No. 26-2190

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

WEST MONROE PARTNERS, INC., ET AL.,

Appellants-Defendants, Cross-Appellees,

v.

MATTHEW DALY, on behalf of himself and all others similarly situated,

Appellee-Plaintiff, Cross-Appellant.

On Appeal from an Order of the United States District Court
for the Northern District of Illinois,
Case No. 1:22-cv-06805-JRB (Hon. John R. Blakey)

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF APPELLANTS AND REVERSAL

Jennifer B. Dickey
Mariel A. Brookins
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, D.C. 20062-2000

Jaime A. Santos
Counsel of Record
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, D.C. 20036-1612
(202) 346-4000
jsantos@goodwinlaw.com

James O. Fleckner
Benjamin Reilly
Lee J. Moore
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
(617) 570-1000

Dated: July 20, 2026

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

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 26-2190

Short Caption: Daly v. West Monroe

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.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Amicus Curiae Chamber of Commerce of the United States of America

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Goodwin Procter LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

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

Attorney's Signature: /s/ Jaime A. Santos Date: July 20, 2026

Attorney's Printed Name: Jaime A. Santos

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

Address: 1900 N Street, N.W.
Washington, D.C. 20036

Phone Number: 202-346-4190 Fax Number: 202-346-4444

E-Mail Address: JSantos@goodwinlaw.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 26-2190

Short Caption: Daly v. West Monroe

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.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Amicus Curiae Chamber of Commerce of the United States of America

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
U.S. Chamber Litigation Center

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

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

Attorney's Signature: /s/ Mariel A. Brookins Date: July 21, 2026

Attorney's Printed Name: Mariel A. Brookins

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

Address: 1615 H Street, NW

Washington, D.C. 20062

Phone Number: (202) 463-5337 Fax Number:

E-Mail Address: mbrookins@USChamber.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 26-2190

Short Caption: Daly v. West Monroe

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.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Amicus Curiae Chamber of Commerce of the United States of America

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
U.S. Chamber Litigation Center

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

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

Attorney's Signature: /s/ Jennifer Dickey Date: July 21, 2026

Attorney's Printed Name: Jennifer Dickey

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

Address: 1615 H Street, NW
Washington, D.C. 20062

Phone Number: (202) 463-5337 Fax Number:

E-Mail Address: JDickey@USChamber.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 26-2190

Short Caption: Daly v. West Monroe

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.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Amicus Curiae Chamber of Commerce of the United States of America

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Goodwin Procter LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

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

Attorney's Signature: /s/ James O. Fleckner Date: July 21, 2026

Attorney's Printed Name: James O. Fleckner

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

Address: 100 Northern Avenue

Boston, MA 02210

Phone Number: (617) 570-1000 Fax Number: (617) 523-1231

E-Mail Address: jfleckner@goodwinlaw.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 26-2190

Short Caption: Daly v. West Monroe

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.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Amicus Curiae Chamber of Commerce of the United States of America

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Goodwin Procter LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

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

Attorney's Signature: /s/ Lee J. Moore Date: July 21, 2026

Attorney's Printed Name: Lee J. Moore

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

Address: 100 Northern Avenue
Boston, MA 02210

Phone Number: (617) 570-1000 Fax Number: (617) 523-1231

E-Mail Address: LMoore@goodwinlaw.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 26-2190

Short Caption: Daly v. West Monroe

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.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Amicus Curiae Chamber of Commerce of the United States of America

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Goodwin Procter LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

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

Attorney's Signature: /s/ Benjamin S. Reilly Date: July 21, 2026

Attorney's Printed Name: Benjamin S. Reilly

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

Address: 100 Northern Avenue

Boston, MA 02210

Phone Number: (617) 570-1000 Fax Number: (617) 523-1231

E-Mail Address: BReilly@goodwinlaw.com

CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no company has 10% or greater ownership in the Chamber.

Dated: July 20, 2026

s/ Jaime A. Santos
Jaime A. Santos

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business organization.[1] 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 its members' interests in matters before the courts, Congress, and the Executive Branch.

The Chamber's members include many employers that sponsor employee-benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). The Chamber therefore regularly participates as amicus curiae in ERISA cases, like this one, that raise issues of concern to plan sponsors. *See, e.g.*, *Hughes v. Nw. Univ.*, 595 U.S. 170 (2022); *Hughes v. Nw. Univ.*, 63 F.4th 615 (7th Cir. 2023).

INTRODUCTION AND SUMMARY OF ARGUMENTS

Class actions are "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (citation omitted). Under Rule 23, only three types

[1] All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2). No counsel for a party authored this brief in whole or in part. No party, no counsel for a party, and no person other than amicus, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

of classes are permissible—mandatory classes under Rule 23(b)(1) and (b)(2), for which the Rule provides class members "no opportunity … to opt out, and does not even oblige the District Court to afford them notice of the action," and nonmandatory classes under Rule 23(b)(3), which typically applies to damages claims and requires both notice and the opportunity to opt out. *Id.* at 362.

This case involves an erroneous mixing of these categories. The district court certified a mandatory class under Rule 23(b)(1) that covers about a hundred former participants of the West Monroe Employee Stock Ownership Plan (the "West Monroe ESOP" or "Plan")—even though the named plaintiff is, by his own admission, seeking individualized monetary relief under ERISA § 502(a)(2).[2] Appx. 33, 127, 129. Rather than grapple with the long line of Supreme Court and Seventh Circuit cases holding that an action for money damages cannot be certified as a mandatory, non-opt-out class, the district court summarily concluded that certification under Rule 23(b)(1) was appropriate. The court reasoned that because Plaintiff purported to bring his claims "on behalf of the Plan" and those claims are premised on a breach of ERISA's fiduciary duties to the Plan, certification under Rule 23(b)(1) posed no issue. Appx. 25.

