No. 26-7637

In the United States Court of Appeals For the Ninth Circuit

IN RE META PIXEL HEALTHCARE LITIGATION

JOHN DOE 1, ET AL.,
Plaintiffs-Respondents,

v.

META PLATFORMS, INC.,
Defendant-Petitioner.

On Petition for Permission to Appeal Under Rule 23(f) from the United States District Court for the Northern District of California
No. 3:22-cv-03580-WHO (Hon. William H. Orrick)

UNOPPOSED MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* SUPPORTING DEFENDANT'S PETITION FOR PERMISSION TO APPEAL

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Under Federal Rule of Appellate Procedure 29(a)(3), the Chamber of Commerce of the United States of America files this unopposed motion for leave to file a brief as *amicus curiae* supporting Meta's Rule 23(f) petition for permission to appeal the district court's order granting class certification. A copy of the proposed brief is attached to this motion. The parties consent to the filing of this brief.

The Chamber is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community. The Chamber has participated as *amicus curiae* in numerous cases addressing the legal standards governing class actions, including at the Rule 23(f) stage. *See, e.g.*, *In re Juul Labs, Inc. Antitrust Litig.*, No. 26-1519 (9th Cir. March 19, 2026); *In re Nvidia Corp. Sec. Litig.*, No. 26-2183 (9th Cir. Apr. 15, 2026); *Golikov* v. *Walmart Inc.*, No. 25-1685 (9th Cir. March 20, 2025); *Drake* v. *Bayer Healthcare, LLC*, No. 24-5956 (9th Cir. Oct. 7, 2024); *In re Oracle Corp. Sec. Litig.*, No. 22-80048 (9th Cir. May 31, 2022); *Heredia* v. *Sunrise Senior Living, LLC*, No. 21-80121 (9th Cir. Dec. 7, 2021).

The Chamber's members are frequent targets of class-action lawsuits. The Chamber has a strong interest in ensuring that would-be class plaintiffs

are held to the rigorous analysis required before a court may certify a class. The Chamber's proposed brief explains that the petition raises important and recurring questions that deserve this Court's immediate review, and that the district court's resolution of those questions is contrary to Federal Rule of Civil Procedure 23(b)(3), the Seventh Amendment, the Due Process Clause, and the Rules Enabling Act. The Chamber's brief likewise details the costs of relaxing Rule 23's stringent standards, particularly for proposed classes as broad as those at issue here.

For the foregoing reasons, the Chamber respectfully requests that the Court grant this unopposed motion for leave to file an amicus brief supporting Meta's Rule 23(f) petition.

November 20, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Ninth Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 387 words, excluding the items exempted by those rules.

This motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface using 14-point Century Expanded BT.

/s/ *Michael R. Huston*
Michael R. Huston

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* SUPPORTING META PLATFORMS, INC.'S RULE 23(f) PETITION FOR PERMISSION TO APPEAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Ninth Circuit Rule 26.1-1, the Chamber of Commerce of the United States of America states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

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INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber's members are frequent targets of class-action lawsuits. The Chamber has a strong interest in ensuring that would-be class plaintiffs are held to the rigorous analysis required before a court may certify a class.[1]

INTRODUCTION

The Federal Rules of Civil Procedure permit a class action only when a single trial can resolve the central disputed questions for each class member at once—"in one stroke." *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 350 (2011). This case does not clear that high bar. Plaintiffs' class action targets Meta's Business Tools, which are digital code that *thousands* of third-party developers employed on their own websites and apps, configured in their own

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

ways, and described to *millions* of users in their own privacy policies. Whether any class member suffered actionable injury—and whether any defense applies—thus depends on both each developer's *and* each user's conduct. Multiply those variables across thousands of websites and apps and millions of users, and common questions cannot possibly predominate.

The District Court nevertheless certified four Rule 23(b)(3) classes. In doing so, it committed multiple errors warranting immediate review. Rather than assess predominance across each class, the court asked whether proof was common to the users of a single developer—and so found predominance by splitting each class into 5,642 developer-specific subsets, none of which it found to satisfy Rule 23. And instead of determining whether plaintiffs carried their burden to establish each Rule 23 requirement by a preponderance, the court deferred those questions to summary judgment or trial.

