

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Elizabeth Belyea, et al. v. GreenSky, Inc., et al.

Case No. 20-cv-01693-JSC (N.D. Cal. Oct. 28, 2025) · No. 3:20-cv-01693 · Decided October 28, 2025

SUMMARY

The United States District Court for the Northern District of California grants GreenSky's motion for partial summary judgment concerning performance-fee recoveries sought by named plaintiff Heidi Barnes. Interpreting California Civil Code section 1789.21(a), the Court holds that the Credit Act does not permit recovery of amounts paid that did not result in injury and are unrelated to the injury conferring statutory standing. The Court distinguishes actual damages from the statute's amount-paid floor and concludes that performance-fee amounts cannot be recovered based solely on alleged injury from transaction fees.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jacqueline Scott Corley
JURISDICTION	United States District Court for the Northern District of California
DECIDED	October 28, 2025
DOCKET	3:20-cv-01693
DISPOSITION	affirmed
PROCEDURAL POSTURE	Motion for partial summary judgment on the issue of recoverability of performance-fee damages under the California Credit Services Act.
STANDARD OF REVIEW	Summary judgment standard; question of statutory construction reviewed de novo.
PRECEDENTIAL VALUE	unpublished

TOPICS

- consumer protection
- statutory interpretation
- civil procedure
- summary judgment
- damages

PRACTICE AREAS

- consumer protection
- civil procedure

QUESTIONS PRESENTED

1. Whether the California Credit Services Act permits a consumer to recover as damages amounts paid that did not result in injury and are unrelated to the injury conferring statutory standing to sue.
2. Whether Plaintiffs are entitled to relief under Federal Rule of Civil Procedure 56(d) to obtain additional discovery on performance-fee injury.

HOLDINGS

1. The Credit Act does not permit recovery of amounts paid that did not result in injury and are unrelated to the injury conferring statutory standing to sue.
2. Plaintiffs are not entitled to Rule 56(d) relief because no named plaintiff has standing to seek further discovery on performance-fee injury, and the request was untimely.

KEY QUOTATIONS

“The Credit Act does not permit recovery of amounts paid that did not result in injury and are unrelated to the injury conferring statutory standing to sue.” (at 25-26)

“So, under the Credit Act's plain and unambiguous language, a plaintiff can recover 'the amount paid by the consumer to the credit services organization' even if that amount exceeds the 'actual damages.'” (at 8-9)

“Reading Credit Act section 1789.21(a) to not include as damages monies the consumer paid which are unrelated to the conduct that injured the consumer produces the more reasonable result.” (at 15-16)

FACTUAL BACKGROUND

Plaintiffs alleged GreenSky, a company partnering with contractors and banks to provide point-of-sale loans to consumers, charged fees in violation of California consumer protection statutes. The Court previously granted summary judgment on performance-fee injury claims because Plaintiffs did not present evidence that named Plaintiff Heidi Barnes was injured by performance fees. Plaintiffs then argued the Credit Act permitted recovery of amounts paid toward performance fees even without showing injury from those specific fees.

PROCEDURAL HISTORY

Plaintiffs filed a certified class action alleging GreenSky's business practices violated California consumer protection statutes, including the Credit Act and UCL. After the Court previously granted summary judgment on performance-fee injury claims, Plaintiffs argued they could still recover performance-fee damages under the Credit Act. GreenSky moved for partial summary judgment on this issue.

DISPOSITION

affirmed

CASES CITED

- *Niedermeier v. FCA US LLC*, 15 Cal. 5th 792 (2024)

- DeLisi v. Lam, 39 Cal. App. 5th 663 (2019)
- CuvIELlo v. City of Oakland, No. C 06-5517 MHP, 2010 WL 3063199 (N.D. Cal. Aug. 3, 2010)
- Wakefield v. ViSalus, Inc., 51 F.4th 1109 (9th Cir. 2022)
- Meza v. 30 Day Credit Repair Inc., No. EDCV 23-1166 JGB (KKx), 2024 WL 2037412 (C.D. Cal. Mar. 29, 2024)
- Heitmeyer v. Am. Credit-Credit
- Jackson v. Red Rock Credit Sols., LLC, No. 22-CV-04471-AGT, 2024 WL 3379663 (N.D. Cal. June 5, 2024)
- In re Bell, 309 B.R. 139 (Bankr. E.D. Pa. 2004)
- In re Barker, 251 B.R. 250 (Bankr. E.D. Pa. 2000)
- FAA v. Cooper, 566 U.S. 284 (2012)
- Eitel v. McCool, 782 F.2d 1470 (9th Cir. 1986)
- Michelman v. Lincoln Nat'l Life Ins. Co., 685 F.3d 887 (9th Cir. 2012)

OPINION

Belyea

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 ELIZABETH BELYEA, et al., Case No. 20-cv-01693-JSC 8 Plaintiffs,

ORDER RE: MOTION FOR PARTIAL

9 v. SUMMARY JUDGMENT

10 GREENSKY, INC., et al., Re: Dkt. No. 338 Defendants. 11 12 13 Plaintiffs' certified class
 action alleges GreenSky, which partners with contractors and 14 banks to provide point-of-sale
 loans to consumers, charges fees in violation of California 15 consumer protection statutes. (Dkt.
 No. 216.)¹ The Court previously concluded "GreenSky is 16 entitled to summary judgment on all
 performance fee-related claims" because Plaintiffs agreed to 17 dismiss Plaintiff David Ferguson's
 claims related to performance fees and did not present 18 evidence Plaintiff Heidi Barnes was
 injured by performance fees. (Dkt. No. 294 at 28.) Plaintiffs 19 subsequently asserted the
 California Credit Services Act ("Credit Act") permits them to "recoup 20 the money they paid
 toward performance fees—even if those fees did not injure Plaintiffs." (Dkt.