That precise reasoning was recently rejected by the Fourth Circuit. After a

[2] This Court sometimes uses ERISA section numbers and sometimes uses U.S. Code section numbers. A helpful cross-reference guide is available at https://benefitslink.com/erisa/cross-reference.html.

careful analysis of the Supreme Court's Rule 23 precedents and thoughtful consideration of the due process issues at play in mandatory, non-opt-out classes, the court held that "ERISA § 502(a)(2) claims [that] are brought in the context of a defined contribution plan" are "'individualized monetary claims' and therefore cannot be joined … in a mandatory class certified under Rule 23(b)(1)." *Trauernicht v. Genworth Fin. Inc.*, 169 F.4th 459, 469 (4th Cir. 2026) (citing *Wal-Mart*, 564 U.S. at 362). That reasoning applies with equal force here. The West Monroe ESOP is a defined-contribution plan in which each participant has an individual account that grows or shrinks in value depending on the value of West Monroe stock, Plaintiff seeks monetary relief specific to the stock value held by each class member, and each absent class member would be entitled to individualized monetary recovery if Plaintiff prevails.

The due process concerns with a mandatory class in this context are overwhelming. There is no dispute that the monetary recovery sought by the class would ultimately inure to each absent class member's own pocket on an individualized basis. Each absent class member should thus be allowed their day in court rather than having their claims adjudicated by someone else with no chance to opt out. And ERISA defendants should be afforded the certainty that *res judicata* is not a one-way ratchet—that it will attach not only to the defendants (should they win or lose) but also to absent class members after a Rule 23(b)(1) class action reaches final judgment.

The district court also erred in allowing Plaintiff to bring his claims under ERISA § 502(a)(2). That provision allows only for the recovery of "losses to the plan." But Plaintiff here has not alleged any losses to the Plan. Indeed, the remedy he seeks—a *redistribution* of the Plan's assets between current and former participants—confirms that he is not complaining of a loss at the Plan-level. This request stretches ERISA's remedial scheme far beyond Congress' intent and tries to expand the universe of ERISA damages actions that can be certified.

Failing to correct these errors would seriously harm not just class-action plaintiffs and defendants, but retirement plans as a whole. All litigation generates some pressure, but when a large ERISA suit for monetary relief is certified as a class action, it becomes a different beast. Faced with enormous litigation expenses and potentially ruinous liability from an adverse judgment, many defendants are compelled to settle—on unfavorable terms and at huge cost—even groundless claims. This dynamic forces plans to incur greater insurance costs and to reduce the choice of benefits offered for fear of getting sued. Making class certification a matter of course in ERISA cases would effectively penalize employers for offering retirement benefits. That outcome would subvert Congress's design.

This Court should reverse.

ARGUMENT

I. Plaintiff's ERISA Section 502(a)(2) claims do not belong in a Rule 23(b)(1) class.

The district court certified this action as a class action under Rule 23(b)(1). But the Supreme Court has made "clear that individualized monetary claims belong in Rule 23(b)(3)," not in the "mandatory classes" of (b)(1) or (b)(2). *Wal-Mart*, 564 U.S. at 361-363. There should be no doubt, particularly after the Supreme Court's decision in *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020), that Plaintiffs' claims for monetary relief inuring to their individual accounts in a defined-contribution plan are exactly the kind of "individualized monetary claims" that do not belong in a (b)(1) class. The Fourth Circuit recognized this when it recently held that ERISA § 502(a)(2) claims brought in the context of a defined-contribution plan are *by definition* "individualized monetary claims" and therefore cannot be joined in a mandatory class certified under Rule 23(b)(1). *Trauernicht*, 169 F.4th at 469. This Court should join the Fourth Circuit and adopt the same conclusion.

A. Rule 23 and the Due Process Clause prohibit mandatory class-wide adjudication of individualized claims for monetary damages.

A class certified under Rule 23(b)(1) or (b)(2) differs fundamentally from a class certified under Rule 23(b)(3). The former provisions establish "mandatory classes: The Rule provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not even oblige the District Court to afford them notice of the action." *Wal-Mart*, 564 U.S. at 362. In contrast, Rule 23(b)(3) "allows class certification in a much wider set of circumstances but with greater procedural protections" because, "unlike (b)(1) and (b)(2) classes, the (b)(3) class is not mandatory; class members are entitled to receive 'the best notice that is practicable under the circumstances' and to withdraw from the class at their option." *Id.* (quoting Fed. R. Civ. P. 23(c)(2)(B)). "Given that structure," the Supreme Court has explained, it is "clear that individualized monetary claims belong in Rule 23(b)(3)." *Id.*; *see also Jefferson v. Ingersoll Int'l Inc.*, 195 F.3d 894, 899 (7th Cir. 1999) (claims for "money damages … [that] are more than incidental to the equitable relief [sought]" can only be certified under 23(b)(3)).

This principle runs deeper than the Federal Rules. It is a basic due process obligation. There is an "inherent tension between representative suits" such as class actions and "our deep-rooted historic tradition that everyone should have his own day in court." *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999) (citation omitted). That tension "is only magnified if applied to damages claims gathered in a mandatory class," in which absent class members' legal rights "are resolved regardless of either their consent, or, in a class with objectors, their express wish to the contrary." *Id.* at 846-847.