The District Court compounded those errors by invoking unspecified "case management strategies," without identifying any measure that could resolve thousands of developer-specific and millions of user-specific questions, and without any viable path to preserve Meta's constitutional rights to litigate those questions. Because these classes cannot be tried without stripping Meta of its individualized defenses to each plaintiff's claim, the class-certification order violates the Due Process Clause, the Seventh Amendment, and the Rules Enabling Act. That outcome is particularly intolerable here because plaintiffs seek statutory damages worth potentially *trillions* of dollars—in what may be the largest class action ever certified. That is precisely the *in*

terrorem settlement pressure that Rule 23(f) exists to relieve. If appellate review waits until final judgment, it will likely never come.

This case also reflects a troubling trend. Class-action plaintiffs nationwide have begun wielding decades-old wiretap and privacy statutes against new, widespread website tools on which American businesses and the public rely. *See* Megan A. Suehiro et al., *Website Tracking, Data Breaches, and AI Class Actions*, GRIP (Apr. 8, 2026), https://tinyurl.com/4459sk7a. Because these novel suits harm businesses and consumers alike, district courts faced with them should enforce Rule 23's rigorous standards—not relax them.

This Court should grant the petition.

ARGUMENT

Class actions are the exception, not the norm. The "usual rule" is that "litigation is conducted by and on behalf of the individual named parties only." *Comcast Corp.* v. *Behrend*, 569 U.S. 27, 33 (2013) (citation omitted). To invoke the exception, plaintiffs must show, after a "rigorous analysis," that Rule 23's prerequisites "have been satisfied." *Id.* (citation omitted). The District Court did not perform that analysis. Instead, it rewrote Rule 23's requirements and certified what is likely the largest class action in our nation's history. Those errors warrant Rule 23(f) review.

This Court intervenes when a class-certification decision (1) is "manifestly erroneous"; (2) is at least "questionable" and creates "a death-knell situation for … the defendant that is independent of the merits"; or (3) "presents

an unsettled and fundamental issue of law relating to class actions, important both to the specific litigation and generally, that is likely to evade end-of-the-case review." *Chamberlan* v. *Ford Motor Co.*, 402 F.3d 952, 959 (9th Cir. 2005) (per curiam).

Each ground is present here. The decision below is manifestly erroneous because it "applie[d] an incorrect Rule 23 standard." *Chamberlan*, 402 F.3d at 962. It measured predominance within developer-specific subsets of each class rather than across each class as a whole, and it deferred threshold Rule 23 questions that must be answered at certification. Those are errors of law, "easily ascertainable from the petition itself." *Id.* at 959. The order also puts extraordinary pressure on Meta to settle by depriving Meta of its fundamental constitutional rights while exposing it to *trillions* of dollars in potential damages. That is a textbook "death knell." And whether a court may certify sprawling privacy classes by slicing them developer-by-developer is a critical question of law—one on which district courts are already reaching conflicting results, Pet. 7-9, 23-25. That question would likely continue to evade review precisely because the pressure to settle is so acute.

I. The certification order rests on manifest legal error.

A. Individualized questions predominate because liability turns on what countless plaintiffs and third parties did.

Certifying a Rule 23(b)(3) class requires a "'close look'" at whether plaintiffs have "affirmatively demonstrate[d]" that "common questions predominate over individual ones." *Comcast*, 569 U.S. at 33-34 (citation omitted).

To ensure that a class is "sufficiently cohesive to warrant adjudication by representation," *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 623-624 (1997), plaintiffs must offer "a theory of liability … capable of *classwide* proof," *Comcast*, 569 U.S. at 37. That proof must resolve liability to absent class members "in one stroke." *Wal-Mart*, 564 U.S. at 350.

The liability questions here are fundamentally individual. Start with the third-party developers: To prove actionable injury, *each* class member must establish that the developer (1) is subject to the relevant privacy statute; (2) used Meta's Business Tools; (3) configured them in a way that transmitted protected health data to Meta; and (4) lacked policies or disclosures that secured user consent to share data with Meta. Individual user questions then add a second layer: Each plaintiff must prove that (1) his activity on a particular website or app caused data to be shared; (2) the data were sent to Meta (rather than blocked by an ad-blocker or the user's private browser); (3) the user was a patient of (or taking medication from) a covered entity at the relevant time; and (4) the data conveyed protected health information.