21 No. 341 at 7.) Pending before the Court is GreenSky's motion for partial summary judgment on
 22 the issue of "performance fee recoveries sought by named Plaintiff Heidi Barnes." (Dkt. No.
 338 23 at 6.) Having carefully reviewed the parties' submissions, and with the benefit of oral
 argument 24 on September 18, 2025 and supplemental briefing, the Court GRANTS GreenSky's
 motion for 25 partial summary judgment. The Credit Act does not permit recovery of amounts
 paid that did not 26 result in injury and are unrelated to the injury conferring statutory standing to
 sue. 27

1 BACKGROUND

2 The Court's January 2, 2025 order contains a detailed summary of the factual and 3 procedural history in this case. (Dkt. No. 279 (sealed); Dkt. No. 294 (unsealed).) Briefly, 4 Greensky partners with contractors ("merchants") and banks to provide point-of-sale loans to 5 consumers for home-improvement and home-maintenance projects. (Dkt. No. 294 at 1.) 6 GreenSky collects two types of fees. (Id. at 2.) First are "transaction fees," which the merchant 7 pays GreenSky when a consumer uses a GreenSky Program loan to pay the merchant. (Id.) 8 Second are "performance fees," which GreenSky receives from bank partners. (Id.) Performance 9 fees are calculated across all loans in the lender's portfolio at the end of the month: 10 The [performance fee] includes "all amounts billed to the borrowers, fees and finance charges, less the fixed servicing fee, less all credit 11 losses, [and] less the bank margin or the yield that . . . the servicing fee sets forth that is due to the lender." (Dkt. No. 235-7 at 33.) "[T]o 12 the extent that the result of that calculation is a positive number," GreenSky is due the remainder as a performance fee. 13 (Id.) 14 Plaintiffs filed a putative class action against GreenSky, alleging the company's business 15 practices violate California consumer protection statutes. The amended complaint alleges (1) 16 violations of the Credit Act, Cal. Civ. Code §§ 1789.10; (2) violations of California's Unfair 17 Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, including for predicate California 18 Financing Law ("Financing Law"), Cal. Fin. Code § 22000, violations; and (3) unjust enrichment. 19 (Dkt. No. 216.) The amended complaint alleges entities that make or broker consumer loans in 20 California and assist consumers in obtaining extensions of credit are regulated by the Financing 21 Law and the Credit Act, respectively. (Id. ¶¶ 15-18.) Both laws require entities to register with 22 the California Department of Justice or Department of Business Oversight and disclose specified 23 information to consumers. (Id. ¶ 19.) Both laws "also limit the nature and amount of fees that 24 lenders, brokers, and credit services organizations may charge." (Id. ¶ 20.) The amended 25 complaint alleges GreenSky fails to comply with the Financing Law's and Credit Act's 26 requirements. As a result, "Plaintiffs and Class members have suffered injury and damages, 27 including that they paid more in connection with their GreenSky-serviced loans than they 1 otherwise would have." (Id. ¶ 111.) 2 GreenSky moved for "summary judgment on each of Plaintiffs' claims," asserting 3 Plaintiffs "failed to adduce any evidence to show that (a) their GreenSky Program merchants 4 passed through to them any portion of the 'transaction fee' the merchants paid GreenSky related to 5 Plaintiffs' loans, or (ii) they paid any part of an 'incentive payment' that Program banks paid to 6 GreenSky pursuant to negotiated contracts between GreenSky and those lenders."2 (Dkt. No. 254 7 at 7.) Essentially, GreenSky argued Plaintiffs could not prove they were injured by paying 8 transaction fees or performance fees, so "Plaintiffs' claims relating to such payments [could not] 9 survive summary judgment." (Id. at 22.) 10 In its Order, the Court observed Plaintiffs' Credit Act, UCL, and unjust enrichment claims 11 all "require[] proof of injury." (Dkt. No. 294 at 13.) On this issue, "Plaintiffs presented evidence 12 creating a dispute of fact as to injury resulting from transaction fees, but Plaintiffs [did] not 13

