No. 23-55742

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAINTERS & ALLIED TRADES DISTRICT COUNCIL 82 HEALTH CARE FUND, third-party healthcare payor fund; ANNIE M. SNYDER, a California consumer; RICKEY D. ROSE, a Missouri consumer; JOHN CARDARELLI, a New Jersey consumer; MARLYON K. BUCKNER, a Florida consumer, on behalf of themselves and all others similarly situated; SYLVIE BIGORD, a Massachusetts consumer,

Plaintiffs-Appellees,

v.

TAKEDA PHARMACEUTICAL COMPANY LIMITED, a Japanese Corporation; TAKEDA PHARMACEUTICALS USA INC, an Illinois corporation formerly known as Takeda Pharmaceuticals North America Inc; ELI LILLY AND COMPANY, an Indiana corporation,

Defendants-Appellants.

On appeal from the United States District Court for the Central District of California No. 2:17-cv-07223, Hon. John W. Holcomb

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR REHEARING

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

Counsel for Amici Curiae

July 28, 2025

(Additional counsel on inside cover)

Audrey Dos Santos
Matthew P. Sappington
U.S. CHAMBER
LITIGATION CENTER
1615 H Street NW
Washington, DC 20062

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

James C. Stansel
Melissa B. Kimmel
Julie Straus Harris
PhRMA
670 Maine Avenue SW
Suite 1000
Washington, DC 20024

Counsel for Amicus Curiae
Pharmaceutical Research and Manufacturers of America
("PhRMA")

CORPORATE DISCLOSURE STATEMENT

Amicus curiae the Chamber of Commerce of the United States of America ("Chamber") 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 percent or greater ownership in the Chamber.

Amicus curiae Pharmaceutical Research and Manufacturers of America ("PhRMA") is a trade association with its headquarters in the District of Columbia. PhRMA has no parent corporation, and no publicly held company owns 10 percent or more of its stock. PhRMA's member companies are listed on its website at https://phrma.org/en/About.

/s/ Ashley C. Parrish
Ashley C. Parrish

Counsel for Amici Curiae
the Chamber of Commerce
of the United States of America
and PhRMA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

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.

The Pharmaceutical Research and Manufacturers of America ("PhRMA") represents the country's leading innovative biopharmaceutical research companies, which are focused on developing innovative medicines that transform lives and create a healthier world. PhRMA's members are fighting for solutions to ensure patients can access and afford medicines that prevent, treat, and cure disease. Over

[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties consented to the filing of this brief.

the last decade, PhRMA member companies have invested more than $800 billion in the search for new treatments and cures, and they support nearly five million jobs in the United States.

Both the Chamber's and PhRMA's members and their subsidiaries include businesses that are often targeted in class actions. Because class certification creates immense pressure to settle even unmeritorious claims, they have a significant interest in ensuring that courts faithfully apply the requirements of Rule 23 before permitting a case to be certified as a class action. Those interests are only heightened in cases where, as here, plaintiffs seek to pursue novel treble-damages claims, with a threat of billions in potential liability, under the Racketeer Influenced and Corrupt Organizations Act.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case raises an important, recurring question concerning courts' authority to deviate from Rule 23's requirements, here in a putative class action that seeks to recover billions in treble damages under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Plaintiffs' novel claims are grounded on the theory that a pharmaceutical manufacturer's alleged non-disclosures caused healthcare companies and other third-party payors to pay too much for, or to purchase too much of, one of its pharmaceutical products. Those claims are not suitable for class-action treatment because they depend on highly individualized inquiries into individual physician prescribing decisions, and there is no reasonable way on a class-wide basis to determine what portion of a healthcare company's costs are attributable to the alleged non-disclosures as opposed to other independent factors. Nonetheless, the panel majority affirmed the district court's decision to certify a first-of-its-kind class action based on a disputed market-share extrapolation that relies on generalized assumptions about causation and injury.

