

No. 26-1483

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**In the United States Court of Appeals  
for the Seventh Circuit**

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JAMES TUCCORI, ET AL.,  
*Plaintiffs-Appellees,*

V.

AT WORLD PROPERTIES, LLC, ET AL.,  
*Defendants-Appellees,*

V.

AARON BOLTON,  
*Proposed Intervenor-Appellant.*

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On Appeal from the United States District Court  
for the Northern District of Illinois, No. 1:24-cv-00150  
The Honorable Lindsay C. Jenkins

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**BRIEF OF CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA AS *AMICUS CURIAE*  
SUPPORTING THE APPELLEES**

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September 28, 2026

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## APPEARANCE &amp; CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 26-1483Short Caption: Tuccori v. At World Properties, LLC

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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None
- ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:  
None
- (4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:  
N/A
- (5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:  
N/A

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Attorney's Signature: /s/ Gene C. Schaerr Date: 09/28/2026Attorney's Printed Name: Gene C. SchaerrPlease indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes ☐ No ☒Address: 1717 K Street N.W., Suite 900Washington, DC 20006Phone Number: 202-787-1060Fax Number: 202-776-0136E-Mail Address: gschaerr@schaerr-jaffe.com

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Attorney's Signature: /s/ Aaron S. Gordon Date: 09/28/2026

Attorney's Printed Name: Aaron S. Gordon

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes ☐ No ☒

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## STATEMENT OF INTEREST AND SOURCE OF AUTHORITY OF *AMICUS CURIAE*<sup>1</sup>

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.

All parties have consented to the filing of this brief.

### INTRODUCTION AND SUMMARY OF ARGUMENT

In this case, a class member represented by a set of competing plaintiffs' class-action counsel seeks to add procedural complexity to the comprehensive Rule 23(e) class-settlement approval proceedings by

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<sup>1</sup> 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.

intervening rather than simply participating as an objector under Federal Rule of Civil Procedure 23(e)(5)(A). But once a settlement is before the district court, internecine fights between plaintiffs' lawyers—whatever their underlying merits, on which the Chamber takes no position—can and should be resolved in those settlement approval proceedings.

Rule 24 grants intervention of right only to those who show that disposing of the action “may as a practical matter impair or impede the movant’s ability to protect its interest.” Fed. R. Civ. P. 24(a)(2). The Rule 23(e) proceeding affords competing—and objecting—plaintiffs’ factions ample ability to protect their interests by asserting all the arguments they could advance as intervenors, with an unimpaired and unimpeded ability to appeal to this Court. *See Devlin v. Scardelletti*, 536 U.S. 1, 8–11 (2002). Thus, “as a practical matter,” the appellant here loses nothing by participating as an objector.

Intervention could only throw a monkey-wrench into the settlement-approval (or -rejection) process. Class actions already impose significant costs on businesses, consumers, and the economy at large. And they impose outsized demands on the federal courts. Courts should

not devote additional resources beyond those contemplated in Rule 23(e) to accommodate fee skirmishes among rival plaintiffs' firms. To the extent courts must resolve those disputes after a settlement has been reached, the Rule 23(e) hearing (or subsequent fee proceeding under Rule 23(h)) is the appropriate place to do so. This Court should not create a precedent that "would only add an additional layer of complexity," *Devlin*, 536 U.S. at 14, to proceedings that are already complex and burdensome to the parties and the courts.

## ARGUMENT

### **I. A Post-Settlement Dispute Among Class-Action Counsel Neither Requires Nor Justifies Intervention At The Settlement Stage.**

#### **A. Intervention Is the Wrong Tool to Resolve Fee Squabbles Between Rival Plaintiffs' Class-Action Counsel in a Settled Case.**

Intervention of right is designed to protect the interests of nonparties whose rights may be impaired if they are not allowed to participate in a case. The analysis (and the equities) focus on the "*movant's* ability to protect its interest." Fed. R. Civ. P. 24(a)(2) (emphasis added). Here, the *movant* is an unnamed class member, who has access to objector proceedings in which to make all of the arguments he presses

here.<sup>2</sup> The lawyers' interests lurking behind his motion are neither the relevant interests for Rule 24(a) purposes, nor the types of interests that intervention should protect.

