No. 25-14120

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SAROYA MARROW,

Plaintiff-Appellant,

v.

E.R. CARPENTER COMPANY, INC., D/B/A CARPENTER CO.,

Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Florida
No. 8:23-cv-02959-KKM-LSG

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Amicus Curiae the Chamber of Commerce of the United States of America ("Chamber"), through undersigned counsel, files this Certificate of Interested Persons and Corporate Disclosure Statement, listing the persons and entities interested in this appeal, as required by Federal Rule of Appellate Procedure 26.1 and 11th Cir. R. 26.1-1, in addition to the persons and entities listed in the Certificates of Interested Persons in briefs that were previously filed by the parties:

1. The Chamber of Commerce of the United States of America
2. Dos Santos, Audrey
3. Galeria, Janet
4. Reed, Alexander
5. Speers, Tyler
6. VerGow, Meaghan

The Chamber 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.

DATED: April 8, 2026

O'MELVENY & MYERS LLP

By: */s/ Meaghan VerGow*
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INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country. An important Chamber function 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* briefs in cases, like this one, that raise issues of concern to the nation's business community.[1]

The Chamber's many members collectively provide healthcare coverage to millions of Americans through employer-sponsored group health plans, many of which are subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and Consolidated Omnibus Budget Resolution Act of 1985 ("COBRA"). These members, and the business community at large, often face overbroad class actions under both ERISA and COBRA that purport to seek remedies on behalf of numerous uninjured class members. Such actions impose

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *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.

substantial costs on plan sponsors, with downstream impacts on the employees covered by these employer-sponsored plans. Litigation surrounding the adequacy of COBRA notices, in particular, has surged in recent years. Threats of sizeable statutory penalties—such as $110 daily per participant or qualified beneficiary—combined with the inevitable cost of litigation often drive plan sponsors into settlements, regardless of the merits of the underlying action. The Chamber and its members have a strong interest in avoiding the adverse consequences for employers, employee benefit plans, and employees resulting from frivolous class-action litigation under ERISA and COBRA, including by ensuring that courts rigorously enforce Article III and Rule 23 before certifying a proposed class action.

STATEMENT OF THE ISSUES

I. Whether Article III requires a plaintiff alleging a COBRA notice deficiency to demonstrate a concrete injury fairly traceable to the alleged deficiency, rather than relying on a bare statutory violation.

II. Whether Rule 23(b)(3) permits certification of a class where member injuries cannot be determined without individualized evidence.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is one chapter in a sustained campaign to exploit COBRA's technical notice requirements to pursue meritless claims against employee benefit plan sponsors. Beginning around 2016, plaintiffs' attorneys began filing putative class actions in volume against plan sponsors, alleging deficiencies in COBRA election notices. *COBRA Notice Litigation Update: Recent Decision Signals Some Skepticism of Plaintiffs' Claims*, Groom Law Group (Sept. 22, 2023), https://tinyurl.com/y6bzv5hm. Since then, more than seventy such class-action lawsuits have been filed, most targeting large plan sponsors and alleging technical violations of the election notice requirements mandated by COBRA. *Id.* The putative classes in these cases can reach thousands of potential members, and seek severe statutory penalties, among other things, for minor technical deviations from COBRA's notice requirements.

The mechanics of this litigation strategy are straightforward. Attorneys track down potential plaintiffs, often by seeking out former employees with preexisting employment disputes, such as a wrongful termination claim. *Understanding the Rise in COBRA Litigation*, MedcomBlog (June 27, 2024), https://tinyurl.com/mvxvktxv. After identifying a plaintiff, counsel then pursues litigation alleging that the plaintiff's COBRA notice was technically deficient in

some way and seeking to certify a class of all former employees who received such notices.

This case illustrates the typical scenario. Plaintiff testified that after speaking with her employment counsel on the day she was terminated, she contacted Defendant's HR department—not to ask about her COBRA rights, but to threaten Defendant with daily penalties if it failed to provide the required COBRA notice. Answering Br. 4. Though Plaintiff timely received her COBRA notice a week later, she never called the number provided on the notice or attempted to elect coverage. *Id.* at 5–6. Nevertheless, she now asserts that technical issues with the COBRA notice can be linked to her failure to elect coverage, subsequent medical expenses, and forgone medical treatment. Opening Br. 4–6. The district court correctly held that the evidence failed to complete that causal chain. Dismissal Order, ECF No. 59, at 12.