present[] evidence creating a dispute of fact as to performance fees.” (Id.) Regarding transaction 14 fees, Plaintiffs’ theory was that Ms. Barnes, Mr. Ferguson, and every class member paid GreenSky 15 transaction fees because the merchants “passed through a portion of the transaction fee to them . . . 16 in the form of inflated project costs.” (Id.) Plaintiffs contend the imposition of transaction fees 17 violates Credit Act section 1789.13(d)(2) because the fees “are derived from payments made by 18 buyers to GreenSky’s bank partners for costs, fees, finance charges, or principal,” as well as 19 Financing Law section 22305, because—at least as to Mr. Ferguson—GreenSky “charge[d] 20 administrative fees in excess of \$50 for loans of \$2500 or less, and \$75 for loans more than 21 \$2500.” (Dkt. No. 216 ¶¶ 109(a), 116(f).)3 As evidence, Plaintiffs filed an expert report 22 “conclud[ing] every class member paid transaction fees in the form of inflated project costs.” 23 (Dkt. No. 294 at 35.) So, Plaintiffs argued, GreenSky’s imposition of the transaction fee via a 24 pass through injured consumers. (Id.; Dkt. No. 235-3 at 29 (class certification motion arguing 25 26 2 “Transaction fees” are also referred to as “merchant fees,” and “performance fees” are also referred to as “incentive payments.” (Dkt. No. 294 at 2.) 27 3 The Court held GreenSky was entitled to summary judgment on Ms. Barnes’s section 22305 1 “[t]he fact that GreenSky’s unlawful transaction fees were passed through to the class, inflating 2 the prices of their projects, constitutes an injury under California law”).) Because Plaintiffs 3 presented evidence creating a dispute of fact, the Court denied GreenSky’s summary judgment 4 motion as to the transaction fee claims. (Dkt. No. 294 at 19.) 5 Regarding performance fees, Plaintiffs argued GreenSky’s collection of performance fees 6 also violated Credit Act § 1789.13(d)(2). (Dkt. No. 294 at 15.) Section 1789.13(d)(2) prohibits a 7 credit services organization from: 8 Charg[ing] or receiv[ing] any money or other valuable consideration for referral of the consumer to a retail seller or other credit grantor 9 who will or may extend credit to the consumer, if . . . The money or consideration is paid by the credit grantor or is derived from the 10 consumer’s payments to the credit grantor for costs, fees, finance charges, or principal. 11 Cal. Civ. Code § 1789.13(d)(2). While Plaintiffs presented evidence from which a factfinder 12 could conclude the performance fees Ms. Barnes’s lender paid GreenSky were derived, in part, 13 from interest Ms. Barnes paid her lender, the payment of interest on the loan GreenSky generated 14 did not, by itself, constitute injury. (Dkt. No. 294 at 16.) And Plaintiffs’ theory “GreenSky set the 15 interest rate on Ms. Barnes’s loan at a rate higher than the bank would otherwise require, so Ms. 16 Barnes spent money she would not have spent absent GreenSky’s allegedly unlawful conduct— 17 lack[ed] sufficient evidentiary support.” Furthermore: 18 Nor does the evidence support a finding Ms. Barnes in particular paid 19 more interest than InTrust (or any other bank) would have charged her for a similar loan, let alone that the higher rate was caused by the 20 performance fees. There are no documents from InTrust reflecting interest rates. No deposition testimony. And no expert regression 21 analysis. And, indeed, Ms. Barnes herself thought she received a good interest rate. (Dkt. No. 241-54 at 50 (“I don’t think the interest 22 rate is too high. It’s a good interest rate.”). 23 (Id. at 17.) So, the Court granted GreenSky’s “motion for summary judgment on

the performance fee claims.” (Id. at 19.) Plaintiffs subsequently filed a motion for clarification “ask[ing] that the Court clarify its summary-judgment ruling to confirm that the Court did not construe the [Credit Act]’s damages provision or otherwise rule on the scope of damages available under the [Credit Act].” (Dkt. No. 1 Barnes and class members paid, the performance fees constitute amounts the class paid to GreenSky and therefore can be recovered as damages for GreenSky’s Credit Act violation even if the performance fees did not injure Ms. Barnes or class members. (Id. at 4-5.) In response, the Court “clarifie[d] it did not decide whether the Credit Services Act permits Plaintiffs—should they prevail—to recover performance fee damages even though the Court granted summary judgment as to Plaintiffs’ performance fee claims.” (Dkt. No. 320 at 1.) “[T]he Court decline[d] to go further by ruling on whether Plaintiffs are entitled to such fees, as that issue was not before the Court when it issued the summary judgment order.” (Id.) At a further case management conference, the parties stated they were “at a discovery impasse on performance fee damages.” (Dkt. No. 332 at 3.) The Court informed GreenSky it could move for partial summary judgment on whether performance-fee damages are recoverable under the Credit Act and granted the parties’ subsequent stipulated briefing schedule. (Id. at 6-7; Dkt. No. 334.) GreenSky now moves for partial summary judgment on whether performance-fee damages are recoverable under the Credit Act. (Dkt. No. 338.)