Bolton's effort to intervene must be understood in light of the broader context. "[N]o sooner does any product defect or consumer issue emerge than attorneys file multiple, repetitive class actions across the country." Linda S. Mullenix, *Ending Class Actions As We Know Them: Rethinking the American Class Action*, 64 Emory L.J. 399, 435 (2014). *See, e.g., In re Wawa, Inc. Data Sec. Litig.*, 141 F.4th 456, 462 (3d Cir. 2025) (noting that, "[a]s is common in 'class action world,' a race to the courthouse promptly ensued" after a data breach at a convenience store chain, producing three "broad groups" of plaintiff classes). When these cases are consolidated, or when one of many parallel cases settles, the other plaintiffs' lawyers converge on the proceeding to seek their cut, as Bolton's counsel has here.

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<sup>2</sup> This brief addresses only intervention of right, as "[r]eversal of a decision denying permissive intervention is 'extremely rare, bordering on nonexistent.'" 3 *Newberg & Rubenstein on Class Actions* § 9.36 (6th ed. June 2026 Update) (quoting *South Dakota ex rel Barnett v. U.S. Dep't of Interior*, 317 F.3d 783, 787 (8th Cir. 2003)). The district court plainly acted within its discretion under Rule 24(b)(1).

A “fee fight” of that kind “should not turn into a ‘second major litigation,’” but “[t]hat caution ... is more aspirational than it is reality.” Jeffrey G. Casurella, *How Class Action Fees Work in the Eleventh Circuit*, 73 Mercer L. Rev. 879, 880 & n.5 (2022) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). “[O]ften there is greater ferocity in combat among the class lawyers over the allocation of attorneys’ fees than there is between the class lawyers and the defendants.” *In re TransUnion Corp. Priv. Litig.*, 629 F.3d 741, 742–43 (7th Cir. 2011). For example, in the *NFL Concussion* class action, “the dispute over attorney fees took almost as much time as the lawyers took to secure the original ~\$1 billion settlement from the NFL.” Edward K. Cheng et al., *Distributing Attorney Fees in Multidistrict Litigation*, 13 J. Legal Analysis 558, 559–60 (2021). See *In re Nat’l Football League Players’ Concussion Injury Litig.*, 814 F. App’x 678 (3d Cir. 2020).

Bitter as those fights may be, a conflict between would-be counsel for an overlapping class provides no sound basis to permit intervention by one hand-picked individual class member. See *Mars Steel Corp. v. Cont’l Illinois Nat’l Bank & Tr. Co.*, 834 F.2d 677, 680 (7th Cir. 1987) (noting that one client of the rival counsel in that case had objected to the

class settlement, while another had opted out to preserve the parallel action). As explained below, Rule 23(e) provides a process by which such an unnamed class member may raise any concerns he has with the settlement.

**B. Abuses in the Objector Process Further Weigh Against Requiring Courts to Permit Objectors to Intervene at the Settlement Approval Stage.**

The objection process under Rule 23(e)(5) also provides a means for rival plaintiffs' counsel to seek a slice of the attorneys' fee pie. *See generally* Deborah R. Hensler et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 90 (2000). In almost every case, “objectors are not disinterested parties,” but rather are—or are represented by—“individual lawyers ... in pursuit of fees for themselves.” *Id.*

This case represents one typical pattern, where objecting class members are the stalking-horse for plaintiffs' counsel in a similar or identical class action brought in another court. Sometimes (as in this case) rival class-action counsel “who have filed duplicative class actions” appear on behalf of objectors in the first case to reach a class settlement. *Id.* The objectors may have filed earlier (as here), or they may have filed later, but they all seek to disrupt the allocation of any fee award. And

some inevitably succeed. *E.g.*, *In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Inj. Litig.*, 332 F.R.D. 202, 208, 227 (N.D. Ill. 2019) (awarding fees to plaintiffs' counsel in rival class action), *aff'd sub nom. Walker v. Nat'l Collegiate Athletic Ass'n*, No. 19-2638, 2019 WL 8058082 (7th Cir. Oct. 25, 2019).

And sometimes counsel for one or more individual absent class members has their client appear as an objector seemingly for no reason other than to extract a pay-off from lead counsel. "Objector blackmail is a well-known class and derivative action phenomenon whereby objectors 'use an appeal of a class action ... settlement as a means of leveraging compensation for themselves or their counsel.'" *In re Wells Fargo & Co. S'holder Derivative Litig.*, 523 F. Supp. 3d 1108, 1113 (N.D. Cal. 2021) (internal alterations omitted) (quoting *Vaughn v. Am. Honda Motor Co., Inc.*, 507 F.3d 295, 300 (5th Cir. 2007) (per curiam)). While the Chamber does not suggest that Bolton has engaged in objector blackmail, the rule he supports would provide an unnecessary and disruptive procedural tool to those who do.