Due process tolerates mandatory classes only where "individual adjudications would be impossible or unworkable, as in a (b)(1) class," or where "the relief sought must perforce affect the entire class at once, as in a (b)(2) class." *Wal-Mart*, 564

U.S. at 361-362. With respect to Rule 23(b)(1), subsection (A) refers to cases where seriatim individual actions risk establishing "incompatible standards of conduct for the party opposing the class," while subsection (B) covers cases (like common-fund cases) in which individual actions would, "as a practical matter … be dispositive of the interests" of non-party class members "or would substantially impair or impede their ability to protect their interests." Fed. R. Civ. P. 23(b)(1)(A)-(B). In other words, given the nature of the claims or relief sought, it would be unfair *not* to aggregate the claims into a single action. Rule 23(b)(3), in contrast, is a more "adventuresome innovation" that allows for class certification even where individual actions are workable but a class action is "superior." *Wal-Mart*, 564 U.S. at 362 (citation omitted).

While "depriving [absent class members] of their right to sue" for non-monetary claims may comply with due process, the opposite is true of monetary claims, at least where individualized adjudication is not inherently unworkable: in that context, the Supreme Court and this Court have "held that absence of notice and opt out violates due process." *Wal-Mart*, 564 U.S. at 363 (citing *Phillips Petroleum Co. v. Shutts*, 472 U. S. 797, 812 (1985)); *Dawson v. Great Lakes Educ. Loan Servs., Inc.*, 2025 WL 800237, at *9 (7th Cir. Mar. 13, 2025) ("Due process requires that class members in an action for money damages receive 'personal notice and an opportunity to opt out of the class action.'" (quoting *Lemon v. Int'l Union of

Operating Eng'rs, Loc. No. 139, AFL-CIO, 216 F.3d 577, 580 (7th Cir. 2000)). And courts have applied these principles in ERISA cases. *See, e.g.*, *Chavez v. Plan Benefit Servs., Inc.*, 108 F.4th 297, 315-316 (5th Cir. 2024) (because the ERISA "class claims are primarily for damages" despite "[t]he inclusion of claims for injunctive and declaratory relief," "Rule 23(b)(3) certification, which permits class members to opt out, is the appropriate vehicle for such class actions"); *Dorman v. Charles Schwab Corp.*, 780 F. App'x 510, 514 (9th Cir. 2019) ("[a]lthough § 502(a)(2) claims seek relief on behalf of a plan, ... such claims are inherently individualized when brought in the context of a defined contribution plan like that at issue").

B. Plaintiff's ERISA claims seek individualized monetary damages.

The district court did not dispute any of those fundamental principles. Indeed, it did not wrestle at all with the due process concerns inherent in adjudicating monetary claims through a non-opt-out class. Instead, the court summarily concluded that a Rule 23(b)(1) class was proper because, in its view, "recovery for a breach of the fiduciary duty owed to an ERISA plan … will inure to the plan as a whole," and resolution of Plaintiff's claims "would necessarily settle the issue for all other prospective plaintiffs." Appx. 15, 25, 27 (citation omitted). But both of those assumptions are incorrect. The proposition that any recovery here "will inure to the plan as a whole" is simply wrong as applied to this case—as explained in

Section II, *infra*, Plaintiff does not seek recovery for the Plan, but rather recovery for *former* participants who are *not part of* the Plan. And the court's assumption that resolving Plaintiff's claims would necessarily resolve the claims of other former participants misapprehends the nature of ERISA § 502(a)(2) claims in the defined-contribution context. As explained below, the claims of the putative class are for individual monetary relief and therefore must be brought either as individual suits or certified in a Rule 23(b)(3) class. *See infra* § I.C. In other words, only *class certification itself* would cause resolution of Plaintiff's claims to "necessarily settle" the same issues for other prospective plaintiffs. Appx. 27. That is precisely why the due-process issues are so acute.

The district court's reasoning fundamentally ignores the context—the Plan is a defined-contribution plan, not a defined-benefit plan. *See* 29 U.S.C. § 1002(34) (defining a "defined-contribution plan"). The Supreme Court has explained the difference between the two: "[I]n a defined-contribution plan, such as a 401(k) plan, the retirees' benefits are typically tied to the value of their accounts, and the benefits can turn on the plan fiduciaries' particular investment decisions." *Thole*, 590 U.S. at 540; *accord Trauernicht*, 169 F.4th at 467. In these plans, "each beneficiary is entitled to whatever assets are dedicated to his individual account." *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439 (1999). In contrast, a "defined benefit plan … consists of a general pool of assets rather than individual dedicated accounts."

Hughes Aircraft, 525 U.S. at 439. "In a defined-benefit plan, retirees receive a fixed payment each month, and the payments do not fluctuate with the value of the plan … ." *Thole*, 590 U.S. at 540; *Trauernicht*, 169 F.4th at 467-468. Instead, "the employer typically bears the entire investment risk and … must cover any underfunding as the result of a shortfall that may occur from the plan's investments." *Hughes Aircraft*, 525 U.S. at 439.

On several occasions, the Supreme Court has addressed the ability of participants in these two kinds of plans to bring an action under ERISA § 502(a)(2), for alleged breach of fiduciary duty under ERISA § 409. In *Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134 (1985), the Court held with respect to a defined-benefit plan that "§ 502(a)(2) authorizes a beneficiary to bring an action against a fiduciary who has violated § 409," but only when seeking "recovery for a violation of § 409 inures to the benefit of the plan as a whole." *Id.* at 140. That approach foreclosed a claim for injury to a particular beneficiary, such as "a cause of action for extra-contractual damages caused by improper or untimely processing of benefit claims." *Id.* at 148.

