No. 24-933

IN THE
Supreme Court of the United States

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY, ET AL.,
Petitioners,

v.

FAYSAL A. JAMA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, AND THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 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, including cases involving class actions.

The American Property Casualty Insurance Association ("APCIA") is a national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent 66% of both the overall U.S. property-casualty insurance market and over 65% of Arizona's personal automobile insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members and their policyholders in legislative and regulatory forums at the federal and state

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[*] Pursuant to this Court's Rule 37.6, *amici* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received timely notice of the intent to file this brief pursuant to this Court's Rule 37.2.

levels, and submits *amicus curiae* briefs in significant cases before federal and state courts.

The National Association of Mutual Insurance Companies ("NAMIC") consists of over 1,300 member companies, including six of the top ten property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers. NAMIC member companies write $383 billion in annual premiums and represent 61% of homeowners, 48% of automobile, and 25% of the business insurance markets. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve, and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

Amici's members are frequent targets of class actions—including class actions like this one, in which plaintiffs' class-certification arguments are predicated on meritless legal theories. *Amici* have a significant interest in this case because the proper application of Article III and Rule 23 raise issues of immense significance not only for their members, but also for the customers, employees, and other businesses that depend on them.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Respondents, plaintiffs in this putative class action, moved to certify a class of individuals whose vehicles were deemed total losses in accidents. Petitioners ("State Farm") gave the proposed class members an estimate as to the value of their vehicles before the accidents, which

State Farm was obligated to pay pursuant to an insurance contract. Plaintiffs allege that State Farm applied a "negotiation adjustment" in determining its estimates—that is, they allege that State Farm first determined the asking price of comparable vehicles and then adjusted that figure downward to account for the fact that vehicles are typically sold for less than their asking price. Plaintiffs allege, on behalf of the proposed "negotiation" class, that this procedure violates Washington insurance law.

The Ninth Circuit held that the class should be certified. As the court explained, plaintiffs contended that because a negotiation adjustment is unlawful, each class member would be entitled to recover the amount of the negotiation adjustment. But the court never assessed whether this theory of liability was correct as a matter of law. Rather, it simply concluded that because plaintiffs had *raised* a theory under which liability could be resolved classwide, common questions predominated and class certification was appropriate.

This analysis reflects a fundamental misunderstanding of class-action practice that warrants this Court's review. Rule 23 requires a court deciding on class certification to evaluate whether *in fact* the requirements for class certification are satisfied. The plaintiffs' mere *contention* that they have a claim that could win the case in one blow is not sufficient. Too many courts, including the Ninth Circuit below, have failed to scrutinize the named plaintiffs' legal theory before approving class certification, instead putting off the legal analysis for a later day.

This case illustrates the problem. Plaintiffs contend that they can prove their contractual and unfair-

competition claims by showing that State Farm violated Washington regulations in arriving at an estimate of their vehicles' value. But even if State Farm made such a procedural error, it would not establish either breach of contract or unfair competition. To do that, plaintiffs would also need to show that the violations actually *injured* them—that is, plaintiffs received less than what State Farm was contractually obligated to pay. The contractual obligation was to pay the vehicle's fair market value, so that determination can only be made following an individualized inquiry into the value of each class member's vehicle. After all, if State Farm's estimate exceeded a vehicle's value even after the negotiation adjustment, that class member would have no claim.

This simple legal analysis makes the Rule 23(b)(3) question in this case easy. There is *no* relevant common question to the class—each class member's claim turns entirely on factual considerations unique to that individual. Even if there were common questions, the necessity of individualized determinations means that common questions plainly do not *predominate*, and thus class treatment is unavailable. Plaintiffs must pursue their claims alone.

Not only is the Ninth Circuit's decision wrong, it also creates a circuit split with several other courts of appeals. Those courts, addressing similar (and in some cases, nearly identical) class actions involving insurers accused of using improper procedures to adjust claims, have correctly understood that such violations cannot support class certification under Rule 23(b)(3) because, ultimately, contract-based claims against insurers require an actual showing of underpayment. And those courts have

correctly *first* rejected legal theories that would purport to allow classwide resolution.