To stem the tide of this flood of frivolous litigation, courts must rigorously enforce Article III standing requirements and Rule 23 class-certification requirements. Courts must conduct a thorough standing analysis as to both the named plaintiff and potential class members to ensure there is a real-world injury fairly traceable to the alleged harm. And it is likewise critical for courts considering certification under Rule 23(b)(3) to ensure that common questions predominate over individual ones. This conserves judicial and party resources,

ensuring that parties do not litigate a class action to judgment only to have the court ultimately conclude the class includes uninjured members (and that class member recovery must be determined through numerous mini-trials). Strict adherence to the standing and class-certification standards also ensures that defendants do not face undue settlement pressure from the threat of compounding statutory penalties based on the claims of uninjured persons who ultimately could not recover.

The business community faces intense settlement pressure in these cases. Statutory penalties multiply quickly in class actions where liability accrues per person per day across a class of potentially thousands, creating urgency for plan sponsors and administrators to settle even frivolous cases rather than incurring the costs of mounting a defense, risking disruptions to business, and depreciating their ability to provide necessary employee benefits. The decisions below should be affirmed.

ARGUMENT

I. ARTICLE III AND RULE 23 PROVIDE A CRITICAL FRAMEWORK FOR WEEDING OUT FRIVOLOUS COBRA NOTICE CLAIMS

A. Standing Requires More Than a Bare Statutory Violation

"Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *TransUnion LLC v. Ramirez*, 594 U.S.

413, 431 (2021) (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 466 (2016) (Roberts, C.J., concurring)). "In an era of frequent litigation"—including "class actions"—"courts must be more careful to insist on the formal rules of standing, not less so." *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 146 (2011). For standing, "an important difference exists between (i) a plaintiff's statutory cause of action to sue a defendant over the defendant's violation of federal law, and (ii) a plaintiff's suffering concrete harm because of the defendant's violation of federal law." *TransUnion*, 594 U.S. at 426–27. In addition, even assuming a plaintiff in a case like this one properly alleges a real-world harm, that harm must be fairly traceable to the alleged COBRA notice deficiencies. "An 'asserted informational injury that causes no adverse effects cannot satisfy Article III.'" *Id.* at 442 (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020)). After all, "Article III grants federal courts the power to redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions." *TransUnion LLC*, 594 U.S. at 427 (quotation omitted). In other words, a bare statutory violation—the failure of a COBRA notice to include a particular required disclosure—is not sufficient to confer Article III standing if it did not cause the plaintiff any real-world harm. "There is no ERISA exception to Article III." *Thole v. U. S. Bank N.A*, 590 U.S. 538, 547 (2020).

The standing requirement performs an essential and irreplaceable gatekeeping function in the context of COBRA notice litigation. When COBRA notices are materially defective in a manner that actually harms the recipients, the law provides appropriate remedies. But where, as here, a plaintiff did not elect COBRA coverage and alleges without any supporting facts that she was harmed by a deficient notice, the standing inquiry rightly focuses on whether the alleged deficiency actually caused the complained-of harm.

District courts have correctly dismissed meritless COBRA notice claims for this very reason. For example, in *Carter v. Southwest Airlines Co.*, the district court dismissed a COBRA notice claim because the plaintiff "failed to allege a concrete economic injury," and failed to explain how the purported notice deficiency "harmed her or how it interfered with her ability to elect COBRA coverage." 2020 WL 7334504, at *3, *5 (M.D. Fla. Dec. 14, 2020). The plaintiff alleged that she could not timely exercise her right to enroll in COBRA and that she refrained from seeking medical care because she did not receive a timely COBRA notice. *Id.* But the plaintiff had health insurance during the relevant period; thus, she could not have suffered an economic injury nor been "injured by a lack of information about COBRA during a period when she had no need to elect COBRA coverage." *Id.* at *4. Because the plaintiff could not demonstrate a real-world injury that was fairly traceable to the alleged notice deficiency, the court

dismissed her claims for lack of standing and for failure to state a claim. *Id.* at *7. *See also, e.g.*, *Bryant v. Wal-Mart Stores, Inc.*, 2020 WL 4333452, at *17, *19 (S.D. Fla. July 15, 2020) (dismissing claims because named plaintiffs could not demonstrate "any causal connection between the alleged COBRA notice deficiency and any harm").