That reality is yet another reason why the district court's order denying intervention should be affirmed. Rule 23(e)(5)(B) requires courts

to scrutinize any payoffs to objectors in part to discourage opportunistic conduct from objectors. *See* Fed. R. Civ. P. 23(e)(5)(B) advisory committee's note to 2018 amendments. Under Bolton's theory, class members seeking to pursue such objector blackmail could intervene as well as object. There is no reason to provide objectors with additional procedural leverage; those with sound arguments against approval will succeed in the ordinary review process.

## **II. The Rule 23(e) Settlement Approval Process Provides The Appropriate Means To Resolve Disputes Over The Adequacy Of Representation And The Fairness Of The Settlement.**

Rather than post-settlement intervention by objecting class members, the approval process required under Rule 23(e) provides the proper means to contest a proffered class-action settlement—including certification of a settlement class. Even if intervention were necessary to protect a class member's interests at an earlier stage of a class action, once a settlement has been reached, the Rule 23(e) process amply protects those interests. Rule 23(e) was amended in 2003 to “strengthen the process of reviewing proposed class-action settlements,” precisely “to assure adequate representation of class members who have not participated in shaping the settlement.” Fed. R. Civ. P. 23(e) advisory

committee's note to 2003 amendment. And it was further refined in 2018 to ensure consideration of the "negotiations leading up to the proposed settlement" and the "pendency of other litigation about the same general subject on behalf of class members," with a "focus ... on the actual performance of counsel acting on behalf of the class." Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment. Rule 23(e) in its current form makes intervention unnecessary once the settlement approval process has begun.

**A. The Rule 23(e) Approval Process Obviates Any Basis for Objectors to Intervene.**

This Court has recognized that, once a motion to approve a class-action settlement has triggered the Rule 23(e) process, an absent class member and his counsel can vindicate threatened rights in either the district court or this Court without intervention. "The lawyer doesn't have to move to intervene in the district court in order to appeal to us; nor does the objector have to move to intervene in order to appeal the lawyer's fee." *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 287 (7th Cir. 2002); *see also Devlin*, 536 U.S. at 14.

Indeed, not a word in Rule 24 or its commentary addresses settlement or class-action settlement approval proceedings. *See* Fed. R.

Civ. P. 24 advisory committee's note to 1966 amendment. Rule 23(e) was crafted to address that process, and its protections have only deepened after further Rule amendments in 2003 and 2018.

The Rule 23(e) proceedings provide especially strong protection to objecting class members like Bolton. A court reviewing a settlement for a class not previously certified—as is the case here—must subject the proposed class certification to the same “rigorous analysis” that applies at other stages of the case. *Jamie S. v. Milwaukee Pub. Schs.*, 668 F.3d 481, 493 (7th Cir. 2012) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51 (2011)). The Supreme Court has made clear that the provisions of Rule 23(a) and (b) that are “designed to protect absentees”—most everything other than manageability—“demand undiluted, even heightened, attention in the settlement context.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Thus, the district court (and this Court on review) will have to ensure “rigorous adherence” to the Rule’s strictures. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 849 (1999).

Indeed, even before Rule 23(e) was twice amended to require greater rigor, Judge Becker (joined by then-Judge Alito) recognized the “concerns” that may arise when a class is certified simultaneously with

the approval of a settlement, but was appropriately “confident that they can be addressed by the rigorous applications of the Rule 23 requisites by the courts at the approval stages.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 794 (3d Cir. 1995). That is surely the case under the expanded Rule 23(e) today.

**B. Specific Inquiries Necessary Under the Settlement Approval Process Further Protect Objectors’ Interests and Obviate any Basis for Intervention.**

Bolton’s stated bases for intervention fall squarely within the issues the district court must resolve under Rule 23: he complains that the settlement is collusive, that class counsel does not adequately represent the class, and that the settlement undervalues the strength of the case. ECF 36, at 26-41. Rule 23(e) is designed to address exactly those concerns.