The Ninth Circuit's decision only deepens its attractiveness to would-be class-action plaintiffs and increases the risks for defendants. In the insurance industry in particular, these suits are a serious threat—even when a class claim is meritless, the potentially staggering liability is a vehicle for extracting settlements from defendants once a class is certified. This Court should intervene and clarify that a common question predominates only when answering that question *actually*—not just hypothetically—can drive resolution of all class members' claims. Where, as here, plaintiffs' claims are legally erroneous, a court must say so at the class-certification stage.

This Court should grant the petition and reverse.

ARGUMENT

I. THE PETITION SHOULD BE HELD PENDING THIS COURT'S DECISION IN *LABCORP*.

On April 29, 2025, this Court will hear argument in *Laboratory Corp. of America Holdings v. Davis*, No. 24-304 (U.S.) ("*LabCorp*"). *LabCorp* presents the question whether a federal court may certify a class action pursuant to Rule 23(b)(3) when some members of the proposed class lack any Article III injury. *See* Brief for Petitioner at i, *LabCorp*, No. 24-304 (U.S. Mar. 5, 2025), 2025 WL 761874.

The petition in this case should be held pending the decision in *LabCorp* because that case potentially resolves this one. As the Chamber has explained, neither Federal Rule of Civil Procedure 23 nor Article III permits certification of a damages class when some members of the

proposed class have not suffered a cognizable injury. *See* Brief for the Chamber of Commerce of the United States of America et al. as *Amici Curiae* Supporting Petitioner at 5-28, *LabCorp*, No. 24-304 (U.S. Mar. 12, 2025), 2025 WL 836748. If this Court agrees and reverses the Ninth Circuit in *LabCorp*, that would require vacating the Ninth Circuit's decision in this case. As explained in more detail below, the putative class at issue here potentially contains a large number of individuals who suffered no injury because State Farm paid them the actual value of their vehicles. Hence, if petitioner prevails in *LabCorp*, a GVR would be appropriate here.

II. IF THE COURT AFFIRMS IN *LABCORP*, IT SHOULD GRANT CERTIORARI AND REVERSE HERE.

Even setting aside Article III issues, the decision below wrongly applies Rule 23's commonality and predominance requirements, and creates a split of authority. It also poses a severe threat not only to insurers, but also to all other class-action defendants within the Ninth Circuit. This Court's intervention is warranted.

A. Rule 23(b)(3) Does Not Permit Certification of the Proposed Class at Issue.

The "negotiation" class at issue here should not have been certified. Rule 23(b)(3) requires some level of scrutiny into the merits of the plaintiffs' claims—a court may not certify based on the mere assertion by plaintiffs of *some* legal theory *theoretically* amenable to classwide resolution. Here, the requisite scrutiny would have revealed that it will be impossible for plaintiffs to obtain relief through wholesale resolution of common questions,

and that this case instead inevitably requires highly individualized inquiries.

"The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Comcast Corp. v. Behrend*, 569 U.S. 27, 33-34 (2013) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979)). "[P]laintiffs wishing to proceed through a[n opt-out] class action must actually *prove*—not simply plead—that their proposed class satisfies each requirement" of Rule 23(b)(3)—commonality, predominance, and superiority. *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014). "[C]ertification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of [Rule 23] have been satisfied." *Comcast*, 569 U.S. at 33 (internal quotation marks omitted) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51 (2011)).

Rule 23(b)(3) certification is inappropriate here because plaintiffs have not proven that *any* common question exists, much less that common questions predominate over individualized ones. Plaintiffs seek to certify a class of State Farm's insureds who purchased insurance contracts that promise to pay actual cash value ("ACV") of totaled vehicles. Pet. App. 5a-9a. (Under Washington law, "[a]ctual cash value" means "fair market value." Wash. Admin. Code § 284-30-320(1).) State Farm calculates ACV using software that applies a "negotiation adjustment," which "assumes that the typical customer negotiates with the dealer and buys a car for less than the advertised price and is designed to capture that price difference." Pet. App. 7a.

Plaintiffs' theory is that this negotiation adjustment is unlawful. They rely on a Washington regulation stating that when settling a total loss vehicle claim, the insurer must "[b]ase all offers on itemized and verifiable dollar amounts for vehicles that are currently [or recently were] available . . . using appropriate deductions or additions for options, mileage or condition when determining comparability." Wash. Admin. Code § 284-30-391(4)(b); *see* Pet. App. 17a. Plaintiffs contend that by enumerating certain permitted adjustments, the state regulation implicitly prohibits other adjustments. *See* Pet. App. 52a-53a.