Here, although Plaintiff's amended complaint survived the motion to dismiss in the district court, her case ultimately was dismissed because she was unable to establish that her injuries were traceable to the COBRA notice deficiency, thus depriving the court of subject matter jurisdiction. Plaintiff had ample opportunity in discovery—including her own deposition—to develop evidence linking her claimed injury to the purported COBRA notice deficiencies. That she was unable to do so is telling, and reflects that some COBRA notice claims are not efforts to redress violations that inflict real harms on real people. *See infra* at 13–16. Fortunately, Article III ultimately precludes a plaintiff from relying on unsubstantiated allegations alone; its requirements act as a barrier at each "successive stage[] of the litigation," requiring "evidence" of injury once a case proceeds past the pleadings. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

If this Court were to hold that Plaintiff has standing to pursue her claims in this case, it would effectively be deciding there is no concrete injury requirement in COBRA notice litigation. Such an expansive interpretation of the standing

doctrine would have severe consequences for the business community and employees alike. Essentially, any recipient of a technically deficient COBRA notice could file suit and not only survive dismissal but also obtain certification of a class without offering a shred of evidence that the deficiency had any impact on their, or anyone else's, decision to forgo coverage. That is a result Article III does not permit, and it would cause untold harm to the many employers the Chamber represents, with cascading effects on their employees through increased cost to the healthcare plans that cover them.

B. Courts Must Not Certify Classes Known to Contain Uninjured Members

Rule 23 likewise precludes giving a pass to classes whose members cannot establish an injury caused by claimed COBRA notice violations. It is the job of the plaintiff seeking to certify a class under Rule 23(b)(3) to "affirmatively demonstrate" that common questions predominate over individual ones. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)); *see also Comcast*, 569 U.S. at 34 (noting "the court's duty to take a 'close look' at whether common questions predominate over individual ones" (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997))). That obligation has special force when some class members lack meritorious claims, including because they have not been injured and therefore lack Article III standing. Rule 23 puts the burden on plaintiffs to demonstrate that

absent class members have standing at the class-certification phase. As Justice Kavanaugh has explained, "a federal court may not certify a damages class that includes both injured and uninjured members" because "common questions do not predominate." *Lab'y Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 328 (2025) (Kavanaugh, J., dissenting from dismissal); *see Amchem*, 521 U.S. at 612.

Thus, in cases like this one, Article III requires the district court to evaluate whether each putative class member suffered an injury traceable to the alleged notice deficiency—that is, whether each proposed class member was actually confused or misled by the deficient notice to their detriment. To resolve a COBRA notice claim in a plaintiff's favor, a court not only has to determine whether the plaintiff received medical care during the COBRA period and whether they paid out of pocket for that care; it also has to evaluate whether the alleged COBRA notice deficiency was the *cause* of that asserted injury—the reason *why* the plaintiff did not elect COBRA coverage. That determination is inherently individualized, as the district court here recognized, Order Denying Class Cert, ECF No. 54 at 13–14, and plaintiffs do not satisfy Rule 23(b)(3)'s requirement that common issues predominate if a court must hold a series of mini-trials to determine the existence of and reason for that injury among hundreds or thousands of uniquely situated class members, *see* Answering Br. 38–39 (collecting cases). Absent a rigorous analysis of each class member's standing, the putative class

would swell with uninjured members like Plaintiff here, artificially inflating the defendant's exposure to statutory penalties that are directly tied to the size of the class. While uninjured class members cannot ultimately recover, the cost of defending a large class action and the threat of overwhelming liability exert tremendous settlement pressure on defendants facing even meritless claims by large numbers of uninjured persons.

* * *

The Article III standing mandate and the Rule 23 predominance requirement are not bureaucratic obstacles to justice. They are the mechanisms by which federal courts ensure that the coercive power of class-action litigation is reserved for cases where real people have suffered real harm from real violations that can be properly addressed in collective litigation. The district court applied those standards correctly here. If Plaintiff's proposed standards were adopted—permitting COBRA litigation to proceed and classes to be certified despite containing members with no demonstrated injury, traceable to nothing more than a notice's technical deviation from counsel's preferred boilerplate—every employer that uses a standard-form COBRA notice would be perpetually in the crosshairs of the plaintiffs' bar. The resulting wave of meritless litigation would cost American businesses hundreds of millions of dollars, harming employees and validating a litigation model that settled law gives no legitimate place in the federal courts.

