No. 26-2626

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE JUUL LABS, INC. ANTITRUST LITIGATION

DEVIN BLACK, *et al.*,

Plaintiffs-Appellees,

v.

ALTRIA GROUP, INC., *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court for the Northern District of California, No. 3:20-cv-02345
Hon. William H. Orrick

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS

Jennifer B. Dickey
Jonathan D. Urick
U.S. CHAMBER
LITIGATION CENTER
1615 H Street NW
Washington, DC 20062
(202) 463-5337

Counsel for the Chamber of Commerce of the United States of America

Ashley C. Parrish
KING & SPALDING LLP
1700 Pennsylvania Avenue NW
Washington, DC 20006
(202) 737-0500
aparrish@kslaw.com

Ross E. Elfand
KING & SPALDING LLP
1290 Ave. of the Americas, 14th Fl.
New York, NY 10104
(212) 556-2100

Counsel for Amicus Curiae

July 28, 2026

(Additional counsel listed on inside cover)

Benjamin T. Lee
KING & SPALDING LLP
2601 Olive Street
Suite 2300
Dallas, TX 75201
(214) 764-4600

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes & Rules

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

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.

SUMMARY OF ARGUMENT

In this antitrust case, the district court improperly certified a sweeping 27-state class without complying with the essential requirements of Rule 23 of the Federal Rules of Civil Procedure. The plaintiffs' theory is that Altria's investment in JUUL Labs, coupled with an agreement to exit the e-cigarette product market, eliminated

---

[1] *Amicus curiae* states that 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. Defendants-Appellants consented to the filing of this brief. Plaintiffs-Appellees did not consent.

competition and allowed JUUL to charge inflated prices. This brief focuses on one of the classes the district court certified: the 27-state "Cartwright Act" indirect purchaser class. To hold that class together, the court declared that California's Cartwright Act applies extraterritorially to supply a uniform rule of nationwide liability, while simultaneously acknowledging that the jury would need to apply the separate damages laws of each of the 27 states. The court offered no meaningful support for exporting California law in this novel fashion. It identified no precedent authorizing a court to assemble its own bespoke mix of liability and damages rules, and it failed to analyze whether common issues predominate over individual ones.

The district court's approach conflicts with Rule 23. A class may be certified only after a "rigorous analysis" establishing that the plaintiff has satisfied each of Rule 23's essential requirements. As to liability, the district court inverted California's presumption against extraterritoriality by improperly placing the burden on the defendants to show why the Cartwright Act should *not* reach the entire class. As to damages, the court left each of the 27 states' damages laws in place. The result is a novel, court-invented antitrust regime: California's liability rules bolted onto 26 other states' separate damages laws.

The district court compounded its errors by never analyzing predominance and declaring instead its "faith" that the acknowledged "true and material differences" between the states could be "readily respected and managed through jury instructions or a special verdict form." 1-ER-33–34 & n.14. But choice of law and predominance are distinct inquiries, and the promise of jury instructions is no substitute for the analysis Rule 23 demands before a class is certified. The trial court's departures from settled class-action procedures violate Rule 23.

If left uncorrected, the district court's decision ensures that businesses operating nationwide will face the worst of all worlds: multi-state classes with liability determined under a single state's plaintiff-friendly regime and damages later calculated under a patchwork of inconsistent and disconnected state antitrust rules. Class actions are supposed to achieve efficiencies by resolving common issues in a single proceeding without altering substantive rights. They are not a mechanism for exporting California's liability rules to the rest of the nation and, regardless of the underlying merits, imposing hydraulic pressure on defendants to settle.

The Court should reverse the district court's order certifying the indirect purchaser class.

ARGUMENT

I. Variations in State Law Typically Preclude Certification in Multi-State Class Actions.

The class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979). To receive the benefit of that limited exception, plaintiffs must "affirmatively demonstrate" their compliance with each of Rule 23's requirements. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). No class may be certified until the trial court determines, "after a rigorous analysis," that plaintiffs have carried their burden. *Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 161 (1982).

