No. 25-____

IN THE

Supreme Court of the United States

JOHNSON & JOHNSON CONSUMER INC.,

Petitioner,

v.

NARGUESS NOOHI, INDIVIDUALLY AND ON BEHALF OF OTHER MEMBERS OF THE GENERAL PUBLIC SIMILARLY SITUATED,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether expert testimony must be admissible under Federal Rule of Evidence 702 and the framework enunciated in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to justify certifying a class under Federal Rule of Civil Procedure 23.

PARTIES TO THE PROCEEDING AND RULE 29.6 DISCLOSURE STATEMENT

Petitioner is Johnson & Johnson Consumer Inc. ("JJCI"). JJCI's interest in this lawsuit has transferred to Kenvue Brands LLC ("Kenvue Brands"), a Delaware limited liability company.

On November 24, 2025, the district court in this action granted JJCI's unopposed motion to substitute Kenvue Brands as the proper party, dismissing the action against JJCI without prejudice and modifying the case caption to list Kenvue Brands as the defendant. *See* Order, *Noohi v. Kenvue Brands LLC*, No. 2:20-cv-03575-TJH-JEM, Dkt. 123. The Ninth Circuit, however, did not substitute Kenvue Brands for JJCI while the case was on appeal or alter the caption of the case. Accordingly, for the sake of simplicity and consistency in terms of how this appeal has previously proceeded, JJCI filed the earlier application for an extension of time in this Court in its own name, and it does the same here in this petition. At the same time, if this Court wishes, it could treat Kenvue Brands as an additional petitioner, and neither JJCI nor Kenvue Brands has any objection to this Court so doing or even restyling the caption.

Kenvue Brands is a wholly owned subsidiary of Kenvue Inc., a publicly traded corporation. Kenvue Inc. has no parent corporation. Vanguard Group, Inc. owns more than 10% of Kenvue Inc.'s stock.

RELATED PROCEEDINGS

Noohi v. Kenvue Brands LLC, No. 2:20-cv-03575 (C.D. Cal.).

Noohi v. Johnson & Johnson Consumer Inc., No. 23-55190 (9th Cir.). The United States Court of Appeals for the Ninth Circuit's decision was filed on July 25, 2025, and it denied rehearing en banc on September 3, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Johnson & Johnson Consumer Inc. respectfully requests a writ of certiorari to the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion (Pet. App. 1a-29a) is reported at 146 F.4th 854. The Ninth Circuit's order denying rehearing en banc (Pet. App. 45a) is unreported. The district court's order granting class certification (Pet. App. 30a-44a) is unpublished but is available at 2022 WL 22278783.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered judgment on July 25, 2025. Pet. App. 1a. The Ninth Circuit denied rehearing en banc on September 3, 2025. Pet. App. 45a. On November 14, 2025, Justice Kagan extended the deadline for filing the petition for a writ of certiorari to January 16, 2026. No. 25A565. The Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Federal Rule of Civil Procedure 23 and Federal Rule of Evidence 702 are reproduced at Pet. App. 46a-55a and Pet. App. 56a, respectively.

INTRODUCTION

In *Comcast Corp. v. Behrend*, 567 U.S. 933 (2012), this Court granted certiorari to decide "[w]hether a district court may certify a class action without re-

solving whether the plaintiff class has introduced admissible evidence, including expert testimony, to show that the case is susceptible to awarding damages on a class-wide basis." The Court then resolved the case on other grounds, holding that the plaintiffs did not meet Rule 23's requirements even if the expert evidence at issue there were admissible. *Comcast Corp. v. Behrend*, 569 U.S. 27, 32 n.4 (2013). Accordingly, the Court reserved for another day the question whether a plaintiff may satisfy the requirements to certify a class under Federal Rule of Civil Procedure 23 with evidence, including expert testimony, that has not been found "admissible" by the district court.

Since *Comcast*, the courts of appeals have become increasingly and openly split on this issue. As Chief Judge Sutton recently explained, the "majority view," held by the Third, Fifth, Sixth, Seventh, and Eleventh Circuits, is that expert testimony must be admissible under Federal Rule of Evidence 702 and this Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to meet the requirements laid out in Civil Rule 23. *In re Nissan N. Am., Inc. Litig.*, 122 F.4th 239, 253 (6th Cir. 2024) (Sutton, C.J.). In these circuits, "[i]f expert testimony is insufficiently reliable to satisfy *Daubert*, it cannot prove that [Rule 23's] prerequisites have been met in fact through acceptable evidentiary proof." *Id.* (quotations omitted).