DISCUSSION

GreenSky raises three arguments in its motion for partial summary judgment. Its first two arguments are based on the Credit Act’s language, which provides: Any consumer injured by a violation of this title or by the credit services organization’s breach of a contract subject to this title may bring any action for recovery of damages, or for injunctive relief, or both. Judgment shall be entered for actual damages, but in no case less than the amount paid by the consumer to the credit services organization, plus reasonable attorney’s fees and costs. An award, if the trial court deems it proper, may be entered for punitive damages. Cal. Civ. Code § 1789.21(a) (emphasis added). GreenSky argues Plaintiffs cannot recover performance-fee damages because (1) “nothing in the statute permits Plaintiffs to recover free-floating ‘performance-fee damages’ when they no longer have a live claim based on performance fees;” and (2) “performance fees are paid exclusively by banks to GreenSky, not by Plaintiffs to GreenSky, and, therefore, such fees cannot be recovered by Plaintiffs under the express language of the” Credit Act permitting recovery of “the amount paid by the consumer to the credit services organization.” (Dkt. No. 338 at 5-6, 11 (citing Cal. Civ. Code § 1789.12(a)).) In the alternative, GreenSky argues Ms. Barnes’s “lack of standing to raise ‘performance fee-related claims’ necessarily means that Barnes cannot recover performance fees, whether characterized as ‘damages’ or otherwise.” (Id. at 5.) As described below, the Court concludes the Credit Act’s language precludes recovery of amounts paid that did not result in injury and are unrelated to the injury conferring statutory standing to sue. For this reason, Plaintiffs are not entitled to recover

performance-fee damages, and the Court need not consider GreenSky's second and third 8 arguments.

9 I. STATUTORY CONSTRUCTION

10 The parties dispute whether the Credit Act permits Plaintiffs to recover performance-fee 11 damages. To resolve this question of statutory construction, courts begin with "the statutory 12 language, giving it a plain and commonsense meaning." *Niedermeier v. FCA US LLC*, 15 Cal. 5th 13 792, 804 (2024) (quotation marks and citation omitted). The Court "examine[s] the entire statute 14 to construe the words in context." *Id.* (quotation marks and citation omitted). "If the language is 15 unambiguous, 'then the Legislature is presumed to have meant what it said, and the plain meaning 16 of the language governs.'" *Id.* (citation omitted). But "if the statutory language permits more than 17 one reasonable interpretation, courts may consider other aids, such as the statute's purpose, 18 legislative history, and public policy." *Id.* (cleaned up). "When more than one statutory 19 construction is arguably possible, [the] policy is to favor the construction that leads to the more 20 reasonable result." *Id.* (cleaned up). 21 A. Plain Language 22 Under the Credit Act, "[a]ny consumer injured by a violation of this title . . . may bring any 23 action for recovery of damages." Cal. Civ. Code § 1789.21(a). When a consumer is injured, the 24 statute provides "for actual damages, but in no case less than the amount paid by the consumer to 25 the credit services organization." *Id.* The statute thus sets forth two possible measures of 26 recoverable damages if the consumer is injured by a violation of the Act. First, the injured 27 consumer can recover "actual damages," Cal. Civ. Code § 1789.21(a), which "are those which 1 from which the evidence shows he or she is certain to suffer in the future." *DeLisi v. Lam*, 39 Cal.

2 App. 5th 663, 681 (2019). "'[A]ctual damages' is a term synonymous with compensatory 3 damages." *Id.* (cleaned up). Second, the injured consumer can recover "the amount paid by the 4 consumer to the credit services organization." Cal. Civ. Code § 1789.21(a). This second measure 5 of damages acts as a floor: if the amount of actual damages to compensate the injured consumer 6 for the harm suffered is less than the amount the consumer paid the credit services organization, 7 then the consumer recovers the amount paid to the credit services organization. 8 So, under the Credit Act's plain and unambiguous language, a plaintiff can recover "the 9 amount paid by the consumer to the credit services organization" even if that amount exceeds the 10 "actual damages." The parties largely agree on this issue. However, they disagree about whether 11 a consumer who suffers an injury under the Credit Act may recover all amounts paid, including 12 payments unrelated to the predicate underlying injury. According to Plaintiffs, a consumer is 13 entitled "no less than the amount paid by the plaintiff to the defendant." (Dkt. No. 341 at 13.) So, 14 Plaintiffs contend, so long as they prove the transaction fees violated the Credit Act and injured 15 Plaintiffs, Plaintiffs can recover not only all the transaction fees paid, but also any performance 16 fees paid. 17 In contrast, GreenSky argues "[a] plaintiff 'injured by a violation' can recover 'actual 18 damages,' i.e., harm suffered 'as a result of the unlawful act,' *De Lisi*, 39 Cal. App. 5th at 681, 19 subject to a floor on such causally related damages in 'the amount paid by the consumer

