No. 24-3473

United States Court of Appeals for the Eighth Circuit

DON GIBSON, *et al.*,

Plaintiffs-Appellees,

v.

NATIONAL ASSOCIATION OF REALTORS,

Defendant,

COMPASS, INC.,

Defendant-Appellee,

EXP WORLD HOLDINGS, INC.,

Defendant,

REDFIN CORPORATION,

Defendant-Appellee,

(For Continuation of Caption See Next Page)

Appeal from the United States District Court
for the Western District of Missouri-Kansas City
No. 4:23-cv-00788-SRB; Hon. Judge Stephen R. Bough

MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES AND AFFIRMANCE

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WEICHERT CO.,

Defendant,

UNITED REAL ESTATE, *et al.*,

Defendants-Appellees,

BERKSHIRE HATHAWAY ENERGY COMPANY, *et al.*,

Defendants,

FIVE D I, LLC, doing business as United Real Estate,

Defendant-Appellee,

PREMIERE PLUS REALTY, CO., *et al.*,

Defendants,

DOUGLAS ELLIMAN REALTY, LLC, *et al.*,

Defendants-Appellees,

NEXTHOME, INC., *et al.*,

Defendants.

v.

JAMES MULLIS,

Objector-Appellant.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* 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 corporation has 10% or greater ownership in the Chamber.

/s/ Donald M. Falk
Donald M. Falk
Counsel for Amicus Curiae

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, proposed *amicus curiae* the Chamber of Commerce of the United States of America ("Chamber") moves this Court for leave to file the attached brief in support of Appellees in this matter. Counsel for the Chamber received consent for the filing of the brief from the individual Plaintiff-Appellees as well as from the Defendant-Appellees Anywhere Real Estate, Re/Max LLC, and Keller Williams Realty, LLC. Objector-Appellant James Mullis did not consent, but stated that he takes no position on this filing. For that reason, this motion is required.

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million 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, including cases involving class actions. In this Court, these cases include *Burnett v. National Association of Realtors*, No. 24-2143 (brief filed Jan. 3, 2025), which presents similar issues.

Many members of the Chamber and the broader business community are targets of class-action lawsuits. Although many such actions fail in motion practice, others require the defendants to consider settlement. An important aspect of such settlement negotiations is the ability of defendants to obtain releases of claims by class members relating to the subject matter of the class action. Defendants who cannot achieve a global settlement with a global release risk being forced into an extended game of whack-a-mole as the same plaintiffs surface with different lawyers pressing new theories of injury and liability stemming from the same conduct that was the subject of a class-action settlement. The Chamber and its members accordingly have a strong interest in the rules that govern releases in class-action settlements.

The motion for leave to file should be granted because the proposed *amicus* brief provides additional insights into a key issue raised by this appeal: whether a class-action settlement properly may include a release of all claims between the parties that relate to the defendant's conduct at

issue in the litigation, whether or not those claims are included in the class complaint. And the brief provides the Court with reasons why a settlement involving a global release of claims would be desirable to plaintiffs, to defendants, and to the courts.

The proposed brief explains why the Court should not undermine a key objective of settlement—global peace. It explains, for example, that the possibility of obtaining global peace with respect to a prior course of conduct is a primary incentive for defendants to settle cases. And the brief explains that plaintiffs benefit from settlements involving a global release of claims as well because a defendant's incentive to settle in exchange for global peace leads to earlier and larger settlements for plaintiff classes. The brief then explains that global releases benefit the court system by instantly resolving all claims between parties rather than permitting satellite actions involving many of the same plaintiffs in the same or (more likely) other jurisdictions.

The proposed brief also explains that global releases are fundamentally fair given the required notice of the release and the ability to opt out, both of which ensure that persons with additional valuable claims can pursue them if they find that the value of the potential

separate recovery exceeds the value offered in settlement. And the brief collects precedent approving global releases, confirming that this Court's similar precedent should not be limited.

The party briefs do not provide a systematic treatment of the benefits and fairness of global releases, nor do they address the academic literature cited in the proposed brief that explains the benefits of settlements involving global releases of claims between plaintiffs and defendants. For all those reasons, the brief will be helpful to the Court.

CONCLUSION

The motion for leave to file should be granted.

Respectfully submitted,

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Counsel for Amicus Curiae

Dated: August 1, 2025

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 707 words, which does not exceed 5,200 words.

This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word Office 16 in 14-point Century Schoolbook font.