The "rigorous analysis" requirement ensures that, consistent with the Rules Enabling Act, 28 U.S.C. § 2072, certification "neither change[s] plaintiffs' separate entitlements to relief nor abridge[s] defendants' rights." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559

U.S. 393, 408 (2010); *see also Ortiz v. Fibreboard Corp.,* 527 U.S. 815, 845 (1999). Courts must ensure strict compliance with Rule 23 because certification creates immense pressure to settle that defendants often "must reluctantly swallow rather than betting the company on the uncertainties of trial." *Lab'y Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 333 (2025) (Kavanaugh, J., dissenting from dismissal). Accordingly, under Rule 23(a), plaintiffs must demonstrate that the class is sufficiently numerous, held together by common questions, and led by representatives who are both typical of the class and capable of adequately protecting the entire class's interests. Fed. R. Civ. P. 23(a). If plaintiffs carry that burden, Rule 23(b)(3) imposes the additional obligation that plaintiffs demonstrate that "questions of law or fact common to class members predominate over any questions affecting only individual members," and that class treatment is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); *Wal-Mart Stores, Inc.*, 564 U.S. at 362.

Rule 23(b)'s predominance requirement is "demanding." *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013). It is satisfied only when "the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quoting 2 William B. Rubenstein, Newberg and Rubenstein on Class Actions § 4:49 (6th ed.)). Moreover, complying with these essential requirements is especially important when plaintiffs seek to certify multistate classes, as differences in state law can often "defeat predominance." *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 928 (9th Cir. 2019). A class representative rarely possesses the same interest or suffers the same injury as class members when different substantive state laws apply to each of their claims. *See Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001), *as amended on denial of reh'g*, 273 F.3d 1266 (Dec. 14, 2001); *see also Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589–90 (9th Cir. 2012). Moreover, before determining whether common questions predominate, the district court must "conduct a choice of law analysis." *Stromberg v. Qualcomm Inc.*, 14 F.4th 1059, 1067 (9th Cir. 2021). The order of operations is essential. Only by first determining "which law will apply" can a court then analyze whether "[v]ariances in state law [] overwhelm common issues and preclude predominance." *Id.* (quoting *Zinser*, 253 F.3d at 1189 & *Mazza*, 666 F.3d at 596).

Stromberg illustrates the point. There, this Court reversed certification of a nationwide class due to "a faulty choice-of-law analysis." *Stromberg*, 14 F.4th at 1067. Applying California's choice-of-law rules, the district court concluded that other states have no interest in applying their own antitrust laws, and it then applied California's more restrictive substantive Cartwright Act across the entire class. *Id.* at 1065–66. This Court firmly rejected that approach. Cautioning courts against construing the "relevant interests" too narrowly, it recognized that other states have a strong interest in applying the liability and damages rules that together form their different antitrust regimes. *See id.* at 1072 (explaining that "the relevant interests are not simply about the benefit or harm to resident consumers" and "there is no basis for concluding that only California has an interest" in having its own law applied to its residents). Noting the risks of exposing defendants to "excessive and 'complicated' antitrust litigation with 'duplicative damages' recovery," it criticized the district court for inserting its "own preference" for California law into the choice-of-law analysis. *Id.* at 1072–73 (quoting

Apple Inc. v. Pepper, 587 U.S. 273, 285 (2019)). Because the choice-of-law errors permeated the broader inquiry, the Court reversed certification and remanded for the district court to perform the required analysis, "starting at step one." *Id.* at 1074.

Even after the choice-of-law questions are resolved at step one, courts must carefully consider whether any different penalties that states impose for violations of their antitrust rules will defeat predominance under Rule 23. Liability requirements and damages rules work together and reflect specific policy choices regarding what counts as an antitrust violation and what damages are appropriate to deter violations without overcompensating plaintiffs. *See id.* at 1073. As a result, although individualized damages calculations under the same substantive law do not automatically defeat certification, a court must carefully analyze differences in damages requirements to ensure that common issues predominate. *See Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010). When differences in state laws extend beyond mere calculations and require individualized fact inquiries, predominance is almost always defeated. *See Zinser*, 253 F.3d at 1189–90. As the Supreme Court has emphasized in other contexts, "[q]uestions of individual damage calculations will inevitably overwhelm questions common to the class" where plaintiffs' proposed damages model does not match their theory of liability. *Comcast*, 569 U.S. at 34–35.