The Court should grant rehearing en banc because the panel majority's decision departs from settled precedent, cannot be reconciled

with the Supreme Court's instructions, and deepens a well-recognized split in circuit court authority. Contrary to Rule 23's requirements, the panel majority improperly affirmed certification of the class, even though it contains potentially thousands of uninjured class members and, as a result, includes claims of absent class members who do not have standing. The panel majority acknowledged that the district court never identified an appropriate mechanism for identifying uninjured class members. Its suggestion that there might nonetheless be an unidentified yet "obvious strategy" for ascertaining some uninjured parties, and its view that thousands of uninjured class members are insignificant because they make up only a small percentage of the class, directly conflicts with precedent. Plaintiffs have the burden to satisfy all of Rule 23's requirements, and the district court improperly assumed that uninjured class members can be identified when plaintiffs never made that essential showing.

More fundamentally, the Court should grant rehearing because the panel majority affirmed the district court's flawed decision to take plaintiffs' expert analysis "at face value" and faulted *defendants* for purportedly not proving that individualized issues predominate over

common ones. As this Court has previously held, it is *plaintiffs* that bear the burden of justifying class certification; defendants need only offer evidence sufficient to raise the possibility of individualized class-member-by-class-member inquiries. *See Van v. LLR, Inc.*, 61 F.4th 1053, 1066 (9th Cir. 2023). Defendants satisfied that burden here. Plaintiffs have not demonstrated that they can prove causation and injury on a class-wide basis, and they should not be permitted to avoid those essential showings merely by dressing up their individualized claims in the guise of a novel fraud-on-the-market theory.

As Judge Miller recognizes in dissent, the panel majority's permissive approach imposes sweeping, unwarranted burdens on American businesses and the economy as a whole. It threatens pharmaceutical manufacturers with enormous class-action exposure whenever a plaintiff alleges that purported misstatements or omissions in marketing materials or drug labeling may have resulted in additional prescriptions or higher prices. More broadly, it will exacerbate the growing problem of courts turning a blind eye to class-action abuse. Instead of treating class actions as an exception to the ordinary rule that favors individual litigation, as the Supreme Court has instructed, the

panel majority's decision allows plaintiffs to circumvent Rule 23's requirements and engage in abuses that cripple businesses and devastate consumers alike.

The Court should grant en banc review, vacate the panel decision, and reverse the class-certification decision below.

ARGUMENT

I. The Court should grant en banc review to avoid an unnecessary split in authority and to bring the panel's decision in line with controlling Supreme Court precedent.

Class actions are "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Comcast Corp. v. Behrand*, 569 U.S. 27, 33 (2013) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (emphasizing the same point). Because class certification allows courts to conclusively resolve the legal claims of absent class members who are not formally joined as parties, it raises "important due process concerns" and questions relating to the court's power to award appropriate relief. *Unger v. Amedisys Inc.*, 401 F.3d 316, 320 (5th Cir. 2005). In "an era of frequent litigation" — and especially "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); *see also Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2566 (2025) (Alito, J. concurring) (noting risk of "'potential unfairness'" for "absent class members and confusion (and pressure to settle) for defendants" (quoting *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982))).

Rule 23 provides crucial safeguards that must be satisfied *before* plaintiffs are permitted to take advantage of class-action procedures. *See Taylor v. Sturgell*, 553 U.S. 880, 900–01 (2008). As this Court has repeatedly emphasized, a district court must conduct a "rigorous analysis" to ensure that Rule 23's prerequisites are met, including that absent class members have demonstrated Article III standing. *See Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC,* 31 F.4th 651, 664 (9th Cir. 2022); *see also Van*, 61 F.4th at 1067. Enforcing that requirement is essential to ensuring that courts do not exceed their proper function by "delegat[ing] . . . judicial power to the plaintiffs." *Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharm. Co.,* 2025 WL 1683472, at *6 (9th Cir. June 16, 2025) (Miller, J., dissenting) (quoting *West v. Prudential Sec., Inc.*, 282 F.3d 935, 938 (7th Cir. 2002)). The "exercise of judicial power" is "restricted to litigants who can show 'injury in fact' resulting from the action which they seek to have the court adjudicate." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982). "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)).