/s/ Donald M. Falk
Donald M. Falk

Counsel for Amicus Curiae

Dated: August 1, 2025

ECF CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 28A(h)(2)

I hereby certify that the ECF submission was scanned for viruses with the most recent version of a commercial virus scanning program and, according to the program, is free of viruses.

/s/ Donald M. Falk
Donald M. Falk

Counsel for Amicus Curiae

Dated: August 1, 2025

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(d), I hereby certify that on August 1, 2025 the foregoing motion was filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case who are registered CM/ECF users will be served through the Court's electronic filing system.

/s/ Donald M. Falk
Donald M. Falk

Counsel for Amicus Curiae

No. 24-3473

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/s/ Donald M. Falk
Donald M. Falk

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Other Authorities

IDENTITY AND INTEREST OF *AMICUS CURIAE* AND SOURCE OF AUTHORITY TO FILE BRIEF

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million 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.

A motion for leave to file this brief has been submitted. As that motion explains, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community, including cases involving class actions. Especially pertinent here, the Chamber filed an *amicus* brief in *Burnett v. National Association of Realtors*, Eighth Cir. No. 24-2143, which presents similar issues and involves the same objector-appellant.

Many members of the Chamber and the broader business community are targets of class-action lawsuits. Although many such actions fail in motion practice, others require the defendants to consider settlement. An important aspect of such settlement negotiations is the

ability of defendants to obtain releases of all claims by class members relating to the subject matter of the class action. Defendants who cannot enter into a global settlement with a global release risk being forced into an extended game of whack-a-mole as the same plaintiffs surface with different lawyers pressing new theories of injury and liability stemming from the same conduct that was the subject of a class-action settlement. The Chamber and its members accordingly have a strong interest in the rules that govern releases in class-action settlements.

RULE 29(a)(4)(e) STATEMENT

No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submission of the brief; and no person other than *amicus*, its members, or its counsel contributed money that was intended to fund the brief's preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

This brief addresses a narrow but significant issue raised by appellant Mullis: whether a class-action settlement properly may include a release of all claims between the parties that relate to the defendant's underlying conduct at issue in the litigation, whether or not those claims are included in the class complaint. The Chamber takes no

position on the question whether Mullis waived his objections by not appearing in person at the final approval hearing. *See* Mullis Br. 46–49; Mullis Br. Addendum 17–19. But the Court should reject Mullis' argument on the merits if reached. To the extent the other objectors in Case Nos. 24-3478, 24-3481, and 24-3564 challenge the ability of parties to resolve all disputes between them, the policy arguments in this brief apply.

The claims at issue here are classic antitrust claims by direct purchasers (home sellers who directly paid commissions and are plaintiffs in this case) and claims by an overlapping group of indirect purchasers (home buyers who paid prices that allegedly were inflated by the commissions paid by sellers). Mullis is among the many people who both sold and bought homes during the relevant period. As with any other combination of direct- and indirect-purchaser claims, each buyer claim piggybacks on a claim by a seller based on the same commission. That is, each commission charged by a defendant led to both a seller claim and a buyer claim directed at the same alleged overcharge.

And in this case, almost every direct purchaser is also an indirect purchaser. Most people who sell a home buy another soon, if not

simultaneously. So while the direct purchasers and indirect purchasers are different for each transaction, when viewed as a class across several years, they are almost entirely the same people.

It thus makes sense that the parties would release all claims relating to the commissions at issue, rather than carving out only part of the defendants' potential liability. Mullis disputes this approach, and asks the Court to confine the scope of the release to the claims pleaded and litigated so far.

On the contrary, the Court should not undercut any aspect of its precedent approving global releases included in settlements of class actions. To move toward the categorical limit that Mullis suggests, and restrict the permissible scope of settlements to claims pressed in the class-action complaint, would undermine one of the key objectives of settlement: finality. So long as the claims released could reasonably arise out of the same underlying conduct, that aspect of the settlement should not be objectionable. To remove the possibility of achieving global peace through a settlement would deter class-action settlements, harming plaintiffs, defendants, and the courts.

Achieving global peace with respect to a prior course of conduct provides a primary incentive for defendants to settle cases—and especially class actions. Defendants' goal is to put the litigated conduct behind them, removing a distraction to management and any potential concern to investors.

If settlements instead must be piecemeal, and categorically must allow the same persons to return to the well with different theories of injury and liability by slicing single transactions into separate liability-producing components, defendants would lose a core incentive to settle. That would hurt plaintiffs' interests in multiple ways. Not only would a piecemeal-only rule delay settlement, as defendants push harder and longer to try to limit or eliminate liability—such a rule also would reduce the amount defendants are willing to pay the plaintiff class. As a matter of simple economics, a partial release is worth less—and in some cases substantially less—than a full release. And piecemeal litigation multiplies the uncertainty attending any potential recovery before judgment or settlement.