The Supreme Court distinguished this holding in *LaRue v. DeWolff, Boberg & Associates, Inc.*, 552 U.S. 248 (2008), when it specifically examined *Russell*'s application to defined-contribution plans. The Court noted that "the disability plan at issue in *Russell* did not have individual accounts; it paid a fixed benefit based on a percentage of the employee's salary." *Id.* at 255. "The 'entire plan' language in *Russell*," the Court explained, "speaks to the impact of § 409 on plans that pay defined benefits." *Id.* But defined-contribution plans work differently; in those plans, "fiduciary misconduct need not threaten the solvency of the entire plan to reduce benefits below the amount that participants would otherwise receive." *Id.* at 255-256. *LaRue* reaffirmed *Russell's* holding that "§ 502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries," but clarified that it "does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account." *Id.* at 256 (emphasis added). After *LaRue*, then, a participant in a defined-contribution plan can bring an action under § 502(a)(2) for injury to their individual account, provided that their individual injuries are "not … distinct from plan injuries." *Id.*; *Trauernicht*, 169 F.4th at 470.

The upshot is that participants in both defined-contribution and defined-benefit plans can bring an action under § 502(a)(2). But those actions rest on different premises and produce different outcomes. A participant in a defined-contribution plan who proceeds under § 502(a)(2) is nominally suing for injuries to plan assets, but not the entire plan's assets—only those in her individual account, which are reserved for her personal benefit. Any recovery will ultimately go into her own pocket. When the participant is in a defined-benefit plan, however, recovery under § 502(a)(2) "inures to the benefit of the plan as a whole." *Russell*, 473 U.S. at 140.[3]

This distinction matters, as underscored in *Thole*. There, the Supreme Court held that plaintiffs in a defined-benefit plan who alleged investment mismanagement lacked Article III standing because they continued to receive their promised monthly pension benefits. *Thole*, 590 U.S. at 542. The Court deemed it "[o]f decisive importance" that "the plaintiffs' retirement plan is a defined-benefit plan, not a defined-contribution plan," because any plan mismanagement in a defined-benefit plan would not injure particular plaintiffs who continued to receive their promised benefits—whereas participants in a defined-contribution plan would suffer injury if their investments performed poorly due to fiduciary mismanagement. *Id.* at 540. Citing *LaRue* and *Hughes Aircraft*, the Court explained that "plan participants [in a defined-benefit plan] possess no equitable or property interest in the plan." *Id.* at 543.

Thole further rejected the argument advanced by the plaintiffs that they had "standing as representatives of the plan itself" because they were proceeding under ERISA § 502(a)(2). *Id.* at 543-544. Indeed, the dissenting Justices viewed the

---

[3] In *Trauernicht*, the Fourth Circuit helpfully illustrated this point through several hypothetical fiduciary-breach suits in the defined-benefit and defined-contribution contexts. *See* 169 F.4th at 468-469.

plaintiffs as having standing to bring a "representational suit" because "Sections 1132(a)(2) and (a)(3) authorize participants and beneficiaries to sue 'in a representative capacity on behalf of the plan as a whole,' *Russell*, 473 U.S. at 142, n. 9, so that any 'recovery' arising from the action 'inures to the benefit of the plan as a whole,' *id.*, at 140." *Thole*, 590 U.S. at 565 (Sotomayor, J., dissenting). The majority disagreed, explaining that "[t]he plaintiffs have not been legally or contractually appointed to represent the plan"—notwithstanding their cause of action under § 502(a)(2). *Id.* at 544.

Read together, *LaRue* and *Thole* establish that a participant in a defined-benefit plan who brings a § 502(a)(2) action for investment mismanagement seeks recovery that inures to the plan as a whole, whereas a participant in a defined-contribution plan who brings a similar action seeks recovery that inures to the plaintiff's own pocket via their individual plan account. *Trauernicht*, 169 F.4th at 470. That is why, in a well-reasoned decision based on the principles of *LaRue* and *Thole*, the Fourth Circuit recently held that an action exactly like this one—"for damages for an alleged breach of fiduciary duties under ERISA § 502(a)(2) and § 409(a) in the context of a defined contribution plan"—is, by its very nature, "an 'individualized monetary claim'" that cannot be certified under Rule 23(b)(1). *Trauernicht*, 169 F.4th at 472 (citation omitted). The court's analysis turned entirely on the nature of the plan at issue (a defined-contribution plan in which individual accounts were maintained) and the type of relief sought (losses to those individual plan accounts).

C. Plaintiff's individualized claims for monetary relief cannot be certified under Rule 23(b)(1).

As just discussed, Plaintiff is a former participant in a defined-contribution plan and is bringing a claim for monetary recovery inuring to the individual plan account he previously maintained. Therefore, his "individualized monetary claims belong in Rule 23(b)(3)"—not Rule 23(b)(1). *Wal-Mart*, 564 U.S. at 362; *see supra* pp. 11-13. As a leading treatise has explained, "the sounder view" is that "certification under (b)(1)(A) is inappropriate for claims, such as a § 502(a)(2) claim, in which the principal relief sought is monetary damages that would pass through the plan to individual participants." 1 McLaughlin on Class Actions § 5:5 (21st ed. Oct. 2024 update); *accord Trauernicht*, 169 F.4th at 470-471 ("it is clear that a mandatory class action under Rule 23(b)(1) is inappropriate").

Unlike classes appropriately certified under Rule 23(b)(1), individual adjudications of § 502(a)(2) claims for monetary relief would not "be impossible or unworkable." *Wal-Mart*, 564 U.S. at 361; *see supra* pp. 6-7. Because *LaRue* permits individual participants to recover losses incurred by their individual account, those individual adjudications would not legally or practically affect anyone else's individual account.

