No. 22-184

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

IN RE: MARRIOTT INTERNATIONAL
CUSTOMER DATA SECURITY BREACH LITIGATION

On Petition for Permission to Appeal from the
United States District Court for the District of Maryland,
No. 8:19-md-02879-PWG, Hon. Paul W. Grimm

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE NATIONAL RETAIL FEDERATION AS *AMICI CURIAE* IN SUPPORT OF THE PETITION

Jennifer B. Dickey
Jordan L. Von Bokern
U.S. CHAMBER
LITIGATION CENTER
1615 H Street NW
Washington, DC 20062

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

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

Counsel for Amici Curiae

Stephanie A. Martz
NATIONAL RETAIL FEDERATION
1101 New York Avenue NW
Washington, DC 20005

Counsel for the National Retail Federation

May 24, 2022

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. 22-184 Caption: Marriott International, Inc. v. Peter Maldini

Pursuant to FRAP 26.1 and Local Rule 26.1,

Chamber of Commerce of the United States of America; National Retail Federation
(name of party/amicus)

who is amicus, 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:

n/a

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/ Ashley C. Parrish Date: 5/24/2022

Counsel for: Amici Curiae

Print to PDF for Filing

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Other Authorities

INTEREST OF AMICI CURIAE[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It directly represents approximately 300,000 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, including by filing amicus briefs in cases, like this one, that raise issues of concern to the nation's business community.

The National Retail Federation ("NRF") is the world's largest retail trade association and the voice of retail worldwide. The NRF's membership includes retailers of all sizes, formats, and channels of distribution, as well as restaurants and industry partners from the United States and more than 45 countries abroad. In the United States, the NRF represents the breadth and diversity of an industry that is the

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

nation's largest sector employer with more than 52 million employees and contributes $3.9 trillion annually to GDP.

Amici's members and their subsidiaries include businesses that are often targeted as defendants in class actions. Amici are thus familiar with class action litigation, both from the perspective of individual defendants in class actions and from a more global perspective. Because of the immense pressure to settle even unmeritorious claims created by class certification, amici have a significant interest in ensuring that the requirements of Rule 23 are rigorously followed, not only for their members, but also for the customers, employees, and other businesses that depend on them.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case calls out for an exercise of this Court's supervisory jurisdiction under Rule 23(f). Instead of enforcing Rule 23, the court below lost sight of controlling principles and allowed this case to proceed as a sprawling class action. Data-breach cases are often best resolved through a bellwether trial process, precisely because they are not well suited for class litigation. In this case, however, plaintiffs have tried to avoid individual litigation by manufacturing a class with the inventive

theory that customers would have paid less for their rooms had Starwood disclosed its data-security issues. And they convinced the court to certify a class, even though customers waived their rights to participate in a class action, plaintiffs' "overcharge" theory of damages is incapable of being measured on a class-wide basis and requires individualized fact-finding missions as to who ultimately bore hotel costs, and two elements of plaintiffs' negligence claims will not be resolved in the action.

The Court's intervention is warranted to correct the district court's manifest errors and to address the important, frequently recurring questions presented. *Amici* submit this brief to focus on two issues that raise particular concerns for the nation's retailers and businesses: (1) the district court's failure to ensure that class members who satisfy Article III's standing requirements can be readily identified; and (2) the district court's decision to certify certain elements of plaintiffs' negligence claims for "issues class" treatment despite finding that the claims as a whole cannot be resolved on a class-wide basis. Both errors contribute to persistent abuses of the class action procedure that harm the economy.

ARGUMENT

I. The District Court Manifestly Erred in Certifying a Class Whose Members Cannot Be Readily Identified.

Because "standing is not dispensed in gross," every class member "must have Article III standing … to recover individual damages." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021). Article III of the Constitution and the Rules Enabling Act both limit the federal judiciary's role "to provid[ing] relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm." *Lewis v. Casey*, 518 U.S. 343, 349 (1996). Accordingly, when "there are multiple plaintiffs" in a lawsuit, each "must have Article III standing." *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017).

The district court correctly recognized that plaintiffs' overpayment theory of injury raises Article III concerns because many individuals who make hotel reservations are reimbursed in full. Because those individuals are not injured and, therefore, lack standing, the district court rewrote the class definition to include only individuals "who bore the economic burden" of their hotel stay. App. 11.[2] But in attempting to

[2] "App." citations refer to the Appendix of Marriott International Inc.'s petition, No. 22-184.

solve the Article III problem, the district court created a new one: the class is not readily ascertainable. *See EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014) (class certification is inappropriate if identifying class members requires "extensive and individualized fact-finding").

