PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1059

PHILLIP ALIG; SARA J. ALIG; ROXANNE SHEA; DANIEL V. SHEA, Individually and on behalf of a class of persons,

Plaintiffs - Appellees,

v.

ROCKET MORTGAGE, LLC, f/k/a Quicken Loans Inc.; AMROCK INC., f/k/a Title Source, Inc., d/b/a Title Source Inc. of West Virginia, Incorporated,

Defendants - Appellants,

and

DEWEY V. GUIDA; APPRAISALS UNLIMITED, INC.; RICHARD HYETT,

Defendants.

THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; WASHINGTON LEGAL FOUNDATION,

Amicus Supporting Appellant.

On Remand from the Supreme Court of the United States.
(S. Ct. No. 21-428)

Argued: September 13, 2022 Decided: October 28, 2022

Before NIEMEYER and WYNN, Circuit Judges, and FLOYD, Senior Circuit Judge.

Vacated and remanded with instructions for reconsideration by published per curiam order. Judge Niemeyer wrote a separate concurring opinion.

ARGUED: William M. Jay, GOODWIN PROCTER LLP, Washington, D.C., for Appellants. Deepak Gupta, GUPTA WESSLER PLLC, Washington, D.C., for Appellees. **ON BRIEF:** Helgi C. Walker, Jesenka Mrdjenovic, Andrew G.I. Kilberg, Washington, D.C., Theodore J. Boutrous, Jr., GIBSON, DUNN & CRUTCHER LLP, Los Angeles, California; Thomas M. Hefferon, Brooks R. Brown, Jaime A. Santos, Keith Levenberg, Washington, D.C., Edwina B. Clarke, GOODWIN PROCTER LLP, Boston, Massachusetts, for Appellants. John W. Barrett, Jonathan R. Marshall, Charleston, West Virginia, Patricia M. Kipnis, BAILEY & GLASSER LLP, Cherry Hill, New Jersey; Gregory A. Beck, Linnet Davis-Stermitz, GUPTA WESSLER PLLC, Washington, D.C.; Jason E. Causey, James G. Bordas, Jr., BORDAS & BORDAS, PLLC, Wheeling, West Virginia, for Appellees. John M. Masslon II, Cory L. Andrews, WASHINGTON LEGAL FOUNDATION, Washington, D.C., for Amicus Washington Legal Foundation. Jennifer B. Dickey, Tyler S. Badgley, UNITED STATES CHAMBER LITIGATION CENTER, Washington, D.C.; Matthew A. Fitzgerald, MCGUIREWOODS LLP, Richmond, Virginia, for Amicus The Chamber of Commerce of the United States of America.

PER CURIAM:

Plaintiffs in this class action are a class of all West Virginia citizens who refinanced a total of 2,769 mortgages with Defendant Quicken Loans Inc. (now Rocket Mortgage, LLC) from 2004 to 2009, for whom Quicken Loans obtained appraisals from Defendant appraisal management company Title Source, Inc. (now Amrock Inc.) using a request form that included an estimate of value of the subject property. The district court certified the proposed class and granted summary judgment to Plaintiffs on three claims: unconscionable inducement under West Virginia Code § 46A-2-121(a)(1); breach of contract; and conspiracy. The court awarded a total of more than $10.6 million in damages.

Last year, we affirmed in part and vacated in part the district court's judgment. *Alig v. Quicken Loans Inc.*, 990 F.3d 782 (4th Cir. 2021). As relevant here, we concluded that Plaintiffs had standing because all of the class members had paid "for *independent* appraisals that . . . they never received." *Id.* at 791 (emphasis added). "Instead," we held, "they received appraisals that were tainted when Defendants exposed the appraisers to the borrowers' estimates of value and pressured them to reach those values." *Id.* at 791–92. We concluded that the "financial harm" involved in paying for a product that was "never received" was "'a classic and paradigmatic form of injury in fact.'" *Id.* at 791–92 (quoting *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 760 (4th Cir. 2018)).

Three months later, the Supreme Court issued its opinion in *TransUnion LLC v. Ramirez*, 594 U.S. __, 141 S. Ct. 2190 (2021), which addressed Article III standing in the context of a class-action case. Following *TransUnion*, it is clear that, to recover damages from Quicken Loans, "[e]very class member must have Article III standing" "for each

claim that they press," requiring proof that they "suffered concrete harm" from the challenged conduct.* 141 S. Ct. at 2208.