The district court agreed with plaintiffs' legal theory to this point—it agreed that it is a regulatory violation for an insurer like State Farm to apply a negotiation adjustment. Pet. App. 52a-53a. Yet as the district court also concluded, this does not necessarily mean that common questions predominate. *See id.* at 12a. After all, plaintiffs have put forth no evidence that *any*—much less *every*—class member was paid less than ACV for his or her vehicle. Indeed, plaintiffs admitted in the lower courts that they "never intended to show that they received less than the ACV." *Id.* at 44a. Instead, plaintiffs' contention is that "they 'are not so much alleging that State Farm breached its contract by failing to pay the actual cash value of vehicles deemed a total loss but alleging that State Farm engaged in an improper valuation process by deducting unlawful amounts from what was otherwise (as determined by State Farm) the actual cash value.'" *Id.* (quoting plaintiffs' briefing).

That theory contains a fundamental flaw. Plaintiffs assert a claim for breaches of their insurance contracts. Those contracts entitle plaintiffs (and putative class

members) to their vehicles' ACV. They do not contain an independent promise to refrain from making negotiation adjustments as part of State Farm's *process* of determining ACV. If State Farm paid accurate ACV (or more), there is no breach, regardless of how State Farm arrived at its estimate. *See Lara v. First Nat'l Ins. Co. of Am.*, 25 F.4th 1134, 1140 (9th Cir. 2022) ("If the . . . adjustment was applied for a plaintiff but then that plaintiff still got an amount equal to what he or she would have gotten if the adjustment was not applied (or more than that), then there was no breach of contract because there was no injury.").

Plaintiffs also assert a claim under the Washington Consumer Protection Act ("WCPA"). That claim rises or falls with the breach-of-contract claim. The WCPA requires proof that a plaintiff be "injured in his . . . business or property." Wash. Rev. Code § 19.86.090. Here, the asserted "injury" is the failure to receive the funds to which plaintiffs were legally entitled under their insurance contracts. Thus, plaintiffs' consumer-protection claim hinges on their theory that State Farm breached the contracts. If State Farm's alleged regulatory violation is not a breach, it is not a violation of the WCPA, either. *See Lara*, 25 F.4th at 1138-39.

Plaintiffs' theory of a contractual breach and a WCPA violation relies entirely on the Washington insurance regulation that allegedly requires insurers to refrain from making negotiation adjustments. But plaintiffs cannot hinge their entitlement to relief on State Farm's alleged regulatory violation, because "only the Washington insurance commissioner can prosecute violations of the regulation." *Lara*, 25 F.4th at 1139. Instead, plaintiffs must

establish a breach of the contractual obligation to pay ACV. A "violation of the regulation isn't a breach," *id.*, or a WCPA violation.

Because plaintiffs must show a breach as to each class member, no class should have been certified. Plaintiffs cannot show that a common question exists at all, and they certainly cannot show that common questions predominate over individualized questions. As this Court has explained, commonality requires not just "the raising of common questions—even in droves—but rather, the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Dukes*, 564 U.S. at 350 (internal quotation marks omitted) (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)). Here, "whether the negotiation adjustment complies with Washington law" is not a common question under Rule 23 because no common answer to that question could drive the resolution of the litigation.

To illustrate, suppose plaintiffs successfully established that Washington law prohibits negotiation adjustments. That finding would still not drive the resolution of the litigation with respect to *any* putative class member, because it would not answer the question that matters: did State Farm breach the contract (or violate the WCPA) by paying less than ACV? For *every* class member, the determination of whether State Farm is liable would still require an individualized analysis of whether the amount of money the class member received is lower than the fair market value of his or her specific vehicle. Plaintiffs therefore cannot show any common questions in the sense relevant to Rule 23—the common question they identify

is, in fact, largely irrelevant to the causes of action they assert.

Even if plaintiffs could show commonality, they could not prove predominance, as Rule 23(b)(3) requires. The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). This inquiry "asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Id.* (internal quotation marks omitted).

