

MEMORANDUM

TO: Briefbank
FROM: Richard Careaga
DATE: September 14, 2026
SUBJECT: Healy v. Milliman, Inc., 164 F.4th 701 (9th Cir. 2026)

1 — Overview

1.1 The case This is a Ninth Circuit certified class action under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. against Milliman, Inc., which compiles consumers’ prescription and medical histories into reports for sale to life insurers. James Healy, the named plaintiff, was denied life insurance after Milliman’s report attributed another person’s serious medical conditions to him. The district court certified two classes. One was an “inaccuracy class” *id.* § 1681e, and the other was a “reinvestigation class” *id.* § 1681i. Milliman moved for partial summary judgment after certification and the close of discovery, but before class notice issued. The district court agreed with defendant Milliman’s argument that the plaintiff could not show Article III standing for the unnamed members of the inaccuracy class. The court held that under *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), the plaintiff had to present “at least some direct evidence of concrete injury on a class-wide basis” and had not, because mismatched Social Security numbers “do not necessarily demonstrate misattributed health records.” On a 28 U.S.C. § 1292(b) appeal a Ninth Circuit panel agreed that after certification both named and unnamed members of a damages class must present evidence of standing at summary judgment. However, that showing is subject to the ordinary Rule 56 standard and that circumstantial evidence can suffice. The nonmovant is required only to show that a rational trier of fact *could* reasonably infer standing, not that a jury necessarily *would*. It reversed and remanded without deciding whether the record created a genuine dispute.

1.2 Purpose and scope

This is a brief bank reference entry for summary judgment practice in federal court. As a reference brief, it is intended as a non-adversarial reading of the authority for future use either as movant or non-movant.

1.3 Materials reviewed.

- the district court order below,
- the merits briefs and the amicus brief
- the reply
- the Rule 28(j) letters
- the public supplemental excerpts of the evidentiary record

- the opinion,

I disregarded the staff summary and avoided over-reading in either direction.

1.4 Current rule text I reviewed the December 1, 2025 edition of the Federal Rules of Civil Procedure from the U.S. Courts website. Unqualified references to a “Rule” are to the Federal Rules of Civil Procedure. Rule 56 has not been amended after December 1, 2010, and no adjustment for rule numbering is necessary.

1.5 Leading Supreme Court cases The panel cites one of the leading Supreme Court authorities on summary judgment, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (“To survive a motion for summary judgment ... a plaintiff only must show that a rational trier of fact ‘could’ find for them at trial.”) The opinion analyzed *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021) for the requirement that unnamed class members must demonstrate standing.

1.6 Ninth Circuit decisions The panel cited *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 947 (9th Cir. 2002) (“at the summary judgment stage the plaintiffs need not establish that they in fact have standing, but only that there is a genuine question of material fact as to the standing elements”); *Guimond v. TransUnion Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) (“a consumer must present evidence tending to show that a credit reporting agency prepared a report containing inaccurate information”); *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 751–52 (9th Cir. 2001) (circumstantial evidence created a genuine issue of material fact); and treated *Ramirez v. TransUnion LLC*, 951 F.3d 1008, 1022–23 (9th Cir. 2020) as abrogated by *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021) (“requires unnamed members of a certified class for money damages to demonstrate standing at summary judgment”).

2 — Decision under review

2.1 Classification The district court granted partial summary judgment on the basis that plaintiff failed to demonstrate class wide standing of the certified 15 U.S.C. § 1681e(b) inaccuracy class.

3 — Posture

3.1 Trial-court posture: burden and scope

Defensive summary judgment. The plaintiff, Healy on behalf of the class, bears the burden of persuasion at trial of demonstrating Article III injury-in-fact standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992); *TransUnion*, 594 U.S. at 431. The defendant was in the posture of a movant without the trial burden unlike, for example, the case in which it raised an affirmative defense that carries with it a trial burden.

Movant’s route. Because Milliman did not have the trial burden on class-wide standing, it had no obligation to produce evidence concerning standing. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Milliman could merely point out “that following three years of discovery the plaintiff’s only class-wide evidence (its expert Jaffe’s analysis) identified Social Security number ‘conflicts,’ and that Jaffe had conceded he could not identify which conflicting reports were

‘mixed files,’ had no statistical analysis correlating conflicts with mixing, and had no class-wide method.”(Answering Br. 20–22, 45–47, citing 1-SER-34–45, 64–67). Milliman also offered some negating evidence testimony that a conflict can arise when a data source carries the primary insured’s Social Security number while the medical information is the applicant’s (Bolduc Dep. 82–83, 1-SER-26–27, six examples from a sample), and revision statistics (1,571 revisions out of 42,781,776 inquiries, 2015–2020, 2-ER-88–89).

Not offensive. No party sought judgment on an element on which it bore the trial burden; the plaintiff’s own inaccuracy motion was held in abeyance.

Partial, not complete. The motion targeted one class claim. No facts were treated as established under e Rule 56(g). The district court’s ruling was a “dismissal without prejudice” of the claims brought solely on behalf of the inaccuracy class, expressly “pursuant to Rule 56” (Dkt. 227 at 1); no judgment was entered under Rule 58 and no Rule 54(b) certification was sought.

No cross motions. See 2.2.

Class-action overlay. The motion was decided after certification (April 29, 2022) and after the Ninth Circuit had denied a Rule 23(f) petition (July 13, 2022), but before class notice was sent. The holding is expressly confined to the post-certification, pre-trial stage of a damages class action (slip op. 10, 13).

3.2 Trial-court posture: procedural configuration.

Fully submitted. Discovery was complete (Dkt. 216 at 4: “In this instance, discovery is complete.”). The motion was filed September 21, 2023, within the scheduling order’s November 3, 2023 dispositive-motion deadline (Dkt. 162), so Rule 56(b) timing was not an issue.

Supplemental briefing ordered by the court. After oral argument on December 5, 2023, the court by minute order (Dkt. 198) directed supplemental briefing on class-wide standing for both certified classes, observing that standing is jurisdictional and may be raised sua sponte (Dkt. 216 at 4 n.4). As to the reinvestigation class this was consideration of standing on the court’s own initiative after notice and an opportunity to respond, functionally equivalent to a Rule 56(f)(3) procedure. The court found direct evidence of class-wide harm for that class (burden-shifting communications and wasted time under *Losch v. Nationstar Mortgage, LLC*, 995 F.3d 937, 943 (11th Cir. 2021); *Apodaca v. Discover Fin. Servs.*, 417 F. Supp. 2d 1220 (D.N.M. 2006)) and let it survive (Dkt. 216 at 5–6). The Ninth Circuit did not address this aspect.

Successive motion. Milliman had previously obtained partial summary judgment on the 15 U.S.C. § 1681g(a)(2) claim for lack of standing (Dkt. 122, April 8, 2022, which is the order some other courts cite as *Healy v. Milliman, Inc.*, on the wasted-time theory of FCRA injury). Dkt. 167 was thus a successive summary judgment motion on a distinct issue; no party contested the court’s discretion to entertain it.

Rule 56(d) not invoked. Milliman’s answering brief made the point affirmatively (Answering Br. 45 that the plaintiff “did not invoke Rule 56(d),” and, in fact, discovery had closed). The opinion does not mention Rule 56(d).

Rule 702. No Federal Rules of Evidence Rule 702 motion accompanied the summary judgment motion. Milliman “made no challenge to Jaffe’s qualifications in the district court” (Opening Br.

15 n.3). (See *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) concerning the proper standards for admissibility of expert testimony.)

Reconsideration. The plaintiff moved for reconsideration and clarification under W.D. Wash. LCR 7(h) (Dkt. 219). The court declined to revisit the merits but clarified that the dismissal was under Rule 56 and without prejudice, and certified the order under 28 U.S.C. § 1292(b) (Dkt. 227).