II. The District Court's Certification of the Cartwright Act Class Violated Rule 23's Predominance Requirement.

Faced with a proposed sprawling class that spans 27 states—each with its own, individualized antitrust regime—the district court was required to determine which states' laws would apply and whether common questions predominate. It satisfied neither requirement. The court instead distorted the choice-of-law analysis at both ends and skipped the crucial predominance inquiry altogether.

A. The district court misapplied California's choice-of-law rules and improperly created its own hybrid scheme.

The district court began on solid ground, correctly recognizing that the choice-of-law rules of the forum state—California—govern the analysis. *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). California's framework is well settled: a plaintiff seeking to apply California law to a nationwide or multistate class must first show that doing so is constitutional, and then satisfy a three-step test that asks (1) whether the relevant laws of each affected jurisdiction differ,

(2) whether a "true conflict" exists because each state has a legitimate interest in applying its own law, and (3) if so, "which state's interest would be more impaired if its policy were subordinated to the policy of the other state." *Mazza*, 666 F.3d at 590 (quoting *McCann v. Foster Wheeler LLC*, 225 P.3d 516, 527 (Cal. 2010)); *see Kearney v. Salomon Smith Barney, Inc.*, 137 P.3d 914, 922 (Cal. 2006). Faithfully applied, this framework protects each state's sovereign choices by ensuring that no state's law is jettisoned unless a genuine conflict compels that result. Unfortunately, the district court took a wrong turn at almost every step.

The court's first misstep reflects a basic misunderstanding of California's place in our federal system: California cannot serve as the default antitrust regulator for the Nation. Each state represented in the class has struck its own balance between deterring anticompetitive conduct and protecting commerce within its borders, and "every state has an interest in having its law applied to its resident claimants." *Mazza*, 666 F.3d at 591–92 (quoting *Zinser*, 253 F.3d at 1187). This Court has thus warned that a district court "improperly impair[s]" other states' policies when it allows "California to set antitrust enforcement policy for the entire country." *Stromberg*, 14 F.4th at 1074.

The district court brushed aside that warning. It held that California's Cartwright Act would supply the rule of antitrust liability not only for California purchasers, but for purchasers in 26 other states—each with its own legislative judgment about when and how antitrust defendants should be held liable. *See Rodriguez v. United States*, 480 U.S. 522, 525–26 (1987) (per curiam) ("[d]eciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice"). The district court thus did precisely what our federal system forbids: it allowed one state to govern conduct and purported injuries occurring outside its borders. *See Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881) ("No State can legislate except with reference to its own jurisdiction."); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996) (no single state may "impose its own policy choice on neighboring States"); *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 14 (2025) ("State sovereign authority is bounded by the states' respective borders").

California law guards against that overreach at the threshold. It recognizes a strong "presumption against extraterritoriality" that bars applying "legislative enactments absent an affirmative indication that such was the Legislature's intent." *Ward v. United Airlines, Inc.*, 466 P.3d 309, 317 (Cal. 2020); *cf. Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010) ("[w]hen a statute gives no clear indication of extraterritorial application, it has none"); *RJR Nabisco v. European Cmty.*, 579 U.S. 325, 335 (2016) (noting that, under the presumption against extraterritoriality, the question is whether the legislature has "affirmatively and unmistakably instructed that" a statute will have an "extraterritorial application"). No such indication exists here, as courts within this Circuit have long recognized. *See In re HIV Antitrust Litig.*, 2022 WL 22609107, at *9 (N.D. Cal. Sept. 27, 2022); *In re Capacitors Antitrust Litig. (No. III)*, 2020 WL 6462393, at *7 (N.D. Cal. Nov. 3, 2020) ("The limits on the extraterritorial application of the California Cartwright Act and UCL are another reason to doubt the propriety of a multi-state class").