to the 20 credit services organization.” (Dkt. No. 342 at 5.) So, according to GreenSky, Plaintiffs can 21 recover transaction fees, but not the performance fees which are wholly unrelated to any injury 22 caused by the transaction fees. 23 GreenSky has the stronger textual argument. The Court “do[es] not consider statutory 24 language in isolation; instead, [it] examine[s] the entire statute to construe the words in context.” 25 Niedermeier, 15 Cal. 5th at 804. The statute begins with an injury requirement. Cal. Civ. Code § 26 1789.21(a) (“Any consumer injured by a violation of this title . . . may bring an action for recovery 27 for damages.”). To read “amounts paid by the consumer” as any and all amounts—regardless of 1 consumers who have demonstrated injury arising from a specific violation of the Act. 2 Plaintiffs argue GreenSky’s reading “identifies no situation in which ‘but in no case less 3 than the amount paid’ takes effect.” (Dkt. No 341 at 12.) Not so. On reply, GreenSky sets forth 4 the following scenario: 5 Suppose a CSO [credit services organization] promises to improve a consumer’s credit score by 100 points, charges \$1,000 for the service, 6 but then improves the score by only 25 points. The CSO’s violation would cause damages, namely, the consumer’s payment for services 7 that were not fully rendered. If the “amount paid” proviso did not exist, the CSO would be liable for \$750 because it failed to deliver 8 only 75% of the promised results. But because the proviso does exist, the CSO must refund the full \$1,000, i.e., the “amount paid by the 9 consumer to the credit services organization.” 10 (Dkt. No. 342 at 3.) Thus, reading the Credit Act to require “amount paid” be related to the 11 underlying injury does not nullify any statutory text. In the scenario GreenSky offers, the “amount 12 paid” language results in a greater recovery than damages that would compensate the consumer. 13 B. Reasonable Result 14 Even if the statute’s plain language were ambiguous, the Court must “favor the 15 construction that leads to the more reasonable result.” Niedermeier, 15 Cal. 5th at 804 (cleaned 16 up). Here, reading Credit Act section 1789.21(a) to not include as damages monies the consumer 17 paid which are unrelated to the conduct that injured the consumer produces the more reasonable 18 result. Consider a hypothetical: a credit services organization helps a consumer obtain two 19 different home-improvement loans—one for roof repairs and one to remodel the patio. For the 20 roof repair loan, the credit services organization renders services in compliance with the Credit 21 Act. But for the patio remodel loan, the credit services organization violates the Credit Act by 22 charging and receiving payment from the consumer one day before completing performance of its 23 services. See Cal. Civ. Code § 1789.13(a) (prohibiting “[c]harg[ing] or receiv[ing] any money . . . 24 prior to full and complete performance of the services the credit services organization ha[d] agreed 25 to perform”). Under Plaintiffs’ interpretation, the consumer could nevertheless recover all 26 amounts paid to the credit services organization, including amounts paid for services fully and 27 1 lawfully rendered for the roof repair loan.⁴ When no injury resulted from those services, this is 2 not a reasonable result. 3 At oral argument, Plaintiffs attempted to distinguish this hypothetical by referring to Credit 4 Act section 1789.13 which prohibits “[a] credit services organization and its salespersons, agents, 5 representatives, and independent contractors who sell or attempt to sell the services of a credit 6

services organization” from conducting certain activities. Cal. Civ. Code § 1789.13(a). Plaintiffs 7 argue “the services of” in section 1789.13(a) limits recovery in section 1789.21(a) to amounts paid 8 to the credit services organization for a particular set of services. The Court is not persuaded “the 9 services of” language in a separate provision can draw the line Plaintiffs are attempting to draw 10 here, wherein performance fees—paid separately through a different mechanism by a different 11 entity than transaction fees—can be recovered as an “amount paid,” but in the hypothetical 12 described above, the fee for services on the roof repair loan—made at the same time by the same 13 credit services organization to the same consumer—cannot be recovered as an “amount paid.” In 14 this hypothetical, the credit services organization is rendering the same “services” for both loans. 15 Setting aside these hypotheticals, this case itself demonstrates the unreasonableness of 16 Plaintiffs’ interpretation. On GreenSky’s prior motion for summary judgment, acknowledging the 17 Credit Act contains a threshold injury requirement, Plaintiffs vigorously argued Ms. Barnes was 18 injured by both transaction fees and by performance fees. Those arguments were very different. 19 Transaction fees are paid by merchants to GreenSky, so Plaintiffs presented an expert report 20 opining “every class member paid transaction fees in the form of inflated project costs.” (Dkt. No. 21 294 at 35.) In contrast, performance fees are paid by bank partners to GreenSky, so Plaintiffs 22 argued Ms. Barnes was injured because “GreenSky set the interest rate on Ms. Barnes’s loan at a 23 rate higher than the bank would otherwise require.” (Id. at 16.) The Court concluded a reasonable 24 25 4 Plaintiffs’ supplemental briefing relies on the California Civil Practice Business Litigation treatise, which provides for a violation of section 1789.13(a), in which the credit services 26 organization charges payment before services are provided, a plaintiff may seek actual damages “equal to or more than the total amount paid by plaintiff.” See Cal. Civ. Prac. Bus. Litig. § 56:96. 27 However, the treatise does not support Plaintiffs’ interpretation of section 1789.21(a); applying it 1 trier of fact could find Ms. Barnes was injured by GreenSky having charged merchants transaction 2 fees but not by the banks paying GreenSky performance fees. To permit Ms. Barnes to 3 nevertheless recover all performance-fee related sums by reading “amount paid” as any and all 4 amounts paid would create a workaround to the Credit Act’s injury requirement and contravene 5 the legislature’s decision to limit suits to “any consumer injured by a violation of this title or by 6 the credit services organization’s breach of a contract subject to this title.” Cal. Civ. Code § 7 1789.21(a). 8 Plaintiffs’ interpretation would also impermissibly penalize GreenSky. “[A] penalty, 9 unlike damages, is a fine assessed for a violation of a statute without regard to the actual injury 10 suffered.” *Cuviello v. City of Oakland*, No. C 06-5517 MHP, 2010 WL 3063199, at *6 (N.D. Cal.