The court system as a whole likewise benefits from the increased incentives to settle provided by the availability of global settlements.

Settlements of all claims between parties resolve not only a single class action, but a limitless array of potential satellite actions involving many of the same plaintiffs in the same or (more likely) other jurisdictions.

There is nothing inherently unfair about a global release. In resolving cases, "[e]ach side gives up a number of things. This is the way settlements usually work." *In re Gen. Am. Life Ins. Sales Pracs. Litig.*, 357 F.3d 800, 805 (8th Cir. 2004). Plaintiffs here agreed to give up their indirect-purchaser claims as well as their direct-purchaser claims in exchange for the significant and timely payments from defendants. And those class members who do not want to release all their claims need not do so. So long as the notice informs class members of the scope of the release, they may make informed decisions to opt out or remain in the settling class. As this Court has recognized, the required notice of the release and the ability to opt out together ensure that persons with additional valuable claims can pursue them if they find that the value of the potential separate recovery exceeds the value offered in settlement.

It is no surprise that overwhelming precedent, including precedent in this Court, supports approving global releases as part of class-action settlements. Given the substantial practical benefits of the current rule,

this Court should not undercut that rule by imposing any artificial limits on parties' ability to release all claims related to a particular course of conduct.

ARGUMENT

A. Global Releases Serve Important Public Interests.

The broad settlement in this case serves the important public interest of achieving global peace between the parties. "[A]chieving global peace is a valid, and valuable, incentive to class action settlements," *Sullivan v. DB Invs. Inc.*, 667 F.3d 273, 310–11 (3d Cir. 2011) (en banc), one that benefits all involved.

1. Global releases provide necessary incentives to defendants.

This Court has recognized that "[t]here is no impropriety in including in a settlement a description of claims that is somewhat broader than those that have been specifically pleaded." *General American*, 357 F.3d at 805. As the Court observed: "In fact, most settling defendants insist on this." *Id.*

There are sound reasons for this insistence. "[U]nderstanding the interests that are being represented by the parties and other stakeholders" is "[f]undamental to the ability to settle a class action."

Pierce Atwood LLP, *Keys to Class Action Settlements: Understanding the Interests at Stake*, JDSUPRA (July 22, 2020), https://tinyurl.com/yxfdprzd. Defendants' "interests in class action settlement generally boil down to two things: settling at a reasonable cost and achieving global peace." *Id.*; *see* William B. Rubenstein, *A Transactional Model of Adjudication*, 89 Geo. L.J. 371, 372–73 (2001) (settlement is a transaction in which the defendant buys peace).

"Global peace" is the "comprehensive resolution of disputes" between the parties in a class action. Samuel Issacharoff, *Rule 23 and the Triumph of Experience*, 84 L. & Contemp. Probs. 61, 170 (2021). That "defendants negotiating settlements … insist upon global peace" is the "starting assumption" whenever settlements are discussed. Rhonda Wasserman, *Future Claimants and the Quest for Global Peace*, 64 Emory L.J. 531, 536 (2014).

The reasons why defendants seek global settlements and global releases are well documented. In his concurring opinion in *Sullivan*, Judge Scirica of the Third Circuit identified seven:

> Facing liability for alleged misconduct, a defendant may desire global settlement for several possible reasons: (1) redressing plaintiffs' injuries; (2) the possibility of liability; (3) the direct costs of defending suits, often in

> multiple fora; (4) the risk of financially unmanageable jury verdicts which may threaten bankruptcy; (5) the effects of pending or impending mass litigation on its stock price or access to capital markets; (6) the stigma of brand-damaging litigation; and (7) maintaining financial stability.

667 F.3d at 339 n.9 (Scirica, J., concurring).

Those reasons largely align with the reasons identified in the academic literature. Wasserman, *supra*, 64 Emory L.J. at 537. First, and perhaps most self-evident, defendants want to both "define and cap their total exposure." *Id.* As the Second Circuit recognized, "Parties often reach broad settlement agreements encompassing claims not presented in the complaint in order to achieve comprehensive settlement of class actions, particularly when a defendant's ability to limit his future liability is an important factor in his willingness to settle." *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242, 247–48 (2d Cir. 2011). Put differently, a global settlement allows defendants to know exactly what they owe the plaintiff class and to plan accordingly.