3.3 Appeal of a complete grant as of right. N/A.

3.4 Interlocutory appeal of a partial grant. The district court certified its order on April 9, 2024 (Dkt. 227). The plaintiff petitioned for permission to appeal on April 19, 2024 (9th Cir. No. 24-2501). The Ninth Circuit granted the petition on May 24, 2024 and docketed the appeal as No. 24-3327 (slip op. 8). Rule 54(b) was not used (no judgment; the dismissal was without prejudice). The district court stayed proceedings pending appeal by stipulation (Dkt. 229).

3.5 Collateral order doctrine. N/A.

3.6 Appeal from a denial of summary judgment. N/A (the order appealed was a grant of summary judgment).

3.7 Rehearing en banc. No petition for panel rehearing or rehearing en banc was filed in respect of the panel opinion (Thomas, Bress, Mendoza, JJ.). The Ninth Circuit docket shows nothing between the corrected opinion (DE 71, January 9, 2026) and a bill of costs (DE 72) and the mandate (DE 73, February 2, 2026). No dissent from denial of rehearing exists.

3.8 Certiorari to clarify Rule 56. N/A. No petition appears on either docket as of September 14, 2026; the 90-day period from the January 9, 2026 judgment expired in early April 2026 absent an extension, and the district court has since proceeded on remand.

3.9 Certiorari to resolve a circuit conflict. N/A.

3.10 Per curiam summary reversal. N/A (signed opinion).

3.11 Grant, vacate, and remand. N/A.

3.12 Standard of review applied. The court conducted de novo review on the grant of summary judgment, “including legal determinations regarding standing” (slip op. 8; 164 F.4th at 705, quoting *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1106 (9th Cir. 2022)), asking “whether the district court correctly applied the relevant substantive law” (slip op. 8–9, quoting *Stewart v. Thorpe Holding Co. Profit Sharing Plan*, 207 F.3d 1143, 1148 (9th Cir. 2000)). No abuse-of-discretion ruling was reviewed. Because the review was de novo, both holdings transfer at full strength.

4 – Court and Docket

4.1 District court decision reviewed. The circuit court reviewed the memorandum decision of Judge John C. Coughenour, United States District Judge, W.D. Wash. (Seattle Division), No. 2:20-cv-01473-JCC. This was an order granting in part and denying in part Milliman’s motion for partial summary judgment and/or to decertify the inaccuracy class, February 22, 2024 (Dkt. 216, 7 pp.), as clarified April 9, 2024 (Dkt. 227, 2 pp.). Publication status: unreported order (RECAP); no F.

Supp. citation located and no Westlaw or Lexis citation verified. The Ninth Circuit is the reviewing court. After remand the case below was reassigned; docket entries from March 2026 forward are signed by Judge Tana Lin and the caption now carries the suffix “-TL.”

4.2 Circuit decision. Ninth Circuit. Panel: Sidney R. Thomas, Daniel A. Bress, and Salvador Mendoza, Jr., Circuit Judges. Author: Judge Sidney R. Thomas. Vote: unanimous (no concurrence, no dissent). Argued and submitted November 19, 2025, San Francisco. Filed January 9, 2026. Amended opinion: a “corrected opinion” was entered the same day (DE 71), the correction was simply to the running header only. The originally posted slip opinion carries the header “GONZALEZ V. CITY OF PHOENIX” on pages 2–18, while the corrected opinion (CourtListener opinion 11239091) reads “HEALY V. MILLIMAN, INC.”; the body text is unchanged. Cite the corrected opinion. Precedential status: published opinion.

4.3 Supreme Court decision. N/A.

5 — Elements

Article III injury in fact for the unnamed members of the certified 15 U.S.C. § 1681e(b) inaccuracy class at the summary judgment stage was the single threshold issue. The plaintiff class bears the burden of persuasion on standing at trial (*Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992); *TransUnion*, 594 U.S. at 431). The movant proceeded by pointing to an absence of evidence (3.1). The Ninth Circuit did not decide the element on undisputed facts and did not find a genuine dispute present or absent. It resolved two questions of law: (1) when the showing must be made, and (2) by what standard. It remanded the factual sufficiency question.

5.1 Threshold issues.

Standing (central). The injury theory is *TransUnion*’s: dissemination to a third party of a report containing inaccurate information bears a “close relationship” to defamation and is a concrete harm (594 U.S. at 432–33). For the inaccuracy class, injury in fact therefore reduces to whether each class member’s report actually contained another person’s medical or prescription record (a “mixed file”) and was sent to an insurer with a red or yellow flag. The court held that after certification this showing must be made for named and unnamed members alike at summary judgment (slip op. 9–15), measured by the ordinary Rule 56 standard (slip op. 16–18).

Threshold issue intertwined with the merits. The standing element (inaccurate report disseminated) overlaps the § 1681e(b) inaccuracy element. The court’s treatment applying the summary judgment standard of *Cent. Delta* and *Matsushita* to the standing showing and its importing *Guimond*’s “evidence tending to show” inaccuracy formulation into the standing analysis (slip op. 16–17) are each consistent with the rule that where jurisdiction and the merits are intertwined, the summary judgment standard applies (*Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039–40 (9th Cir. 2004); *Leite v. Crane Co.*, 749 F.3d 1117, 1121–22 & n.3 (9th Cir. 2014)). The opinion does not cite those cases.

Class certification status and effect on absent members. The class was certified on April 29, 2022 (Dkt. 126), definitions modified by stipulation on July 29, 2022 (Dkt. 140); a Rule 23(f) petition was denied on July 13, 2022 (No. 22-80043). The district court’s ruling dismissed “Plaintiff’s

claims brought solely on behalf of the inaccuracy class” without prejudice, an order that operated on the absent members’ claims before notice; the Ninth Circuit reversed it. Whether every class member must demonstrate standing before certification was expressly not addressed, following *TransUnion*, 594 U.S. at 431 n.4 (slip op. 9, 14).

Subject-matter jurisdiction. 28 U.S.C. § 1331 (FCRA) (slip op. 8). Appellate jurisdiction: 28 USC § 1292(b) (slip op. 8).

Mootness, ripeness, immunity, exhaustion, arbitration. None in issue.

5.2 Prima facie elements as the court stated them. The court stated the summary judgment showing for the 15 U.S.C. § 1681e(b) inaccuracy element is that the consumer “must ‘present evidence tending to show that a credit reporting agency prepared a report containing inaccurate information’” (slip op. 16, *Guimond v. TransUnion Credit Info. Co.*, 45 F.3d 1329 (9th Cir. 1995)). The reasonable/procedures element, the willfulness standard (15 U.S.C. § 1681n; *Safeco*), and damages were not reached. Standing elements were stated by reference to *Lujan* and *TransUnion*; only injury in fact was contested. The court noted the parties’ agreement that at the pleading stage and before certification only a named plaintiff must show standing, and that at the end of a damages case every class member must have standing to recover (slip op. 9–10).

5.3 Affirmative defenses. None.

5.4 Derivative and vicarious liability. N/A.

5.5 Damages and remedies. The class sought statutory damages. The relief sought is limited to a “certified class for money damages” (slip op. 18), and the court repeatedly distinguished equitable-relief classes, in which “only one named plaintiff needs to demonstrate standing ... even at the final stage of a case when relief is awarded” (slip op. 10, citing *Baggett v. Bullitt*, 377 U.S. 360, 366 n.5 (1964), and *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (en banc)), and quoting *TransUnion*’s statement that standing “is not dispensed in gross” (594 U.S. at 431). No willfulness threshold or damages cap was decided.