To be sure, before *LaRue* "classes frequently were certified under Rule 23(b)(1)(B) in ERISA 'stock drop' cases under ERISA § 502(a)(2) … on the theory that any recovery under § 502(a)(2) inures to the plan as a whole, so that adjudications of one member's claim would necessarily affect the interests of other class members." 1 McLaughlin on Class Actions § 5:14 & n.11 (collecting cases). But by opening the door to individualized claims in defined-contribution cases, *LaRue* effectively recognized that such cases are not susceptible to class treatment under Rule 23(b)(1)(B). Indeed, "*LaRue* cures any concern that the potential class members' claims would essentially be disposed of by this litigation. … Because the putative class members have an individual remedy, they can pursue relief on their own behalf." *In re First Am. Corp. ERISA Litig.*, 258 F.R.D. 610, 621-622 (C.D. Cal. 2009). Thus, "[p]ost-*LaRue*, certification is not appropriate under Rule 23(b)(1)(B) because there is no risk that individual adjudications would be dispositive of the interests of absent members." 1 McLaughlin on Class Actions § 5:14.

Applying these principles, numerous courts in the years immediately following *LaRue* declined to certify Rule 23(b)(1) classes asserting claims under § 502(a)(2). *See, e.g.*, *In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2017 WL 1273963, at *13 (S.D.N.Y. Mar. 31, 2017) (*Wal-Mart* "unequivocally concludes" that individual damages claims can be certified only under Rule 23(b)(3));

Healthcare Strategies, Inc. v. ING Life Ins. & Annuity Co., 2012 WL 10242276, at *11-12 (D. Conn. Sept. 27, 2012); *Bauer-Ramazani v. Tchrs. Ins. & Annuity Ass'n of Am.-Coll. Ret. & Equities Fund*, 290 F.R.D. 452, 457 (D. Vt. 2013); *Carr v. Int'l Game Tech.*, 2012 WL 909437, at *7 (D. Nev. Mar. 16, 2012). In the years that followed, other courts reached an opposite conclusion, largely without disciplined analysis. *See, e.g.*, *Kindle v. Dejana*, 315 F.R.D. 7, 12-13 (E.D.N.Y. 2016) (certifying 23(b)(1) classes asserting claims under § 502(a)(2) without considering impact of *LaRue*); *Douglin v. GreatBanc Tr. Co.*, 115 F. Supp. 3d 404, 412 (S.D.N.Y. 2015) (same). But as the Fourth Circuit's recent opinion recognized, a careful examination of relevant Supreme Court precedents, Rule 23, and the due process underpinnings of class-actions doctrine leads to only one conclusion: *Wal-Mart's* prohibition on Rule 23(b)(1) classes for monetary relief applies with full force to Section 502(a)(2) claims in the context of defined-contribution plans. *See Trauernicht*, 169 F.4th at 469 (citing *Wal-Mart*, 564 U.S. at 362).

The district court's contrary view is erroneous. Rather than grapple with *Wal-Mart's* holding that the "absence of notice and opt out violates due process" in the context of a class action seeking monetary relief, 564 U.S. at 363, the district court summarily concluded that class certification under 23(b)(1) was appropriate "because recovery for a breach of the fiduciary duty owed to an ERISA plan, as is the predominant claim here, will inure to the plan as a whole." Appx. 25. This reasoning is doubly flawed.

First, just because Plaintiff has styled this as a representative suit on behalf of the Plan does not mean any recovery will "inure to the plan as a whole." As Defendants explain, Plaintiff is not seeking recovery for a plan-wide injury. If anything, he has identified a Plan-wide *gain* that he now wishes to share in through a *redistribution* of the Plan's assets between current and former participants, the latter of whom no longer maintain plan accounts. Appx. 132. Second, as discussed above, the Supreme Court's decisions in *Thole* and *LaRue* establish that recovery for a § 502(a)(2) claim in a defined-contribution plan is an *individualized* claim for monetary relief. *See supra* pp. 10-13. Nothing in the district court's order suggests that it even considered whether this was a case for individualized monetary relief—indeed, its Rule 23(b) analysis did not cite *Wal-Mart* even once. To the contrary, the court seems to have sidestepped the question by summarily concluding that any recovery "will inure to the plan as a whole." Appx. 25.

Moreover, the district court's approach is entirely unresponsive to the fundamental due process concerns underlying the Supreme Court's reading of Rule 23(b)—the "constitutional dimension" of the issue explored by the Fourth Circuit in *Trauernicht*, 169 F.4th at 472. It failed to engage with these concerns when it concluded that a 23(b)(1) class was appropriate because resolution of Plaintiff's claims "would necessarily settle the issue for all other prospective plaintiffs." Appx. 15, 27. That is true only if the class is certified—which is precisely the problem. Adjudicating the primarily monetary claims of absent class members via a mandatory class action is a violation of due process because it is incompatible with the "deep-rooted historic tradition that everyone should have his own day in court." *Ortiz*, 527 U.S. at 846 (citation omitted). Even the *potential* for conflict "underscores the need for plaintiffs with individual monetary claims to decide *for themselves* whether to tie their fates to the class representatives' or go it alone—a choice Rule 23(b)(2) does not ensure that they have." *Wal-Mart*, 564 U.S. at 364. This conflict cannot be papered over with a formalistic workaround—which is why the fiction of a representative action does not cure the due process problem.

However a § 502(a)(2) claim in the defined-contribution context is labeled, the due process problem remains: The participants who might otherwise want to bring such claims for injury to their individual accounts deserve an opportunity to have their day in court. Rule 23 should not be read to prevent them from opting out of a class that would dispose of their ability to seek monetary relief.