Meta's defenses raise still more individual questions. Consent can turn on each website's or app's disclosures and consent mechanisms—and for implied consent, on what information a user encountered or whether she shared it on social media. Across an entire class involving thousands of developers and millions of users, those individual questions overwhelm any common ones. A class so fractured is not "sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623-624.

B. The District Court's reasons for certifying the classes were flawed.

The District Court found predominance only by redefining the Rule 23 test, shifting the burden, and eschewing any manageable trial plan.

First, the District Court did not measure predominance across the classes it actually certified; instead, it focused on granular subsets within each class. That is a fundamental methodological error. Almost any putative class, including sprawling ones with many diverse plaintiff experiences, can be carved into subsets whose members share *some* question. As the Supreme Court has observed, "[a]ny competently crafted class complaint literally raises common 'questions.'" *Wal-Mart*, 564 U.S. at 349 (citation omitted). What matters is not the raising of common questions "even in droves," but whether a classwide proceeding can "generate common answers apt to drive the resolution of the litigation." *Id.* at 350 (citation and emphasis omitted). That is true of Rule 23's commonality requirement, and truer still of predominance, which is "far more demanding." *Amchem*, 521 U.S. at 624. The District Court's approach here would let plaintiffs in myriad contexts manufacture unwieldy class actions—dividing each class by store, product, employer, or website until every subset seems cohesive—and thereby mask the very differences among class members that Rule 23 requires courts to confront.

Meta's implied-consent defense illustrates the error: Because disclosures vary from developer to developer, no common proof can establish whether each class member consented—especially for users who accessed

different websites and apps. The District Court, however, held that evidence of a single developer's disclosures is "not individualized but common to class members of that specific provider." D.Ct.Doc. 1425 at 15 n.13. It thus appeared to reason that individualized questions predominate only if adjudicating each class member's claims requires completely unique evidence not relevant to any other claimant. That is not the law. Predominance asks whether common proof can answer the central questions on a *classwide* basis. *Comcast*, 569 U.S. at 37. And evidence common to *one* developer's users is not common to a class spanning millions of users who used thousands of other apps and websites.

Second, the District Court relieved plaintiffs of their burden by deferring contested Rule 23 questions. D.Ct.Doc. 1425 at 7, 10. This Court has held that would-be class plaintiffs "must prove the facts necessary to carry the burden of establishing that the prerequisites of Rule 23 are satisfied by a preponderance of the evidence." *Olean Wholesale Grocery Coop., Inc.* v. *Bumble Bee Foods LLC*, 31 F.4th 651, 665 (9th Cir. 2022) (en banc). And where, as here, a Rule 23 requirement turns on disputed facts or dueling experts, the court *must* resolve the dispute at certification, even if doing so "overlap[s] with the merits" of the "underlying claim." *Comcast*, 569 U.S. at 33-34 (quoting *Wal-Mart*, 564 U.S. at 351); *see, e.g.*, *Goldman Sachs Grp., Inc.* v. *Ark. Tchr. Ret. Sys.*, 594 U.S. 113, 126-127 (2021).

The District Court did not conduct that analysis. The court instead credited plaintiffs' assurance that they would *eventually* offer common proof, and thus reserved this basic Rule 23 requirement for "test[ing] at summary

judgment, at trial, or through" unspecified "case management techniques." D.Ct.Doc. 1425 at 7-11. But that decision replaced plaintiffs' burden and the court's duty to undertake a "rigorous analysis" with a rebuttable presumption of certification. Rule 23 forbids that lax approach: Plaintiffs "must actually *prove*—not simply plead—that their proposed class satisfies each requirement of Rule 23," and they must do so "before class certification." *Olean*, 31 F.4th at 664 (citation omitted).

Third, the District Court never identified how this case could be tried such that a class action would be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). When a defendant raises an individualized issue, the court must determine "whether a class-member-by-class-member assessment" of it "will be unnecessary or workable." *Van* v. *LLR, Inc.*, 61 F.4th 1053, 1069 (9th Cir. 2023). That task requires a concrete mechanism "truncated enough to ensure that the common issues predominate, yet robust enough to preserve the defendants' Seventh Amendment and due process rights to contest every element of liability and to present every colorable defense." *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 934 F.3d 619, 625 (D.C. Cir. 2019); *accord In re Asacol Antitrust Litig.*, 907 F.3d 42, 58 (1st Cir. 2018).