II. THE PROLIFERATION OF FRIVOLOUS COBRA NOTICE LITIGATION IS HARMFUL TO EMPLOYERS AND EMPLOYEES ALIKE

In the typical COBRA notice litigation scenario, plaintiffs bring claims about technical violations against large corporations in the absence of real injuries, seeking to certify substantial classes of uninjured notice recipients to leverage large settlements. This model has proven lucrative for plaintiffs' firms, to the detriment of businesses and the employees to whom they provide healthcare coverage.

A. COBRA Notice Claims Frequently Settle Regardless of Merit

The penalties for COBRA notice violations can quickly add up. Plan administrators may be penalized up to $110 per day for each failure to provide a compliant COBRA notice under 29 U.S.C. § 1132(c)(1). *See* 29 C.F.R. § 2575.502c-1. In addition to the daily penalty under ERISA, COBRA violations can also trigger an IRS excise tax under an analogous penalty structure of $100 per day per qualified beneficiary (with a maximum of $200 per day for the same qualifying event). 26 U.S.C. § 4980B(b)(1), (c)(3)(B).

These penalties compound quickly in a class action, particularly one inflated by large numbers of uninjured persons, which is exactly why these cases have been pursued against very large employers with substantial numbers of former employees. And ERISA's fee-shifting framework also means that defending a COBRA notice case through judgment risks an award of attorneys' fees, on top of

the foregoing penalties. 29 U.S.C. § 1132(g)(1) ("[T]he court in its discretion may allow a reasonable attorney's fee and costs of action to either party."). Together, this substantial penalty and fee exposure creates overwhelming pressure to settle, even where the underlying claim is entirely without merit and even where no class member can demonstrate any injury traceable to the notice's deficiencies. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978) ("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."). While courts have discretion under COBRA to award less than $110 per violation per day,[2] the risk of maximum liability accruing daily across a class of potentially thousands of members creates settlement pressure wholly independent of whether any class member suffered any real-world harm.

In fact, between 2016 and 2023, the vast majority of the seventy-plus COBRA notice class actions settled. *COBRA Notice Litigation Update*, *supra*. These settlements were often reached at the outset of litigation, before any discovery had been conducted to determine the existence of any injury in fact, for the simple reason that defendant companies rationally concluded that the cost of

[2] Courts have discretion to consider the degree of prejudice to a defendant, if any, in calibrating how much of a penalty to award per violation. *Thibodeaux v. City of Atlanta*, 2025 WL 2505600, at *6 (11th Cir. Sept. 2, 2025) (citing *Scott v. Suncoast Beverage Sales, Ltd.*, 295 F.3d 1223, 1231-32 (11th Cir. 2002)).

litigating—even with a winning defense—exceeded the cost of paying plaintiffs' counsel to go away. Charles F. Seemann III & Kyle R. Bevan, *Companies Face Increased Litigation Over COBRA Notices*, Society for Human Resource Management (May 26, 2022), https://tinyurl.com/47ecy52f.

The recent wave of COBRA notice litigation includes a clear pattern of cases in this circuit weaponizing COBRA's technical notice requirements to leverage compounding statutory penalties across large putative classes to pressure major companies into settlements even though nothing in the COBRA notices prevented plaintiffs from understanding or exercising their COBRA rights. The following are just a few examples of the facially meritless COBRA notice claims that have resulted in a settlement.

- In *Rigney et al v. Target Corp.*, No. 8:19-cv-01432 (M.D. Fla.), the plaintiffs alleged that Target's COBRA notice failed to explain how to enroll in COBRA and omitted the address for COBRA premium payments, among other things, causing them to lose insurance coverage and incur medical bills. ECF No. 27. But plaintiffs did not allege they ever even attempted to enroll in COBRA, undermining any causal link between the alleged omissions and the loss of coverage. *Id.* The case settled while the defendant's motion to dismiss was pending. ECF Nos. 33, 37, 47. The court approved a $1.6M fund for approximately 92,000 class members, but which, with attorneys' fees of over $500,000, resulted in just $10 per class member. ECF Nos. 53, 54, 58.