Here, individualized issues predominate for a straightforward reason: it is *inevitable* that there will be individual liability mini-trials with respect to *every single* class member. As already explained, even if plaintiffs were to prove, following class certification, that negotiation adjustments violate Washington law, that fact would say nothing about whether State Farm is liable to any particular class member. For every single class member, the court would still have to ask the question: was State Farm's payment *in fact* lower than ACV? That "claim-specific inquiry," *Kartman v. State Farm Mut. Auto. Ins. Co.*, 634 F.3d 883, 891 (7th Cir. 2011), would depend on individualized evidence regarding the characteristics of each class member's particular vehicle.

As this Court has explained, "[a]n individual question is one where members of a proposed class will need to present evidence that varies from member to member, while a common question is one where the same evidence will suffice for each member to make a prima facie showing

[or] the issue is susceptible to generalized, class-wide proof." *Tyson Foods*, 577 U.S. at 453 (second alteration in original) (internal quotation marks omitted). The questions that would have to be adjudicated for each class member here are quintessential individualized questions, and they plainly would predominate, as the court would need to review particularized evidence with respect to every putative class member before determining whether any of them were entitled to damages.

B. The Ninth Circuit's Purported Distinction Between the Two Proposed Classes Proves Its Error.

The Ninth Circuit agreed that plaintiffs' proposed "condition" class—as opposed to the "negotiation" class—could not be certified. Pet. App. 23a-24a. That proposed "condition" class consisted of insureds for whom State Farm applied an adjustment based on the "assum[ption] that the typical car in use is in worse condition and would sell for less than comparable cars advertised by dealers." *Id.* at 7a. In *Lara*, 25 F.4th 1134, the Ninth Circuit had affirmed the denial of certification of a nearly identical class raising similar claims under the Washington regulations. Pet. App. 9a-10a. The court there had "recognized that '[w]hether [the insurer's] condition adjustment violates the Washington state regulations' was a question common to the class," but individualized inquiries still predominated because each plaintiff ultimately "had to show that they received less money than they were owed." *Id.* at 11a (first alteration in original) (quoting *Lara*, 25 F.4th at 1138).

The court below followed *Lara* in affirming denial of the condition class. Pet. App. 23a-24a. But it purported

to distinguish *Lara* with respect to the negotiation class. The court observed that "[n]o one in *Lara* disputed that [the insurer] could lawfully have applied a properly itemized and verifiable condition adjustment to calculate putative class members' actual cash value," and thus "there was no way to know whether any individual putative class member was injured . . . without individually inquiring into whether the adjustment *exceeded* whatever condition adjustment [the insurer] could lawfully have applied." Pet. App. 18a. But with respect to the negotiation class at issue, plaintiffs had argued that applying a negotiation adjustment was *per se* unlawful and entitled each class member to recover the amount of the adjustment. *Id.* at 18a-19a. Rather than look behind the curtain to determine whether plaintiffs were correct on that point, the court simply accepted the argument as sufficient to establish predominance. *See id.* at 17a ("Plaintiffs contend that Washington law flatly prohibits *any* negotiation adjustment; and *if Plaintiffs are correct about that legal issue*, then each Plaintiff suffered damages equal to the amount of the negotiation adjustment that State Farm made." (second emphasis added)).

In distinguishing the two proposed classes (and its prior decision in *Lara*), the court of appeals thus relied on plaintiffs' "conten[tion]" that a bare procedural violation would entitle class members to a particular damages sum. That is, the court found predominance based on plaintiffs' theory that the requirements of the Washington regulations "are incorporated into their insurance contracts and that a violation of the insurance regulations also constitutes a violation of the [WCPA] . . . pursuant to which they are authorized to sue." Pet. App. 6a. But the fact that plaintiffs "contend" something does not make it true. A

court may not take the plaintiff's theory of liability at face value; it must *evaluate* that theory to assess whether Rule 23's requirements are satisfied. And plaintiffs' theory is dead wrong: the contract unambiguously requires a payment of ACV, not an amount greater than ACV, regardless of whether plaintiffs establish a regulatory violation. The regulations are not privately enforceable, and plaintiffs cannot conjure a cause of action by declaring the regulations "incorporated" into the insurance contracts.