Ascertainability is a threshold requirement and "an 'essential' element of class certification" that is "encompassed" by Rule 23. 1 Newberg on Class Actions § 3:2 (5th ed.); *see also EQT Prod. Co.*, 764 F.3d at 358. Unless absent class members are identifiable, a court cannot perform the "rigorous analysis" that Rule 23 mandates. *Comcast Corp. v. Behrend*, 569 U.S. 27, 35 (2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)). Without a ready means of ascertaining who belongs in the proposed class, the named plaintiffs cannot show that common questions "predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Nor can they show that a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy," taking into account "the likely difficulties in managing a class action." *Id.*

Taking a certify-now, worry-later approach, the district court concluded that an "individualized review" of "individual files"—which the

court conceded would be "certainly required," App. 15—did not defeat administrative feasibility because parties could self-certify that they paid for their hotel stay, affidavits could be cross-checked against a database, and plaintiffs could rely on individual records "such as receipts and bank and credit card statements," App. 16. But that evidence could be properly disputed by the defendants. And neither plaintiffs nor the district court explained how the evidence could be used to identify class members without either eliminating defendants' individualized defenses or undertaking numerous mini-trials to determine which customers are part of the class.

A class must be capable of being identified through a streamlined process relying on objective criteria *not reasonably subject to dispute*. In this case, determining whether a customer suffered an economic burden—and hence is part of the class—will require judging credibility and weighing conflicting evidence, not relying on undisputed database records. As a result, the class definition fails. *See Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 593 (3d Cir. 2012) (holding that class could not be certified because "nothing in company databases shows or could show whether individuals should be included in the proposed class"); *Martin v.*

Pac. Parking Sys. Inc., 583 F. App'x 803, 804 (9th Cir. 2014) (holding that the class was not ascertainable because there was "no reasonably efficient way to determine which of the hundreds of thousands of individuals who used the parking lots 'used a personal credit or debit card, rather than a busines or corporate card,' to purchase parking").

The district court brushed aside these concerns, noting that although identifying class members would be "time consuming," the court would "carefully monitor" the case "to ensure continued administrative feasibility." App. 17. But that is insufficient. It is the named plaintiffs' burden at the class-certification stage to "affirmatively demonstrate" that class members can be identified without burdensome individualized adjudication. *Comcast*, 569 U.S. at 33, 35 (quoting *Wal-Mart*, 564 U.S. at 350); *see also Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014) (plaintiffs "must actually *prove*—not simply plead—that their proposed class satisfies each requirement of Rule 23"). In failing to apply that burden, the district court violated Rule 23 and put the defendants in the situation of litigating against, or attempting to settle with, an unknown and indeed unknowable group of persons.

II. The District Court Manifestly Erred in Certifying Classes as to Only Certain Elements of Plaintiffs' Negligence Claims.

Both Marriott's and Accenture's petitions raise the question whether Rule 23(c)(4) empowers district courts to certify "element-only" classes when the full cause of action cannot be certified under Rule 23(b). Specifically, the district court certified classes on negligence claims to litigate the "duty and breach sub-issues," leaving the remaining elements of liability—causation and injury—to be litigated individually. *See* App. 63–64.

This Court previously declined to resolve whether an entire cause of action must meet Rule 23(b)'s requirements for certification to be appropriate. *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 444–45 (4th Cir. 2003). The Court should take this opportunity to hold that it must. The district court's contrary approach is inconsistent with the structure of Rule 23, raises serious Article III concerns, and allows plaintiffs and courts to disassemble nearly any claim so that class certification precedent becomes meaningless.

Rule 23(c)(4), which allows a class action to "be brought or maintained … with respect to particular issues," is a case-management rule, not a revolutionary device that permits element-by-element

litigation. The structure of Rule 23 is informative. Rule 23(a) lists the four prerequisites of all class actions, Rule 23(b) offers three "types of class actions," and Rule 23(c) provides case-management tools and procedural requirements. Rule 23(c)(4)'s placement alongside Rule 23(c)'s other provisions proves that it, too, is a case-management rule—nothing more. *See Murphy v. Smith*, 138 S. Ct. 784, 789 (2018) (looking to the "surrounding statutory structure"). It allows a district court to limit class treatment to particular issues when "an action"—not elements of claims—satisfies Rule 23(a) and (b). By certifying a class where plaintiffs admittedly did *not* meet Rule 23(b)(3)'s predominance requirement, App. 63, the district court erred.