Second, "defendants not only want to define and cap their total exposure but they actually want to reduce it by discouraging prospective claimants who have not yet sued from initiating fresh litigation against them." Wasserman, *supra*, 64 Emory L.J. at 537. When a settlement is

not global and leaves open additional claims, "[d]efendants do not know what their total exposure will be" because "[t]he higher the class settlement …, the greater the possibility that additional litigants will emerge from out of the woodwork to commence suit." John C. Coffee, Jr., *Litigation Governance: Taking Accountability Seriously*, 110 Colum. L. Rev. 288, 338 (2010). Defendants thus seek global settlements to avoid any remaining claims drawing "more claimants into the litigation, as prospective plaintiffs and attorneys smell blood in the water." Howard M. Erichson & Benjamin C. Zipursky, *Consent versus Closure*, 96 Cornell L. Rev. 265, 271 (2011).

Third, "defendants want to reduce their total liability, not only by discouraging the filing of new claims but also by reducing their transaction costs." Wasserman, *supra,* 64 Emory L.J. at 537; *see also* Richard A. Nagareda, *Aggregate Litigation Across the Atlantic and the Future of American Exceptionalism*, 62 Vand. L. Rev. 1, 11–12 (2009). Naturally, "individual negotiations require greater resource expenditures." Erichson & Zipursky, *supra,* 96 Cornell L. Rev. at 271. "[B]road settlements," by contrast, "give [defendants] better returns on their sunk transaction costs." Charles Silver & Lynn A. Baker, *Mass*

Lawsuits and the Aggregate Settlement Rule, 32 Wake Forest L. Rev. 733, 761 (1997). This is especially the case where "defendants can offer a lump sum and disclaim any role in the allocation," thereby avoiding the additional cost "of valuing and negotiating individual claims." D. Theodore Rave, *Governing the Anticommons in Aggregate Litigation*, 66 Vand. L. Rev. 1183, 1194 (2019). And this is no small consideration, as "[t]he amount to be saved by reducing transaction costs can be enormous." Wasserman, *supra*, 64 Emory L.J. at 537.

Fourth, defendants "want to avoid" (1) "the distraction from core business functions that litigation entails"; (2) any negative publicity from the litigation; and (3) scaring off potential or current investors. Wasserman, *supra*, 64 Emory L.J. at 538; *see* Nagareda, *supra*, 62 Vand. L. Rev. at 11–12. Any settlement that leaves potential claims available "may result in additional negative publicity, attract unwanted regulatory scrutiny, and hamper access to capital markets—hard-to-quantify costs that may be greatly disproportionate to the number or value of remaining claims." Rave, *supra*, 66 Vand. L. Rev. at 1195. Global settlements avoid these potential outcomes and allow businesses to get back to basics.

Global settlements thus further a variety of defendants' legitimate goals in class-action litigation. Research indicates that, while the incentives attending litigation risk render plaintiffs more motivated to settle (and secure a certain benefit) than proceed to trial, the incentives affecting defendants make them relatively more motivated to proceed to trial (where the potential reward is avoiding any loss). *See* Chris Guthrie, *Prospect Theory, Risk Preference, and the Law*, 97 Nw. U.L. Rev. 1115, 1123 (2003). The prospect of global peace may be a powerful motivator to bring a defendant to the settlement table instead.

2. Global releases benefit plaintiffs.

It would be wrong, however, to assume that defendants are the only ones benefiting from global settlements. Plaintiffs benefit as well from defendants' enhanced incentives to achieve such settlements.

Most obvious are the direct pecuniary benefits to settling plaintiffs. Defendants will pay more for the peace resulting from a global release than for the continued uncertainty that attends a partial release that preserves a risk of future litigation by the same parties.

It is no secret that global settlements "secur[e] more for a cohesive group than what disparate individuals could hope for." Issacharoff,

supra, 84 L. & Contemp. Probs. at 170. Defendants are often willing to pay a "'peace premium' available only through a class resolution." *Id.* That premium reflects the benefits of global settlement outlined above: "to put the whole litigation behind them—to end the uncertainty, the risk of adverse selection (that is, overpaying to settle weak claims while plaintiffs hold the strong ones out for trial), and the negative publicity and concomitant drag on stock price that goes along with mass litigation." Andrew D. Bradt & D. Theodore Rave, *It's Good to Have the "Haves" on Your Side: A Defense of Repeat Players in Multidistrict Litigation*, 108 Geo. L.J. 73, 90 (2019). And because "[h]andling claims in bulk is more cost effective for defendants," even if otherwise "weak claims" are included in a global deal, more claimants recover higher amounts from a global deal than they would have recovered through piecemeal litigation. Rave, *supra*, 66 Vand. L. Rev. at 1194.