Absent class members are not the only ones for whom Rule 23(b)(1) certification raises problems. Class judgments are supposed to bind both defendants and also all members of the certified class. But that is not true for absent class members whose due process rights were violated. *See, e.g.*, *Jefferson*, 195 F.3d at

896-97 (class certification without notice or opportunity to opt out "may be collaterally attacked by class members who contend that they should have been notified and allowed to proceed independently"). Given the due process concerns identified above, if cases like this proceed as a Rule 23(b)(1) class action, defendants could face a one-way ratchet—a prior class judgment could bind them but not absent class members. *See Tice v. Am. Airlines, Inc.*, 162 F.3d 966, 973 (7th Cir. 1998) (in determining "the appropriateness of [claim] preclusion" in the class action context, "of course, the due process rights of absentees … must be respected")*; see also Taylor v. Sturgell*, 553 U.S. 880, 891 (2008) ("The federal common law of preclusion is, of course, subject to due process limitations."). The same is true for defendants who resolve their claims through a settlement after a Rule 23(b)(1) class is certified. *See, e.g.*, *In re Johns-Manville Corp.*, 600 F.3d 135, 158 (2d Cir. 2010) (absent class member not bound by prior settlement).

Given these potential dynamics and the uncertainty they create, certification under Rule 23(b)(1) is not only manifestly unfair to Defendants, it could also defeat "[t]he central purpose of each of the various forms of class action"—which "is to establish a judgment that will bind not only the representative parties but also all nonparticipating members of the class certified by the court." 18A Wright & Miller, Federal Practice & Procedure § 4455 (3d ed. June 2024 update). That intolerable outcome is not compelled by Rule 23.

II. This Court should re-affirm that no class asserting a claim under ERISA § 502(a)(2) may be certified without a showing of plan-wide injury.

The district court's class-certification order was erroneous in another way: it failed to respect the limits Congress placed on claims asserted under ERISA § 502(a)(2), which requires a showing of *plan-wide* injury.[4]

Plaintiff purports to bring his claims under ERISA § 502(a)(2), which empowers plan participants and beneficiaries to sue "for appropriate relief under section 1109 of this title." 29 U.S.C. § 1132(a)(2). That cross-referenced provision (ERISA § 409), in turn, makes a breaching fiduciary "personally liable to make good *to such plan* any losses *to the plan* resulting from each such breach." 29 U.S.C. § 1109(a) (emphases added). As explained above, *LaRue* settled that a participant in a defined-contribution plan can bring an action under § 502(a)(2) for injury to their individual account only if the participant's individual injuries are "not … distinct from plan injuries." 552 U.S. at 256. Applying that rule, this Court has instructed that the threshold question is not whether the alleged injury merely harms a participant individually but whether it does so in a way that also "has a plan-wide

[4] This Court could reverse either because of the district court's erroneous application of Rule 23(b)(1) or because of its erroneous application of ERISA § 502(a)(2) and *Spano*. Amicus urges this Court, however, to reach both issues and reverse on both grounds—doing so will provide much-needed clarity to plan participants and plan sponsors throughout the circuit that find themselves parties in putative ERISA class actions asserting § 502(a)(2) claims, which are filed with ever-increasing frequency. *See* Jacklyn Wille, *ERISA Class Actions Soar in 2026 as New Legal Theories Emerge*, Bloomberg Law (Apr. 13, 2026), https://tinyurl.com/mrt6x2v4.

effect, in the sense that the loss of benefits occurring in one account *diminishes the plan assets as a whole*." *Spano v. Boeing Co.*, 633 F.3d 574, 581 (7th Cir. 2011) (emphasis added). As the Court explained, only "an injury to one account that qualifies as a plan injury … would be appropriate for class treatment." *Id.* Plaintiff cannot make that showing. He seeks to share in a Plan-wide *gain*, not remedy a Plan-wide *injury*. *See supra* p. 19. That relief goes beyond what Congress permits under § 502(a)(2) and renders a § 502(a)(2) class impermissible.

This is no mere technicality. ERISA *has* a remedial provision, § 502(a)(1)(B), that permits an individual participant to "recover benefits due to him" without any showing of plan-wide injury or losses to the plan as a whole. 29 U.S.C. § 1132(a)(1)(B). But that is not how Congress designed ERISA § 502(a)(2)—*that* provision, by cross-referencing § 409, creates a private right of action for "[l]iability for breach of fiduciary duty" to the plan as a whole and thus is intentionally limited to claims involving "losses to the plan"—*i.e.*, plan-wide injury. 29 U.S.C. § 1109(a). There is no automatic class-wide remedy for losses to some individual plan accounts that resulted in gains to others.

ERISA is "enormously complex and detailed," and its enforcement provisions are "carefully crafted." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 254, 262 (1993). Congress designed it that way. *See generally* James A. Wooten, *The Employee Retirement Income Security Act of 1974: A Political History* (2004). ERISA's eleven enforcement provisions are highly particularized, granting causes of action to specific types of individuals for specific types of remedies to address specific types of harm. Congress did not include a broad, general damages liability provision, knowing that unpredictable liability can "unduly discourage employers from offering [employee-benefit] plans in the first place." *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996). The statute accordingly "represents a careful balancing between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans." *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (citations and internal quotation marks omitted).

Within this carefully calibrated scheme, particular remedies are limited to certain types of violations. For example, ERISA includes criminal penalties, but only for specified violations—*e.g.*, if there is a willful violation of ERISA's reporting or disclosure requirements. *See* 29 U.S.C. § 1131. The Secretary of Labor may enforce ERISA's disclosure obligations through civil penalties, but plan participants may privately enforce only a subset of these disclosure requirements. See 29 U.S.C. § 1132(a).

