaintiff brought a class action under the Fair Credit Reporting Act against a company that compiled individuals’ health data and furnished it to life insurers to assist with underwriting. The plaintiff alleged the defendant furnished information on an entirely different person with a similar name, which caused the insurers to deny the plaintiff’s life insurance application. The district court certified an “inaccuracy class” comprising individuals about whom the defendant supplied inaccurate information to insurance companies (generally, files in which the class member’s Social Security number did not match the Social Security number the defendant had on file). The defendant moved for summary judgment, arguing that the plaintiff

could not demonstrate classwide standing because some class members’ files contained an inaccurate Social Security number but accurate information about the applicant’s health. Because files that actually contained inaccurate health information could only be identified by a file-by-file review, the defendant argued, the class would necessarily contain individuals who suffered no injury because the defendant did not furnish any inaccurate information about them to insurers. Because these individuals had no personal stake in the case, they lacked Article III standing.

The district court granted summary judgment to the defendant, holding that under *Ramirez*, the plaintiff had to present some evidence of concrete injury on a classwide basis at the summary judgment stage. The plaintiff argued before the Ninth Circuit that under *Ramirez*, class members must demonstrate standing only at the time individual money damages are awarded after judgment or settlement. Rejecting that argument, the Ninth Circuit held that a class representative must present evidence of classwide standing at the summary judgment stage. The court based its holding on *Ramirez*, which established that a plaintiff must “demonstrate standing with the manner and degree of evidence required at the successive stages of the litigation.” Applying that standard, the Ninth Circuit held that at summary judgment the plaintiff must “demonstrate that there is a genuine question of material fact as to the standing elements.”

Although it affirmed the district court’s conclusion that the plaintiff must provide classwide standing evidence to survive summary judgment, the Ninth Circuit disagreed with the lower court’s application of the summary judgment

standard. The district court required the plaintiff to provide direct evidence of standing, but the Ninth Circuit held that circumstantial evidence – such as the misattributed or erroneous health records on which the plaintiff relied – was sufficient to create a genuine issue of material fact. The Ninth Circuit also held that the plaintiff need only provide evidence from which a rational trier of fact **could** find injury, not evidence from which they **would necessarily** find injury. The Ninth Circuit remanded for the district court to consider the summary judgment evidence under these standards, but it seems clear that had the Ninth Circuit decided the issue itself, it would have found the evidence of classwide standing sufficient to avoid summary judgment. Thus, while the requirement that a plaintiff prove classwide standing at summary judgment does present a hurdle that defendants can leverage in some cases (particularly in cases where there is little or no evidence of injury for a significant portion of the class), the practical effects may be minimal, considering that the burden to establish a triable issue of material fact, at least as articulated by the Ninth Circuit in *Healy*, is not very high. Defendants may be better served by focusing on differences among class members like those presented by the mixed files in *Healy* as a means of arguing against predominance and superiority in the class certification context.

Healy did not address an important issue left open by *Ramirez*: Can a court certify a class containing members that lack Article III standing? The Supreme Court considered that question in 2025 in *Labcorp v. Davis* but dismissed the case as improvidently granted.

FOR MORE INFORMATION

For more information, please contact:

Gregory T. Fouts

312.998.4244

Gregory.Fouts@ThompsonHine.com

Jessica E. Salisbury-Copper

937.443.6854

Jessica.Salisbury-Copper@ThompsonHine.com

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