The district court's misguided interpretation raises serious constitutional concerns. As the Supreme Court recently affirmed, "[e]very class member must have Article III standing in order to recover individual damages." *TransUnion*, 141 S. Ct. at 2208. Class actions are no exception to Article III's requirements, and "federal courts do not issue advisory opinions." *Id.* at 2203. But by certifying a class as to duty and breach alone, the district court's piecemeal approach allows just that. By allowing litigation of individual elements of a claim—neither which

separately or together establish the core standing requirements—the district court opens the door to class members who may have suffered no injury at all, and certainly none that is traceable to the defendants' conduct. *See id.* And by permitting litigation that ends before a liability determination, the district court invites advisory opinions.

The opinion below also enables plaintiffs to carve up claims, allowing cases to proceed as class actions, even in scenarios the Supreme Court has rejected. In *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013), for example, the district court certified a class of antitrust plaintiffs on "the theory that Comcast engaged in anticompetitive clustering conduct, the effect of which was to deter the entry of overbuilders," and under the belief that "damages resulting from overbuilder-deterrence impact could be calculated on a classwide basis." *Id.* at 31. The Supreme Court rejected the proposed class because plaintiffs failed to "establish[] that damages are capable of measurement on a classwide basis." *Id.* at 34. But an "element-only" approach to Rule 23(c)(4) would have allowed plaintiffs to proceed on the question whether Comcast engaged in "anticompetitive clustering conduct" that "deter[ed] entry of

overbuilders," *id.* at 31, leaving the questions of causation and damages for individual determination.

Rule 23(c)(4) should not be interpreted to allow guiding precedent to be so easily dodged. Instead, this Court should reverse the district court's holding that Rule 23(c)(4) permits the certification of classes as to only some elements of a cause of action.

III. Impermissibly Broad Approaches to Class Certification Severely Burden Businesses and the Economy.

Rigorous enforcement of Rule 23's requirements is essential to protecting defendants' due process rights to "present every available defense." *Lindsey v. Normet*, 405 U.S. 56, 66 (1972) (quoting *Am. Sur. Co. v. Baldwin*, 287 U.S. 156, 168 (1932)). As courts have recognized, class certification is not merely "a game-changer," but "often the whole ballgame." *Marcus*, 687 F.3d at 591 n.2.

Class certification often creates insurmountable pressure on defendants to settle. "Certification of a large class may so increase the defendant's potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense." *Coopers Lybrand v. Livesay*, 437 U.S. 463, 476 (1978); *accord AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (noting the

"risk of 'in terrorem' settlements that class actions entail"); *Shady Grove Orthopedic v. Allstate Ins. Co.*, 559 U.S. 393, 445 n.3 (2010) (Ginsburg, J., dissenting) (class certification "places pressure on the defendant to settle even unmeritorious claims") . As a result, "[e]ven a complaint which by objective standards may have very little chance of success at trial has a settlement value to the plaintiff out of any proportion to its prospect of success at trial." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 740 (1975).

Virtually all certified class actions "end in settlement" before trial. Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 812 (Dec. 2010). Indeed, in 2021, companies reported settling 73.1% of class actions. *See* 2022 Carlton Fields Class Action Survey 26, https://bit.ly/2WDSTEP. Class-action litigation costs in the United States crossed the $3 billion threshold for the first time in 2021, continuing a rising trend that started in 2015. *Id.* at 7. The cost to defend a single class action can run into nine figures. *See* Adeola Adele, *Dukes v. Wal-Mart:* Implications for Employment Practices Liability Insurance 1 (2011). And class actions can drag on for years. *See* U.S. Chamber Instit. for Legal Reform, *Do*

Class Actions Benefit Class Members? An Empirical Analysis of Class Actions 1 (2013), http://bit.ly/3rrHd29 ("Approximately 14 percent of all class action cases remained pending four years after they were filed.").

Properly enforcing Rule 23's requirements at the class-certification stage ensures that parties do not needlessly expend time and money—and defendants are not faced with unwarranted settlement pressure—litigating claims through trial only for a court to conclude at final judgment that significant portions of the certified class lack standing or cannot prove essential elements of liability, such as causation. Moreover, even assuming (contrary to significant evidence) that class-action settlements benefit class members and society, those benefits are only achieved if members can be ascertained to receive their share. Certifying classes that cannot be ascertained only disincentivizes efficient settlements and incentivizes coercive ones.