5.6 Pure questions of law decided on undisputed facts. After certification, unnamed members of a damages class must demonstrate a genuine dispute of material fact as to standing when the defendant moves for summary judgment (slip op. 13, 15, 18). That showing is governed by the ordinary e Rule 56 standard: circumstantial evidence may suffice, and the nonmovant need not show that a jury “necessarily” would draw the inference (slip op. 16–18). Both are holdings, not applications to particular facts.

6 – Facts

6.1 Facts the movant asserted were not in dispute. Milliman’s IntelliScript service compiles applicants’ prescription and medical histories from pharmacy benefit managers, pharmacies, and health insurers using the identifiers the insurer supplies (name, date of birth, gender, Social Security number, ZIP code); about 87% of matched information is matched on Social Security number, about 13% on exact name, date of birth, ZIP code, and gender, and about 0.7% on “near name” matches combined with those identifiers (Answering Br. 11–12, citing 2-ER-118–

19). Records matched by the non-SSN methods are included even when they carry a different Social Security number (slip op. 5). The named plaintiff's April 2020 report to Amerigo contained another person's medical and prescription history, matched through a near-name match on a person sharing his first name, date of birth, gender, and first three ZIP digits (Answering Br. 14, citing 2-ER-121); Milliman did not contest the named plaintiff's standing. Discovery was complete. The analysis of plaintiff's expert, Jaffe, identified reports with Social Security number "conflicts," but Jaffe had not cross-checked his sets against dispute workbooks or consumers (Jaffe Dep. Vol. II 174–75, 180, 1-SER-36–38), and, as Milliman characterized his testimony, conceded that conflicts do not equate to mixed files, that he had no statistical analysis correlating the two, and that he had no class-wide method for identifying mixed files (Answering Br. 16–17, 21, citing 1-SER-34–45, 64–67). A conflict can have benign causes: the data source may carry the primary insured's Social Security number while returning the applicant's own records, or a tax identification number, a health-plan identifier, or a typographical error (Answering Br. 16–17; Bolduc Dep. 82–83, 1-SER-26–27).

6.2 Facts the nonmovant asserted were in dispute, and additional material facts. Jaffe, a data scientist, analyzed Milliman's own data and identified 311,226 reports issued to insurers during the class period in which (1) at least one prescription or medical record carried a Social Security number differing from the applicant's by at least three digits, which is a threshold chosen to exclude transposition-type errors, and (2) at least one such record carried a yellow or red risk flag (slip op. 6–7, 17; Opening Br. 17–18, citing 2-ER-30–37; Second Supp. Jaffe Report ¶¶ 13, 33, 38, Dkt. 184-15). Of those, 14,170 also had a conflicting date of birth or last name; the named plaintiff's report was one of them (Opening Br. 18; Dkt. 216 at 5 n.5). Of the 204 records on the named plaintiff's report, 202 belonged to someone else (Opening Br. 16, citing 2-ER-81–94). Milliman's own witnesses and documents describe the Social Security number as "a very strong match" and "a key differentiator," and Milliman's dispute handlers remove records on the basis of a Social Security number mismatch (Opening Br. 13, 50, citing 3-ER-264, 271, 300; 4-ER-348). Milliman processed roughly 43 to 45 million inquiries in the class period (Opening Br. 11; Answering Br. 19). In his abeyed partial summary judgment motion, the plaintiff presented direct evidence of misattributed records for 47 prospective class members (Dkt. 216 at 5 n.8, citing Dkt. 185 at 10–16 and Dkt. 184-21). Inference urged: a red- or yellow-flagged record bearing a Social Security number that differs from the applicant's by three or more digits is, more likely than not, someone else's record; a report containing it is inaccurate; its dissemination to an insurer is the *TransUnion* injury.

6.3 Facts the court treated as undisputed. The Ninth Circuit's recital (slip op. 4–8) treats as established: the matching process and the 87%/13% split; the use of "fuzzy matching"; the inclusion of fuzzy-matched records despite a differing Social Security number; the flag system and its meaning to insurers; the contents of the named plaintiff's report and Amerigo's denial; the identification of 311,226 reports meeting the two criteria; and the district court's own acknowledgment that mismatched Social Security numbers were "indicative of a misattributed or erroneous health record" (slip op. 8, 17, quoting Dkt. 216 at 5). No fact was deemed undisputed for failure to address it (*see* Fed. R. Civ. P. 56(e)(2)) and none was established by order (*see* Fed. R. Civ. P. 56(g)).

6.4 Facts the court found genuinely disputed and material. None. The panel expressly declined to decide whether the circumstantial evidence creates a genuine dispute (slip op. 18). The material dispute it identified for remand is whether a rational trier of fact could reasonably infer, from the mismatch-plus-flag evidence, that class members’ reports contained misattributed health records (slip op. 17–18).

6.5 Facts the court found immaterial. None. The district court’s “simple transposition” hypothesis (Dkt. 216 at 5) was not treated as immaterial; the panel treated the court’s reliance on it, reasoning that mismatches “do not necessarily demonstrate” misattribution, as a misstatement of the nonmovant’s burden rather than as a finding (slip op. 17–18).

7 — Evidence

7.1 Evidence cited by the movant, and inferences urged. Circumstantial and testimonial: Jaffe’s deposition admissions (Vol. II at 174–75, 180, 1-SER-36–38) that his two sets were built from the matching criteria alone (answering “in a broad understanding, yes” to that characterization) and that verification against dispute workbooks or consumers “wasn’t part of my assignment,” together with the further concessions Milliman attributes to him, that conflicts do not equate to mixed files, that no statistical analysis links the two, and that he had identified no class-wide method for finding mixed files (Answering Br. 16–17, 21, citing 1-SER-34–45, 64–67; testimony not reproduced in the public excerpts reviewed); the Bolduc declaration and deposition describing the matching hierarchy and a sample of six instances in which a conflicting Social Security number was the primary insured’s while the records were the applicant’s own (1-SER-24–27); revision statistics (2-ER-88–89); and the district court’s class certification order noting that Jaffe “does not opine on whether” conflicts “resulted in an actual misattributed medical item to a consumer, i.e., a mixed file” (Answering Br. 17, quoting 2-ER-64). Inference urged: because a conflict is consistent with several innocent explanations, a jury could reach “mixed file” only by speculation (“the symptom does not prove the disease,” Answering Br. 50–51).

7.2 Evidence cited by the nonmovant, and inferences urged. Expert and documentary: the Jaffe corrected report (Dkt. 100-7), supplemental report (with Dkt. 166), and second supplemental report (Dkt. 184-15), including the three-digit variance methodology (2-ER-29–37); Milliman deposition testimony that a Social Security number “is a very strong match” and “represents a unique identifier for a person” (3-ER-300), that “SSN is a key differentiator” (3-ER-264), and that reports with mismatched Social Security numbers “can occur” (3-ER-334); Milliman dispute-handling records removing items because of Social Security number mismatch (3-ER-271; 4-ER-348); Milliman’s admission that the named plaintiff’s report contained another person’s information (2-ER-130) and the corrected report (2-ER-81–94); the Bolduc declaration ¶ 7 (Dkt. 20) on why non-SSN matching is used; deposition testimony (Brozovic, Hoyer, Frydrychowicz) that flagged records were in fact reported out to insurers (Pl.’s Supp. Br. 5, 1-SER-10); and the 47-member direct-evidence set (Dkt. 184-21). The plaintiff urged a chain of inference: the chain mismatch; misattribution; inaccurate report; dissemination with a disqualifying flag; *TransUnion* injury, supported by Milliman’s own treatment of the Social Security number as the decisive identifier and by the *Apodaca* seven-of-nine-digits industry matching convention (Opening Br. 49–50, citing *Apodaca v. Discover Fin. Servs.*, 417 F. Supp. 2d 1220, 1224 (D.N.M. 2006)).