Plaintiffs especially benefit when the released claims that were not litigated closely correspond to the released claims that will be directly compensated. Here, the vast majority of the settlement-class members bought a home not long before or after they sold a home. Thus, it is easy enough for each notified class member to assess the value of the released

claim and decide whether to proceed with payment for a claim on one of each pair of related transactions. *See* Mullis Br. Add. 35–38. And, of course, for every class member's released indirect-purchaser (buyer) claim, another class member recovers compensation on a direct-purchaser (seller) claim.

Global releases can be beneficial for plaintiffs even if a class likely would win at trial. A class-action verdict may be so high that a defendant, who has already burned enormous resources simply preparing for trial, is unable to pay. And this risk remains if settling plaintiffs are free to continue to pursue other claims targeting the same transactions. Indeed, as Congress found in addressing asbestos litigation in the 1990s, one significant threat facing the asbestos claimants was the risk that assets would be exhausted and some claimants "may lose altogether." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 598 (1997) (quoting Report of the Judicial Conference Ad Hoc Committee on Asbestos Litigation 2–3 (1991)). When the defendant agrees to a global settlement, it eliminates any risk that, after a trial, a jury will return a verdict so large that the defendant cannot pay the plaintiffs. The district court in this case cited

that factor as favoring approval of the settlement over the arguments Mullis presses here. Mullis Add. 38–39; *see also id.* at 11.

Plaintiffs thus benefit from global settlements just like defendants.

3. Global releases benefit the courts.

Global releases also serve important interests of judicial economy, benefits that likely stretch beyond the single forum in which a particular class action is pending. It is no secret that class-action lawsuits impose enormous burdens on the courts. "Judges, honest as they may be and diligently as most may work, have an interest in settling any and all cases, and an even bigger interest in seeing large and cumbersome class actions settle." Susan P. Koniak, *How Like A Winter? The Plight of Absent Class Members Denied Adequate Representation*, 79 Notre Dame L. Rev. 1787, 1798 (2004). Piecemeal litigation necessarily adds to the workload, as a proposed settlement "[l]acking [in] finality" may cause defendants to be "slower to settle" in the first place "and may on occasion even" cause the case to "go to trial, thereby resulting in greater work and delay for courts." Coffee, *supra*, 110 Colum. L. Rev. at 328. But most important, by precluding further litigation related to the same course of conduct, global releases in class-action settlements free up resources from all the various

state and federal courts that might have had to entertain variations on the litigation that is globally settled.

B. Global Settlements Are Fair to Holders of Released Claims Who Receive Adequate Notice and Opportunity to Opt Out.

Settlements of Rule 23(b)(3) class actions raise no valid concerns about fairness to the class members. Class members who do not like the terms of the settlement have a straightforward and effective option: they can opt out and pursue their claims in separate actions. Put in terms of this case, persons who had both direct- and indirect-purchaser claims—those who both sold and bought property subject to a real estate agent's commission during the relevant period—could bring both direct- and indirect-purchaser claims in the court of their choice. Opt-outs who are already pursuing indirect-purchaser claims could continue to press them, adding in any direct-purchaser claims they might have. And of course the settlement has no preclusive effect on persons who bought but did not sell homes during the relevant period; they are not members of the settling class. *See* Mullis Br. Add. 39 & n.8, 43. If they are sufficiently numerous—and a few dozen would be enough under Rule 23(a)(1)—they could file their own class action, or redefine a proposed class in the ongoing case to which Mullis refers. *See* Mullis Br. 7–9.

Of course, the right to opt out is only as effective as the notice of class settlement. A class member cannot provide informed consent either to be included or excluded from a settlement without being informed of the scope of the settlement's release. But class members who have received notice that adequately described the scope of the release—generally (and here) all claims related to a particular course of conduct by the defendants—can protect themselves if they believe the settlement does not adequately compensate all of their claims.