These concerns apply with particular force here because class members waived any right to pursue class action litigation and, rather than resolving the merits of those waivers, the district court decided to wait until "all discovery is complete." App. 25 n.26. In these circumstances, if the district court's erroneous approach stands, the

immense pressure to settle improperly brought class actions will grow even further. This harms the entire economy, because the costs of defending and settling abusive class actions are ultimately absorbed by consumers and employees through higher prices or lower wages.

CONCLUSION

The Court should grant the petitions.

Respectfully submitted,

/s/ Ashley C. Parrish

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

Counsel for Amici Curiae

Jennifer B. Dickey
Jordan L. Von Bokern
U.S. CHAMBER
LITIGATION CENTER
1615 H Street NW
Washington, DC 20062

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

Stephanie A. Martz
NATIONAL RETAIL
FEDERATION
1101 New York Avenue, NW
Washington, DC 20005

Counsel for the National Retail Federation

May 24, 2022

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure Rule 32(a), I certify that this brief complies with the length limitations set forth in Fed. Rule App. Proc. 32(a)(7) because it contains 2,593 words, as counted by Microsoft Word 2013, excluding the items that may be excluded under Federal Rule 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook Font.

Dated: May 24, 2022

/s/ Ashley C. Parrish
Ashley C. Parrish

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system pursuant to Local Rule 23(a)(1)(A)(i). I further certify that a copy of the foregoing has been delivered by First Class Mail and electronic mail on the following:

Amy E. Keller
DICELLO LEVITT
GUTZLER LLC
Ten North Dearborn Street
6th Floor
Chicago, IL 60602
akeller@dicellolevitt.com

James J. Pizzirusso
HAUSFELD LLP
888 15th St. NW, Ste 300
Washington, DC 20006
jpizzirusso@hausfeld.com

Megan Jones
HAUSFELD LLP
600 Montgomery Street, Ste 3200
San Francisco, CA 94111
mjones@hausfeld.com

MaryBeth V. Gibson
THE FINLEY FIRM, P.C.
3535 Piedmont Rd, Bldg. 14,
Ste 230
Atlanta, GA 30305
mgibson@thefinleyfirm.com

Ariana J. Tadler
TADLER LAW LLP
One Penn Plaza, 36th Floor
New York, NY 10119
atadler@tadlerlaw.com

Jason Lichtman
LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013
jlichtman@lchb.com

Andrew N. Friedman
COHEN MILSTEIN
SELLERS & TOLL PLLC
1100 New York Avenue, NW,
Ste 500
Washington, DC 20005
afriedman@cohenmilstein.com

Norman E. Siegel
STUEVE SIEGEL
HANSON LLP
460 Nichols Road, Ste 200
Kansas City, MO 64112
siegel@stuevesiegel.com

Timothy Maloney
Veronica Nannis
JOSEPH GREENWALK &
LAAKE, P.A.
6404 Ivy Lane, Ste 400
Greenbelt, MD 20770
tmaloney@jgllaw.com
vnannis@gjllaw.com

Daniel R. Warren
Lisa M. Ghannoum
Dante A. Marinucci
BAKER & HOSTETLER LLP
127 Public Square, Ste 200
Cleveland, OH 44114
dwarren@bakerlaw.com

Gilbert S. Keteltas
BAKER & HOSTETLER LLP
1050 Connecticut Ave. NW, Ste 200
Washington, DC 20036
gketeltas@bakerlaw.com

Daniel Robinson
ROBINSON CALCAGNIE, INC.
19 Corporate Plaza Drive
Newport Beach, CA 92660
drobinson@robinsonfirm.com

Gary F. Lynch
CARLSON LYNCH LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
glynch@carlsonlynch.com

James Ulwick
KRAMON & GRAHAM PA
1 South Street, Ste 2600
Baltimore, MD 21202
julwick@kg-law.com

Craig S. Primis, P.C.
Erin N. Murphy
Devin S. Anderson
Emily M. Lon
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 389-5000
cprimis@kirkland.com

Matthew S. Hellman
Lindsay C. Harrison
Zachary C. Schauf
Kevin J. Kennedy
JENNER & BLOCK LLP
1099 New York Ave., NW, Ste 900
Washington, DC 20001
mhellman@jenner.com

Dated: May 24, 2022

/s/ Ashley C. Parrish
Ashley C. Parrish

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an Application for Admission before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at Register for eFiling.