The presumption against extraterritoriality assigns the burden to plaintiffs. To reach transactions outside California, plaintiffs were required to come forward with affirmative evidence that the California Legislature intended that the Cartwright Act would regulate conduct beyond California's borders. *See, e.g.*, *Ward*, 466 P.3d at 317. The district court demanded the opposite. Rather than requiring plaintiffs to overcome the presumption against the extraterritorial application of a state's antitrust laws, it treated California law as presumptively applicable to the entire class and faulted defendants for failing to show why the Cartwright Act should not reach the other 26 states. 1-ER-29. That turns the presumption on its head. A rule that a state's statutes stop at its borders cannot be satisfied by the absence of an objection. *Cf. Seagate Tech. LLC v. NHK Spring Co.*, 163 F.4th 1272, 1283–84 (9th Cir. 2026) (refusing to apply federal antitrust law extraterritorially absent evidence of a "tight causal link" between anticompetitive conduct, the effect on U.S. commerce, and the ultimate antitrust injury), *petition for cert. filed*, No. 25-1358 (U.S. June 8, 2026). Only by reversing the presumption could the district court manufacture the premise on which the rest of its choice-of-law analysis depended—specifically, that California law was available for export.

With that erroneous premise in mind, the district court's next move was also wrong. California's governmental-interest test required it to compare each state's law against California's, determine whether the differences create "true conflict[s]," and, where a conflict exists, decide which state's interest would be more impaired if its policy gave way. *Mazza*, 666 F.3d at 590 (quoting *McCann*, 225 P.3d at 527). The court never completed that analysis. It instead acknowledged "true and material differences" between the 27 states' antitrust regimes, 1-ER-34, yet resolved the conflict it had identified by splitting the difference: California's law would govern liability, while each state's own law would govern damages. That compromise finds no support in California's choice-of-law rules, which ask which state's law should apply—not how a court might blend them.

A state's antitrust regime is a considered package, pairing the reach of liability with the scope of the remedy; treble damages, culpability thresholds, and limits on recovery are calibrated to the liability standards they accompany. *See* Caleb Nelson, *The Persistence of General Law*, 106 Colum. L. Rev. 503, 544 (2006) ("Under virtually all American choice-of-law regimes, for instance, the same state's law that governs whether a cause of action exists (and what its elements are) will also govern the measure of damages"); *see also* Restatement (Second) of Conflict of Laws § 171 (1971); *Chesapeake & Ohio Ry. Co. v. Kelly*, 241 U.S. 485, 491 (1916) ("[T]he question of the proper measure of damages is inseparably connected with the right of action[.]"). By decoupling the two, the court fabricated its own hybrid scheme that was enacted by no legislature, and no state would recognize as its own. California law does not permit a court to "stitch together the laws of many states" into a regime of the court's own design. *See Cassirer v. Thyssen-Bornemisza Collection Found.*, 69 F.4th 554, 562 (9th Cir. 2023) (a court must assess whether another jurisdiction's law, "taken as a whole, conflict[s] with California's," and, when "necessary," "resolve that conflict").

As just one example, the court's decision to apply California law for "liability" imports California's rules on how indirect purchasers must prove antitrust injury. But states differ on this threshold question. California recognizes a limited "pass-on" defense "to avoid duplication in the recovery of damages," *Clayworth v. Pfizer, Inc.*, 233 P.3d 1066, 1086 (Cal. 2010), while other states never allow a pass-on or pass-through defense, *see Cox v. F. Hoffman-La Roche, Ltd.*, 2003 WL 24471996, at *1 (Kan. Dist. Oct. 10, 2003) (rejecting pass-through defense in Kansas), and yet others expressly allow one, *see* N.Y. Gen. Bus. Law § 340(6). By importing California law on "liability," the district court swept these and many other individual issues under the rug.

The district court's errors—applying California law extraterritorially and adopting an unprecedented pick-and-choose approach to choice-of-law—create artificial commonality that cloaks a predominance problem. Correct these errors and the outcome is obvious: 27 states with 27 different liability standards and 27 different damages frameworks. No one can plausibly argue that a Balkanized class consisting of 27 different frameworks satisfies Rule 23(b)(3).

B. The district court failed to analyze whether common issues predominate over individual ones.

Even if California law could be applied to establish the liability rules that govern conduct in 26 other states, the district court was still required to analyze whether common issues predominate. It never did. Instead, after acknowledging "true and material differences" between the 27 states' different damages regimes, the court declared that those differences could be "readily respected and managed through jury instructions or a special verdict form." 1-ER-33–34. That solution was grounded not in law, but in the district court's "faith" that juries could "parse and consider instructions and verdict forms directed to various state laws." 1-ER-34 n.14. Because of that faith, the court concluded that any differences in law do "not preclude class certification." 1-ER-34.