7.3 Evidence whose admissibility was challenged. No Rule 56(c)(2) objection appears in the order or the opinion. The district court sealed exhibits under the compelling-reasons standard (Dkt. 216 at 6), which concerns public access, not admissibility. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006).

7.4 Expert evidence and Rule 702. The plaintiff’s data science expert, Jonathan Jaffe supplied the class-wide evidence. No *Daubert* challenge was made (Opening Br. 15 n.3) and no Rule 702 ruling accompanies the motion. Milliman deposed a rebuttal expert (the scheduling orders extended that deposition to November 3, 2023, Dkt. 173) and filed a declaration of Joel Strassburg in opposition to the plaintiff’s abeyed motion (Dkt. 193); neither is discussed in the order or the opinion (N-7).

7.5 Sham declarations. None.

7.6 Judicial notice and uncited record material. No judicial notice. The district court stated that it “closely reviewed the expert report(s), including the technique(s) applied to weed out transposition and similar errors,” citing the class-modification motion (Dkt. 166 at 17–27, 44–54) rather than the summary judgment papers (Dkt. 216 at 5 n.6), a Rule 56(c)(3) consideration of other record material. The Ninth Circuit did not remark on it.

8 — Rules Construed or Applied

Subdivision references are to Rule 56 as amended effective December 1, 2010; no concordance translation is needed because the decision post-dates the amendment.

8.1 Rule 56(a) construed and applied. The genuineness standard as applied to standing: “at the summary judgment stage the plaintiffs need not establish that they in fact have standing, but only that there is a genuine question of material fact as to the standing elements” (slip op. 16, quoting *Cent. Delta*, 306 F.3d at 947), so that “a plaintiff only must show that a rational trier of fact ‘could’ find for them at trial” (slip op. 16, citing *Matsushita*, 475 U.S. at 587). Materiality was not separately analyzed. The district court stated its reasons on the record (Dkt. 216), satisfying the “should state on the record” clause; the panel’s criticism was of the standard applied, not the absence of reasons.

8.2 Burden framework applied. Party with the burden of persuasion at trial: the plaintiff class, on each standing element, for named and unnamed members alike (slip op. 12–13, citing *TransUnion*, 594 U.S. at 431, 439). Movant’s route: pointing to an absence of evidence (3.1). Nonmovant’s responsive burden: produce evidence from which a rational trier of fact “could” reasonably infer the fact (slip op. 17–18). The court rejected two enhancements of that burden — a requirement of “direct evidence” and a requirement that the evidence “necessarily demonstrate” the fact (slip op. 17). The appellant’s brief had argued that the “necessarily” formulation is the burden of a party moving on an issue on which it bears the burden of persuasion (Opening Br. 46, citing *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003)); the panel did not adopt that framing but reached the same result, characterizing the district court’s statement as one that “overstates the burden placed on a party opposing summary judgment” (slip op. 17).

No heightened substantive standard of proof was imported (*Anderson's* substantive-standard rule was not invoked); the FCRA willfulness standard was not in play.

8.3 Inference and credibility rules applied. Direct or circumstantial evidence may create a genuine dispute (slip op. 16, citing *Keyser*, 265 F.3d at 751–52, and *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003)); definitions of direct evidence (*Coghlan v. Am. Seafoods Co.*, 413 F.3d 1090, 1095 (9th Cir. 2005)) and circumstantial evidence (*Treasure Valley Potato Bargaining Ass'n v. Ore-Ida Foods, Inc.*, 497 F.2d 203, 208 (9th Cir. 1974)), (slip op. 16–17). Evidence that is “indicative” of the disputed fact is permissible circumstantial evidence (slip op. 17). The reasonableness limit on inferences is preserved in the formulation “could reasonably infer” (slip op. 18). No credibility determination and no *Scott v. Harris* “blatantly contradicted” exception was involved.

8.4 Rule 56(b) not construed. Timing was uncontested (3.2).

8.5 Rule 56(c)(1) not construed. The movant’s showing was in substance a Rule 56(c)(1)(B) absence-of-proof showing; the rule text is not discussed.

8.6 Rule 56(c)(2) not construed. No form-of-evidence objection.

8.7 Rule 56(c)(3) not construed, but see 7.6 (district court considered materials filed with the class-modification motion).

8.8 Rule 56(c)(4) not construed. No affidavit-competence or sham-affidavit issue.

8.9 Rule 56(d) not construed; not invoked (3.2).

8.10 Rule 56(e) not construed. No fact was deemed undisputed for failure to address it.

8.11 Rule 56(f) not construed. The district court’s sua sponte inquiry into the reinvestigation class’s standing after notice and supplemental briefing (3.2) is functionally Rule 56(f)(3) but was not analyzed under it.

8.12 Rule 56(g) not applied.

8.13 Rule 56(h) N/A.

8.14 Local rules and standing orders. W.D. Wash. LCR 7(h) (motions for reconsideration; the court set an abbreviated response and reply, Dkt. 223) and LCR 5(g) (sealing) were applied by the district court. No conflict with Rule 56 arose. The district court’s clarification that the dismissal was “pursuant to Rule 56” rather than Rule 23 (Dkt. 227 at 1) was the predicate for § 1292(b) certification and for the Ninth Circuit’s treatment of the order as a summary judgment ruling.

8.15 Other rules and statutes construed with Rule 56.

- *28 U.S.C. § 1292(b)*: certification, petition, grant, and appellate jurisdiction (slip op. 8).
- *Rule 23*: the decision preserves the rule that before certification one named plaintiff’s standing suffices (slip op. 9; 164 F.4th at 706), reserves the *TransUnion* n.4 question whether every member must show standing before certification (slip op. 9, 14), distinguishes *DZ Reserve v. Meta Platforms, Inc.*, 96 F.4th 1223 (9th Cir. 2024), as a certification-stage and injunctive-relief case (slip op. 15), and treats pre-*TransUnion* class-standing precedent as abrogated in part (slip op. 14–15). The alternative motion to decertify was not reached by the panel.

- *Article III / Lujan “successive stages” framework*: the pleading, summary judgment, and trial stages each carry their own evidentiary demand (slip op. 13, quoting *TransUnion*, 594 U.S. at 431, and *Lujan*, 504 U.S. at 561).
- *15 U.S.C. § 1681e(b)*: the *Guimond* “evidence tending to show” inaccuracy formulation applied at summary judgment (slip op. 16–17). (The opinion twice calls the statute the “Federal Credit Reporting Act,” slip op. 8, 11; quote those sentences with “[sic]” or paraphrase.)
- Rule 23(f) (earlier, denied petition) and W.D. Wash. LCR 7(h) (reconsideration) shaped the path to appeal but were not construed by the panel.

9 — Questions or Issues Presented

The panel framed the appeal at the outset: “This appeal presents the question of whether, following class certification, both named and unnamed class members in a money damages suit must present evidence of standing at summary judgment.” (slip op. 4.) It then narrowed the live dispute: “The disagreement at summary judgment in this case is a narrow one: in a class action for damages, do unnamed class members need to demonstrate evidence of standing after class certification but before individual damages are awarded?” (slip op. 10.) The second issue is framed in Part IV as whether the district court correctly applied “the summary judgment standard to this case” (slip op. 16). For comparison, the appellant’s statement of issues asked (1) whether Article III requires absent class members to demonstrate standing at summary judgment or only when they seek “to recover individual damages,” and (2) whether a heightened “direct evidence” standard applies when a defendant moves for summary judgment on standing (Opening Br. 4–5); the appellee’s asked whether plaintiffs must prove class members’ standing at summary judgment after certification and whether the district court correctly held that the plaintiff failed to create a triable issue (Answering Br. 3). The panel answered the first question for the appellee and the second for the appellant, and declined to reach the appellee’s sufficiency question.