This Court long ago recognized these principles in *Thompson v. Edward D. Jones & Co.*, 992 F.2d 187 (8th Cir. 1993). In that case, the Court made clear that the interests of class members who had claims in addition to those held by other class members were sufficiently protected so long as they "had sufficient notice of the terms of the proposed settlement, including the provision barring 'claim[s] of any nature whatsoever' related to the [transaction at issue], and had adequate opportunity to opt out of the class." *Id.* at 191. So long as the "notice was neither confusing nor misleading as to the release of liability under the settlement agreement," *In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, 716 F.3d 1057, 1065 (8th Cir. 2013), class members

who wish to take a different litigation approach can decide whether the certainty of a settlement payment outweighs the discounted valued of an additional possible future recovery under different theories. Thus the approval of a settlement of this kind largely rests on the sufficiency of the notice—which Mullis does not challenge here.

C. The Weight of Precedent Favors Approval of Global Settlements

Finally, courts of appeals routinely approve global class-action settlements. This Court has done so repeatedly. *See*, *e.g.*, *Thompson*, 992 F.2d at 189–92; *General American*, 357 F.3d at 805; *Uponor*, 716 F.3d at 1065.

And other courts of appeals agree that "[t]he weight of authority establishes that ... a court may release not only those claims alleged in the complaint and before the court, but also claims which could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the complaint." *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 221 (5th Cir. Apr. 1981) (internal quotation marks omitted); *see also*, *e.g.*, *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 107–110 & n.13 (2d Cir. 2005); *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d 355, 366–67 (3d Cir. 2001); *City P'ship Co. v. Atl.*

Acquisition Ltd. P'ship, 100 F.3d 1041, 1044 (1st Cir. 1996); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1287–88 (9th Cir. 1992).

The relationship between the litigated seller claims and the released buyer claims is close indeed—even closer than other combinations of direct- and indirect-purchaser claims arising from the same practice alleged to be unlawful under the antitrust laws. Here, the released buyer claims in principal part address the buyer-side of the same sales forming the basis for settlement compensation here—the very same transactions. And the alleged antitrust violation affecting both the buyer-side and the seller-side of these same transactions involved the same conspiracies to impose the same costs on the same parties through the same mechanisms.

Although Mullis presents the Second Circuit's decision in *National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9 (2d Cir. 1981), as if it were a blanket rejection of class settlements that exceed the scope of the class complaint, both this Court and the Second Circuit have explained how that decision is limited—and limited in ways that favor affirmance here. This Court pointed out that *Super Spuds* rested on the unique facts of that case, where the district court rejected an

objector's effort to opt out when the terms of a new, broader release were not revealed until the approval hearing. *See Thompson*, 992 F.2d at 191; *see also General American*, 357 F.3d at 805. No similar situation is presented here, where the notice accurately represented the breadth of the release. And the Second Circuit has since explained that "*Super Spuds* hinged on the fact that the class representatives did not possess" the same claims as the objectors. *Wal-Mart*, 396 F.3d at 111 (citing *Super Spuds*, 660 F.2d at 17). But some of the class representatives here bought as well as sold houses, and thus released their indirect-purchaser claims just as Mullis did. *See* Mullis Br. Add. 10.

Still more recently, the Second Circuit has recognized that global settlements are routine and proper: "Parties often reach broad settlement agreements encompassing claims not presented in the complaint in order to achieve comprehensive settlement of class actions, particularly when a defendant's ability to limit his future liability is an important factor in his willingness to settle." *In re Literary Works*, 654 F.3d at 247–48. And the same court earlier this year recognized that a global settlement barred class members' claims directed at the same conspiracy "concerning the same time periods, means of collusion, and relevant

players," notwithstanding the would-be repeat plaintiffs' assertions "that their claims focus on a different segment of the [relevant] market[.]" *BNP Paribas v. N.M. State Inv. Council*, No. 24-635-CV, 2025 WL 1443654, at *3 (2d Cir. May 20, 2025) (unpublished opinion).

The precedent approving global settlements is sound. As Judge Wilkinson of the Fourth Circuit observed, "[t]o restrict releases unduly risks undermining the utility of an important tool in class action litigation, one which assists the settlement of claims and alleviates the need for go-for-broke trials." *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 91 F.4th 174, 185 (4th Cir. 2024) (Wilkinson, J., concurring). This Court should continue to accord "due respect for the lubricative role that releases play in beneficial class action settlements," *id.* at 186, and thus should adhere to its precedent approving global settlements that comply with the other strictures of Rule 23.

CONCLUSION

The Court should reject Mullins' effort to impose artificial constraints on the ability of parties to agree to global releases in class-action settlements.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 4,241 words and does not exceed 6,500 words.

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(d), I hereby certify that on August 1, 2025, the foregoing Brief of *Amicus Curiae* was filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case who are registered CM/ECF users will be served through the Court's electronic filing system.

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