This Court should grant en banc review to address the significant conflicts between the panel's decision and controlling precedent in this important area of the law. The panel recognized that at least several thousand class members are unlikely to have been injured but nonetheless concluded that any challenge to identifying those uninjured class members did not defeat predominance. *See Painters*, 2025 WL 1683472, at *4. But that approach cannot be reconciled with precedent, which requires that plaintiffs bear the burden of satisfying all of Rule 23's requirements. *See Wal-Mart*, 564 U.S. at 350. To obtain class certification, plaintiffs must "*affirmatively demonstrate* [their] compliance with [Rule 23] — that is, [they] must be prepared *to prove* that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Id.* (emphasis altered); *see also Comcast*, 569 U.S. at 33 (named plaintiff must "'affirmatively demonstrate'" compliance with Rule 23 "through evidentiary proof" (quoting *Wal-Mart*, 564 U.S. at 350)). If plaintiffs cannot meet that burden by a "preponderance of the evidence,"

the class should not be certified. *Van*, 61 F.4th at 1066–67, 1069; *see* Fed. R. Civ. P. 23(c)(1) advisory committee's note to 2003 amendment.

That obligation has special force when some class members may lack meritorious claims, including because they have not been injured and therefore lack Article III standing. *Van*, 61 F.4th at 1067. Rule 23 puts the burden on plaintiffs to demonstrate that absent class members have standing at the class-certification phase. As Justice Kavanaugh recently 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* (*LabCorp*), 145 S. Ct. 1608, 1609 (2025) (dissenting from dismissal); *see Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 612 (1997); *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 565 n.12 (9th Cir. 2019).

Consistent with these principles, if some putative absent class members may lack standing, Rule 23(b)(3) requires courts to deny certification or, at a minimum, to ensure that the class can be purged of uninjured members without burdensome individualized inquiries. *See TransUnion*, 594 U.S. at 431 ("[e]very class member must have Article III standing in order to recover individual damages"); *In re Rail Freight*

Fuel Surcharge Antitrust Litig. – MDL No. 1869, 934 F.3d 619, 624 (D.C. Cir. 2019). Contrary to the panel's conclusions, a trial court cannot ignore these issues by merely noting that uninjured class members make up only a small percentage of the class or speculating that there may be an "obvious strategy"' for identifying some of the uninjured class members. *See Painters*, 2025 WL 1683472, at *4. To the contrary, a court must identify a reasonable "winnowing mechanism" to cull meritless claims, and the process must be "robust enough to preserve the defendants' Seventh Amendment and due process rights to contest every element of liability and to present every colorable defense." *Rail Freight*, 934 F.3d at 625. That mechanism must be identified *before* a class may be certified. *See Painters*, 2025 WL 1683472, at *8 (Miller, J. dissenting) ("[T]he 'absence of any winnowing mechanism' means that 'the need for individualized proof of injury and causation destroy[s] predominance" (quoting *Rail Freight*, 934 F.3d at 623–24)); *In re Asacol Antitrust Litig.*, 907 F.3d 42, 58 (1st Cir. 2018).

The Court should therefore grant en banc review because the panel's decision fails to comply with these settled principles and, as the petition for rehearing explains, deepens an existing split in authority.

See Johannessohn v. Polaris Indus. Inc., 9 F.4th 981, 986 (8th Cir. 2021); *Prantil v. Arkema Inc.*, 986 F.3d 570, 579 (5th Cir. 2021); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 987 (9th Cir. 2011). The panel's permissive approach simply cannot be reconciled with the basic requirements of due process and the Rules Enabling Act, which mandates that courts interpret Rule 23 in a manner that does not "abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b).

II. The Court should grant review because the panel majority failed to require the district court to conduct the "rigorous analysis" necessary to assess issues of causation and injury.