10 — Disposition

10.1 Reversed and remanded. The Ninth Circuit reversed the district court’s partial grant of summary judgment (an order dismissing, without prejudice and under Rule 56, the claims brought solely on behalf of the § 1681e(b) inaccuracy class for lack of class-wide standing) and remanded “for the court to consider whether Healy has presented enough circumstantial evidence that a rational trier of fact could reasonably infer that there was class-wide standing” (slip op. 18). No judgment had been entered below (no Rule 58 judgment; no Rule 54(b) certification); no facts were established under Rule 56(g); no Rule 56(d) relief was granted. The § 1681i reinvestigation class was not before the court and is unaffected. The district court’s denial as moot of the plaintiff’s motion to modify the class definition (Dkt. 166) was not separately addressed. Mandate issued February 2, 2026.

10.2 Holding in one sentence. After a class seeking money damages has been certified, *TransUnion* requires that both named and unnamed class members demonstrate a genuine dispute of material fact as to their Article III standing when the defendant moves for summary judgment, but

that showing is governed by the ordinary Rule 56 standard. The showing may be made with direct or circumstantial evidence from which a rational trier of fact could reasonably infer standing, and the nonmovant need not show that a jury necessarily would so find.

11 – Reasoning

Part III – when unnamed class members must show standing (slip op. 9–15). The court began from two points of agreement. Before certification, Article III is satisfied “as long as at least one named plaintiff has standing” (slip op. 9), whether the class seeks damages or equitable relief (slip op. 9, citing *In re Zappos.com, Inc.*, 888 F.3d 1020, 1028 n.11 (9th Cir. 2018); *Melendres v. Arpaio*, 784 F.3d 1254, 1262 (9th Cir. 2015); *Casey v. Lewis*, 4 F.3d 1516, 1519 (9th Cir. 1993)), a rule *TransUnion* left undisturbed by expressly reserving the pre-certification question (594 U.S. at 431 n.4). And at the end of a damages case, “[e]very class member must have Article III standing in order to recover individual damages” (slip op. 10, quoting 594 U.S. at 431), while equitable-relief classes remain governed by the one-named-plaintiff rule (slip op. 10, citing *Baggett and Bates*). The narrow question was the interval between certification and the award of damages.

The court answered it from *TransUnion*’s own method. *TransUnion* examined the trial record for evidence of injury to unnamed as well as named class members. If found standing for the 1,853 members whose reports were disseminated and none for the 6,332 whose reports were not, and finding standing on the mailing-format claims only for the named plaintiff without reference to any later individualized claims process (slip op. 11–13, citing 594 U.S. at 417–18, 431–32, 438–40). Because “the specific facts set forth by the plaintiff to support standing ‘must be supported adequately by the evidence adduced at trial’” (slip op. 12, quoting 594 U.S. at 431), and because standing must be shown “with the manner and degree of evidence required at the successive stages of the litigation” (slip op. 13, quoting 594 U.S. at 431, and *Lujan*, 504 U.S. at 561), the court concluded that the same members must demonstrate evidence of standing “after class certification but prior to trial at summary judgment” (slip op. 13; 164 F.4th at 708), measured by the circuit’s usual summary judgment standard for standing under *Cent. Delta* (slip op. 13). It found this consistent with *TransUnion*’s n.4 reservation, which concerns certification rather than the post-certification summary judgment stage (slip op. 14).

The court rejected the appellant’s two responses. First, *TransUnion*’s procedural posture (a post-judgment appeal) does not confine its rule to the moment damages are awarded; the Court’s own language ties the showing to the evidence adduced at trial (slip op. 14). Second, circuit precedent does not point the other way: “nearly all of the cases Healy cites predate *TransUnion* and therefore have since been abrogated to the extent they would have permitted unnamed class members to go without demonstrating standing at trial or in any later claims process” (slip op. 14, listing *Ramirez v. TransUnion*, 951 F.3d at 1022–23; *Bates*; *Casey*; *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1021 (9th Cir. 2011); *Zappos*; *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 680 (9th Cir. 2021); *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1137 n.6 (9th Cir. 2016); *Gutierrez v. Wells Fargo Bank, N.A.*, 704 F.3d 712, 728 (9th Cir. 2012); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1131–32 (9th Cir. 2017)). The one post-*TransUnion* case, *DZ Reserve*, concerned injunctive relief and the certification stage (slip op. 15). *In re Apple Inc. Device*

Performance Litigation., 50 F.4th 769, 782 (9th Cir. 2022), was read as consistent: allegations of classwide injury sufficed there only because the case settled before certification or summary judgment (slip op. 15). Conclusion: the district court “correctly determined that both named and unnamed members of Healy’s inaccuracy class had to produce evidence of standing at summary judgment” (slip op. 15).

Part IV — the summary judgment standard (slip op. 16–18). The court “part[ed] ways” with the district court on application. The governing standard is *Central Delta*’s genuine-question formulation and *Matsushita*’s “could” formulation; in a § 1681e(b) case the plaintiff must present evidence “tending to show” an inaccurate report (*Guimond*); and plaintiffs may use direct or circumstantial evidence (*Keyser*; *Desert Palace*), with the two defined by reference to *Coghlan* and *Treasure Valley* (slip op. 16–17). The district court “contravened this settled law” in two ways. First, it required “direct evidence of concrete injury on a class-wide basis,” which “is incorrect as a matter of law given that either direct or circumstantial evidence may suffice”; the mismatch-plus-flag evidence, which the district court itself called “indicative” of misattribution, “is the sort of circumstantial evidence which has long been permissible at summary judgment” (slip op. 17). Second, by resting on the observation that mismatches “do not necessarily demonstrate” misattribution, the district court “imposed an unduly high burden”: the nonmovant “merely needed to produce enough evidence at summary judgment that a rational trier of fact ‘could’ reasonably infer that this was the case” (slip op. 17–18).

Authorities treated as binding. Supreme Court: *TransUnion*, *Lujan*, *Matsushita*, *Desert Palace*, *Baggett*. Ninth Circuit: *Cent. Delta*, *Guimond*, *Keyser*, *Coghlan*, *Treasure Valley*, *Zappos*, *Melendres*, *Casey*, *Bates (en banc)*, *Ochoa*, *Stewart*. The opinion cites no out-of-circuit authority and does not mention the Fourth Circuit’s *Alig v. Rocket Mortgage, LLC*, 126 F.4th 965 (4th Cir. 2025), which both sides addressed by Rule 28(j) letter.

Ground of decision. Both holdings were decided on grounds the appellant argued (Opening Br. Parts I and II), not on an alternative ground; Rule 56(f)(2) is not implicated. There are no alternative holdings. The court did not reach the appellee’s argument that the evidence was insufficient under the correct standard (Answering Br. Part III), remanding that question instead.

12 — Limitations

- Express reservation of the sufficiency question: “We express no view on whether the circumstantial evidence does create a genuine dispute of material fact in this regard.” (slip op. 18.) The opinion does not say what quantum of circumstantial evidence would suffice class-wide, does not endorse or reject the three-digit methodology or the 311,226-report set, and does not discuss statistical or sampling proof.
- The pre-certification question is expressly left open, tracking *TransUnion* n.4 (slip op. 9, 14).
- The one-named-plaintiff rule for equitable-relief classes at every stage is assumed, not decided: “Neither party argues that *TransUnion* overturned” it (slip op. 10).
- The holding is confined to “a certified class for money damages” (slip op. 18) and to the post-certification, pre-trial stage; the court called the disagreement “a narrow one” (slip op. 10).