The Eighth and Ninth Circuits, by contrast, are "on the short side" of this "lopsided circuit split." *Sali v. Corona Reg'l Med. Ctr.*, 907 F.3d 1185, 1189 (9th Cir. 2018) (Bea, J., dissenting from denial of rehearing en banc). In those circuits, plaintiffs may rely on

expert testimony to satisfy Rule 23 without demonstrating that the testimony complies with Rule 702 and *Daubert*. Instead of applying the requirements set out in the Federal Rules of Evidence, district courts in those circuits may perform a "limited *Daubert* analysis," *Nissan*, 122 F.4th at 253, that functions only as a rough check on the reliability of the expert's proposed testimony.

This conflict in authority has immense practical consequences for how class actions are litigated and decided. Under the majority framework, a plaintiff's expert must actually develop his opinion before it can be used to certify a class under Rule 23. And a district court, faced with a class-certification motion, will then test that opinion under Federal Rule of Evidence 702 and *Daubert*. But in the Eighth and Ninth Circuits, plaintiffs seeking to certify a class need only ask their experts to sketch out a path to developing opinions on an element of the class's claims. So long as that sketch survives limited scrutiny, it may be used to certify a class, granting the plaintiff class immense settlement leverage without ever needing to prove that the testimony justifying class treatment is admissible under the Federal Rules. The expert testimony offered in support of class certification, the nature of the analysis conducted by the district court, the classes that are certified, and even the parties' appeal rights vary depending on the circuit in which a class action is filed.

This Court should use this case, which squarely presents the issue in an outcome-determinative posture, to resolve this conflict. When Respondent

Narguess Noohi moved for class certification, she relied on the testimony of her damages expert, Dr. Wade Roberts. At class certification, Dr. Roberts had not yet formulated an opinion on the class's damages. That opinion was "preliminary" and undeveloped. In support of Noohi's certification motion, Dr. Roberts opined only that "the determination of class wide economic damages for this case is possible" *if* a survey-based model were fully designed and reliably implemented, neither of which had happened at the time Noohi moved for class certification. 3-ER-270.[1] Petitioner opposed class certification on the ground that Dr. Roberts's testimony was inadmissible. But the district court brushed aside Petitioner's challenges. In doing so, the district court did not apply the requirements of Rule 702 and *Daubert*. Instead, it held that Dr. Roberts's testimony satisfied Rule 23 because it could develop into admissible evidence at some later point.

The Ninth Circuit affirmed, reaffirming its rule that expert testimony need not comply with Rule 702 and *Daubert* to prove a requirement under Rule 23. Pet. App. 11a-14a, 19a. In the Ninth Circuit, but not in most others, an inquiry into admissibility goes only "to the weight that evidence is given" in determining whether the requirements of Rule 23 are satisfied. Pet. App. 11a (quoting *Lytle v. Nutramax Lab'ys, Inc.*, 114 F.4th 1011, 1025 (9th Cir. 2024)). To this end, the

[1] "ER" refers to the Excerpts of Record filed with Petitioner's opening brief in the Ninth Circuit. "Dist. Ct. Dkt." refers to the docket in *Noohi v. Johnson & Johnson Consumer Inc.* (C.D. Cal. No. 2:20-cv-03575).

Ninth Circuit requires only a "limited *Daubert* analysis" that entails "determining whether the expert's methodology is reliable"—not actual compliance with the elements of Rule 702. Pet. App. 12a (quotations omitted). Under this relaxed framework, the court of appeals held that Dr. Roberts's preliminary testimony was sufficiently reliable to justify certifying a class. Pet. App. 12a-14a.

That decision not only conflicts with the majority view that expert testimony must comply with Rule of Evidence 702 and *Daubert* to satisfy the requirements of Civil Rule 23; it is clearly wrong. Absent an exception, the Federal Rules of Evidence apply in full at any stage of the case at which evidence is offered. *See* Fed. R. Evid. 1101. There is no class-action exception to Rule 1101. So a plaintiff seeking to certify a class based on expert testimony must demonstrate the expert's compliance with Rule 702 and this Court's opinion interpreting the Rule's requirements in *Daubert*. By the same token, a district court that has conducted only a "limited" Rule 702 inquiry has not engaged in the "rigorous analysis," *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011) (quotations omitted), of the plaintiff's evidence in support of certification that the Federal Rules require.

This Court should grant certiorari and reverse.

STATEMENT OF THE CASE

1. JJCI marketed and sold a cosmetic product known as "Neutrogena® Oil-Free Moisture for Sensitive Skin" (the "Moisturizer"). Pet. App. 4a. Respondent Narguess Noohi purchased the Moisturizer after starting an ultra-low calorie diet under the guidance

of a chiropractor. 2-ER-18-25, 33, 49. According to Noohi, she sought out an oil-free moisturizer because the diet required avoiding applying oils to her skin. 2-ER-22, 24-25.