11 Aug. 3, 2010) (citing Black’s Law Dictionary definitions of “penalty” and “damage”). In this 12 case, Plaintiffs’ expert estimated classwide damages from GreenSky performance fees at 13 \$67,251,816—which is slightly less than his estimate of \$67.8 million in classwide damages for 14 transaction fees. (Dkt. No. 294 at 6, 12.) To interpret the Credit Act to allow Plaintiffs—should 15 they prevail as to the unlawfulness of transaction fees—to nearly double their recovery through

16 performance fees would result in recovery far exceeding Plaintiffs’ actual injury. Such 17 interpretation would thus rewrite the Credit Act to permit recovery of civil penalties, despite the 18 statute’s language limiting recovery to “actual damages, but in no case less than the amount paid 19 by the consumer to the credit services organization.” Cal. Civ. Code § 1789.21(a). 20 Plaintiffs, citing *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1123 (9th Cir. 2022), argue 21 “[l]egislatures are empowered to prescribe purely punitive penalties for violations of statutes.” 22 (Dkt. No. 341 at 16.) But *Wakefield* was about the constitutionality of aggregated statutory 23 damages awards “where the prescribed per-violation award is constitutionally sound” but the 24 award “is unusually high” due to the large number of violations or class members. *Wakefield*, 51 25 F.4th at 1121. *Wakefield* thus addressed a different question: when an award of statutory damages 26 violates due process. *Wakefield* does not permit the Court to adopt a statutory interpretation 27 imposing a civil penalty when the legislature did not provide for one. 1 be controversial” because “the statutory scheme espouses punitive and deterrent purposes.” (Dkt.

2 No. 341 at 17.) See Cal. Civ. Code § 1789.21(a) (“An award, if the trial court deems it proper, 3 may be entered for punitive damages.”). That the statute clearly authorizes punitive damages 4 suggests the legislature knew how to be explicit in this regard, which weighs against a statutory 5 construction inserting a penalty the legislature did not explicitly authorize. Plaintiffs’ argument 6 the statutory scheme espouses deterrent purposes is also belied by the statute’s language. The 7 legislature chose to require a consumer to establish injury in order to sue under the Credit Act, 8 even though many of the Act’s statutory violations are unlikely to result in injury. See, e.g., Cal. 9 Civ. Code § 1789.13(j) (prohibiting a credit services organization from advertising its services 10 “without being registered with the Department of Justice”). If deterrence were the legislature’s 11 goal, it would not have required a consumer to demonstrate injury to file suit. 12 Plaintiffs, citing *Niedermeier*, further argue the Credit Act’s imposition of a penalty (or a 13 windfall) is irrelevant when the Credit Act’s plain language provides for such. In *Niedermeier*, the 14 relevant statute “provide[d] a specific formula for calculating the amount of restitution.” 15 Cal. 15 5th at 806. That is, the statute provided: 16 [T]he manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer, including any charges for 17 transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and 18 including any collateral charges such as sales or use tax, license fees, registration fees, and other official fees, plus any incidental damages 19 to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually 20 incurred by the buyer. The amount to be paid to the buyer may also be reduced by the manufacturer by that amount directly attributable 21 to use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service 22 and repair facility for correction of the problem that gave rise to the nonconformity. 23 *Id.* (cleaned up) (quoting Cal. Civ. Code § 1793.2(d)(2)). Because “[t]he statutory restitution 24 remedy has clearly enumerated exceptions, none of which include[d] the offset requested by [the 25 defendant],” the

California Supreme Court concluded the defendant was not entitled to the 26 requested offset—even if it resulted in a windfall to the buyer. *Id.* at 806, 822. 27 Plaintiffs argue here, as in *Niedermeier*, the Credit Act’s “specific formula” for calculating 1 damages should control, and “[a]ny argument about consumers ‘receiv[ing] windfalls’ under the 2 statutorily prescribed remedy [can]not outweigh the statute’s plain text.” (Dkt. No. 341 at 12-13, 3 16-17 (quoting *Niedermeier*, 15 Cal. 5th at 806-07).) But in *Niedermeier*, the court emphasized 4 the statute’s “defined restitution formula, including its express references to specific permissible 5 offsets.” *Niedermeier*, 15 Cal. 5th at 806; see also *id.* (“[T]he Act’s plain language lays out a 6 specific formula.”). Here, in contrast, the Credit Act provides no “formula” to calculate damages. 7 It merely provides an injured consumer can recover “actual damages” with an “amount paid” 8 floor. Moreover, at oral argument, Plaintiffs acknowledged “amount paid by the consumer to the 9 credit services organization” cannot be read literally and without limitation, otherwise absurd 10 results would follow. *Niedermeier*’s instruction to adhere to the plain text even if the result is a 11 windfall is thus inapposite. 12 Nevertheless, if Plaintiffs prevail on their transaction fees theory, their recovery may well 13 exceed their actual damages. As the Court’s prior Order noted, “[i]f Plaintiffs prevail and the 14 Court applies the 42.5% figure to the \$107.79 transaction fee his contractor paid, . . . Mr. Ferguson 15 is entitled to approximately \$46.” (Dkt. No. 294 at 41.) When accounting for the benefit Mr. 16 Ferguson received from obtaining GreenSky’s “point-of-sale loan,” Mr. Ferguson’s actual 17 damages may be less than his \$46 “amount paid.” In such case, the statute would operate as the 18 legislature intended: the “amount paid” floor ensures Mr. Ferguson recovers the entire amount he 19 paid GreenSky related to the fee GreenSky imposed, which caused his injury.