The District Court did not identify any such plan. The court said only that "[v]arious accepted case management strategies can handle the complexity of this case," D.Ct.Doc. 1425 at 2; *see id.* at 12, without identifying those strategies or explaining how they would preserve predominance. Plaintiffs'

failure to meet this element of their burden is unsurprising: Any mechanism robust enough to let Meta contest each developer's disclosures and each user's injury would require thousands, if not millions, of mini-trials.

Beyond misapplying Rule 23, the errors below also offend the Constitution and the Rules Enabling Act. The Seventh Amendment and the Due Process Clause preserve a defendant's rights "to contest every element of liability and to present every colorable defense." *Rail Freight*, 934 F.3d at 625; *see Lindsey* v. *Normet*, 405 U.S. 56, 66 (1972). Those constitutional guarantees likewise protect the opportunity to "test the sufficiency" of a claim with "evidence in explanation or rebuttal." *ICC* v. *Louisville & N.R. Co.*, 227 U.S. 88, 93 (1913). A contrary rule would also "abridge" or "modify" substantive rights in violation of the Rules Enabling Act. *See Wal-Mart*, 564 U.S. at 367; 28 U.S.C. § 2072(b). That is precisely what the decision below did. By certifying classes that cannot be tried with Meta's defenses intact, the order exposes Meta to potentially *trillions* of dollars in liability on claims it will have no meaningful chance to contest.

II. The certification order exerts death-knell settlement pressure, and this case exemplifies a surge of privacy class actions that harm businesses and consumers.

The decision below exerts the very "in terrorem" pressure that the Supreme Court has warned against. *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011). "Certification of a large class may so increase the defendant's potential damages liability and litigation costs that he may find it

economically prudent to settle and to abandon a meritorious defense." *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 476 (1978). Rule 23(f) review of this manifestly erroneous—and certainly at least "questionable"—order is therefore appropriate when "a grant of certification sounds the death knell of the litigation" by "'put[ting] considerable pressure on the defendant to settle' independent of the merits of the plaintiffs' claims." *Chamberlan*, 402 F.3d at 958. And the prospect of later "narrowing" or "decertify[ing]" the classes, D.Ct.Doc. 1425 at 6, 10-11, does not relieve that pressure. It prolongs it—especially for classes of such unprecedented scope.

This case is one of a wave of burdensome lawsuits invoking legacy privacy statutes against widespread modern technology. Those suits are driven largely by a handful of high-volume, repeat-player law firms, and they harm industry and consumers alike. In 2024 alone, plaintiffs filed about 2,500 data-privacy class actions, including suits challenging web-tracking tools. Müge Fazlioglu, *US Data Privacy Litigation Report 2025*, IAPP (Mar. 10, 2025), https://tinyurl.com/bdh6ama8. The burden falls hardest on the businesses least able to bear it. Small businesses shoulder roughly 50% of nationwide litigation costs; "in proportion to revenue earned, the costs of the [lawsuit] system are seven times greater for businesses making $1 million or less in annual revenue compared to businesses that make $50 million or more." Inst. L. Reform, *The U.S. Lawsuit System Costs America's Small Businesses $160 Billion* (Jan. 4, 2024), https://www.uschamber.com/lawsuits/the-us-lawsuit-system-costs-americas-small-businesses-160-billion. One study estimates that

navigating the patchwork of state privacy laws costs small businesses between $20-23 billion annually. Daniel Castro et al., *The Looming Cost of a Patchwork of State Privacy Laws*, Info. Tech. & Innovation Found. 1 (Jan. 2022), https://tinyurl.com/3vwjttzp.

Many of these suits target conduct that does not involve any actual harm to user privacy. *See, e.g.*, *Popa* v. *Microsoft Corp.*, 153 F.4th 784, 791 (9th Cir. 2025). Class members, meanwhile, often see little benefit. From 2023 to 2025, courts approved more than $32 billion in class settlements, excluding costs and interest; roughly a quarter went to attorneys' fees. Adam Mills Masarek et al., *Class Action Litigation Report 2026, LexisNexis 24* (Apr. 2026). "In fact, every study that has looked at consumer class action settlements has reached the same conclusion: The overwhelming majority of such class actions deliver nothing to class members." John H. Beisner et al., *Unfair, Inefficient, Unpredictable: Class Action Flaws and the Road to Reform,* U.S. Chamber Inst. for Legal Reform 12 (Aug. 2022), https://tinyurl.com/yxn6u6tk (citation modified).