Although the panel majority contends that the district court engaged in a "rigorous analysis," it failed to apply that standard consistent with precedent. By permitting certification of "a sprawling class action based on millions of prescribing decisions by thousands of individual physicians" where a rigorous analysis "would have shown that individual issues predominate," the district court abused its discretion in certifying a class. *Painters*, 2025 WL 1683472, at *10 (Miller, J. dissenting).

To conduct a "rigorous analysis" of plaintiffs' claims, a court must "look beyond the pleadings to understand the claims, defenses, relevant

facts, and applicable substantive law in order to make a meaningful determination of the certification issues." *Yates v. Collier*, 868 F.3d 354, 362 (5th Cir. 2017) (quotation marks omitted); *see also Ellis*, 657 F.3d at 981–83 ("a district court *must* consider the merits if they overlap with the Rule 23(a) requirements"). Where appropriate, the required analysis includes "[w]eighing conflicting expert testimony," "[r]esolving expert disputes," and "judging the persuasiveness of the evidence presented." *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 323–24 (3d Cir.), *as amended* (Jan. 16, 2009); *Ellis*, 657 F.3d at 982. A court must determine whether the case can be effectively tried without prejudicing defendants' ability to litigate their individualized defenses. *See Wal-Mart*, 564 U.S. at 361–62.

Plaintiffs allege that manufacturers conspired to fraudulently market a drug (Actos) by allegedly failing to provide warnings concerning the risk of bladder cancer. Claims that rely on allegations of fraud are rarely suitable for class treatment because of the need to address individualized issues of causation, reliance, and injury. *See In re St. Jude Med., Inc.*, 522 F.3d 836, 838 (8th Cir. 2008) ("Because proof often varies among individuals concerning what representations were received, and

the degree to which individual persons relied on the representations, fraud cases often are unsuitable for class treatment.").

That unsuitability is especially pronounced in the prescription-drug context, where class-wide proof is often impossible given "the individualized nature of physicians' prescribing decisions." *Sergeants Benevolent Ass'n Health & Welfare Fund v. Sanofi-Aventis U.S. LLP*, 806 F.3d 71, 89–90 (2d Cir. 2015). Those decisions are, by their very nature, "multifaceted and individualized," *id.* at 92, and "influenced by a number of things . . . [besides] representations by [the] manufacturer," *Ironworkers Loc. Union No. 68 v. AstraZeneca Pharms. LP*, 585 F. Supp. 2d 1339, 1344 (M.D. Fla. 2008). Physicians undergo years of training and study, including ongoing medical education; they consult with other doctors; they attend conferences and seminars; they consult scientific literature; and they obtain the patient's relevant clinical experience, both with the particular drug and overall medical history.

Physicians thus learn about "a drug through multiple sources, only one of which might be the drug manufacturer's promotions and literature." *Ironworkers Local Union 68 v. AstraZeneca Pharms., LP*, 634 F.3d 1352, 1362 (11th Cir. 2011); *see Sidney Hillman Health Ctr. v.*

Abbott Labs., 873 F.3d 574, 577 (7th Cir. 2017) (explaining that physicians change their prescribing practices based on a host of information, some of which "may have dominated over anything [the manufacturer] did"); *UFCW Loc. 1776 v. Eli Lilly & Co.*, 620 F.3d 121, 135 (2d Cir. 2010) (noting that physicians take into account numerous individualized considerations when prescribing medication). These myriad preferences and circumstances that shape an individual physician's decision to prescribe a drug to a particular patient make class-wide presumptions about that behavior almost always improper. *See Sidney Hillman,* 873 F.3d at 577 (noting the "difficulties" of "[d]isentangling the effects of the improper promotions from the many other influences on physicians' prescribing practices"); *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1085 (6th Cir. 1996); *see also Poulous v. Caesars World, Inc.*, 379 F.3d 654, 665–66 (9th Cir. 2004).