20 II. OTHER COURTS

21 Plaintiffs’ assertion “every court that has interpreted similar language has interpreted it as 22 Plaintiffs do” is also unpersuasive. (Dkt. No. 341 at 13.) None of the cases Plaintiffs cite address 23 the interpretative question at issue on this motion. 24 Several of the cases Plaintiffs cite merely recite section 1789.21’s language. See, e.g., 25 *Meza v. 30 Day Credit Repair Inc.*, No. EDCV 23-1166 JGB (KKx), 2024 WL 2037412, at *4 26 (C.D. Cal. Mar. 29, 2024) (stating “under the [Credit Act], a plaintiff may recover actual damages 27 (no less than the amount paid by the plaintiff to the defendant)”); *Heitmeyer v. Am. Credit-Credit 1* (stating “under the [Credit Act], a consumer may bring any action for a statutory violation to 2 recover actual damages (nothing less than the amount paid by plaintiff to defendant)”); *Jackson v. 3 Red Rock Credit Sols., LLC*, No. 22-CV-04471-AGT, 2024 WL 3379663, at *2 (N.D. Cal. June 5, 4 2024), report and recommendation adopted, No. 3:22-CV-04471-JSC, 2024 WL 5058028 (N.D. 5 Cal. July 10, 2024) (concluding plaintiff could recover “damages[] equivalent to the service fee 6 she paid . . . under the . . . Credit Services Act”). Contrary to Plaintiffs’ assertion, the recitations 7 of section 1789.21’s language in *Meza*, *Heitmeyer*, and *Jackson*—all default judgment cases—do 8 not support Plaintiffs’ interpretation of the Credit Act: that consumers can recover amounts paid 9 that

did not result in injury and are unrelated to the underlying injury. Instead, the courts 10 discussed the Credit Act in the context of weighing the factors set forth in *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986), such as “the sum of money at stake in the action.” There is no 12 indication the courts considered whether amounts paid unrelated to the injury are recoverable. 13 Nor did the courts have reason to. In *Meza and Jackson*, the courts awarded as damages the fee 14 paid for the defendant’s services. See *Meza*, 2024 WL 2037412, at *5 (awarding plaintiff the \$350 15 payment she made to defendant “in connection to the credit repair services Defendant was to 16 perform on [her] account”); *Jackson*, 2024 WL 3379663, at *2 (awarding “\$997.00 in damages, 17 equivalent to the service fee” plaintiff paid). And in *Heitmeyer*, the court denied without prejudice 18 plaintiff’s motion for default judgment because plaintiff “requested \$1,300 in actual damages” but 19 “failed to prove up damages.” See 2023 WL 5505875, at *4 (“Regarding actual damages, the only 20 evidence Plaintiff offers is the attorney’s affidavit, which states that ‘Plaintiff is requesting’ 21 \$1,300, . . . [which], by itself, is insufficient.”). 22 Plaintiffs also cite cases in which Pennsylvania bankruptcy courts interpreted the 23 Pennsylvania Credit Services Act, which—like California’s Credit Act—provides “[j]udgment 24 shall be entered for actual damages, but in no case less than the amount paid by the buyer or 25 borrower to the credit services organization or loan broker.” 73 Pa. Stat. Ann. § 2191. While the 26 courts recited this language and awarded damages according to it, none opined on whether 27 consumers can recover amounts paid when such payments are unrelated to the injury-causing 1 For example, in *In re Bell*, 309 B.R. 139, 146 (Bankr. E.D. Pa. 2004), the court concluded 2 a broker fell within the Pennsylvania Credit Services Act’s definition of “credit services 3 organization” and violated the Act by not providing certain required disclosures. The court then 4 determined the debtor was “entitled to damages in the amount she paid to” the broker, which 5 included “a broker fee of \$3,840,” “an application fee of \$350 from the Borrower’s loan 6 proceeds,” and “a yield spread premium of \$1,280 by the lender at settlement.” *Id.* at 163; see 7 also *id.* at 153 n.9 (“A Yield Spread Premium is a bonus paid to a broker when it originates a loan 8 at an interest rate higher than the minimum interest rate approved by the lender for a particular 9 loan.”). Upon reconsideration, the *Bell* court clarified because the loan had been rescinded, the 10 debtor “has no actual damages,” so the award “was made pursuant to the language of the CSA 11 which permitted actual damages ‘but in no case less than the amount paid by the buyer or 12 borrower to the credit services organization or loan broker.’” *In re Bell*, 314 B.R. 54, 60 (Bankr. 13 E.D. Pa. 2004) (quoting 73 Pa. Stat. Ann. § 2191). However, the court maintained its prior 14 holding the debtor “was entitled to damages for [the lender’s] violation of the CSA,” in other 15 words, the debtor had still been injured by the lender’s violating the statute by failing to disclose 16 the loan could be cancelled within 5 days. *Id.* 17 Similarly, the bankruptcy court in *In re Barker*, 251 B.R. 250, 260-61 (Bankr. E.D. Pa. 18 2000), did not consider whether a consumer can recover amounts paid unrelated to the underlying 19 injury which allows for the recovery of damages in the first place. After finding the loan broker 20 violated Pennsylvania’s Credit Services Act by “engag[ing] in common law fraud and violat[ing]