Relevant here, the statute provides for the recovery of monetary damages from a fiduciary for breach of fiduciary duty, but those damages are expressly limited to restoration of "losses *to the plan* resulting from each such breach" and "any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary." 29 U.S.C. §§ 1109(a), 1132(a)(2) (emphasis added). In so limiting § 409(a), Congress intended ERISA fiduciary litigation to protect the integrity of employee benefit plans *as institutions*, not to create a federal tort remedy for every *individual* injury alleged by plan participants. As the Supreme Court explained in *Russell*, "Congress did not intend that section to authorize any relief except for the plan itself." 473 U.S. at 144.

Accordingly, before engaging in the Rule 23 analysis, a district court must ask a threshold question: Does the ERISA § 502(a)(2) claim allege a "plan injury"—one that has "a plan-wide effect, in the sense that the loss of benefits occurring in one account diminishes the plan assets as a whole"? *Spano*, 633 F.3d at 581. If not, class treatment is not "appropriate." *Id.* The District Court skipped this step.

As Defendants explain, Plaintiff redeemed the West Monroe shares held in his ESOP account after he voluntarily terminated his employment. Thereafter, a corporate transaction caused the value of West Monroe stock (held in the ESOP on behalf of remaining participants) to increase beyond the price Plaintiff received. Plaintiff now seeks a "redistribut[ion]" of that gain to himself and other former participants. Appx. 87-89. He identifies no loss *to the Plan*; if anything, the Plan received an enormous benefit from the transaction. Plaintiff now wishes to share in that benefit. Thus, he claims that the class should have been given more money at the "dollar-for-dollar" expense of current plan participants. Appx. 87-89. That is not seeking to recover losses from a diminishment in the Plan's overall assets. It is seeking the opposite—to redistribute the Plan's assets for Plaintiff's own gain, which stretches § 502(a)(2) beyond recognition.

Although Plaintiff seeks to upend ERISA's carefully calibrated enforcement scheme by pursuing a class action based on Section 502(a)(2) claims where there is no "plan injury," he is not alone. In the last several years, multiple new waves of ERISA litigation have swelled involving 502(a)(2) claims for fiduciary breach that allege distinctly individualized injuries.

Wellness-Program Litigation. Since the early 2020s, dozens of plan sponsors have been sued on the theory that they charged tobacco-using participants higher health premiums without complying with ERISA's requirements for doing so.[5] These lawsuits frame their claims as fiduciary breaches under § 502(a)(2), yet the plaintiffs uniformly allege that they paid improper surcharges *out of their own pockets* and seek money to be placed *back in their own pockets* (not into the plan). *See Chirinian v. Travelers Cos.*, 2025 WL 2147271, at *12 (D. Minn. July 29, 2025) (rejecting argument); *Fisher v. GardaWorld Cash Serv. Inc.*, 2025 WL 2484271, at *7 (W.D.N.C. Aug. 28, 2025) (same).

---

[5] *See, e.g.*, *Plesha v. Ascension Health All.*, No. 24-cv-1459 (E.D. Mo.); *Williams v. Target Corp.*, No. 24-cv-3748 (D. Minn.); *Brown v. Huntington Ingalls Indus., Inc.*, No. 26-cv-34 (E.D. Va.).

Pension Risk Transfer Litigation. Similarly, since 2024, a dozen suits have been filed against some of the nation's largest employers, challenging pension annuity buyout transactions, commonly referred to as pension risk transfers (PRTs), which are expressly permitted by ERISA.[6] These suits, brought on behalf of former pension plan participants, allege that the employers breached fiduciary duties by transferring the plaintiffs' pension benefit obligations to third-party insurers. Congress crafted a cause of action for those plaintiffs: ERISA § 502(a)(9), with remedies limited to relief that will "assure receipt" by the former participants "of the amounts … to be provided by" the insurers to whom pension obligations have been transferred. 29 U.S.C. § 1132(a)(9). Not content with that express remedy, however, plaintiffs have asserted claims under § 502(a)(2) seeking purported plan-wide losses. *See Doherty v. Bristol-Myers Squibb Co.*, 2025 WL 2774406, at *10 (S.D.N.Y. Sept. 29, 2025) (rejecting argument), *appeal docketed*, No. 26-1021 (2d Cir. Apr. 20, 2026).

As here, the wellness-program and PRT plaintiffs strategically bring Section 502(a)(2) claims so that they can obtain class-wide damages. And as long as the potential for class-wide damages remains, these suits will continue to proliferate.

---

[6] *See, e.g.*, *Doherty v. Bristol-Myers Squibb Co.*, No. 24-cv-6628 (S.D.N.Y.); *Bueno v. Gen. Elec. Co.*, No. 24-cv-822 (N.D.N.Y.); *Konya v. Lockheed Martin Corp.*, No. 24-cv-750 (D. Md.).

Indeed, new tobacco cessation wellness-program complaints are filed on a seemingly daily basis.[7] By its plain terms, though, Section 502(a)(2) allows for relief only under "section 1109," which in turn provides for the recovery of "losses to the plan." 29 U.S.C. §§ 1109(a), 1132(a)(2). The Court should be "reluctant to tamper with [the] enforcement scheme embodied in the statute by extending remedies not specifically authorized by its text." *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209 (2002) (citation and internal quotation marks omitted). It should not allow Plaintiff to read "to the plan" out of the statute.

III. The District Court's reasoning encourages abusive lawsuits that aim to extort settlements, undermining both ERISA and Rule 23.

The consequences of the decision below are far-reaching. If ERISA fiduciary-breach claims like these are certified as class actions, the pressure to settle skyrockets—which subverts Congress's goal of encouraging employers to offer benefit plans and aggravates the due process concerns of class-action adjudication.