As this analysis illustrates, Rule 23 sometimes requires a partial analysis of the merits of a plaintiff's claim at the class-certification stage. Here, the lower courts were required to evaluate plaintiffs' "incorporated into the contract" theory at the class-certification stage, even though plaintiffs' merits claim hinges on that theory. That is an inevitable and common feature of class-action litigation. This Court has repeatedly "emphasized that it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question," and "[s]uch an analysis will frequently entail overlap with the merits of the plaintiff's underlying claim." *Comcast*, 569 U.S. at 33-34 (internal quotation marks omitted). "That is so because the class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action." *Id.* at 34 (internal quotation marks omitted).

That is precisely the case here. The question "would a finding that negotiation adjustments violate Washington law establish State Farm's liability with respect to each class member?"—the relevant inquiry for commonality and predominance under Rule 23—overlaps with the question "did State Farm breach the contract by using a

negotiation adjustment?"—the relevant inquiry for liability. But notwithstanding this overlap, the court must resolve the commonality and predominance questions prior to class certification.

To further illustrate the error, consider the following hypothetical. Suppose that the plaintiffs in this case asserted that Washington insurance law entitled them each to a flat payment of $50,000 (and no other relief) as a result of State Farm's allegedly unlawful application of a negotiation discount. If that position were correct as a matter of Washington law—if the Washington insurance scheme actually entitled plaintiffs to such a payment—there would be a strong argument that common questions predominate and that class certification is appropriate under Rule 23(b)(3). But of course, no court would certify such a class, because it is plain, upon cursory review of the relevant regulations, that the putative class members are not uniformly entitled to this lump-sum payout. Instead, the court would almost certainly say, all the putative class members are actually entitled to is damages for the contractual breach. And once the absurd legal theory warranting uniform treatment is put to the side, there is little left to support commonality or predominance.

Though this hypothetical is extreme, there is nothing that meaningfully distinguishes it from this case. In both the hypothetical and this case, if the asserted legal theory for relief is correct, there is a strong case that common questions predominate and class certification is likely appropriate. The problem in both cases is that the plaintiffs' asserted theory withers under scrutiny, and with it the common questions that might have otherwise predominated. Yet the Ninth Circuit upheld class certification

without giving *any* scrutiny to the faulty legal premise of plaintiffs' class-certification theory.

C. This Court's Review Is Urgently Warranted.

The petition's first question presented has split the courts of appeals, with a majority correctly holding that bare assertions of meritless legal theories are insufficient at the class-certification stage to establish commonality and predominance. Without this Court's review, plaintiffs seeking to certify class actions that Rule 23(b)(3) does not countenance will flock to the Ninth Circuit and cause significant harm not only to insurers, but also to all other class-action defendants.

1. *There is a split of authority on the first question presented.*

As the petition and the dissent below explain, in holding that certification of the negotiation class was proper, the Ninth Circuit split from the Fifth Circuit's resolution of the same issue. *See* Pet. 12-14; Pet. App. 33a-35a (Rawlinson, J., dissenting). The Fifth Circuit has held in a materially similar case that "predominance was not satisfied where plaintiff class members could show that an insurer's use of [a particular valuation model] was unlawful but could not prove an actual underpayment by class-wide proof." *Sampson v. USAA*, 83 F.4th 414, 422 (5th Cir. 2023). The Fifth Circuit in *Sampson* accurately applied this Court's teaching in *Comcast* that courts must decide whether Rule 23's requirements are *in fact* satisfied—even when that inquiry overlaps with the merits. *See id.* at 422-23 ("[A] district court's wide discretion to choose an imperfect estimative-damages model at the certification stage *does not carry over from the context of damages to the context of liability*." (emphasis added));

see also Bourque v. State Farm Mut. Auto. Ins. Co., 89 F.4th 525, 528-29 (5th Cir. 2023).

The decision below is also incompatible with decisions of the Eighth and Seventh Circuits. In *In re State Farm Fire & Casualty Co. (LaBrier)*, 872 F.3d 567 (8th Cir. 2017), the Eighth Circuit likewise correctly held that the plaintiffs' theory of liability must be scrutinized—not blindly accepted—at the class-certification stage. The court first concluded that "State Farm's method of determining estimated [ACV] does not breach its replacement cost contract," contrary to the plaintiffs' contention. *Id.* at 573. And having made that critical legal determination, the court proceeded to conclude that "there is no basis to certify a class of insureds who suffered unique, individual covered losses." *Id.* Like here, it was possible that State Farm's use of the challenged "estimating methodology would produce an unreasonable estimate," but that issue could "only be determined based on all the facts surrounding a particular insured's partial loss," and there were therefore "no predominant common facts at issue." *Id.* at 577 (emphasis omitted).