21 its fiduciary duties to the Debtor,” the court determined the debtor could recover the \$1,950 fee
22 she paid the broker: 23 [T]he CSA [Credit Services Act] provides that, if any actual damages
whatsoever are proven, the offending loan broker is liable for an 24 amount no less than the
amount of fees paid to it by the borrower, as well as reasonable attorney fees and costs. Here, the
Broker charged 25 the Debtor fees of \$1950. It is therefore difficult to see how the Broker’s
damages for the pertinent CSA violation could be less than 26 that amount. 27 Id. The court later
elaborated because “the CSA prohibits exactly the kind of deceptive behavior 1 transaction
because it engaged in intentional, improper practices.” Id. at 264. This unremarkable 2 proposition
—that the statute permits a consumer to recover the fee she paid the broker when the 3 consumer
was injured by services rendered in exchange for that fee—has no bearing on whether a 4
consumer can recover amounts paid when the consumer as a matter of law was not injured by 5
those amounts. 6 Plaintiffs’ supplemental briefing relies on the federal Privacy Act’s damages
provision, 7 which allows recovery of “actual damages sustained by the individual as a result of
the refusal or 8 failure, but in no case shall a person entitled to recover receive less than the sum of
\$1,000.” 5 9 U.S.C. § 552a(g)(4)(A). The Supreme Court has held the provision authorizes a
plaintiff to 10 recover a “guaranteed minimum award of \$1,000 for violations of the Act, but only
if they prove 11 at least some ‘actual damages.’” *FAA v. Cooper*, 566 U.S. 284, 295 (2012) (citing
Doe v. Chao, 12 540 U.S. 614 (2004)). But the Supreme Court has still required plaintiffs to
“show[] some 13 pecuniary harm” before “recover[ing] the statutory minimum of \$1,000,” id. at
296, and did not 14 address the question at issue here: whether Plaintiffs can recover amounts paid
to GreenSky 15 unrelated to any injury or pecuniary harm. 16 *** 17 In sum, the Court GRANTS
GreenSky’s motion for partial summary judgment. As a 18 matter of law, Plaintiffs were not
injured by performance fees. So, under the plain language of the 19 Credit Act and considering the
most reasonable result, Plaintiffs are not entitled to recover 20 performance fee damages. Having
so concluded, the Court need not consider GreenSky’s 21 alternative arguments.

22 III. PLAINTIFFS’ RULE 56(D) MOTION

23 In the alternative, Plaintiffs request relief under Federal Rule of Civil Procedure 56(d). 24
“Rule 56(d) offers relief to a litigant who, faced with a summary judgment motion, shows the 25
court by affidavit or declaration that ‘it cannot present facts essential to justify its opposition.’” 26
Michelman v. Lincoln Nat’l Life Ins. Co., 685 F.3d 887, 899 (9th Cir. 2012) (quoting Fed. R. Civ.
27 P. 56(d)). Under Rule 56(d), the Court may: @ allow time to obtain affidavits or declarations
or to take discovery; 5 (3) issue any other appropriate order. Fed. R. Civ. P. 56(d). ° Plaintiffs state
they “prioritized expert testimony that established one class-wide injury (from GreenSky’s
transaction fees)” and “have yet to present expert evidence about how ° GreenSky performance
fees impacted interest rates.” (Dkt. No. 341 at 24.) Plaintiffs thus ° “request time to finish
developing” evidence performance fees “caused higher interest rates.” □□□□□ ’ Plaintiffs’
corresponding declaration also attests “[t]o brief class certification as early [as is] ° practicable,
following the Ninth Circuit’s remand in late 2023, Plaintiffs prioritized developing a ° limited

amount of additional streamlined discovery.” (Dkt. No. 341-1 4 8 (quotation marks 0 omitted).) 11 The Court DENIES Plaintiffs’ request for Rule 56(d) relief. Plaintiffs dismissed Mr. Ferguson’s performance-fee claims because it was “undisputed Mr. Ferguson did not pay interest on his loan.” (Dkt. No. 294 at 15.) As to the only other named plaintiff—Ms. Barnes—the Court S granted GreenSky’s motion for summary judgment and held as matter of law Ms. Barnes was not injured by performance fees. As such, no named plaintiff has standing to seek the Rule 56(d) relief Plaintiffs now request: time to develop further evidence establishing injury from = " performance fees. Further, the appropriate time to make such a request was in response to 18 Greensky’s motion for summary judgment, not months after the Court granted the motion.

CONCLUSION

For the reasons stated above, the Court GRANTS GreenSky’s motion for partial summary judgment. 22 This Order disposes of Docket No. 338. °° IT IS SO ORDERED. Dated: October 28, 2025 25

27 JACQUELINE SCOTT CORL

28 United States District Judge