Among its many mandates, Rule 23(e) requires a district court examining a proposed class settlement to determine whether “the class representatives and class counsel have adequately represented the class” and whether “the proposal was negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(A), (B). These requirements address Bolton and his *amici*’s core allegations directed at the settlement. And the court not only must

apply a multi-factor analysis to decide whether the proposed relief is economically “adequate,” *id.* 23(e)(2)(C), which Bolton disputes, but must separately address whether “the proposal treats class members equitably relative to each other,” *id.* 23(e)(2)(D)—which puts still another of Bolton’s points of contention directly before the district court. The district court cannot simply gloss over these prescribed factors, but must hold a “hearing,” *id.* 23(e)(2), and then “must make findings that support the conclusion that the settlement is fair, reasonable, and adequate. The findings must be set out in sufficient detail to explain to class members and the appellate court the factors that bear on applying the standard.” Fed. R. Civ. P. 23(e)(1) advisory committee’s note to 2003 amendment.

The district court also must certify the settlement class under Rule 23(b)(3), as no class was previously certified. And in deciding whether to certify a class under Rule 23(b)(3), the district court must consider “the extent and nature of any litigation concerning the controversy already begun by or against class members,” Fed. R. Civ. P. 23(b)(3)(B)—which of course would include the *Batton* litigation that Bolton claims would provide class members here with a greater benefit.

Bolton can also press his inadequate representation argument through this lens, as the settlement class must satisfy the requirement of fair and adequate representation under Rule 23(a)(4). Indeed, one set of Bolton's *amici* recognizes that the primary asserted basis for intervention is the same "concern that animates Rule 23(a)(4)." *Amici Curiae* Br. of J. Maria Glover et al. at 11, ECF 43-2. And Rule 23(g) requires a separate, searching analysis of class counsel's "ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B); *see also id.* 23(g)(2) & (4).

In sum, all of Bolton's arguments can be pressed in the Rule 23(e) proceeding that was triggered by the motion for preliminary approval, without any necessary intervention on his part.

### **III. Permitting Duplicative Intervention Would Unjustifiably Increase The Substantial Costs Of Class Action Litigation.**

Finally, requiring district courts to permit intervention by objectors would impose additional and unwarranted costs and delays upon an already resource-intensive proceeding. Class action litigation is burdensome enough without allowing additional time-consuming procedural complications.

**A. Because Lawyer-Driven Class Action Litigation Often Disproportionately Benefits Lawyers Rather than Clients, the Court Should Not Require Resource-Intensive Intervention by Objectors Fronting for Rival Class Counsel.**

The high cost of class action litigation is well-known. And in many cases, the corresponding benefits to class members are modest. If this Court requires the district court here to permit objecting class members to intervene as well as participate in the Rule 23(e) settlement-approval process, that holding would only increase those costs with little or no corresponding benefit.

The lawyer-centric nature of many class actions is well-recognized, the inevitable consequence of a form of litigation where “private, profit-driven plaintiffs’ firms” operate with little input or control from clients who have only modest individual stakes in the case. Miranda Litwak, *A Participatory Approach to Damages Class Actions*, 49 N.Y.U. Rev. L. & Soc. Change 103, 118 (2025). “[A] number of commentators have noted that in all too many situations, it is *only* the class attorneys, rather than their clients, who benefit financially from the modern class action.” Martin H. Redish & Megan B. Kiernan, *Avoiding Death by a Thousand*

*Cuts: The Relitigation of Class Certification and the Realities of the Modern Class Action*, 99 Iowa L. Rev. 1659, 1675 (2014).

“[W]hat drives damage class actions is private gain: the opportunity they offer lawyers to secure large fees by identifying, litigating, and resolving claims on behalf of large numbers of individuals, many of whom were not ... aware that they might have a legal claim and most of whom play little or no role in the litigation process.” Hensler et al., *supra*, at 6–7. Thus, “the plaintiffs’ attorneys are the real parties in interest”; in contrast, “[m]any class members are likely not even aware that they are plaintiffs in a major legal action, and the overwhelming majority will never even benefit directly from a successful prosecution.” Martin H. Redish, *Wholesale Justice: Constitutional Democracy and the Problem of the Class Action Lawsuit* 14 (2009). See also Martin H. Redish, *Class Actions and the Democratic Difficulty: Rethinking the Intersection of Private Litigation and Public Goals*, 2003 U. Chi. Legal F. 71, 77 (2003).