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 22-184 as

☑ Retained ☐ Court-appointed(CJA) ☐ CJA associate ☐ Court-assigned(non-CJA) ☐ Federal Defender

☐ Pro Bono ☐ Government

COUNSEL FOR: Chamber of Commerce of the United States of America;

National Retail Federation as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

/s/Ashley C. Parrish
(signature)

Please compare your information below with your information on PACER. Any updates or changes must be made through PACER's Manage My Account.

Ashley C. Parrish Name (printed or typed)	(202) 737-0500 Voice Phone
King & Spalding LLP Firm Name (if applicable)	(202) 626-3737 Fax Number
1700 Pennsylvania Avenue NW Washington, DC 20006 Address	aparrish@kslaw.com E-mail address (print or type)

CERTIFICATE OF SERVICE *(required for parties served outside CM/ECF)*: I certify that this document was served on 05/24/2022 by ☐ personal delivery; ☑ mail; ☐ third-party commercial carrier; or ☐ email (with written consent) on the following persons at the addresses or email addresses shown:

See attached

/s/Ashley C. Parrish
Signature

05/24/2022
Date

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system pursuant to Local Rule 23(a)(1)(A)(i). I further certify that a copy of the foregoing has been delivered by First Class Mail and electronic mail on the following:

Amy E. Keller
DICELLO LEVITT
GUTZLER LLC
Ten North Dearborn Street
6th Floor
Chicago, IL 60602
akeller@dicellolevitt.com

James J. Pizzirusso
HAUSFELD LLP
888 15th St. NW, Ste 300
Washington, DC 20006
jpizzirusso@hausfeld.com

Megan Jones
HAUSFELD LLP
600 Montgomery Street, Ste 3200
San Francisco, CA 94111
mjones@hausfeld.com

MaryBeth V. Gibson
THE FINLEY FIRM, P.C.
3535 Piedmont Rd, Bldg. 14,
Ste 230
Atlanta, GA 30305
mgibson@thefinleyfirm.com

Ariana J. Tadler
TADLER LAW LLP
One Penn Plaza, 36th Floor
New York, NY 10119
atadler@tadlerlaw.com

Jason Lichtman
LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013
jlichtman@lchb.com

Andrew N. Friedman
COHEN MILSTEIN
SELLERS & TOLL PLLC
1100 New York Avenue, NW,
Ste 500
Washington, DC 20005
afriedman@cohenmilstein.com

Norman E. Siegel
STUEVE SIEGEL
HANSON LLP
460 Nichols Road, Ste 200
Kansas City, MO 64112
siegel@stuevesiegel.com

Timothy Maloney
Veronica Nannis
JOSEPH GREENWALK &
LAAKE, P.A.
6404 Ivy Lane, Ste 400
Greenbelt, MD 20770
tmaloney@jgllaw.com
vnannis@gjllaw.com

Daniel R. Warren
Lisa M. Ghannoum
Dante A. Marinucci
BAKER & HOSTETLER LLP
127 Public Square, Ste 200
Cleveland, OH 44114
dwarren@bakerlaw.com

Gilbert S. Keteltas
BAKER & HOSTETLER LLP
1050 Connecticut Ave. NW, Ste 200
Washington, DC 20036
gketeltas@bakerlaw.com

Daniel Robinson
ROBINSON CALCAGNIE, INC.
19 Corporate Plaza Drive
Newport Beach, CA 92660
drobinson@robinsonfirm.com

Gary F. Lynch
CARLSON LYNCH LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
glynch@carlsonlynch.com

James Ulwick
KRAMON & GRAHAM PA
1 South Street, Ste 2600
Baltimore, MD 21202
julwick@kg-law.com

Craig S. Primis, P.C.
Erin N. Murphy
Devin S. Anderson
Emily M. Lon
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 389-5000
cprimis@kirkland.com

Matthew S. Hellman
Lindsay C. Harrison
Zachary C. Schauf
Kevin J. Kennedy
JENNER & BLOCK LLP
1099 New York Ave., NW, Ste 900
Washington, DC 20001
mhellman@jenner.com

Dated: May 24, 2022

/s/ Ashley C. Parrish
Ashley C. Parrish

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. 22-184 Caption: Marriott International, Inc. v. Peter Maldini

Pursuant to FRAP 26.1 and Local Rule 26.1,

Chamber of Commerce of the United States of America; National Retail Federation
(name of party/amicus)

who is amicus, 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:

n/a

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/ Ashley C. Parrish Date: 5/24/2022

Counsel for: Amici Curiae

Print to PDF for Filing