That puzzling conclusion reflects a basic misunderstanding of the standards for class certification. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 621 (1997) (noting that Rule 23 is designed to prohibit "appraisals of the chancellor's foot kind," where class certification depends on "the court's gestalt judgment"). The district court appears to have treated its choice-of-law ruling as if it also resolved predominance. But the two are separate inquiries: choice of law identifies which state's law applies; predominance asks whether, in applying that law, common questions will predominate over individual ones. Answering the first inquiry does not answer the second. *See Jabbari v. Farmer*, 965 F.3d 1001, 1006 (9th Cir. 2020) ("[A] court may have to decide which state's or states' law applies *before* it can determine whether common questions of law or fact predominate" (emphasis added)).

Just as choice-of-law analysis should precede any predominance decision, so too must the predominance analysis precede certification. The district court was required to determine — "[b]efore certifying a class" — whether applying 27 different antitrust damages frameworks would create individual issues that predominate over common ones. *Zinser*, 253 F.3d at 1186; *Falcon*, 457 U.S. at 161 (certification comes "only . . . after a rigorous analysis" ensures "that the prerequisites of Rule 23(a) have been satisfied"). That analysis involves considering the "particular facts of the case" and carefully determining "'whether individualized questions'" arising from the laws of 27 different states "'will overwhelm common ones.'" *Van v. LLR, Inc.*, 61 F.4th 1053, 1067 (9th Cir. 2023) (quoting *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir. 2022)); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014) ("plaintiffs wishing to proceed through a class action must actually prove—not simply plead—that their proposed class satisfies each requirement of Rule 23, including (if applicable) the predominance requirement of Rule 23(b)(3)").

The district court's failure to conduct a rigorous predominance analysis is sufficient to warrant reversal. This Court has not hesitated to vacate certification orders when a district court fails to "scrutinize [the] classes before certifying them" or to test whether common questions genuinely "predominate." *Black Lives Matter L.A. v. City of Los Angeles*, 113 F.4th 1249, 1258 (9th Cir. 2024); *see also Stromberg*, 14 F.4th at 1067 (reversing where a "faulty choice of law analysis" produced only the appearance of predominance). A court cannot satisfy Rule 23(b)(3) by assuming away the individualized questions it is obligated to confront. The predominance requirement demands a "rigorous analysis," not an expression of confidence that the problems can be sorted out later. *Comcast*, 569 U.S. at 33–34.

Here, even assuming that the court could sweep away different liability issues by stitching together 26 Frankenstein monsters of California liability rules with other states' damages rules, the differences even between the damages rules for the 27 states are not minor. Take the availability and trigger of enhanced damages: some States make treble damages mandatory upon a finding of liability, *see* N.Y. Gen. Bus. Law § 340, while others leave them to the factfinder's discretion, *see* Kan. Stat. Ann. § 50-161. Whether a given class member may recover three times her actual damages or only the actual damages themselves depends on the state law that applies. The problem is compounded when enhanced damages turn on culpability, because the required showing varies materially from state to state. Arizona permits treble damages when a "violation is flagrant," Ariz. Rev. Stat. § 44-1408; Iowa authorizes double damages when "the prohibited conduct is willful or flagrant," Iowa Code § 553.12; and Massachusetts allows treble damages only when "the violation was engaged in with malicious intent to injure," Mass. Gen. Laws ch. 93, § 12. Each formulation calls for a different factual finding about the same conduct, so a jury could reach opposite results depending solely on which state's standard governs. Such differences result in the type of individual damages calculations that courts have recognized preclude a finding that common questions predominate. *See Comcast*, 569 U.S. at 34–35; *Lucas v. Breg, Inc.*, 212 F. Supp. 3d 950, 970 (S.D. Cal. 2016).

Those examples are illustrative but far from exhaustive. Each of the 27 jurisdictions applies a distinct damages regime under a distinct statute. Where the "[q]uestions of individual damage calculations . . . inevitably overwhelm questions common to the class," certification is inappropriate. *Comcast*, 569 U.S. at 34–35. Because the district court substituted faith for analysis, it violated Rule 23.

