No. 25-2145

In the

United States Court of Appeals

For the Fourth Circuit

ALLY FINANCIAL INCORPORATED,
Defendant-Appellant,

v.

MICHAEL C. SHERIDAN,
ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,
Plaintiff-Appellee.

On Appeal from the United States District Court for the Southern District of West Virginia, Case No. 5:23-cv-00616
Hon. Frank W. Volk, Chief U.S. District Judge

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE AMERICAN FINANCIAL SERVICES ASSOCIATION AS AMICI CURIAE IN SUPPORT OF APPELLANT

Jennifer B. Dickey
Audrey Dos Santos
U.S. CHAMBER LITIGATION CENTER
1615 H Street NW
Washington, DC 20062

Matthew A. Fitzgerald
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219
T: (804) 775-4716
mfitzgerald@mcguirewoods.com

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

(Additional counsel listed on inside cover)

Philip Bohi
AMERICAN FINANCIAL SERVICES ASSOCIATION
1750 H St NW Suite 650
Washington, DC 20006

Counsel for Amicus Curiae
American Financial Services Association

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 25-2145 Caption: Michael Sheridan v. Ally Financial Incorporated

Pursuant to FRAP 26.1 and Local Rule 26.1,

The Chamber of Commerce of the United States of America; American Financial Services Association
(name of party/amicus)

---

who is Amici Curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Matthew A. Fitzgerald Date: 12/19/2025

Counsel for: Amici Curiae

Print to PDF for Filing

TABLE OF CONTENTS

Page

IDENTITY AND INTEREST OF AMICI CURIAE 1

INTRODUCTION 3

ARGUMENT 4

I. For a question to be common, a jury must answer the question the same way for all class members. 5

II. The district court erred in finding commonality. 9

A. Subjective belief and reliance are key elements of apparent authority claims. 9

B. Questions of subjective belief and reliance are not susceptible to classwide resolution. 13

III. Issues of subjective belief and reliance also destroy predominance under Rule 23. 17

CONCLUSION 19

TABLE OF AUTHORITIES

Page(s)

Cases

All Med, LLC. v. Randolph Eng'g Co.,
723 S.E.2d 864 (W. Va. 2012) 11, 13, 15

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997) 18

Auvil v. Grafton Homes, Inc.,
92 F.3d 226 (4th Cir. 1996) 10

Berry v. United States,
312 U.S. 450 (1941) 7

Broussard v. Meineke Disc. Muffler Shops, Inc.,
155 F.3d 331 (4th Cir. 1998) 14, 16

Burless v. W. Va. Univ. Hosps., Inc.,
601 S.E.2d 85 (W. Va. 2004) 10

Clint Hurt & Assocs., Inc. v. Rare Earth Energy, Inc.,
480 S.E.2d 529 (W. Va. 1996) 10

EQT Prod. Co. v. Adair,
764 F.3d 347 (4th Cir. 2014) 17

First Union Nat'l Bank v. Brown,
603 S.E.2d 808 (N.C. Ct. App. 2004) 13

Freeman v. Progressive Direct Ins. Co.,
149 F.4th 461 (4th Cir. 2025) 18

Froneberger v. Smith,
748 S.E.2d 625 (S.C. Ct. App. 2013) 12

Gen. Elec. Credit Corp. v. Fields,
133 S.E.2d 780 (W. Va. 1963) 10

Glover v. EQT Corp.,
151 F.4th 613 (4th Cir. 2025) 14, 17

Naimoli v. Pro-Football, Inc.,
120 F.4th 380 (4th Cir. 2024) 12

Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC,
31 F.4th 651 (9th Cir. 2022) 5

Phelps-Dickson Builders, L.L.C. v. Amerimann Partners,
617 S.E.2d 664 (N.C. Ct. App. 2005) 12

Robert K. Harwood, L.C. v. Chinchilla,
920 S.E.2d 322 (Va. Ct. App. 2025) 12

Ross v. Bernhard,
396 U.S. 531 (1970) 7

Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.,
559 U.S. 393 (2010) 7

Sheridan v. Ally Fin., Inc.,
2025 WL 2055750 (S.D. W. Va. July 22, 2025) 13, 17

Sheridan v. Ally Fin., Inc.,
776 F. Supp. 3d 375 (S.D. W. Va. 2024) 9

Sing Fuels Pte Ltd. v. M/V Lila Shanghai,
39 F.4th 263 (4th Cir. 2022) 13

Speerly v. Gen. Motors, LLC,
143 F.4th 306 (6th Cir. 2025) (en banc) 4, 6, 7, 10, 15, 18