Defendants filed a petition for a writ of certiorari, arguing that Plaintiffs lack standing under *TransUnion*. Earlier this year, the Supreme Court granted Defendants' petition, vacated our judgment, and remanded the case "for further consideration in light of" that case. *Rocket Mortgage, LLC v. Alig*, 142 S. Ct. 748, 748 (2022) (mem.).

We ordered supplemental briefing and held oral argument. Having considered the parties' submissions, we conclude that the district court should apply *TransUnion* to the facts of this case in the first instance. Accordingly, we vacate and remand for further proceedings.

VACATED AND REMANDED

* In *TransUnion*, this meant that less than a quarter of the class had standing to pursue a claim related to the accuracy of their credit files, and that no class member other than the named plaintiff had standing to pursue two other claims related to "formatting defects in certain mailings sent to them by TransUnion." *TransUnion*, 141 S. Ct. at 2200.

NIEMEYER, Circuit Judge, concurring:

I am pleased to concur in this court's order vacating and remanding this case to the district court to apply the Supreme Court's recent decision in *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021). The Supreme Court vacated and remanded our decision in this case, giving us the task of reconsidering it in light of *TransUnion*. In passing our task on to the district court, I believe that a fuller statement of the circumstances now facing the district court would be helpful to that court.

Briefly, the named plaintiffs, Phillip and Sara Alig and Daniel and Roxanne Shea, refinanced their home mortgages with Quicken Loans in 2007 and 2008, respectively, and, in applying for those loans, provided Quicken Loans with an estimate of their homes' present market value. As was common in the industry at the time, Quicken Loans and its affiliate, Title Source, Inc., then included that estimate on the form used to hire an appraiser to appraise each home, identifying it on the form as the "Applicant's Estimated Value." Several years later, the Aligs and Sheas commenced this action against Quicken Loans and Title Source, purporting to represent themselves and all West Virginia citizens similarly situated and alleging that the defendants had provided their home-value estimates to appraisers as part of a "systematic[]" effort "to influence appraisers" and that doing so had "rendered [their] appraisals unreliable and worthless." As relevant to the current circumstances, their complaint included three claims: *first*, that their loans had been "induced by unconscionable conduct," in violation of West Virginia Code § 46A-2-121(a)(1); *second*, that "by providing value estimates to appraisers" without disclosing the practice to them, Quicken Loans had breached its contractual obligation to obtain "a fair

and unbiased appraisal"; and *third*, that Quicken Loans and Title Source had engaged in an unlawful civil conspiracy that rendered Title Source equally liable for the unconscionable inducement and breach of contract claims alleged.

Following discovery, the Aligs and Sheas filed a motion to certify a class of "[a]ll West Virginia citizens who refinanced mortgage loans with Quicken, and for whom Quicken obtained appraisals through an appraisal request form that included an estimate of value of the subject property." There were 2,769 such loans. Shortly thereafter, the parties filed cross-motions for summary judgment, and the district court, by memorandum opinion and order dated June 2, 2016, certified the proposed class and granted summary judgment to the plaintiffs on the three claims. In a later order, the court awarded (1) statutory damages of $3,500 per loan for the unconscionable inducement claim, and (2) approximately $969,000 for the breach of contract claim, which represented the aggregate amount of fees that class members had paid for appraisals. The district court's total judgment against the defendants thus exceeded $10.6 million.

In an opinion dated March 10, 2021, this court affirmed in part and vacated in part the district court's judgment. *Alig v. Quicken Loans Inc.*, 990 F.3d 782 (4th Cir. 2021). First, this court affirmed the district court's decision to certify the class, rejecting, among other challenges, the defendants' argument that "a significant number of the class members [were] uninjured and therefore lack[ed] standing." *Id*. at 791. The opinion reasoned that all of the class members had paid "for *independent* appraisals" but instead "received appraisals that were tainted when Defendants exposed the appraisers to the borrowers' estimates of value . . . ." *Id*. at 791–92 (emphasis added). It concluded that the "financial

harm" involved in paying for something that was different from what was received was "a classic and paradigmatic form of injury in fact," even if the plaintiffs financially "benefited from obtaining the loans." *Id*. at 792 (internal quotation marks and citation omitted).