And physicians are not the only decisionmaker in the causal chain. For example, even before a physician decides whether to prescribe a drug, pharmacy benefit managers decide whether to recommend adding the drug to a third-party payor's formulary, and third-party payors must decide whether to accept the recommendation to place the drug on the

formulary, making the drug eligible for reimbursement. *See* PhRMA *Amicus* Brief at 9-10 (COA ECF 25). These highly sophisticated entities do not accept pharmaceutical company marketing statements at face value. Rather, they employ drug utilization review and formulary committees to review medical literature and carefully scrutinize decisions about the safety, efficacy, and cost-effectiveness of the medications for which they are paying. *See Int'l Bhd. of Teamsters, Loc. 734 Health & Welfare Tr. Fund v. Philip Morris Inc.*, 196 F.3d 818, 826 (7th Cir. 1999).

The complex and individualized nature of decisions to prescribe and reimburse the cost of prescription medications precludes class certification in this case. The certified class contains numerous third-party payors that have different formularies and reimburse prescriptions from a medley of prescribers, with each exercising diverse medical judgments with respect to unique patients who have varied diagnoses and assorted medical histories. Many doctors would have prescribed Actos to individual patients even if defendants had provided different warnings. Plaintiffs cannot show on a class-wide basis that the alleged

misrepresentations caused class members' alleged injuries. *See* AOB 36–37.

Instead of recognizing that these individualized issues preclude class certification, the panel majority affirmed the district court's reliance on plaintiffs' flawed statistical model, which predicted that almost all members of the class would have suffered some injury. *See Painters*, 2025 WL 1683472, at *4. But the district court did not weigh the conflicting evidence between plaintiffs' and defendants' respective experts, nor did it resolve the disputes between them. *Id.* at *7 (Miller, J. dissenting). In fact, the district court made no findings that the model was accurate or that plaintiffs would be able to use the model to identify *which* members suffered injury and *which* did not. Instead, the district court accepted plaintiffs' model and estimates "at face value," without ruling on defendants' contrary evidence and arguments demonstrating that plaintiffs' analysis was flawed. *Id.* The district court erroneously found that it would be wrong to "prejudge the accuracy" of plaintiffs' expert evidence before trial, and that it was up to the finder of fact to evaluate the expert's findings. *Id.*

By affirming the district court's erroneous analysis, the panel majority violated the bedrock requirement that the requisite analysis be more than an empty gesture; instead, it must be rigorous — sufficient to determine whether plaintiffs have demonstrated that their claims can be tried on a class-wide basis and without eliminating defendants' rights to raise individualized defenses, even when that inquiry requires examining the merits. *See Wal-Mart*, 564 U.S. at 351–52; *Comcast*, 569 U.S. at 33–34; *see also Amchem*, 521 U.S. at 615 (Rule 23's requirements demand a "close look"). Moreover, contrary to the panel's suggestions, *see Painters*, 2025 WL 1683472, at *3, *defendants* are not required to prove anything with respect to predominance. *Van*, 61 F.4th at 1069. It is plaintiffs' burden to prove that discovery and trial can occur without individualized issues predominating over common issues. *Id.* at 1067 n.11; *see also Ellis*, 657 F.3d at 984.

In short, it was plaintiffs' burden to prove that individualized questions did not predominate, it was the district court's obligation to rigorously analyze plaintiff's purported proof, and it was the panel's responsibility to hold the district court to those stringent requirements. Simply accepting "at face value" the assertions made by plaintiffs' expert

was not sufficient. *See Painters*, 2025 WL 1683472, at *7 (Miller, J. dissenting) (contending that the district court's failure to "grapple with [defendants'] three critical objections" is reversable error). This Court should grant en banc review to correct these errors.

III. Eroding class-certification standards inflicts broad harm on businesses and consumers.

The panel majority failed to consider the "serious real-world consequences" of its relaxed approach to enforcing Rule 23's essential requirements. *LabCorp*, 145 S. Ct. at 1612 (Kavanaugh, J., dissenting from dismissal). Class-action litigation in the United States imposes staggering costs on U.S. businesses and consumers.