Stafford v. Bojangles Rests., Inc.,
123 F.4th 671 (4th Cir. 2024) 18

Tershakovec v. Ford Motor Co., Inc.,
79 F.4th 1299 (11th Cir. 2023) 19

Thorn v. Jefferson-Pilot Life Ins. Co.,
445 F.3d 311 (4th Cir. 2006) 5, 8, 14

Wal-Mart Stores, Inc. v. Dukes,
564 U.S. 338 (2011) 4, 5, 6, 7, 15

Constitutional Provisions

U.S. Const. amend. VII 7

Rules

Fed. R. Civ. P. 23(a)(2) 5, 17

Fed. R. Civ. P. 23(b)(3) 18

Other Authorities

2 Herbet B. Newberg & William Rubenstein on Class Actions
§ 4:58 (6th ed. 2025) 19

3 Am. Jur. 2d, *Agency* § 80 (1986) 10

12 Samuel L. Williston & Richard A. Lord, A Treatise on the
Law of Contracts § 35:21 (4th ed. 2025) 11

Aaron D. Van Oort & John L. Rockenbach, *Defining
Common and Individual Issues in Class Actions: What
A Reasonable Jury Could Do*, 109 Minn. L. Rev.
Headnotes 1 (2024) 5, 6

Authority, Black's Law Dictionary (12th ed. 2024) 11

Restatement (Third) of Agency § 2.03 (2006) 11, 12

IDENTITY AND INTEREST OF AMICI CURIAE[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Financial Services Association ("AFSA") is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans,

---

[1] No party's counsel authored this brief in whole or in part, and no entity or person, aside from amici curiae, their members, or their counsel, contributed any money to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance. AFSA has a broad membership, ranging from large international financial services firms to single-office, independently owned consumer finance companies. For over 100 years, AFSA has represented financial services companies that hold leadership positions in their markets and conform to the highest standards of customer service and ethical business practices. AFSA supports financial education for consumers of all ages. AFSA advocates before legislative, executive, and judicial bodies on issues affecting its members' interests.

INTRODUCTION

This case presents an important opportunity for this Court to clarify the interaction between apparent authority and class certification.[2] Apparent authority is an equitable doctrine. It exists to help a plaintiff make a case when there was no actual agency, but when the plaintiff *subjectively believed* agency did exist and *relied* on that subjective belief. There is nothing wrong with apparent authority as a general legal doctrine. The problem arises at class certification. Any doctrine that requires proof of subjective belief and reliance should pose an insurmountable barrier to class certification. It is one thing for a single plaintiff to prove his subjective belief and reliance. But 15,000 plaintiffs certainly cannot prove those things with common evidence.

The district court here thought otherwise, applying a test for apparent authority that undermines Rule 23's critical commonality requirement. In doing so, it threatened both Ally Financial's and the unnamed class members' Seventh Amendment rights. This Court can and should correct that decision. It is not possible to answer in one stroke

---

[2] Apparent authority is also referred to as apparent agency and case law refers to the two interchangeably.

the question whether each putative class member subjectively believed that the third-party payment processors at issue here were agents of Ally, and all of the individualized inquiries necessary to find apparent authority would predominate over any common questions that do exist.

ARGUMENT

Commonality is an oft litigated, yet oft misunderstood requirement for certifying a class action. The Supreme Court has emphasized again and again that a class action must be based on a "common contention . . . of such a nature that is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The Sixth Circuit recently explained further that a question is only common if a reasonable decisionmaker *must* answer it the same way for all class members. *Speerly v. Gen. Motors, LLC*, 143 F.4th 306, 316 (6th Cir. 2025) (en banc).

Applying that standard here, it is clear that apparent authority is a doctrine that resists certification. A reasonable jury could answer the question whether one class member subjectively believed that the third-party payment processors were Ally's agents differently than it could

answer that question as to another, so there is no common question apt to drive resolution of the litigation. The critical element of reliance simply cannot be proven en masse without undermining the Seventh Amendment rights of both businesses and putative class members.

I. For a question to be common, a jury must answer the question the same way for all class members.

Commonality "is the [Rule 23 requirement] that most bedevils courts in practice." Aaron D. Van Oort & John L. Rockenbach, *Defining Common and Individual Issues in Class Actions: What A Reasonable Jury Could Do*, 109 Minn. L. Rev. Headnotes 1 (2024). Rule 23 requires plaintiffs to prove commonality—"questions of law or fact common to the class," Fed. R. Civ. P. 23(a)(2), which the Supreme Court has emphasized requires looking at not just the *questions* but the ability to generate *common answers*. *Wal-Mart Stores*, 564 U.S. at 350. As this Court has held, "[a] common question" is "one that can be resolved for each class member in a single hearing." *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006) (cleaned up); *see also Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 664 (9th Cir. 2022) ("[T]he plaintiffs must prove that there are 'questions of law or fact

common to class members' that can be determined in one stroke") (quoting *Wal-Mart Stores*, 564 U.S. at 349).

In deciding that question in a single hearing, it is vital that the same conclusion applies to all individual plaintiffs. Oort & Rockenbach, *supra* p. 5, at 10. Sitting en banc in an automobile defect case, the Sixth Circuit recently emphasized this point. *Speerly*, 143 F.4th at 316. It explained, "[i]f a reasonable decisionmaker . . . *may* answer 'yes' to a question for some class members and 'no' for others, the class has not shown that it is common." *Id.* (emphasis added).

The Sixth Circuit's explanation of commonality (and the related predominance inquiry) had real importance for its decision reversing class certification. *Id.* at 312. There, plaintiffs brought a litany of product liability claims, including breach of implied warranty and violation of state consumer protection laws. *Id.* On commonality, the Sixth Circuit concluded that plaintiffs failed to identify a question "affect[ing] at least one contested element in each cause of action" that could be resolved with "a yes-or-no-answer. . . for the class in one stroke." *Id.* at 317–18. Explaining that the meaning of "defect" varied under the state laws at issue, the court rejected the plaintiffs' argument that the

generalized question of the existence of a "defect" presented a common question. *Id.* Likewise, the court found that the defendant's knowledge of the defect was not susceptible to classwide proof because the defendant's knowledge evolved throughout the class period. *Id.* at 319. And the court further cautioned that Rule 23 and accompanying precedent "suggest[] that common questions do not predominate in the state consumer protection statutes that require reliance." *Id.* at 333–34.

This understanding of commonality protects Seventh Amendment rights. The Seventh Amendment guarantees "the right to trial by jury" in cases at common law, U.S. Const. amend. VII, bestowing juries with the "exclusive power . . . to weigh evidence and determine contested issues of fact." *Berry v. United States*, 312 U.S. 450, 453 (1941). Rule 23 does nothing to change this fundamental guarantee. *See, e.g.*, *Ross v. Bernhard*, 396 U.S. 531, 538–39 (1970). Instead, it "merely enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits," "leav[ing] the parties' legal rights and duties intact and the rules of decision unchanged." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (plurality); *see also Wal-Mart Stores*, 564 U.S. at 367 ("[A] class cannot be certified on the premise

that [a defendant] will not be entitled to litigate its [] defenses to individual claims"). That means that plaintiffs must demonstrate that *each* class member can satisfy *each* element of *each* claim that they bring, and defendants must be permitted to bring defenses as to each class member.

So, when determining if a question is common such that it "can be resolved for each class member in a single hearing," *Thorn*, 445 F.3d at 319, the court should ask if a reasonable jury must answer the question the same way for each class member. If some class members would have succeeded on their claims in an individual case but are unfairly doomed because of defects in their fellow class members' cases, their rights would be violated. On the other hand, if the defendant would be unfairly held liable on a classwide basis because only some, but not all, class members would have succeeded on their claims in an individual trial, its rights would be violated. The only way to ensure all parties' jury rights is for the court to determine first that a reasonable jury must answer the question the same way for all class members. Finding otherwise would transform the class action device from a mere procedural tool aggregating claims to a substantive device.

II. The district court erred in finding commonality.

The district court's certification decision here rested on its misunderstanding of the apparent authority doctrine. The reliance inquiry entailed in that doctrine—and the subjective belief inquiry it encompasses—is inherently individualized and should have doomed class certification.

A. Subjective belief and reliance are key elements of apparent authority claims.

Apparent authority is an equitable principle, designed to step in when the principal did not actually endow the purported agent with any agency, yet it would be inequitable to deny the plaintiff relief given the plaintiff's reliance on a subjective, mistaken belief. The district court understood that requirement at an earlier phase of this case, holding that to prove apparent authority, a plaintiff must demonstrate that he *relied* on the principal's representation. *See Sheridan v. Ally Fin., Inc.*, 776 F. Supp. 3d 375, 385 (S.D. W. Va. 2024). But it erred when it strayed from that understanding in certifying the class.

West Virginia law only recognizes apparent authority when "the principal . . . holds out or represents a person to be his agent or employee, and a third party or parties *rely* thereon." *Gen. Elec. Credit Corp. v.*

Fields, 133 S.E.2d 780, 784 (W. Va. 1963) (emphasis added). Put another way, the party asserting the relationship must prove he "had reason to believe, and *did actually believe*, that the agent possessed such authority" and "*relying* on such appearance of authority[,] . . . changed his position." *Clint Hurt & Assocs., Inc. v. Rare Earth Energy, Inc.*, 480 S.E.2d 529, 536 n.13 (W. Va. 1996) (quoting 3 Am. Jur. 2d, *Agency* § 80 (1986)) (emphases added); *Auvil v. Grafton Homes, Inc.*, 92 F.3d 226, 230 (4th Cir. 1996) (explaining that under West Virginia law, apparent authority exists "[w]hen . . . a third party . . . *rel*[*ies*] on the agent's authority to act on the principal's behalf") (emphasis added).

This standard requires not only a *reasonable* belief in authority, but a subjective, *actual* belief in authority that in turn leads to *reliance* on that erroneous belief. The Supreme Court of West Virginia has recognized that the "reliance prong of the apparent agency test" is "subjective," calling it a "subjective molehill." *Burless v. W. Va. Univ. Hosps., Inc.*, 601 S.E.2d 85, 97 (W. Va. 2004). But "[c]lass certification makes mountains out of molehills." *Speerly*, 143 F.4th at 315. And West Virginia "law indulges no presumption that an agency exists." *All Med,*

LLC. v. Randolph Eng'g Co., 723 S.E.2d 864, 870 (W. Va. 2012) (quotations omitted).

West Virginia is hardly alone. Its definition of apparent authority largely tracks the Restatement, which defines apparent authority as "the power held by an agent or other actor to affect a principal's legal relations with third parties when *a third party reasonably believes* the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." Restatement (Third) of Agency § 2.03 (2006) (emphasis added); *see also Authority*, Black's Law Dictionary (12th ed. 2024) (defining apparent authority as "[a]uthority that a third party reasonably believes an agent has"). As Williston explains, "[a] party that deals with an agent must prove that the facts giving rise to the agency were known when it dealt with the agent, and that it believed the agent was acting within the scope of its authority." 12 Samuel L. Williston & Richard A. Lord, A Treatise on the Law of Contracts § 35:21 (4th ed. 2025).

Indeed, every state in this Circuit requires plaintiffs asserting apparent authority to prove their reasonable and subjective belief. Maryland adopted the Restatement and its requirement that the "third

party reasonably believes the actor has authority to act." *Naimoli v. Pro-Football, Inc.*, 120 F.4th 380, 387 (4th Cir. 2024) (quoting Restatement (Third) of Agency § 2.03). North Carolina states that a "principal may be held liable [under a theory of apparent authority] if a third person, in the exercise of reasonable care, *justifiably believed* the principal had conferred such authority on the agent." *Phelps-Dickson Builders, L.L.C. v. Amerimann Partners*, 617 S.E.2d 664, 669 (N.C. Ct. App. 2005) (emphasis added). Meanwhile, South Carolina finds apparent authority when "[the principal's words or conduct], . . . reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf." *Froneberger v. Smith*, 748 S.E.2d 625, 630 (S.C. Ct. App. 2013). And Virginia defines apparent authority as the authority "that a third party reasonably believes the agent has." *Robert K. Harwood, L.C. v. Chinchilla*, 920 S.E.2d 322, 327 (Va. Ct. App. 2025) (cleaned up). All of these states ask not only what a reasonable person *could* have believed; they ask what the plaintiff himself *did* believe about the agency status of the other party.

In light of apparent authority's subjective requirement, a plaintiff must present "specific facts to show that [he] believed that [the purported

agent] was acting as [an] employee or agent." *All Med, LLC.*, 723 S.E.2d at 871. Again, West Virginia is not alone in recognizing that apparent authority necessitates a fact-intensive inquiry. *See First Union Nat'l Bank v. Brown*, 603 S.E.2d 808, 815 (N.C. Ct. App. 2004) (noting that "the law of apparent authority" in North Carolina "usually depends upon the unique facts of each case."); *Sing Fuels Pte Ltd. v. M/V Lila Shanghai*, 39 F.4th 263, 275–76 (4th Cir. 2022) (applying admiralty law and noting that apparent authority is a question of fact).

In short, apparent authority forgives the lack of actual authority but demands proof of actual belief in return.

B. Questions of subjective belief and reliance are not susceptible to classwide resolution.

Notwithstanding the inherently fact-intensive nature of the apparent authority analysis, the district court held "the inquiry into apparent agency authority may be uniformly applied to all class members." *Sheridan v. Ally Fin., Inc.*, 2025 WL 2055750, at *6 (S.D. W. Va. July 22, 2025). That is not correct.

In other contexts, this Court and others have recognized as much, holding that questions of reliance require individualized inquiries. This Court has reversed a grant of class certification for fraudulent

concealment claims where "[state substantive] law requires proof of *reliance* on the defendant's alleged fraudulent acts and *considers the individual circumstances* under which a plaintiff received and reacted to said acts." *Glover v. EQT Corp.*, 151 F.4th 613, 628–29 (4th Cir. 2025) (emphases added).

In *Thorn*, this Court held that the question of when each plaintiffs' claim accrued was not susceptible to classwide proof. 445 F.3d at 318–21. As it explained, "[o]ur circuit's accrual rule, which focuses on the contents of the plaintiff's mind, is not readily susceptible to class-wide determination." *Id.* at 320. This is because the "[e]xamination of whether a particular plaintiff possessed sufficient information . . . will generally require individual examination of testimony from each particular plaintiff to determine what he knew and when he knew it." *Id.*

Likewise, when an inquiry "focuse[s] on the plaintiff's knowledge, such as the requirement that a plaintiff in a fraud claim reasonably rel[ied] on the defendant's representations," this Court has "consistently held that individual hearings are required." *Id.* at 321; *see also Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 341 (4th Cir. 1998) (reversing class certification on plaintiffs' North Carolina

fraud and negligent misrepresentation claims because both require "proof of reasonable reliance"). Indeed, the need to prove "reliance tends to pose 'an insuperable barrier to class certification.'" *Speerly*, 143 F.4th at 329 (quoting *Wal-Mart Stores*, 564 U.S. at 351 n.6).

The apparent authority analysis should be the same. West Virginia substantive law—like that of many states—requires an evaluation of each class member's mental state when apparent authority is in question. Rule 23 does not relieve class members of their burden to put forth "specific facts" demonstrating their belief. *All Med, LLC.*, 723 S.E.2d at 871.

Here, a reasonable jury could find that one class member subjectively believed that ACI Pay was Ally's agent and relied on that, while finding that a different class member did not believe that ACI Pay was Ally's agent. As an initial matter, even if all class members received the same Welcome Letter, that does not mean every class member read it. Michael Sheridan himself does not recall receiving the letter, much less reading it or seeing the letter's disclaimer stating that ACI and CFP were third parties. Opening Br. at 11–12. By contrast, plenty of class members may have actually read the letter and understood that ACI and

CFP were third parties. And then Sheridan admitted to seeing (but not paying attention to) Ally's website's disclaimers stating that ACI and CFP are third parties. Opening Br. at 12–13. Others may have paid attention. Further, some class members may have called Ally, ACI, or CFP's customer support and, during those interactions, gleaned information swaying their subjective belief as to ACI and CFP's authority one way or another. In sum, different class members saw and heard different information.

And even if all class members *had* seen and heard the same things from Ally, that does not mean they believed the same thing. Some class members may have a more sophisticated understanding of the financial services industry than others and comprehend the legal distinction between Ally and payment processors. In other words, each class member must have brought their own experience and knowledge to the table to inform their beliefs.

Without engaging in an individualized inquiry, no jury can pry out each class member's subjective belief, nor can a jury weigh the reasonableness of it. *See Broussard*, 155 F.3d at 341 ("[P]roof of reasonable reliance [for fraud and negligent misrepresentation claims]

would depend upon a fact-intensive inquiry into what information each [proposed class member] actually had"); *Glover*, 151 F.4th at 628–29 (same for fraudulent concealment claims); *EQT Prod. Co. v. Adair*, 764 F.3d 347, 370 (4th Cir. 2014) ("[A] plaintiff's knowledge typically requires individual evidence").

The question whether each class member believed that the third-party payment processor they contracted with acted with "apparent authority" thus defies a classwide answer. As a result, there is no major question "of law or fact common to the class." *See* Fed. R. Civ. P. 23(a)(2). The district court erred in finding otherwise. On this ground alone, the Court should reverse the district court's certification order.

III. Issues of subjective belief and reliance also destroy predominance under Rule 23.

A second error lurks in the district court's opinion—its decision to collapse the commonality and predominance analyses into one. *Sheridan*, 2025 WL 2055750, at *5–6. But identifying common and uncommon issues is a separate endeavor from a predominance analysis, where the issues should be weighed against each other. "While commonality serves to ask whether class-wide proceedings are even possible, predominance 'tests whether proposed classes are sufficiently cohesive to warrant

adjudication by representation.'" *Stafford v. Bojangles Rests., Inc.*, 123 F.4th 671, 679 (4th Cir. 2024) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). "[T]he predominance criterion is far more demanding" than commonality. *Amchem Prods., Inc.*, 521 U.S. at 623–24. In a predominance analysis, the court "must put the common issues on one side, the individual issues on the other, then qualitatively evaluate which side predominates." *Speerly*, 143 F.4th at 317.[3]

In this case, the importance of the non-common issue of apparent authority across the 15,000-member class means that any predominance showing would fail even if there happened to be other issues that are common. That is, even if *some* common issues may exist on other points, they would not "predominate" over the individualized reliance inquiries that would be needed for plaintiffs to prevail. *See* Fed. R. Civ. P. 23(b)(3).

---

[3] While this Court has stated that the predominance inquiry can "subsume" the commonality requirement, that does not excuse the district court from conducting separate analyses. *See Freeman v. Progressive Direct Ins. Co.*, 149 F.4th 461, 466, 469 (4th Cir. 2025) (cleaned up). It merely means that the predominance inquiry is "more demanding" than the commonality analysis, so a failure to satisfy commonality is a per se failure to prove predominance. *Id.* at 466 (quoting *Amchem Prods., Inc.*, 521 U.S. at 624). But that underscores the need to conduct a rigorous commonality analysis before moving to predominance.

In similar circumstances, courts routinely find as much: "[a]ffirmatively proving reliance is a very individualized inquiry, the kind that would predominate over other common questions in a class action." *Tershakovec v. Ford Motor Co., Inc.*, 79 F.4th 1299, 1307–08 (11th Cir. 2023); 2 Herbet B. Newberg & William Rubenstein on Class Actions § 4:58 (6th ed. 2025) (collecting cases) ("[C]ourts often deny Rule 23(b)(3) class certification in . . . reliance-related cases[] on the grounds that the individualized nature of the reliance inquiry means the predominance test cannot be met.").

Thus, properly viewed, not only is apparent authority a non-common question under Rule 23, but its centrality to this case means any predominance showing must fail as well. This Court should reverse the class certification.

CONCLUSION

Affirming the district court's class certification would have significant consequences beyond this case. It would allow plaintiffs to short-cut state substantive law reliance and mental-state requirements by invoking the class certification process. Not only would this interpretation put this Circuit out of step with its sister courts, but it

would also impinge on defendants' and unnamed class members' Seventh Amendment rights. The district court's class certification order should be reversed.

Dated: December 19, 2025

Respectfully submitted,

/s/ Matthew A. Fitzgerald
Matthew A. Fitzgerald
McGuireWoods LLP
800 East Canal Street
Richmond, VA 23219
T: (804) 775-4716
F: (804) 698-2251
mfitzgerald@mcguirewoods.com

Jennifer Dickey
Audrey Dos Santos
U.S. Chamber Litigation Center
1615 H Street NW
Washington, DC 20062
jdickey@uschamber.com
adossantos@uschamber.com

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

Philip Bohi
American Financial Services Association
1750 H St NW Suite 650
Washington, DC 20006
pbohi@afsamail.org

Counsel for Amicus Curiae American Financial Services Association

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 3,715 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it has been prepared in a proportionally spaced Century Schoolbook typeface using Microsoft Word, in 14-point size.

/s/ Matthew A. Fitzgerald
Matthew A. Fitzgerald

CERTIFICATE OF SERVICE

I hereby certify that on December 19th, 2025, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the system.

/s/ Matthew A. Fitzgerald
Matthew A. Fitzgerald