Indeed, “the fear that class actions will prove less beneficial to class members than to their attorneys has been often voiced by concerned courts and periodically bolstered by empirical studies.” *Weinberger v. Great N. Nekoosa Corp.*, 925 F.2d 518, 524 (1st Cir. 1991). See also, e.g.,

*Lowery v. Rhapsody Int'l, Inc.*, 75 F.4th 985, 988 (9th Cir. 2023) (disapproving settlement that provided attorneys' fees 30 times the amount recovered by the class); *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 175–76, 179 (3d Cir. 2013) (“In this case, class counsel, and not their client, may be the foremost beneficiaries of the settlement.”) (remanding settlement for factual inquiry); *In re Dry Max Pampers Litig.*, 724 F.3d 713, 721 (6th Cir. 2013) (disapproving “settlement [that] benefits class counsel vastly more than it does the consumers who comprise the class”). “Brief glances at these cases and their proposed (and sometimes accepted) settlements suggest that some proportion of class actions are resolved with little benefit to class members and large fees for class counsel.” Hensler et al., *supra*, at 94.

Particularly in low- or no-injury class actions, “there is a concern that those actions are brought primarily to benefit class counsel, and awarding disproportionate class counsel fees only incentivizes that behavior.” *Baby Products Antitrust*, 708 F.3d at 179. Counsel in no-injury class actions “receive[] an average of 37.9 percent of available funds, over 4 times the funds distributed to the class.” Joanna Shepherd, *An Empirical Survey of No-Injury Class Actions*, Emory Univ. Sch. of L.

Legal Stud. Rsch. Paper Series: Rsch. Paper No. 16-402 at 5, 22 (Apr. 8, 2016), <https://tinyurl.com/4kx36yn2>. “[I]n claims-made settlements, class members as a whole receive on average only 23% of the settlement amount, with the remainder being consumed by attorneys’ fees, expenses, or *cy pres* distributions.” Jones Day, *An Empirical Analysis of Federal Consumer Fraud Class Action Settlements (2010–2018)*, at i (Apr. 2020), <https://tinyurl.com/v5am89w8>. And more than 60% of the funds paid in all class action settlements “go[] to attorneys or others who are not members of the class.” *Id.*

Indeed, “evidence from claim administrators suggests that a very high percentage of class members fail to be compensated at all.” Mullenix, *supra*, 64 Emory L.J. at 419–20. Actual funds distributed to class members often amount to far less than the valuation of relief presented to the approving court. *See, e.g., Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014) (measured against actual payments to class members, “attorneys’ fees represented not 9.6 percent of the aggregate value but an outlandish 69 percent”).

In deciding this case, this Court should be mindful that the rule of intervention of right that Bolton urges here would only increase

requested attorney's fees in these class actions, reducing even further the awards available to injured class members. Rule 23(e) (and, when part of the Rule 23(e) process, Rules 23(a), (b), and (h)) provide the proper tools to address Bolton's concerns.

**B. Intervention by Objectors Would Unjustifiably Increase the Costs of Class Actions to Businesses and Consumers.**

The Court should reject intervention at the settlement approval stage for the additional reason that such intervention would unjustifiably increase the costs of class-action litigation. In contrast with all too often minimal consumer benefits, class actions impose substantial costs on businesses. Defending against a single large class action can cost tens of millions of dollars—or more. *See Adeola Adele, Dukes v. Wal-Mart: Implications for Employment Practices Liability Insurance*, Marsh (July 21, 2011) (noting defense cost can reach \$100 million in a single action), available at <https://tinyurl.com/255pppec>. “Class action defense remains one of the fastest-growing areas of corporate legal spending.” Carlton Fields, *Class Action Survey: Best Practices in Reducing Cost and Managing Risk in Class Action Litigation* 6 (2026), available at <https://tinyurl.com/568dpkea> (“Carlton Fields 2026 Survey”). Among

large companies alone, class action litigation costs reached a record-breaking \$4.53 billion in 2025 and were projected to surpass \$4.8 billion in 2026, up from \$2.46 billion in 2018. *See id.* at 7. The potential liability is often orders of magnitude higher. As Justice Ginsburg observed, even “the mine-run case” risks “potentially ruinous liability.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 445 n.3 (2010) (Ginsburg, J., dissenting) (quoting Fed. R. Civ. P. 23 advisory committee’s note to 1998 amendment).