Kartman, 634 F.3d 883, involved insurance policies covering roof repairs, not totaled vehicles, but the Seventh Circuit recognized all the same that "[i]f a given policyholder was fully compensated for the damage," the insurer "will have satisfied its contractual obligation *regardless* of whether it used" a lawful or unlawful method for adjusting the claim. *Id.* at 890. Like the Ninth Circuit ought to have done here, the Seventh Circuit in *Kartman* began by analyzing the elements of the plaintiffs' claim. For instance, the court of appeals observed that to establish the elements of the bad-faith claim plaintiffs asserted

on behalf of the class, the plaintiffs would have to "establish that their claims were underpaid—or wrongfully denied—in the first place." *Id.* at 891. And "[t]his requirement alone bar[red] class certification because it cannot be established on a class-wide basis." *Id.* The court did *not* say that because plaintiffs had asserted a *theory* under which showing bad faith entitled every class member to relief, the class could be certified.

2. *The Ninth Circuit's position makes it far too easy to obtain class certification and invites forum shopping in meritless cases that will decimate insurers.*

The Ninth Circuit's decision provides a roadmap for class certification in essentially every single case. Plaintiffs seeking to represent a class could simply assert that a legal theory exists that would allow the defendant's liability to be adjudicated on a classwide basis—and if the defendant argues that the legal theory is faulty, the plaintiffs could say that this is an issue to be resolved after class certification. Indeed, under the court of appeals' reasoning, even plaintiffs without standing could obtain class certification—they could simply *assert* an injury in fact, and the court could certify a class based on that assertion without assessing whether the injury actually exists. Plaintiffs seeking to bring massive class actions against their insurers (despite having suffered no injury) will have even more reason to flock to the Ninth Circuit, where they now need only assert some *hypothetical theory* under which the class members' claims can be resolved in one fell swoop, even if that theory is utterly without merit.

This outcome would violate the letter and spirit of Rule 23 and would result in serious harm to class-action defendants. Even if a legal theory undermining a class claim appears meritless, class certification is still a pivotal event. "Certification as a class action can 'coerce the defendant into settling on highly disadvantageous terms, regardless of the merits of the suit.'" *Creative Montessori Learning Ctrs. v. Ashford Gear LLC*, 662 F.3d 913, 915 (7th Cir. 2011) (quoting Fed. R. Civ. P. 23(f) advisory committee note to 1998 amendment). And "[w]ith vanishingly rare exception, class certification sets the litigation on a path toward resolution by way of settlement, not full-fledged testing of the plaintiffs' case by trial." Nagareda, *supra*, at 99.

In the typical case, "extensive discovery and the potential for uncertainty and disruption in a lawsuit allow plaintiffs with weak claims to extort settlements from innocent companies." *Stoneridge Inv. Partners v. Sci.-Atlanta, Inc.*, 552 U.S. 148, 163 (2008). This risk is magnified in class actions: "[c]ertification of a large class may so increase the defendant's potential damages liability and litigation costs" that even the most surefooted defendant "may find it economically prudent to settle and to abandon a meritorious defense." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978), *superseded in other part by* Fed. R. Civ. P. 23(f); *accord Coinbase, Inc. v. Bielski*, 599 U.S. 736, 743 (2023) ("[T]he possibility of colossal liability can lead to what Judge Friendly called 'blackmail settlements.'" (quoting Henry J. Friendly, *Federal Jurisdiction: A General View* 120 (1973))); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) ("Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims."). This is why

"virtually all cases certified as class actions and not dismissed before trial end in settlement." Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 812 (2010).

Given these realities, this Court should grant certiorari to hold that classes may not be certified based on manifestly faulty legal theories.

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be held pending resolution of *Laboratory Corp. of America Holdings v. Davis*, No. 24-304 (U.S. to be argued Apr. 29, 2025), and following this Court's decision in that case, the petition should be granted and disposed of as appropriate in light of the Court's ruling.

Respectfully submitted.

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