- The abrogation of prior circuit cases is qualified: “to the extent they would have permitted unnamed class members to go without demonstrating standing at trial or in any later claims process” (slip op. 14), and *Rusoff v. Happy Group, Inc.*, No. 24-7706 (9th Cir. Aug. 17, 2026) later describes the abrogation of *Ruiz Torres* as “on other grounds,” confirming that those cases survive for their Rule 23 holdings.
- Nothing on the FCRA merits (reasonable procedures, willfulness, damages), on Rule 23 predominance or decertification, or on the Tyson Foods post-trial claims-process question was decided. The district court had rejected a post-trial process for standing (Dkt. 216 at 5 n.7); the panel rejected the appellant’s timing argument but said nothing about how standing is to be adjudicated for absent members at or after trial.
- The opinion does not address Rule 56(d), the movant’s route under *Nissan Fire*, or the admissibility of the expert analysis.

13 — Open Questions

13.1 Remanded or reserved for trial. On remand the district court must decide, under the correct standard, whether the plaintiff’s circumstantial evidence creates a genuine dispute of material fact as to class-wide standing. If it does, the § 1681e(b) claim proceeds to trial on inaccuracy, reasonable procedures, willfulness, and damages, and standing for absent members must be “supported adequately by the evidence adduced at trial.” Also pending: the § 1681i reinvestigation class claims; class notice (never sent); the plaintiff’s abeyed motion for partial summary judgment on inaccuracy (Dkt. 185); the plaintiff’s motion to modify the class definition (denied as moot, Dkt. 166); and Milliman’s alternative motion to decertify. Post-remand status: the case was reassigned to Judge Tana Lin; on March 20, 2026 the court granted a joint stay pending mediation (Dkt. 242); further entries appear on April 3 and August 19, 2026 (Dkt. 243–245), whose contents are not available through RECAP. No disposition or settlement approval was located as of September 14, 2026.

13.2 Legal questions left open. (a) Whether every class member must demonstrate standing before certification (*TransUnion* n.4); an unpublished Ninth Circuit memorandum has since applied *Healy* to hold that at certification “our standing inquiry focuses on the named plaintiffs” (*Solano v. Kroger Co.*, No. 25-536 (9th Cir. May 19, 2026) (mem.), citing 164 F.4th at 706, 708), and the Supreme Court’s grant of certiorari to decide whether a Rule 23(b)(3) class may be certified when some members lack Article III injury. *Laboratory Corp. of Am. Holdings v. Davis*, 145 S. Ct. 1608 (2025) (dismissed as improvidently granted; (b) How class-wide standing may be proven by inference from common evidence, by sampling, or by an individualized process and how demonstrably uninjured members are to be identified and excluded before damages are awarded; (c) Whether a post-trial claims process may supply the standing showing for absent members (rejected by the district court at Dkt. 216 at 5 n.7; not reached by the panel); (d) The relationship between a post-certification standing challenge under Rule 56 and decertification under Rule 23(c)(1)(C); and (e) The opinion identifies no circuit split. The parties’ Rule 28(j) letters discussed *Alig v. Rocket Mortgage*, 126 F.4th 965 (4th Cir. 2025) (reversing a class-wide judgment because absent members had not shown standing “to recover damages”); the appellee

presented it as consistent with requiring proof at summary judgment, the appellant as a post-judgment case. The entry does not independently survey other circuits.

14 — Propositions for Which the Case Is Authority

14.1 Propositions a movant (party seeking summary judgment) could cite.

1. After a damages class is certified, the defendant may test the standing of unnamed class members by summary judgment motion, and the plaintiff must respond with evidence: “TransUnion requires named and unnamed members of a certified class for money damages to demonstrate that there is a genuine dispute of material fact over standing at summary judgment.” Slip op. 18; see slip op. 13 (164 F.4th at 708). *Holding*.
2. The plaintiff may not defer the class-wide standing showing to the moment individual damages are awarded or to a later claims process; TransUnion’s rule is tied to the evidence adduced at trial and to the “successive stages of the litigation.” Slip op. 13–14. *Holding*.
3. Pre-*TransUnion* Ninth Circuit cases suggesting that only the representative’s standing matters until damages are distributed, cases such as *Ramirez v. TransUnion*, *Bates*, *Casey*, *Stearns*, *Zappos*, *Magadia*, *Ruiz Torres*, *Gutierrez*, *Briseno*, are abrogated to the extent they would permit unnamed members to go without demonstrating standing at trial or later. Slip op. 14–15. *Holding* (confirmed by *Rusoff*, 15.7).
4. *DZ Reserve v. Meta Platforms* is limited to standing for injunctive relief at the certification stage and does not govern a post-certification damages class at summary judgment. Slip op. 15. *Holding* (distinguishing prior authority).
5. The nonmovant’s inference must still be one a rational trier of fact “could reasonably infer” and circumstantial evidence is permitted, but *Matsushita*’s reasonableness limit remains. Slip op. 17–18. *Holding* (formulation of the standard).
6. Summary judgment rulings, including legal determinations regarding standing, are reviewed de novo. Slip op. 8 (164 F.4th at 705). *Holding* (standard of review).
7. Standing “is not dispensed in gross”; a class with standing to seek one form of relief does not necessarily have standing to seek another, and the damages/equitable distinction matters. Slip op. 10 (quoting *TransUnion*, 594 U.S. at 431, 436). *Dictum* (recital of Supreme Court holdings as background).

14.2 Propositions a nonmovant (party opposing summary judgment) could cite.

1. No heightened evidentiary standard applies at summary judgment merely because Article III standing is the issue; “the usual summary judgment standards apply.” Slip op. 4, 16. *Holding*.
2. A requirement of “direct evidence” of injury at summary judgment “is incorrect as a matter of law”; circumstantial evidence may create a genuine dispute on standing. Slip op. 16–17. *Holding*.
3. A nonmovant need not show that a jury “necessarily” would draw the inference in its favor; it need only produce enough evidence that a rational trier of fact “could” reasonably infer the fact. A court that demands more “imposed an unduly high burden” and “applie[d] an improperly narrow standard.” Slip op. 17–18. *Holding*.

4. At summary judgment plaintiffs “need not establish that they in fact have standing, but only that there is a genuine question of material fact as to the standing elements.” Slip op. 13, 16 (quoting *Cent. Delta*, 306 F.3d at 947). *Holding*.
5. In a § 1681e(b) case the plaintiff’s summary judgment burden on inaccuracy is to present evidence “tending to show” that the agency prepared an inaccurate report; evidence that is “indicative” of a misattributed record meets that description. Slip op. 16–17 (quoting *Guimond*, 45 F.3d at 1333). *Holding*.
6. Before certification, Article III is satisfied “as long as at least one named plaintiff has standing,” for damages and equitable classes alike, and *TransUnion* did not disturb that rule. Slip op. 9 (164 F.4th at 706). *Dictum* in this posture, but stated as settled circuit law and since applied in *Solano* (15.7).
7. In a class seeking equitable relief, only one named plaintiff need show standing even at the final stage. Slip op. 10 (citing *Baggett, Bates*). *Dictum* (assumed; “[n]either party argues” otherwise).
8. A grant of summary judgment that rests on the court’s own view that the nonmovant’s inference does not “necessarily” follow from the evidence is reversible; the choice among competing reasonable inferences belongs to the trier of fact. Slip op. 17–18. *Holding* (application), consistent with *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, and *Tolan v. Cotton*, 572 U.S. 650, 656–57, which the opinion does not cite.

14.3 Quotable passages (verbatim, with pinpoint citations).

Each passage below was verified character-for-character against the slip opinion text; internal quotation marks and citations are reproduced as they appear.

(a) Slip op. 4

This appeal presents the question of whether, following class certification, both named and unnamed class members in a money damages suit must present evidence of standing at summary judgment. We conclude that they must do so. However, we further hold that the usual summary judgment standards apply.

(b) Slip op. 9 (164 F.4th at 706)

To this end, we have consistently held that Article III’s requirements are satisfied before a class is certified as long as at least one named plaintiff has standing.