- In *Morris v. US Foods, Inc.*, No. 8:20-cv-105 (M.D. Fla.), plaintiffs alleged that they received a deficient COBRA notice and that their failure to understand the notice rendered them unable to "make an informed decision about their health insurance," which ultimately caused them to lose their health insurance coverage and forgo necessary medical care. ECF No. 19. But plaintiffs did not allege they made any efforts to enroll

in COBRA coverage, or that the purported notice deficiencies prevented them from doing so. The case settled while the defendant's motion to dismiss was pending. ECF Nos. 22, 35. The court approved a $450,000 fund for 18,000 class members, but after attorneys' fees of $150,000 class members only received around $40 each, subject to reduction if insufficient funds existed to cover each claim after payment of attorneys' fees and costs. ECF Nos. 54, 56.

- In *Bacs et al. v. Capital One Financial Corp.*, No. 8:21-cv-2852 (M.D. Fla.), plaintiffs alleged that the COBRA notice failed to identify the specific termination date for coverage. ECF No. 30. But they did not allege that the failure to provide the termination date caused them to decline coverage they otherwise would have elected or that they would have elected coverage if the end date had been included. *Id.* Ultimately, the parties settled, resulting in a $285,000 fund for almost 16,000 class members, who were each eligible to receive $7 to $10 after class counsel's fees of $95,000. ECF Nos. 65, 72, 75, 83.

The pattern from these cases confirms what large employers know from direct experience: the overwhelming majority of COBRA class actions are not filed to vindicate genuine victims harmed by deficient notices, but rather to exploit the coercive potential of statutory penalties for the principal purpose of generating substantial attorneys' fees.

B. The Costs of Defending or Settling Meritless COBRA Notice Claims Are Ultimately Borne by Employees

The financial stakes in any certified COBRA notice class action are staggering. Were a class of even a few thousand members certified in this case alone, the potential penalty exposure—including $110 per day per class member under COBRA, and $100 per day per beneficiary under the IRC—could be enormous. The coercive dynamic this creates is not just theoretical, as suggested

by the number of these cases filed since 2016 that have settled. *COBRA Notice Litigation Update*, *supra*.

Those settlements consume resources that could otherwise be allocated to employee benefits. And these cases also divert management attention, generate significant discovery costs, and—crucially—may adversely impact an employer's decisions regarding benefit plan design. The end result is a transfer of wealth from existing plan participants to litigation attorneys—undermining ERISA's very purpose. *Foster v. Sedgwick Claims Mgmt. Servs., Inc.*, 842 F.3d 721, 733 (D.C. Cir. 2016) ("Because administrative and litigation costs can 'unduly discourage employers from offering [ERISA] plans in the first place,' ERISA encourages the creation of benefit plans and maintaining high levels of benefits in existing plans by promoting efficiency and minimizing administrative and litigation costs." (quoting *Conkright v. Frommert*, 559 U.S. 506, 517 (2010))). Simply put, meritless employee benefit litigation "make[s] everyone worse off." *Cooper v. IBM Pers. Pension Plan*, 457 F.3d 636, 642-43 (7th Cir. 2006).

COBRA's notice enforcement scheme exists to protect employees who are genuinely harmed by inadequate notices—not to furnish a litigation bonanza for the plaintiffs' bar at the expense of the nation's employers and, ultimately, the workers they employ. The district court correctly applied well-established standing and class-certification principles to bring this litigation to a close.

CONCLUSION

The Court should affirm the district court's orders dismissing Plaintiff's claim for lack of standing and denying class certification.

DATED: April 8, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with: (1) the type-volume limitation of Fed. R. App. P. 29(a)(5), 32(a)(7)(B)(i), and 11th Cir. R. 32-4 because it contains 3,777 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief 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) and 11th Cir. R. 32-3 because it has been prepared in a proportionally spaced typeface using Microsoft Word, in 14-point Times New Roman, and is double-spaced.

/s/ Meaghan VerGow
Meaghan VerGow

CERTIFICATE OF SERVICE

I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit on April 8, 2026, by using the appellate CM/ECF system, and service was accomplished for all counsel of record by the appellate CM/ECF system.

/s/ Meaghan VerGow
Meaghan VerGow