C. The district court's proposed solutions are no substitute for Rule 23's requirements.

Whether the individualized issues associated with applying 27 different state damages laws preclude certification is a question the district court was required to grapple with "[*b*]*efore* certifying a class." *Zinser*, 253 F.3d at 1186 (emphasis added). The district court attempted to avoid this obligation by suggesting it could use "jury instructions or a special verdict form" to resolve material differences at trial. 1-ER-34. Neither the Rules Enabling Act nor this Court's precedents permits this certify-first, resolve-later approach to Rule 23. *See* 28 U.S.C. § 2072(b); *Zinser*, 253 F.3d at 1186.

Rule 23(b)(3) requires a district court to determine whether allowing a putative class action to proceed would produce a sufficiently cohesive class and provide a superior method "for fairly and efficiently adjudicating the controversy." *Wal-Mart Stores, Inc.*, 564 U.S. at 362 (quoting Fed. R. Civ. P. 23(b)(3)). Forgoing the required analysis leaves important practical questions unaddressed. For example, what would jury instructions actually look like for a damages regime spread across 27 different states' laws? Would there be specific instructions walking the jury through each state's law? Would the court attempt to group states together based on commonalities, and make a judgment call as to which differences are salient? How exactly would the culpability differences—for example, the differences between a state that trebles damages for a "flagrant" violation and one that requires "malicious intent to injure"—be solved by jury instructions or a special verdict form alone?

And how would the court prevent litigation over these important differences from bogging down and dominating the trial?

The district court answered none of these questions. It expressed its "faith that federal court juries will be able to readily parse and consider instructions and verdict forms directed to various state laws, if and as necessary." 1-ER-34 n.14. This Court's precedents demand more. When there is "no manageable trial plan adequate to deal with individualized issues and variances in state law," the only appropriate action is to "decline[] certification." *Zinser*, 253 F.3d at 1190; *see also Gianino v. Alacer Corp.*, 846 F. Supp. 2d 1096, 1103–04 (C.D. Cal. 2012) (nationwide class not superior where the court "would face the impossible task of instructing the jury on the law of 50 different states"). The district court's certify-now-analyze-later approach fails.

III. The District Court's Errors Warrant Reversal.

The district court's errors warrant correction now. The order collides with the Rules Enabling Act by using a procedural device to rewrite substantive rights. That approach subjects defendants to immense settlement pressure, and it invites forum shopping that harms businesses and consumers alike.

A class action is a procedural device that, under the Rules Enabling Act, must not be wielded to "abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b). By replacing the liability law of 26 other states with California's, the district court's certification order enlarges some class members' entitlements while stripping defendants of defenses those states' laws would afford. The Supreme Court has invoked that very concern in cautioning that a class "cannot be certified on the premise that [the defendant] will not be entitled to litigate its . . . defenses to individual claims." *Wal-Mart Stores, Inc.*, 564 U.S. at 367; *cf. Shady Grove*, 559 U.S. at 422 (Stevens, J., concurring in part and concurring in the judgment) (a federal rule that "effectively abridges, enlarges, or modifies a state-created right or remedy" would violate § 2072(b)). Those defenses include a defendant's due process right to "present every available defense." *Lindsey v. Normet*, 405 U.S. 56, 66 (1972) (quoting *American Sur. Co. v. Baldwin*, 287 U.S. 156, 168 (1932)). Reading Rule 23 to work that result would raise serious problems the district court never confronted.

The district court's erroneous certification also creates immense settlement pressure. As courts have recognized, class certification is not merely "a game-changer" but "often the whole ballgame." *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 591 n.2 (3d Cir. 2012). "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); *accord AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (noting the "risk of 'in terrorem' settlements that class actions entail"); *Shady Grove*, 559 U.S. at 445 n.3 (Ginsburg, J., dissenting) (class certification "places pressure on the defendant to settle even unmeritorious claims"). As a result, "even a complaint which by objective standards may have very little chance of success at trial has a settlement value to the plaintiff out of any proportion to its prospect of success at trial." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 740 (1975). That pressure is especially acute in antitrust cases, which are "exceedingly complex, expensive, and lengthy," so that even anemic claims acquire enormous settlement value and few cases ever reach trial. *In re Auto. Refinishing Paint Antitrust Litig.*, 2008 WL 63269, at *5 (E.D. Pa. Jan. 3, 2008); *see also* Joanna C. Schwartz, *The Cost of Suing Business*, 65 DePaul L. Rev. 655, 660 (2016).