(c) Slip op. 10

The disagreement at summary judgment in this case is a narrow one: in a class action for damages, do unnamed class members need to demonstrate evidence of standing after class certification but before individual damages are awarded?

(d) Slip op. 13 (164 F.4th at 708)

We conclude that *TransUnion* also compels unnamed class members to demonstrate evidence of standing here, after class certification but prior to trial at summary judgment. This follows directly from *TransUnion*’s instruction that plaintiffs “must demonstrate standing ‘with the manner and degree of evidence required at the successive stages of the litigation.’” *Id.* at 431 (quoting *Lujan*, 504 U.S. at 561). Drawing from our typical summary judgment standard, though unnamed class members “need not establish that they in fact have standing,” they would at least have to demonstrate “that there is a genuine question of material fact as to the standing elements.” *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 947 (9th Cir. 2002).

(e) Slip op. 14

For one, nearly all of the cases Healy cites predate *TransUnion* and therefore have since been abrogated to the extent they would have permitted unnamed class members to go without demonstrating standing at trial or in any later claims process.

(f) Slip op. 16

As noted above, “at the summary judgment stage the plaintiffs need not establish that they in fact have standing, but only that there is a genuine question of material fact as to the standing elements.” *Cent. Delta Water Agency*, 306 F.3d at 947. To survive a motion for summary judgment, therefore, a plaintiff only must show that a rational trier of fact “could” find for them at trial. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

(g) Slip op. 16

In doing so, plaintiffs can use either direct evidence or circumstantial evidence.

(h) Slip op. 17

First, the district court concluded that Healy had the burden to present “direct evidence of concrete injury on a class-wide basis” at summary judgment. But this is incorrect as a matter of law given that either direct or circumstantial evidence may suffice at summary judgment.

(i) Slip op. 17

But evidence which is “indicative” of a misattributed or erroneous health record is the sort of circumstantial evidence which has long been permissible at summary judgment.

(j) Slip op. 17–18

Second, and relatedly, the district court imposed an unduly high burden on Healy at summary judgment. In the district court’s view, the key problem was that mismatched social security numbers “do not necessarily demonstrate misattributed health records.” (Emphasis added). However, this observation overstates the burden placed on a party opposing summary judgment. Healy did not need to show that a jury “necessarily” would find that mismatched social security numbers demonstrate misattributed health records. Rather, Healy merely needed to produce enough evidence at summary judgment that a rational trier of fact “could” reasonably infer that this was the case. *Matsushita*, 475 U.S. at 587. The district court therefore erred in applying an improperly narrow standard at summary judgment.

(k) Slip op. 18

In sum, we hold that *TransUnion* requires named and unnamed members of a certified class for money damages to demonstrate that there is a genuine dispute of material fact over standing at summary judgment. We also hold that the district court misapplied the law of summary judgment in assessing whether the class here had done so. We therefore reverse the district court’s partial grant of summary judgment and remand for the court to consider whether Healy has presented enough circumstantial evidence that a rational trier of fact could reasonably infer that there was class-wide standing. We express no view on whether the circumstantial evidence does create a genuine dispute of material fact in this regard.

The reversed district court formulations, for accurate characterization of what was rejected (Dkt. 216, W.D. Wash. Feb. 22, 2024):

(l) Dkt. 216 at 4

In this instance, discovery is complete. (See Dkt. Nos. 146, 150, 162, 164.) So Plaintiff must present the Court with at least some direct evidence of concrete injury on a class-wide basis. See *TransUnion LLC*, 594 U.S. at 431.

(m) Dkt. 216 at 5

Regardless, mismatched identifiers do not necessarily demonstrate misattributed health records.

14.4 Statute and claim tags. FCRA § 1681e(b) (reasonable procedures / accuracy; inaccuracy class); FCRA § 1681i (reinvestigation class; surviving, not decided); FCRA § 1681n (willful violation; statutory damages; not decided); Rule 23 (certified class; post-certification; decertification alternative not reached; Rule 23(f) petition previously denied); standing (Article III; injury in fact; *TransUnion*; class-wide standing; unnamed/absent class members; successive-stages framework); Rule 56(a) (genuine dispute; circumstantial evidence; inference standard; no heightened standard for standing); 28 U.S.C. § 1292(b) (interlocutory appeal); consumer report (prescription and medical history; insurance underwriting); mixed file.

15 – Subsequent History

15.1 Appellate history of this decision. Opinion filed January 9, 2026 (DE 70), with judgment entered the same day; corrected opinion entered January 9, 2026 (DE 71) (“Correction: Opinion header corrected”); bill of costs filed January 22, 2026 (DE 72); no petition for panel rehearing or rehearing en banc; mandate issued February 2, 2026 (DE 73). No petition for certiorari appears on either docket through September 14, 2026. Citation to be used: *Healy v. Milliman, Inc.*, 164 F.4th 701 (9th Cir. 2026). On remand: W.D. Wash. No. 2:20-cv-01473 (reassigned to Judge Tana Lin); stay pending mediation ordered March 20, 2026 (Dkt. 242); later entries through August 19, 2026 (Dkt. 243–245) whose contents are not in RECAP; no disposition located.

15.2 Cases overruling the holding. None.

15.3 Intervening higher authority abrogating the holding. None located. No Supreme Court decision since January 9, 2026 addresses class-member standing at summary judgment. *Laboratory Corp. of America Holdings v. Davis* was dismissed as improvidently granted on June 5, 2025, before this decision, and decides nothing.

15.4 Rule or statutory amendment superseding the holding. None. Rule 56 has not been amended since December 1, 2010 (confirmed against the December 1, 2025 edition). 15 U.S.C. § 1681e(b) is unchanged.

15.5 Cases distinguishing the holding. None located in CourtListener as of the verification date.

15.6 Cases criticizing, questioning, or limiting the holding. None located in CourtListener as of the verification date.

15.7 Cases following the holding (positive treatment). Three, all Ninth Circuit; most recent August 17, 2026:

- *Rusoff v. Happy Group, Inc.*, No. 24-7706 (9th Cir. Aug. 17, 2026) (published) cites *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016), as “abrogated on other grounds by *Healy v. Milliman, Inc.*, 164 F.4th 701 (9th Cir. 2026),” confirming both the reporter citation and the abrogation holding (14.1, item 3). However, it continued to rely on *Ruiz Torres* for Rule 23 predominance.
- *United States v. Howe*, No. 25-2584 (9th Cir. June 23, 2026) (unpublished memorandum) cites 164 F.4th at 705 for de novo review of summary judgment.
- *Solano v. Kroger Co.*, No. 25-536 (9th Cir. May 19, 2026) (unpublished memorandum) quotes 164 F.4th at 706 for the rule that before certification Article III is satisfied if at least one named plaintiff has standing, “regardless of ‘whether the class action seeks money damages or equitable relief’” (*Solano*, mem. at 2), and cites *id.* at 708 as “holding that unnamed class members must demonstrate evidence of standing ‘after class certification but prior to trial at summary judgment’” (*Solano*, mem. at 3).

Not treatment of this decision, but easily confused with it: Henkel v. U.S. Department of Education, No. 24-1676 (D.D.C. July 22, 2025), cites *Healy v. Milliman, Inc.*, No. 20-cv-1473, 2022 WL 1061921, at *3 (W.D. Wash. Apr. 8, 2022), which the earlier order in this litigation on the individual claims (Dkt. 122) — for the proposition that wasted time correcting FCRA errors is a concrete injury. That order is not the decision briefed here.