ERISA class-action litigation has exploded in the last 15 years. *See, e.g.*, George S. Mellman & Geoffrey T. Sanzenbacher, *401(k) Lawsuits: What are the Causes and Consequences?*, Ctr. for Ret. Rsch. at Bos. Coll. (May 2018), https://crr.bc.edu/wp-content/uploads/2018/04/IB_18-8.pdf. "Regardless of plan type, plan size or jurisdiction, no retirement plan or plan fiduciary is immune." AIG,

[7] *See* Encore Fiduciary, *"Tobacco Surcharge" Litigation Update* (Jan. 7, 2026), https://encorefiduciary.com/tobacco-surcharge-litigation-update/.

Understanding the Rapid Rise in Excessive Fee Claims 2, https://bit.ly/3k43kt8 (noting that the number of "claims has jumped to unprecedented levels").

A class action is supposed to be "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart*, 564 U.S. at 348 (citation omitted). But a rule that makes certification of damages classes a matter of course only ratchets up the already substantial pressure on plan sponsors to settle. *See PBGC ex rel. Saint Vincent Cath. Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 719 (2d Cir. 2013) (discussing the "ominous" burden of discovery in ERISA cases that "elevates the possibility that 'a plaintiff with a largely groundless claim' could use discovery to add "an *in terrorem* increment of the settlement value, rather than a reasonably founded hope that the discovery process will reveal relevant evidence" (quoting *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005))). As the Supreme Court has recognized, certification of a class "can exert substantial pressure on a defendant 'to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability.'" *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 474 (2013) (quoting Advisory Committee's 1998 Note on Rule 23(f)). In other words, "class actions can entail a 'risk of "in terrorem" settlements.'" *Id.* (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011)). Thus, "[i]t is no secret that [class] certification can coerce a[n ERISA] defendant into settling on highly disadvantageous terms regardless of the merits of the suit." *Chavez v. Plan Benefit Servs., Inc.*, 957 F.3d 542, 547 (5th Cir. 2020) (citation and quotation marks omitted).

Unsurprisingly, then, ERISA class actions that have been erroneously certified under Rule 23(b)(1) despite involving claims for monetary relief under § 502(a)(2) often settle shortly after certification. *See* Chubb, *Excessive Litigation Over Excessive Plan Fees In 2023*, 2-3 (Apr. 2023), https://bit.ly/433OJ6V. In 2023, for example, there were 36 settlements in ERISA class actions totaling more than $219 million. ERISA Litigation Update, Goodwin Procter (Jan. 18, 2024), https://bit.ly/3ZRXL70. The average settlement was $5.9 million. *Id.* Those settlements—which typically benefit the lawyers much more than individual participants—not only hurt employers and risk hurting absent class members who have no option to chart their own litigation course with respect to their claims for individualized relief, they also harm defined-contribution plans themselves. When Congress enacted ERISA, it "did not require employers to establish benefit plans." *Conkright*, 559 U.S. at 516. Rather, ERISA was crafted to encourage employers to offer benefit plans while also protecting the benefits promised to employees. *Id.* at 516-17. Congress knew that if it adopted a system that was too "complex," then "administrative costs, or litigation expenses, [would] unduly discourage employers from offering … benefit plans in the first place." *Varity Corp.*, 516 U.S. at 497.

The system has largely allowed employers to experiment with and increase the availability of defined-contribution plans like those at issue in this case. But ballooning liability from class actions like this would *undermine* employers' ability to do so. Moreover, it would force plan sponsors to incur "high insurance costs," which jeopardizes Congress's "goal of containing pension costs." *Mertens*, 508 U.S. at 262-263 (citation omitted). In fact, the risks of litigation have pushed insurers "to raise insurance premiums, increase policyholder deductibles, and restrict exposure with reduced insurance limits."[8]

If employers need to absorb the litigation risks and costs of higher premiums, then many will inevitably offer less generous benefits, like matching contributions. *See* American Benefits Council, *The Proliferating Risk of Baseless Retirement Plan Litigation is Harming Plan Participants and Retirement Security* 4-6 (Oct. 2, 2025), https://bit.ly/49vJpOn. That benefits no one.

This Court should not allow an expansive view of ERISA § 502(a)(2) and Rule 23(b)(1) to become a pipeline for converting ERISA cases into class-action settlements that deprive absent class members of their due process rights, and harm employers and plans alike.

CONCLUSION

The district court's order certifying the class under Rule 23(b)(1) should be

[8] Daniel Aronowitz, *Exposing Excessive Fee Litigation Against America's Defined Contribution Plans*, Euclid Specialty, at 4 (Dec. 2020), https://bit.ly/3hNXJaW.

reversed.

Dated: July 20, 2026

Respectfully submitted,

Jennifer B. Dickey
Mariel A. Brookins
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, D.C. 20062-2000

/s/ Jaime A. Santos
Jaime A. Santos
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, D.C. 20036-1612
(202) 346-4000
jsantos@goodwinlaw.com

James O. Fleckner
Benjamin Reilly
Lee J. Moore
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
(617) 570-1000

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

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limitations of Circuit Rule 29 because it contains 6,999 words, excluding the parts of the document exempted by Rule 32(f).

This document complies with the typeface requirements of Circuit Rule 32(b) because it has been prepared in 14-point Times New Roman, a proportionally spaced font, using Microsoft Word.

Dated: July 20, 2026

/s/Jaime A. Santos
Jaime A. Santos

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing brief with the Clerk of the United States Court of Appeals for the Seventh Circuit via the CM/ECF system on this 21st day of July 2026. I certify that all participants in this case are registered ECF users and that service will be accomplished by the CM/ECF system.

/s/Jaime A. Santos
Jaime A. Santos