Those costs are "one of the fastest-growing areas of legal spending," with U.S. companies spending $4.21 billion — 12.5 percent of corporate litigation budgets — defending class actions in 2024 alone. *See* 2025 Carlton Fields Class Action Survey, at 4–7, *available at* https://tinyurl.com/474nkhvt (noting that claims are expected to grow another 7.6 percent in 2025). The costs are widespread — roughly 72 percent of major companies face class actions — and surging, due, in part, to an increasingly "aggressive litigation environment" with baseless class-action suits that "courts remain reluctant to dismiss." *See id.* at 8,

16 (discussing growth in "baseless claims"). Defending even *a single* class action can cost a business nine figures. *See* Adeola Adele, *Dukes v. Wal-Mart*: Implications for Employment Practices Liability Insurance 1 (July 2011). And those cases can persist for years with no resolution of even the threshold class-certification issues, leaving businesses in a state of uncertainty. *See* U.S. Chamber Inst. for Legal Reform, Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions, at 1, 5 (Dec. 2013), *available at* http://bit.ly/3rrHd29 (noting that "[a]pproximately 14 percent of all class action cases remained pending four years after they were filed").

Such costs create immense pressure for businesses to agree to "settlements that they sometimes must reluctantly swallow rather than betting the company on the uncertainties of trial," even for unmeritorious claims. *LabCorp*, 145 S. Ct. at 1612 (Kavanaugh, J., dissenting from dismissal); *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 524 (2018) (arguing that class actions can "unfairly place pressure on the defendant to settle even unmeritorious claims" (cleaned up)); *see* Joanna C. Schwartz, *The Cost of Suing Business*, 65 DePaul L. Rev. 655, 660 (2016) (noting that "the threat of discovery expense will push cost-conscious defendants to

settle even anemic cases" (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559 (2007)). Judge Friendly called these "blackmail settlements." Henry J. Friendly, Federal Jurisdiction: A General View 120 (1973); *Shady Grove Orthopedic Assocs., P.A., v. Allstate Ins. Co.*, 559 U.S. 393, 445 n.3 (2010) (Ginsburg, J., dissenting) (noting that when "a class action poses the risk of massive liability unmoored to actual injury," the "pressure to settle may be heightened"). That pressure exists even when, as is often the case, the outcome is likely to be favorable for defendants. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 740 (1975). That irony is particularly marked in cases, like this one, that advance RICO or other similar claims that pose the threat of treble damages. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (noting that "[f]aced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims").

Moreover, the costs that class-action abuse imposes on U.S. businesses are passed on "to consumers in the form of higher prices; to retirement account holders in the form of lower returns; and to workers in the form of lower salaries and lesser benefits." *LabCorp*, 145 S. Ct.

at 1612 (Kavanaugh, J., dissenting from dismissal); s*ee* Joseph A. Grundfest, *Why Disimply?*, 108 Harv. L. Rev. 727, 732 (1995). The panel majority's affirmation of an "[o]verbroad and incorrectly certified class[]" therefore harms everyone: businesses, consumers, retirees, and workers alike. *LabCorp*, 145 S. Ct. at 1612 (Kavanaugh, J., dissenting from dismissal). For these reasons, rigorous enforcement of Rule 23's requirements is much needed.

CONCLUSION

This Court should grant en banc review, vacate the panel's decision, and reverse the district court's class-certification order.

Respectfully submitted,

/s/ Ashley C. Parrish

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

Counsel for Amici Curiae

Audrey Dos Santos
Matthew P. Sappington
U.S. CHAMBER
LITIGATION CENTER
1615 H Street NW
Washington, DC 20062

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

James C. Stansel
Melissa B. Kimmel
Julie Straus Harris
PhRMA
670 Maine Avenue SW
Suite 1000
Washington, DC 20024

Counsel for Amicus Curiae Pharmaceutical Research and Manufacturers of America ("PhRMA")

July 28, 2025

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(2) because it contains 3,979 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point size.

Date: July 28, 2025

/s/ Ashley C. Parrish
Ashley C. Parrish

Counsel for Amici Curiae
the Chamber of Commerce
of the United States of America
and PhRMA