Only strict compliance with Rule 23 prevents transforming the class-action device from a tool of litigation efficiency into an instrument of extortion. *See In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1298 (7th Cir. 1995) (describing "settlements induced by a small probability of an immense judgment in a class action" as "'blackmail settlements'") (quoting Henry J. Friendly, Federal Jurisdiction: A General View 120 (1973)). By making California the nation's antitrust regulator and endorsing a "worry later" approach to class certification, the district court has charted a path for plaintiffs to extort their way to billions in settlements, making Rule 23 a dead letter.

The district court's approach to class certification also creates a roadmap for forum shopping. Enterprising plaintiff lawyers can file in California, invoke California's liability standards for the entire class, and preserve access to each state's damages rules—cherry-picking the most favorable combination of legal standards. That cannot be reconciled with the principle that "every state has an interest in having its law applied to its resident claimants," *Mazza*, 666 F.3d at 591–92 (quoting *Zinser*, 253 F.3d at 1187), or with this Court's admonition against allowing

"California to set antitrust enforcement policy for the entire country," *Stromberg*, 14 F.4th at 1074.

For businesses, the district court's novel approach creates profound uncertainty. A company doing business nationwide cannot know what legal standard will govern its conduct, because following the district court's path means the answer depends on the composition of a future class and the forum plaintiffs choose. Left with that uncertainty, businesses must either conform their conduct to the most restrictive State's rule—chilling procompetitive behavior that is lawful where it occurs—or accept the litigation risk of an unpredictable, court-assembled regime. Neither option serves consumers, who benefit from vigorous competition and clear legal rules. And leaving the order intact invites other courts to follow suit—treating one State's law as exportable to a nationwide class and forgoing any genuine predominance analysis whenever a multistate class can be repackaged as a common one. A trial requiring a single jury to apply 27 different damages frameworks is not "superior to other available methods" of adjudication. Fed. R. Civ. P. 23(b)(3). It is 27 overlapping trials crammed into a single proceeding—

an outcome Rule 23 forbids. *See In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1020 (7th Cir. 2002).

These consequences all trace to the same source: a class certified without the rigorous analysis Rule 23 demands. If allowed to stand, the district court's class certification order would undermine not only the interests of millions of business organizations, but also the integrity of the certification process under Rule 23(b)(3).

CONCLUSION

This Court should reverse the district court's order certifying the indirect purchaser class.

Respectfully submitted,

/s/ Ashley C. Parrish

Ashley C. Parrish
KING & SPALDING LLP
1700 Pennsylvania Avenue NW
Washington, DC 20006
(202) 737-0500
aparrish@kslaw.com

Ross E. Elfand
KING & SPALDING LLP
1290 Ave. of the Americas
14th Fl.
New York, NY 10104
(212) 556-2100

Benjamin T. Lee
KING & SPALDING LLP
2601 Olive Street
Suite 2300
Dallas, TX 75201
(214) 764-4600

Counsel for Amicus Curiae

Jennifer B. Dickey
Jonathan D. Urick
U.S. CHAMBER
LITIGATION CENTER
1615 H Street NW
Washington, DC 20062
(202) 463-5337

Counsel for the Chamber of Commerce of the United States of America

July 28, 2026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s) 26-2626

I am the attorney or self-represented party.

This brief contains 5,194 **words,** including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

- ○ complies with the word limit of Cir. R. 32-1.
- ○ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ◉ is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ○ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ○ complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
  - ☐ it is a joint brief submitted by separately represented parties.
  - ☐ a party or parties are filing a single brief in response to multiple briefs.
  - ☐ a party or parties are filing a single brief in response to a longer joint brief.
- ○ complies with the length limit designated by court order dated ______.
- ○ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/Ashley C. Parrish **Date** 07/28/2026
(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov