

Nos. 26-2018 & 26-2772

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

IN RE: THE BOEING COMPANY AIRCRAFT SECURITIES LITIGATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI, ET AL.,
Plaintiffs/Appellees,

v.

BOEING COMPANY AND DENNIS MUILENBURG,
Defendants/Appellants.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division
No. 1:19-cv-02394 (Valderrama, J.)

**BRIEF OF *AMICI CURIAE* THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA, THE SECURITIES
INDUSTRY AND FINANCIAL MARKETS ASSOCIATION, AND
THE AMERICAN PROPERTY CASUALTY INSURANCE
ASSOCIATION IN SUPPORT OF
DEFENDANTS-APPELLANTS AND REVERSAL**

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 26-2018 & 26-2772Short Caption: In re: The Boeing Company Aircraft Securities Litigation

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

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None.
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- (4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:
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N/A

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Yes

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INTEREST OF AMICI CURIAE¹

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Securities Industry and Financial Markets Association (SIFMA) represents the interests of securities firms, banks, and financial-asset managers across the United States. SIFMA's mission is to support a strong financial sector, while promoting investor opportunity, capital formation, job creation, economic growth, and the cultivation of public trust and confidence in the financial markets.

¹ Consistent with Federal Rule of Appellate Procedure 29(a)(2), amici state that counsel conferred with counsel for the parties, and all parties have consented to the filing of this brief. Amici also state that no party's counsel authored this brief in whole or in part. No party, party's counsel, or person other than amici, their members, or their counsel contributed money that was intended to fund preparing or submitting this brief.

The American Property Casualty Insurance Association (APCIA) is the leading national trade association for home, auto, and business insurers, with a legacy dating back 150 years. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members and their policy holders in legislative and regulatory forums at the federal and state levels.

This appeal presents a recurring question of vast practical importance: what a securities plaintiff must prove about its damages methodology before a class may be certified under Rule 23(b)(3). That question matters to amici's members—the public companies, investors, and financial-market participants who bear the costs when securities classes are certified on inadequate showings. Amici regularly participate in cases raising class-certification issues, including in support of a Rule 23(f) petition that the Sixth Circuit recently granted, and have a direct interest in ensuring that Rule 23's standards are faithfully applied in this Circuit and elsewhere.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

For class certification under Rule 23(b)(3), plaintiffs must present “evidentiary proof” that “damages are capable of measurement on a

classwide basis” through a methodology “consistent with [their] liability case.” *Comcast Corp. v. Behrend*, 569 U.S. 27, 33-35 (2013) (citation omitted). Promises do not count. A court that takes one on faith, rather than examining the expert’s method and its application to the facts of the case, has not done the “rigorous analysis” that *Comcast* requires. *Id.* at 33.

The district court certified a class seeking more than \$15 billion on the strength of exactly such an untested promise. *See* Appellants’ Br. 10. Plaintiffs’ expert described the out-of-pocket measure of damages, proposed an event study, and predicted that discovery would supply the rest. S.A. 24-25. The district court held that this “is all Rule 23(b)(3) and *Comcast* require[].” S.A. 28. Then, on reconsideration, the court approved a damages model it had initially rejected as “untethered to the theory of liability,” while withdrawing its approval of the approach to damages on which its original certification had rested. S.A. 42-43, 76-81. The Fourth Circuit recently confronted a materially similar showing in a different securities class action against Boeing and held that it was “not enough.” *Office of the Gen. Treasurer ex rel. Emps. Ret. Sys. v. Boeing Co.*, 182 F.4th 422, 442 (4th Cir. 2026). This Court should reach

the same conclusion and, in doing so, make clear to the district courts of this Circuit what *Comcast* requires in securities cases.

The rule amici ask the Court to adopt is modest but important to the fair conduct of high-stakes securities cases like this one. *Comcast* does not require a securities plaintiff to calculate damages at the certification stage, and a classwide methodology may rely on individualized inputs such as the dates and prices of each class member's trades. *See id.* at 441, 443. But the plaintiff must show, with evidence, how it will measure the artificial inflation in the stock price over the class period in a manner consistent with its theory of liability, so that the district court can evaluate whether common issues will predominate in the litigation. That requirement does not hinder a plaintiff with a sound theory and reliable model. It constrains only plaintiffs who cannot, or would rather not, commit to one at the class-certification phase.

I. *Comcast's* limits on class certification provide essential protections for American businesses and investors. The rigorous-analysis requirement matters because certification is very often the practical end of securities litigation. Once a class is certified, defendants

frequently settle even low-probability cases rather than risk trial. The ensuing costs are not borne only by the parties; they also fall on shareholders, consumers, workers, and the capital markets as a whole.

II. *Comcast* requires evidentiary proof, at certification, of a methodology capable of measuring damages classwide in a manner consistent with the plaintiff's theory of liability. Many district courts, including the district court here, have ignored that dictate and instead accepted a recitation of the "out-of-pocket" measure, which is in reality merely a "legal description of what damages [in a securities case] are generically"—not a methodology for *how* to calculate damages on the facts of a particular case. *Id.* at 440. These courts have relied less on reasoned analysis than on a headcount of prior certification orders that, because certified cases typically settle, were almost never reviewed. The Fourth Circuit squarely rejected that approach in *Boeing*, and the Sixth Circuit insisted on the rigorous analysis that *Comcast* requires in *In re FirstEnergy Corp. Securities Litigation*, 149 F.4th 587 (6th Cir. 2025). This Court's decisions in *Parko v. Shell Oil Co.*, 739 F.3d 1083 (7th Cir. 2014), and *In re Allstate Corp. Securities Litigation*, 966 F.3d 595 (7th Cir. 2020), point the same way. And to be clear, the rule this Court

should adopt is cabined: plaintiffs need not calculate damages at certification, and their methodology may use individualized inputs. What they may not do is defer presentation of the methodology itself. Nothing in *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796 (7th Cir. 2013), or the Second Circuit's decision in *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017), is to the contrary.

III. This case shows why this rule matters so much. It serves the important aim of requiring the class certification analysis to be anchored in fact, in a theory of liability, and in a model that can actually be used to calculate, on a classwide basis, the damages alleged to have resulted from that theory of harm.

Here, in contrast, Plaintiffs' expert offered a recycled description of the out-of-pocket measure and a prediction that discovery would supply the details. The district court certified the class in part on a model the expert said he "could construct." S.A. 40. It then withdrew its approval of that model, after concluding that Plaintiffs never really intended to pursue that theory, and accepted one it had initially rejected. *See* S.A. 80-81. *Comcast* does not permit a court to certify first and find a methodology later. Allowing a class action to proceed on that

basis reduces Rule 23(b)(3)'s predominance requirement to a nullity—precisely what *Comcast* forbids. This Court should reverse.

ARGUMENT

I. *Comcast's* Limits On Class Certification Provide Essential Protections For American Businesses And Investors.

Plaintiffs “seeking to maintain a class action ‘must affirmatively demonstrate [their] compliance’ with Rule 23.” *Comcast*, 569 U.S. at 33 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). For a Rule 23(b)(3) class, that requires “evidentiary proof”—not pleadings or assurances—that common issues predominate and, thus, that damages can be measured classwide through a methodology consistent with plaintiffs’ liability theory. *See id.* at 33-35. At the certification stage, a court may not accept an expert’s promise that a workable model will eventually emerge. It must instead “take a close look” and “conduct a rigorous analysis” to determine whether the methodology plaintiffs have presented can measure damages on a classwide basis. *Id.* at 34-36 (internal quotation marks omitted). Without that showing, “[q]uestions of individual damage calculations will inevitably overwhelm questions common to the class.” *Id.* at 34.

That rigorous review is critical because, as a practical matter, “[f]or many damages class actions, certification is the whole ballgame.” *Speerly v. Gen. Motors, LLC*, 143 F.4th 306, 351 (6th Cir. 2025) (en banc) (Nalbandian, J., concurring). “[A] grant of class status can put considerable pressure on the defendant to settle, even when the plaintiff’s probability of success on the merits is slight. Many corporate executives are unwilling to bet their company that they are in the right in big-stakes litigation, and a grant of class status can propel the stakes of a case into the stratosphere.” *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 834 (7th Cir. 1999); accord *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978) (“Certification of a large class may so increase the defendant’s potential damages liability and litigation costs that [it] may find it economically prudent to settle and to abandon a meritorious defense.”); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (recognizing that “even a small chance of a devastating loss” can cause settlement of “questionable claims”); *Szabo v. Bridgeport Machs., Inc.*, 249 F.3d 672, 675 (7th Cir. 2001) (class certification can turn a “\$200,000 dispute ... into a \$200 million dispute,” inducing “a substantial settlement even if the customers’ position is weak”).

Defendants simply “may not wish to roll these dice” and “will be under intense pressure to settle.” *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1298 (7th Cir. 1995). And “[e]ven in the mine-run case, a class action can result in ‘potentially ruinous liability’” and corresponding “pressure to settle.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 445 n.3 (2010) (Ginsburg, J., dissenting).

These concerns are not merely theoretical. From 1997 through 2025, fewer than half of one percent of federal securities class actions went to trial. Cornerstone Rsch., *Securities Class Action Filings: 2025 Year in Review* 16 (2026). The stakes explain why. Securities class actions filed in 2025 put at issue roughly \$2.9 trillion in maximum potential damages. *Id.* at 10. The first half of 2026 brought 121 more filings, up from 93 in the prior six months, with maximum potential damages of \$1.858 trillion. Cornerstone Rsch., *Securities Class Action Filings: 2026 Midyear Assessment* 1, 9 (2026). Cases that survive dismissal and win certification therefore “almost always settle.” Geoffrey Rapp, *Rewiring the DNA of Securities Fraud Litigation: Amgen’s Missed Opportunity*, 44 Loy. U. Chi. L.J. 1475, 1478 (2013); see also *2025 Year in Review*, *supra*, at 16 (from 2015 to 2022, 54% of such

cases were dismissed, 39% settled, and 5% are ongoing); Henry J. Friendly, *Federal Jurisdiction: A General View* 119-20 (1973) (“While the benefits to the individual class members are usually miniscule, the possible consequences of a judgment to the defendant are so horrendous that these actions are almost always settled.”). Certification, in other words, is where *Comcast* does its work. If a damages model is not tested there, the odds are high it will never be tested.

The consequences of these certification-driven settlements extend well beyond the parties to any particular suit; they “get[] passed along to the public.” *SEC v. Tambone*, 597 F.3d 436, 452-53 (1st Cir. 2010) (Boudin, J., and Lynch, C.J., concurring). The average securities class action reduces the equity value of the defendant company by 3.5 percent, with losses absorbed by current shareholders who, in effect, insure former shareholders against their investment losses. Anjan V. Thakor, *The Unintended Consequences of Securities Litigation*, U.S. Chamber Inst. for Legal Reform 14 (Oct. 26, 2005). More broadly, “coerced settlements substantially raise the costs of doing business,” and companies “in turn pass on those costs to consumers in the form of higher prices; to retirement account holders in the form of lower

returns; and to workers in the form of lower salaries and lesser benefits.” *Lab’y Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 333 (2025) (Kavanaugh, J., dissenting). And this, in turn, can discourage foreign issuers from accessing U.S. capital markets “for fear that the potential costs of litigation will more than outweigh any incremental benefits of cheaper capital.” Michael Bloomberg & Charles Schumer, *Sustaining New York’s and the US’ Global Financial Services Leadership* ii, 101 (2007). “Simply put, the consequences of overbroad and incorrectly certified damages class actions can be widespread and significant.” *Lab’y Corp.*, 605 U.S. at 333 (Kavanaugh, J., dissenting).

This Circuit has seen its share of these cases. Securities class actions filed in the Seventh Circuit in 2025 alone alleged more than \$160 billion in maximum dollar losses. *2026 Midyear Assessment*, *supra*, at 27. Event-driven suits like this one—filed in the wake of a non-financial crisis and built around long class periods and numerous challenged statements—have become increasingly common. *See* U.S. Chamber Inst. for Legal Reform, *Containing the Contagion* 9-11 (Feb. 2019). When *Comcast’s* limits are diluted, public issuers face “incorrectly certified classes” and may “reluctantly swallow” settlements

“rather than be[t] the company on the uncertainties of trial.” *Lab’y Corp.*, 605 U.S. at 333 (Kavanaugh, J., dissenting); *see also Speerly*, 143 F.4th at 324. That concern is particularly acute where, as here, Plaintiffs challenge 32 statements made over nearly a year and seek more than \$15 billion, *see* Appellants’ Br. 10, 58, yet fail to account for the evolving mix of public information or for the fact that certain alleged corrective events had profound economic consequences regardless of any prior statement. The resulting costs fall not on alleged wrongdoers (individual defendants are indemnified) but on current shareholders, consumers, and the public at large. *See Speerly*, 143 F.4th at 324. No principle underlying Rule 23 is served by that result.

II. Comcast Requires A Case-Specific Damages Methodology At Certification, Not A Promise To Build One Later.

A. The District Court “Consensus” Reflects Settlement Dynamics, Not Rigorous Analysis.

The Supreme Court has “repeatedly explained”—before *Comcast* and since—that district courts have “an obligation before certifying a class to ‘determin[e] that Rule 23 is satisfied, even when that requires inquiry into the merits.’” *Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys.*, 594 U.S. 113, 122 (2021) (quoting *Comcast*, 569 U.S. at 35); *see, e.g., Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275-76

(2014); *Dukes*, 564 U.S. at 351 & n.6. Yet some district courts in this Circuit have reduced *Comcast* to a formality, treating it as satisfied when plaintiffs merely identify a generic methodology, such as an “out-of-pocket, or event study, method[ology],” and list valuation techniques that might be applied at a later date. S.A. 27-29 & n.9; *see also Pub. Emps.’ Ret. Sys. of Miss. v. TreeHouse Foods, Inc.*, 2020 WL 919249, at *9 (N.D. Ill. Feb. 26, 2020); *Washtenaw Cnty. Emps.’ Ret. Sys. v. Walgreen Co.*, 2018 WL 1535156, at *3-4 (N.D. Ill. Mar. 29, 2018). And the problem is not limited to this Circuit. As Plaintiffs emphasized to the district court, a host of district courts have rejected *Comcast* objections and granted class certification on similarly thin showings. R. 434-2 (collecting 108 cases).

But a headcount is not a “rigorous analysis,” and those decisions share the same errors. Some treat *Comcast* as an antitrust rule with no application in securities suits. *See, e.g., In re Groupon, Inc. Sec. Litig.*, 2014 WL 5245387, at *2 (N.D. Ill. Sept. 23, 2014) (finding *Comcast* “inapposite in a securities fraud class action”). But *Comcast* construed Rule 23, not the antitrust laws, and the Supreme Court has since

invoked *Comcast* in securities cases. *See Halliburton*, 573 U.S. at 275; *Goldman*, 594 U.S. at 122.

Other district courts have at least acknowledged that *Comcast* applies, but then erred by conflating the out-of-pocket *measure* of damages with a *methodology* to determine a vital input—the artificial inflation embedded in the stock price—needed to calculate that measure. *See, e.g.*, S.A. 27-28; *In re Boeing Co. Sec. Litig.*, 2025 WL 2428481, at *2 (E.D. Va. Mar. 7, 2025), *rev'd sub nom. Office of the Gen. Treasurer ex rel. Emps. Ret. Sys. v. Boeing Co.*, 182 F.4th 422 (4th Cir. 2026). District courts' recurrent endorsement of barebones, cookie-cutter damages theories has created a snowball effect: the growing body of flawed precedent becomes its own basis for courts to shirk *Comcast's* requirements and grant class certification for every securities case. *See, e.g.*, S.A. 28 (relying on “numerous cases in which courts have found [the expert's] event study out-of-[pocket]-damages methodology to be sufficient under *Comcast* and to support class certification”); *TreeHouse Foods*, 2020 WL 919249, at *9 (noting “dozens of cases in which [the expert's] opinions” had been accepted). Each certification decision becomes the authority for the next. But that approach has no

relationship to the question that *Comcast* requires district courts to both ask and answer before certifying a class action—whether *this particular* methodology can measure damages attributable to *this* theory of liability *on this case's* specific facts.

The district court headcount therefore deserves little weight. Because certified securities cases almost always settle, the promised models are seldom built, never tested at trial, and rarely reviewed on appeal. The decisions granting certification accumulate precisely because no one ever learns whether the promise could be kept. As this Court has recognized, “a large proportion of class actions settles or is resolved in a way that overtakes procedural matters,” leaving “some fundamental issues about class actions ... poorly developed.” *Blair*, 181 F.3d at 835. The district court here candidly acknowledged that nearly all of the authority it followed consisted of district court decisions. S.A. 34-35. Now that the question is squarely before this Court, it should be answered by *Comcast's* text and logic, not by the momentum of unreviewed district court decisions. And this Court should clarify that district courts cannot simply “wait until summary judgment to do the dirty work.” *Speerly*, 143 F.4th at 351 (Nalbandian, J., concurring).

B. The Fourth And Sixth Circuits, And This Court's Own Precedents, Require More.

Two courts of appeals—the Fourth and Sixth Circuits—have insisted on the rigorous analysis that was missing in the district court decision here. Last year, in *In re FirstEnergy Corp. Securities Litigation*, the Sixth Circuit held that the district court erred in certifying a securities class because it “failed to conduct any analysis at all, let alone a rigorous one” under *Comcast*. 149 F.4th at 621.² And this year, the Fourth Circuit reversed the certification of a securities class against Boeing where the district court had accepted—just as the district court did here—a recitation of the out-of-pocket measure as a damages methodology. *Boeing*, 182 F.4th at 428, 448.

Distilling *Comcast*, the Fourth Circuit identified five requirements that plaintiffs must satisfy. *First*, plaintiffs “must put forth a damages ‘methodology,’” which “require[s] more than a legal description of what damages are generically—[it] must explain how damages will be measured in a specific case.” *Id.* at 440. “A menu of options that the

² After remand, the district court once again certified the class. On September 28, 2026, the Sixth Circuit granted a second Rule 23(f) petition raising the same question presented here. *See In re FirstEnergy Corp.*, No. 26-0303, Dkt. 77-2 (6th Cir. Sept. 28, 2026).

party will decide on later is not a damages methodology.” *Id.* *Second*, that methodology “must demonstrate how damages can be measured on a class-wide basis” so that “the district court can determine if class-wide issues predominate over individual ones.” *Id.* at 441. *Third*, the methodology “must be consistent with [the] liability case,” requiring plaintiffs to “identify both comparators” and “show that the methodology and the liability theory are sufficiently consistent.” *Id.* (citation omitted). *Fourth*, the methodology must permit “a just and reasonable inference” of damages and cannot be “speculative.” *Id.* (citation omitted). *Fifth*, plaintiffs must supply “‘evidentiary proof’ that their damages methodology satisfies” these requirements because Rule 23 “does not set forth a mere pleading standard.” *Id.* at 441-42 (citation omitted). And at each step, the district court must “conduct a rigorous analysis to determine whether” each requirement is met. *Id.* at 442 (citation omitted).

Applying those requirements in a similar action against the same defendant, the Fourth Circuit held that an expert describing the out-of-pocket measure, contemplating an event study, and listing possible valuation techniques and inflation-measurement approaches was

simply “not enough.” *Id.* at 442. The out-of-pocket description “broadly tells us what securities-fraud damages are,” but “it doesn’t tell us how to determine the artificial inflation embedded in Boeing’s stock price on any day of the class period. *Comcast* demands that missing step.” *Id.* An expert who “never committed to any methodology,” but instead offered “a series of ‘maybe[s],’ ‘perhaps[es]’ and ‘what ifs,’” has not provided a methodology at all. *Id.* at 442-43 (quoting *Speerly*, 143 F.4th at 324). A longer rebuttal report does not cure the problem: “A list of possible methodologies, described in general terms, isn’t a methodology, even if it is carried out in more pages.” *Id.* at 444. Nor can plaintiffs “get around *Comcast*’s frontloading mandate by emphasizing a backend conclusion” that any problems with their model would present classwide. *Id.* At bottom, the Fourth Circuit made clear that “*Comcast* requires a rigorous analysis” and reminded courts that “[u]nder *Comcast*, certification orders are not like participation trophies that are handed out to everyone on the tee ball team.” *Id.* at 447.

The Fourth Circuit’s reasoning is not novel in this Circuit. In holding that it is insufficient for plaintiffs to merely give “examples of what they might, or could, do,” the Fourth Circuit relied on this Court’s

decision in *Parko*—including its admonition that “if intentions (hopes, in other words) were enough, predominance, as a check on casting lawsuits in the class action mold, would be out the window.” *Id.* at 440 n.16 (quoting *Parko*, 739 F.3d at 1086). Adopting the same rule in this case would not break new ground analytically. Rather, it would simply apply the logic of this Circuit’s preexisting *Comcast* precedent to the securities context. *See Parko*, 739 F.3d at 1086 (noting it is not enough to “*intend* to rely on common evidence and a single methodology to prove both injury and damages”). And requiring plaintiffs to satisfy this requirement at certification is consistent with Rule 23’s broader goals. As this Court recognized in *In re Allstate Corp. Securities Litigation*, parties seeking class certification “must prove that they can *actually satisfy*” Rule 23’s requirements, and “factfinding as to whether common issues predominate is not only proper but necessary at the class certification stage.” 966 F.3d at 603, 614 (emphasis added). That is the guidance that district courts need to prevent the spread of the lower courts’ mistaken approach.

C. The Rule Is Administrable, And Plaintiffs' Claims To The Contrary Lack Merit.

The rule the Fourth Circuit adopted, and that amici urge here, is administrable. It does not require plaintiffs to “actually calculate damages” at certification. *Boeing*, 182 F.4th at 443. It permits “individualized inputs like data points concerning when class members bought and sold stock.” *Id.* at 441. And it does not demand precision, because “[c]alculations need not be exact.” *Comcast*, 569 U.S. at 35. It requires only “enough information in the plaintiffs’ filings for the district court to identify the plaintiffs’ methodology, specify their theory or theories of liability and explain whether the former is consistent with the latter and whether the methodology is reasonable.” *Boeing*, 182 F.4th at 446.

A plaintiff with a sound theory and reliable model will not be thwarted by this rule. The only plaintiffs the rule weeds out are those who have no such methodology or who prefer to “bob and weave pre-certification and not commit to a firm methodology until [they have] the leverage of class certification to use as a sword in litigation.” *Id.* at 447. No valid class action principle or policy is promoted by allowing such plaintiffs to proceed as a class.

Nor is it an answer that the out-of-pocket measure is “the standard measurement of damages in Section 10(b) securities cases.” S.A. 28. No one disputes that. The question *Comcast* asks is not whether the plaintiff has identified the correct legal measure of damages; every securities plaintiff can do that. It is whether the plaintiff has shown *how* it will supply that measure’s critical input: the artificial inflation in the stock price on each day of the class period. *Boeing*, 182 F.4th at 442. And the difficulty of that task varies enormously from case to case. A single misstatement corrected by a single disclosure may present few complications. But a class period spanning 32 challenged statements, five alleged corrective disclosures, a plane crash, the grounding of the 737 MAX fleet, and months of evolving public information about the aircraft presents many. See Appellants’ Br. 7-10, 18-19, 58. That is precisely why *Comcast* requires the methodology to be disclosed and tested before certification, when the court can still evaluate whether it will work in the case at hand.

Nothing in *Butler* or *Waggoner* is to the contrary. Plaintiffs relied in the district court on *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796 (7th Cir. 2013), and the district court relied on *Waggoner v. Barclays*

PLC, 875 F.3d 79 (2d Cir. 2017). S.A. 27, 32-34. On the question that matters here, which is when the methodology must be shown, *Butler* supports reversal. It read *Comcast* to emphasize that predominance has “to be satisfied by proof presented at the class certification stage rather than deferred to later stages in the litigation.” 727 F.3d at 800. The deferral strategy that *Butler* criticizes is exactly what Plaintiffs and their expert did here. *Butler* also cautioned that it would “drive a stake through the heart of the class action device ... to require that every member of the class have identical damages.” *Id.* at 801. But the rule urged here requires nothing of the kind.

Waggoner does not support the district court’s order either. That case involved a single, committed inflation-maintenance theory tied to one corrective disclosure, and an expert whose constant-dollar inflation model matched that theory. *Boeing*, 182 F.4th at 445 (discussing *Waggoner*, 875 F.3d at 88, 90, 105-06). That holding cannot save the class certification order here, where the expert committed to no methodology at the certification stage and the theory of liability spans 32 statements and five alleged corrective disclosures, reflecting a wide range of evolving information. That Plaintiffs’ expert, Dr. David Tabak,

later adopted a constant-dollar inflation model in a merits report the district court declined to consider, S.A. 23 n.6, does not change the analysis. It would be “inappropriate to let a class-certification decision stand based on a report which the district court didn’t even consider in certifying a class in the first place.” *Boeing*, 182 F.4th at 447. And it is not at all clear that a constant-dollar inflation model could fit Plaintiffs’ theory of liability given the wide range of challenged statements, corrective disclosures, and evolving public information throughout the class period here. In any event, that supposition certainly has not been tested.

III. This Case Shows Why *Comcast* Must Be Enforced At Class Certification.

The record here illustrates what happens when a promise substitutes for a methodology. Dr. Tabak devoted about three pages of his opening report to damages, *see* Appellants’ Br. 14 (citing A. 537-40), and he acknowledged at his deposition that the discussion was “copied and pasted” from reports he had submitted in prior cases, *see* S.A. 26 (describing R. 418-2, Tabak Dep. 111:21-112:4). He identified the out-of-pocket measure of damages, proposed an event study, and asserted he could “apply relevant analytical tools (including but not limited to cash-

flow analyses and content analysis) to separate out” confounding information. A. 537-40. But he did not even attempt to estimate inflation. Instead, he simply predicted that “discovery should aid in some of the exact parameterizations of the damages calculations” and admitted that there still “may be questions about how to calculate inflation.” *Id.* at 539. Nevertheless, he concluded that “a method for determining inflation at any date, and thus damages for any Class Member, will be feasible.” *Id.*; *see also* S.A. 25.

That describes only what a methodology would accomplish; it is not itself the methodology *Comcast* requires. It does not say how Dr. Tabak would measure inflation across 32 challenged statements, five alleged corrective disclosures, and months of evolving public information about the 737 MAX. Yet the district court held that invoking a future event study, identifying potential valuation tools, and reciting the out-of-pocket measure “is all Rule 23(b)(3) and *Comcast* require[].” S.A. 28.

The reconsideration order is more telling still. In its original order, the district court rejected as “untethered to the theory of liability alleged” in the operative complaint the so-called “Grounding Theory”

that Plaintiffs first described in their reply brief. S.A. 42, 67-69. The court relied instead in part on a materialization-of-the-risk model that Dr. Tabak said he “could construct.” S.A. 40, 42-43. Three months later, the court reversed itself on both points. On its second attempt, it accepted the Grounding Theory, S.A. 76-79, and withdrew its approval of the materialization-of-the-risk approach after concluding that Plaintiffs “did not really intend to seek class certification” on that theory and that no expert had built such a model. S.A. 79-81. The class was thus certified in reliance on a model that was never built, and it remains certified on a model the court had rejected when it first certified the class.

That sequence is exactly what *Comcast*’s rigorous-analysis requirement exists to prevent. A certification order is supposed to rest on a methodology the court has tested, not on one the plaintiff may or may not later build. As this Court explained in *Parko*, predominance is not a “pleading requirement,” and “intentions” or “hopes” are not enough. 739 F.3d at 1086.

This Court should hold, consistent with the approach of the Fourth Circuit, that a securities plaintiff seeking certification of a Rule

23(b)(3) class must present, at the certification stage, evidentiary proof of a case-specific methodology for measuring artificial inflation that is consistent with its theory of liability. Reciting the out-of-pocket measure and promising to develop a model later does not satisfy the rigorous analysis *Comcast* demands.

CONCLUSION

For the foregoing reasons, the Court should reverse the district court's class certification order and remand for further proceedings.

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This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5), as modified by Circuit Rule 29. The brief contains 5,106 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), as determined by the word-counting feature in Microsoft Word.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), as modified by Circuit Rule 32(b), and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook font in the body of the brief and 12-point Century Schoolbook font in the footnotes.

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CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2026, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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