On the merits, this court affirmed the district court's holding that the plaintiffs had established their statutory claim for unconscionable inducement as a matter of law, reasoning that the defendants' practice of providing appraisers with prospective borrowers' estimates without disclosing the practice to the borrowers was unconscionable and that all of the borrowers' loans were necessarily induced by this unconscionable conduct because "the appraisal process [was] sufficiently central to the refinancing agreement that any conduct designed to affect the appraisal process necessarily contributed to the Plaintiffs' conclusions to enter the loans." *Alig*, 990 F.3d at 806. On the plaintiffs' breach of contract claim, however, this court vacated the district court's grant of summary judgment, concluding that, while "a contract was formed between each class member and Quicken Loans" under which "Quicken Loans was obligated to 'obtain a fair, valid and reasonable appraisal of the property,'" it was necessary to remand to allow the district court to consider whether "Quicken Loans breached its contracts with the class members" and whether "the class members suffered damages as a result." *Id*. at 797–98. "In particular," this court recognized that "the district court will need to address Defendants' contention that there were no damages suffered by those class members whose appraisals would have been the same whether or not the appraisers were aware of the borrowers' estimates of value — which one might expect, for example, if a borrower's estimate of value was accurate." *Id*.

at 796; *see also id*. at 803 n.22 (noting that, based on the record, "we cannot evaluate whether the appraisals for most class members were inflated").

I dissented, explaining that "there [was] no evidence that the appraisers on these loans were influenced by the borrowers' estimates" and also that there was "simply no evidence that had the practice been disclosed to [the Aligs and Sheas], they would have proceeded any differently." *Alig*, 990 F.3d at 809 (Niemeyer, J., dissenting). I concluded that "[t]o impose liability on Quicken Loans for what was an industry-wide practice to provide relevant information to appraisers and that harmed the Aligs and Sheas *not one iota* [was] fundamentally unjust" and that we should "reverse and remand with instructions to enter judgment for" the defendants. *Id*. at 808–09.

The United States Supreme Court granted the defendants' petition for writ of certiorari on January 10, 2022, vacated the judgment of this court, and remanded the case "for further consideration in light of *TransUnion LLC v. Ramirez*, 594 U.S. __, 141 S. Ct. 2190 (2021)." *Rocket Mortgage, LLC v. Alig*, 142 S. Ct. 748, 748 (2022). The Court's *TransUnion* opinion addressed "the Article III requirement that the plaintiff's injury in fact be 'concrete.'" 141 S. Ct. at 2204. The named plaintiff in that case alleged that TransUnion, a credit reporting agency, had violated the Fair Credit Reporting Act by failing to use reasonable procedures before placing a misleading alert in his credit file and by sending him two mailings that did not comply with certain formatting requirements imposed by the statute. *Id*. at 2200–02. The district court had certified a class of more than 8,000 people who had the same misleading alert added to their credit files and had received similar mailings during a certain time period. A jury then awarded each class

member statutory and punitive damages, a judgment that was largely affirmed by the Ninth Circuit. *Id*. at 2202. The Supreme Court reversed and remanded, holding that only a subset of the class had established Article III standing to sue TransUnion for its failure to use reasonable procedures to ensure the accuracy of their credit files — namely, those 1,853 class members whose credit reports were provided to third-party businesses and who had suffered "concrete reputational harm" as a result. *Id*. at 2200. With respect to the two claims relating to the formatting defects in the mailings, the Court held that no class member other than the named plaintiff had demonstrated any concrete harm caused by the formatting errors, such that only he had standing to recover on those claims. *Id*.

In explaining its decision, the Court emphasized that, "under Article III, an injury in law is not an injury in fact" and that "[o]nly those plaintiffs who have been *concretely harmed* by a defendant's statutory violation may sue that private defendant over that violation in federal court." *TransUnion*, 141 S. Ct. at 2205. The *TransUnion* Court also stated that "standing is not dispensed in gross" — rather, "[e]very class member must have Article III standing in order to recover individual damages," and "plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek . . . ." *Id*. at 2208. The Court further made clear that there must be a connection between the form of harm demonstrated and the form of relief sought: while "a person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring," *id*. at 2210, "the risk of future harm on its own does not support Article III standing for [a] damages claim," *id*. at 2213. Accordingly, the approximately 6,300 class members who failed to prove that the misleading alert in their credit report was

ever provided to a third-party "did not suffer a concrete harm" sufficient to support their reasonable-procedures claim. *Id*. at 2212. And none of the class members "demonstrated that the format of TransUnion's mailings" — even if not in compliance with the statute — caused them "any harm *at all*." *Id*. at 2213.

Because the district court entered its final judgment without the benefit of *TransUnion*, I agree that we should vacate its judgment and remand to allow the district court, in the first instance, to apply *TransUnion* to the facts of this case.