If anything, lax class-certification standards in cases like these *harm* American consumers. "[C]oerced settlements substantially raise the costs of doing business," which affect "consumers in the form of higher prices." *Lab'y Corp. of Am. Holdings* v. *Davis*, 605 U.S. 327, 333 (2025) (Kavanaugh, J., dissenting from dismissal of certiorari as improvidently granted). Rule 23's rigorous standards guard against those costs.

This Court's review is "most appropriate" now because district courts have split over these novel class actions. Most have denied certification, even

where a *single* website was at issue—let alone 5,642. *E.g.*, *Lewis* v. *Magnite, Inc.*, 2026 WL 2254788, at *9-12 (C.D. Cal. July 20, 2026). Because so much of the technology industry is based in this Circuit, these suits will only increase.

CONCLUSION

The Court should grant the Rule 23(f) petition.

November 20, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and Ninth Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 2,799 words, excluding the items exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface using 14-point Century Expanded BT.

/s/ *Michael R. Huston*
Michael R. Huston

November 20, 2026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 34. Disclosure Statement under FRAP 26.1 and Circuit Rule 26.1-1

Instructions for this form: http://www.ca9.uscourts.gov/forms/form34instructions.pdf

9th Cir. Case Number(s) 26-7637

Name(s) of party/parties, prospective intervenor(s), or amicus/amici filing this form:

Chamber of Commerce of the United States of America

Under FRAP 26.1 and Circuit Rule 26.1-1, I make the following disclosures:

1. I disclose the following information required by FRAP 26.1(a) and/or Circuit Rule 26.1-1(b) for any nongovernmental corporation, association, joint venture, partnership, limited liability company, or similar entity[1] which is a party, prospective intervenor, or amicus curiae in any proceeding, or which the government identifies as an organizational victim below in section 2 of this form,[2] or which is a debtor as disclosed below in section 3 of this form.

   a. Does the party, prospective intervenor, amicus, victim, or debtor have any parent companies? Parent companies include all companies that control the entity directly or indirectly through intermediaries.
   ○ Yes ◉ No

   If yes, identify all parent corporations of each entity, including all generations of parent corporations *(attach additional pages as necessary)*:

   b. Is 10% or more of the stock of the party, prospective intervenor, amicus, victim, or debtor owned by a publicly held corporation or other publicly held entity?
   ○ Yes ◉ No

[1] A corporate entity must be identified by its full corporate name as registered with a secretary of state's office and, if its stock is publicly listed, its stock symbol or "ticker."

[2] To the extent it can be obtained through due diligence.

If yes, identify all such owners for each entity *(attach additional pages as necessary)*:

2. In a criminal case, absent good cause shown, the government must identify here any organizational victim of the alleged criminal activity:

3. In a bankruptcy case, the debtor, the trustee, or, if neither is a party, the appellant must identify here each debtor not named in the court of appeals caption:

4. Are you aware of any judge serving on this Court who participated at any stage of the case, either in district court, administrative proceedings, or in related state court proceedings?

○ Yes ◉ No

If yes, list the name of the judge and the case name, case number, and name of court of the related proceedings:

I certify that *(select only one)*:

◉ this is the first disclosure statement filed in the above-referenced case by the above-identified party/parties, prospective intervenor(s), or amicus/amici, and this disclosure statement complies with FRAP 26.1 and Circuit Rule 26.1-1.

○ the party/parties, prospective intervenor(s), or amicus/amici submitting this supplemental disclosure statement has previously filed a compliant disclosure statement in this case, and this updated disclosure statement discloses changed or additional information.

○ I have reviewed this form, FRAP 26.1, and Circuit Rule 26.1-1 and, to the best of my knowledge, have no information to disclose at this time.

Signature s/ Michael R. Huston **Date** November 20, 2026

*(use "*s/[typed name]*" to sign electronically-filed documents)*