More than 74% of major U.S. companies defended against class actions in 2025. Carlton Fields 2026 Survey, *supra*, at 8. Most of them face class actions frequently, with the growth in “baseless claims” presenting the “dominant concern.” Carlton Fields, *Class Action Survey: Best Practices in Reducing Cost and Managing Risk in Class Action Litigation* 16, 17 (2025), available at <https://tinyurl.com/3r38f9jm>. Courts “remain reluctant to dismiss” even seemingly meritless claims. *Id.* at 16. As a result, “the prospect of aggregating thousands of weak or frivolous individual claims into a single sprawling class action—with the potential to coerce companies into settlement—has invited a bevy of dubious consumer class action suits.” U.S. Chamber of Com. Inst. for

Legal Reform, *Unfair, Inefficient, Unpredictable: Class Action Flaws and the Road to Reform* 22 (2022), available at <http://tinyurl.com/2jvv33az>.

“[E]xtensive discovery and the potential for uncertainty and disruption in a lawsuit allow plaintiffs with weak claims to extort settlements from innocent companies.” *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 163 (2008) (citation omitted).

Additional procedural complexity would only increase class action costs and the concomitant settlement pressure.

**C. Intervention by Objectors Would Impose Unwarranted Demands on Judicial Resources.**

Intervention at the settlement approval stage would also impose unwarranted costs on the federal courts. “Class actions are far from routine.” Thomas E. Willging et al., *An Empirical Analysis of Rule 23 to Address the Rulemaking Challenges*, 71 N.Y.U. L. Rev. 74, 97 (1996) (*Empirical Analysis*). They can persist for years before class certification, let alone resolution. See U.S. Chamber Inst. for Legal Reform, *Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions* 1, 5 (Dec. 2013) (“Approximately 14 percent of all class action cases remained pending four years after they were filed.”), available at

<https://bit.ly/3rrHd29>. Given the stakes for all parties, it is no surprise that every stage generally results in full-bore litigation.

Class actions involve two components not present in other litigation. First, class actions involve resource- and expert-intensive class certification proceedings that often are the most procedurally complex and burdensome stage of the case before trial. Second, any settlement approval process can involve complex proceedings, especially when some class members object to the settlement's terms or its negotiating process.

The Federal Judicial Center (FJC) has recognized the demands class action litigation places on federal courts. An FJC “national time study” concluded that “certified and noncertified class actions on average consumed almost five times more judicial time than the typical civil case.” Thomas E. Willging et al., Fed. Jud. Ctr., *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules* 7 (1996). Indeed, certified class actions consume 11 times the resources as the average civil action. *See* Willging et al., *Empirical Analysis, supra*, 71 N.Y.U. L. Rev. at 97.

This Court was among the first to recognize that, “[i]n the class action context in particular, there is an overriding public interest in favor

of settlement,” in part to “reduce[] the strain such litigation imposes upon already scarce judicial resources.” *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 313 (7th Cir. 1980) (cleaned up), *overruled in part on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998), *aff’d sub nom. Cal. Pub. Emps. Retirement Sys. v. Felzen*, 525 U.S. 315 (1999). That view is now commonplace. “Courts have consistently noted that the public interest favoring the settlement of litigation is even stronger in the context of class action litigation, where one proceeding can resolve many thousands or even millions of claims that might otherwise threaten to swamp the judiciary.” 2 *McLaughlin on Class Actions* § 6:3 & n.1 (22nd ed. Nov. 2025 Update) (citing, *inter alia*, *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (en banc), and *General Motors Pick-Up Litig.*, 55 F.3d at 805)).

In light of the “urgency” of the pro-settlement “policy in complex actions that consume substantial judicial resources and present unusually large risks for the litigants,” *General Motors Pick-Up Litig.*, 55 F.3d at 805, it makes no sense to increase costs of such settlements by allowing objectors to intervene after a settlement has been reached. The comprehensive approval process under Rule 23(e) fully protects objectors’

interests—including their ability to appeal. Adding delay and procedural complexity to the settlement process incurs costs without benefits. The Court should reject Bolton’s effort to nullify the Rule’s modest efficiencies.

### CONCLUSION

The order of the district court denying intervention should be affirmed.

Dated: September 28, 2026

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## CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(g)(1) and Seventh Circuit Rules 29 and 32, I certify that this brief:

(i) complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Circuit Rule 29 because it contains 4,440 words, including footnotes and excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), as determined by the word counting feature of Microsoft Office; and

(ii) complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Circuit Rule 32(b) and the type-style requirements of Fed. R. App. P. 32(a)(6) and Circuit Rule 32 because it has been prepared using Microsoft Word 365, set in Century Schoolbook font in a size measuring 14 points or larger.

Dated: September 28, 2026

/s/ Donald M. Falk  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 2026, the foregoing Brief of *Amicus Curiae* was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: September 28, 2026

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