15.8 Date and source of verification. September 14, 2026. Sources: CourtListener REST API v4, live (not a bulk export), cluster 10772506 metadata (no citation field populated; the F.4th citation is taken from the Ninth Circuit’s own citations in *Rusoff*, *Howe*, and *Solano*); full-text citing searches for “*Healy v. Milliman*” and “164 F.4th 701” across published and unpublished opinions; RECAP docket for 9th Cir. No. 24-3327 (docket id 69260909, 73 entries, complete through the mandate) and for W.D. Wash. No. 2:20-cv-01473 (docket id 18507176, entries through No. 245 dated August 19, 2026). Limitations: CourtListener’s coverage of district court opinions is partial, its Ninth Circuit coverage contains known lacunae, and no commercial citator was run.

15.9 Cross-reference to other brief bank entries. Cases cited by this decision that are candidates for bank entries: *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021); *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003); *Baggett v. Bullitt*, 377 U.S. 360 (1964); *Ramirez v. TransUnion LLC*, 951 F.3d 1008 (9th Cir. 2020); *In re Zappos.com, Inc.*, 888 F.3d 1020 (9th Cir. 2018); *Melendres v. Arpaio*, 784 F.3d 1254 (9th Cir. 2015); *Casey v. Lewis*, 4 F.3d 1516 (9th Cir. 1993); *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974 (9th Cir. 2007) (en banc); *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013 (9th Cir. 2011); *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668 (9th Cir. 2021); *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125 (9th Cir. 2016); *Gutierrez v. Wells Fargo Bank, N.A.*, 704 F.3d 712 (9th Cir. 2012); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017); *DZ Rsrv. v. Meta Platforms, Inc.*, 96 F.4th 1223 (9th Cir. 2024); *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769 (9th Cir. 2022); *Cent. Delta Water Agency v. United States*, 306 F.3d 938 (9th Cir. 2002); *Guimond v. TransUnion Credit Info. Co.*, 45 F.3d 1329 (9th Cir. 1995); *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741 (9th Cir. 2001); *Coghlan v. Am. Seafoods Co.*, 413 F.3d 1090 (9th Cir. 2005); *Treasure Valley Potato Bargaining Ass’n v. Ore-Ida Foods, Inc.*, 497 F.2d 203 (9th Cir. 1974); *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102 (9th Cir. 2022); *Alaska Right to Life PAC v. Feldman*, 504 F.3d 840 (9th Cir. 2007); *Stewart*

v. Thorpe Holding Co. Profit Sharing Plan, 207 F.3d 1143 (9th Cir. 2000); *Robi v. Reed*, 173 F.3d 736 (9th Cir. 1999). Cases citing this decision: *Rusoff*, *Solano*, *Howe*. Related, not cited: *Apodaca v. Discover Financial Services*, 417 F. Supp. 2d 1220 (D.N.M. 2006), relied on in the appellant’s brief for the industry seven-of-nine-digits matching convention (Opening Br. 50).

16 – Counsel

16.1 Movant (Milliman, Inc. the defendant below; appellee). Jones Day: Nathaniel Garrett (argued) and Eric A. Nicholson, San Francisco; Adam W. Wiers, Chicago. Williams Kastner: Daniel A. Brown, Jeffery M. Wells, and Rodney L. Umberger, Seattle (Williams Kastner was trial counsel; Allison Booker also appeared in the district court from September 2023).

16.2 Nonmovant (James Healy and the certified classes – plaintiff below; appellant). Gupta Wessler LLP: Matthew W.H. Wessler (argued) and Gabriel Chess (withdrew October 24, 2025), Washington, D.C.; Jessica Garland, San Francisco. Terrell Marshall Law Group PLLC: Blythe H. Chandler, Beth E. Terrell, Jennifer R. Murray, and Adrienne D. McEntee, Seattle (appointed class counsel). Francis Mailman Soumilas PC: James A. Francis, Lauren K.W. Brennan, and John Soumilas, Philadelphia (appointed class counsel).

16.3 Amici. The Chamber of Commerce of the United States of America and the Consumer Data Industry Association, in support of appellee and affirmance (brief filed December 20, 2024): Erik R. Zimmerman and Zachary A. Johnson, Robinson, Bradshaw & Hinson, P.A., Chapel Hill, N.C.; Jennifer B. Dickey and Jonathan D. Urick, U.S. Chamber Litigation Center, Washington, D.C. (The opinion’s counsel listing prints “U.S. Chamber Litigation Canter”; the brief’s cover reads “Center.”)

Appendix A – Docket Chronology (from RECAP, verified September 14, 2026)

Date	Event	Reference
Oct. 5, 2020	Class action complaint filed (FCRA §§ 1681e(b), 1681i(a), 1681i(f), 1681g(a)(2))	W.D. Wash. Dkt. 1
Apr. 4, 2022	Motion for class certification	Dkt. 95
Apr. 8, 2022	Order on Milliman’s second motion for summary judgment: granted on the individual § 1681g(a)(2) claim (standing), denied on remaining claims	Dkt. 122 (2022 WL 1061921)
Apr. 29, 2022	Class certification order: inaccuracy class (§ 1681e(b)) and reinvestigation class (§ 1681i) certified; Healy appointed representative; Terrell Marshall and Francis Mailman Soumilas appointed class counsel	Dkt. 126 (redacted), 127 (sealed)
July 13, 2022	Ninth Circuit denies Rule 23(f) petition	Dkt. 135 (9th Cir. No. 22-80043)
July 29, 2022	Stipulated modification of class definitions	Dkt. 140
Sept. 8, 2023	Plaintiff’s motion to modify class definition	Dkt. 166

Date	Event	Reference
Sept. 21, 2023	Milliman's motion for partial summary judgment / to decertify inaccuracy class	Dkt. 167
Nov. 3, 2023	Plaintiff's motion for partial summary judgment (held in abeyance at plaintiff's request)	Dkt. 184, 185
Dec. 5, 2023	Oral argument	Dkt. 197
Dec. 6, 2023	Minute order directing supplemental briefing on class-wide standing for both classes	Dkt. 198
Jan. 5–26, 2024	Supplemental briefs	Dkt. 203, 208, 213
Feb. 22, 2024	Order: motion granted in part; inaccuracy class dismissed for lack of class-wide standing; reinvestigation class survives; motion to modify denied as moot	Dkt. 216
Mar. 6, 2024	Motion for reconsideration and clarification	Dkt. 219
Apr. 9, 2024	Order: dismissal is under Rule 56 and without prejudice; § 1292(b) certification	Dkt. 227
Apr. 16, 2024	Stipulated stay pending appeal	Dkt. 229
Apr. 19, 2024	Petition for permission to appeal	9th Cir. No. 24-2501
May 24, 2024	Petition granted; appeal docketed	9th Cir. No. 24-3327, DE 1
June 12, 2024	Released from Ninth Circuit mediation program	DE 8
Dec. 3, 2024	Opening brief (redacted public version)	DE 29
Dec. 16, 2024	Answering brief; supplemental excerpts of record	DE 33, 34, 36
Dec. 20, 2024	Amicus brief (Chamber of Commerce; CDIA) in support of appellee	DE 39
Mar. 7, 2025	Reply brief; Milliman's Rule 28(j) letter (Alig; Lab. Corp. v. Davis cert. grant)	DE 52, 53
Mar. 18, 2025	Healy's response to 28(j) letter	DE 57
June 11, 2025	Healy's Rule 28(j) letter (Lab. Corp. v. Davis dismissed as improvidently granted)	DE 58
Nov. 19, 2025	Argued and submitted, San Francisco (Thomas, Bress, Mendoza, JJ.)	DE 69
Jan. 9, 2026	Opinion filed; reversed and remanded; corrected opinion (header) same day	DE 70, 71; W.D. Wash. Dkt. 234
Feb. 2, 2026	Mandate issued	DE 73
Mar. 20, 2026	Order (Lin, J.) on joint motion for stay pending mediation	Dkt. 242
Apr. 3 & Aug. 19, 2026	Further entries; contents not available in RECAP	Dkt. 243–245