Although Noohi was satisfied with the Moisturizer's performance, 2-ER-34, she brought this lawsuit, alleging that the Moisturizer's "oil-free" label was false and misleading under California law. Pet. App. 5a-6a. She claims that the "oil-free" label was deceptive because the Moisturizer (in her view) "contains oils and oil-based ingredients," Pet. App. 4a, and also because some consumers (but not Noohi herself) have said the moisturizer made their skin feel "oily," 2-ER-79-80. The district court had subject matter jurisdiction under 28 U.S.C. § 1332(d).

2. Noohi moved to certify a class under Rule 23(b)(3). To obtain certification under this Rule, a named plaintiff must "satisfy through evidentiary proof" the required elements of Rule 23(a) and Rule 23(b)(3). *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). As relevant here, Noohi was required to prove that questions of law or fact common to the putative class "predominate[d] over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Noohi attempted to carry this evidentiary burden in part by offering the testimony of an expert witness, Dr. Wade Roberts.

Dr. Roberts is an economist who proposes to testify about the economic impact of the Moisturizer's "oil-free" label. But at the time Noohi moved for class certification, the only opinion Dr. Roberts had developed was that "the determination of class wide economic damages for this case is possible (and highly probable)

by properly designing and implementing qualitative market survey research and then applying the most appropriate quantitative testing methods contingent on the findings from the quantitative market research." 3-ER-270. In other words, Dr. Roberts opined that damages were "capable of measurement on a classwide basis," *Comcast*, 569 U.S. at 34, *if* a reliable damages model were designed and implemented.

At the time Noohi moved for class certification, Dr. Roberts's model had not been "fully developed," nor had it been implemented. Pet. App. 7a. Indeed, as Dr. Roberts himself acknowledged, it was "not really possible for [him] to spell out all the details of what will be done at every step" because everything about his methodology was "very preliminary." 3-ER-179-80, 227-28. Dr. Roberts repeatedly admitted that the reliability of any testimony derived from his proposed model depends entirely on how this model is "design[ed] and implement[ed]," 3-ER-270, including the selection of representative population sets and the drafting of survey questions, 3-ER-159-60, 164-68, 172, 179, 213-14, 217-18, 222. He also admitted that none of these critical design steps had even begun. Survey questions had not been formulated or vetted. 3-ER-173-74, 179-80. Survey flow had not been determined. 3-ER-244-47. Representative population sets had not been identified. 3-ER-254-55. In fact, Dr. Roberts would not even be the one performing much of this work. He revealed in his deposition that a different, undisclosed expert would be "designing, conducting, [and] implementing the survey, [and] vetting

the [survey] questions" that would ultimately determine the reliability of his testimony. 3-ER-196-97.

To illustrate how incomplete his work was, after affirming that it was "critical" to determine the correct population set for the surveys, Dr. Roberts's report stated that in the "qualitative phase, women over the age of 18 will be considered." 3-ER-273. At his deposition, however, Dr. Roberts explained that this statement, like basically everything else in his report, was just "a suggestion," "an example." 3-ER-224-26. Men *will* be included in the surveys, but because everything was "all kind of up in the air at th[at] point," Dr. Roberts did not "have anything nailed down with respect to which men [e.g., demographics] or how large of the pie will be represented by men." 3-ER-240; *see also* 3-ER-224-26, 229-31.

Thus, as Dr. Roberts candidly acknowledged, even his own report is not a reliable resource for how his model would actually be designed because the report outlined only the "very initial starting point of the research methods. It's not a well vetted and fleshed-out, detail-oriented report showing all of the brackets where everything is going to land. It's just saying" that determining the impact of the "oil-free" claim on consumer behavior "is a very possible thing, if we use these methods." 3-ER-230.

3. Petitioner opposed Noohi's motion for class certification. Alongside its opposition, Petitioner moved to exclude Dr. Roberts's testimony on the ground that it was inadmissible. Pet. App. 12a. The district court held that Petitioner failed to rebut "Noohi's *prima facie* case" that Dr. Roberts's testimony would be admis-

sible when developed, and otherwise rejected Petitioner's challenge to "the preliminary and tentative nature" of Dr. Roberts's testimony as "not yet ripe." Pet. App. 43a.

4. The Ninth Circuit affirmed. As relevant here, the Ninth Circuit held that expert testimony need not be admissible under Rule 702 and *Daubert* to satisfy Rule 23. Pet. App. 11a. "Instead, 'an inquiry into the evidence's ultimate admissibility should go to the weight that evidence is given at the class certification stage." *Id.* (quoting *Lytle v. Nutramax Lab'ys, Inc.*, 114 F.4th 1011, 1025 (9th Cir. 2024)). In undertaking this inquiry, district courts in the Ninth Circuit may apply a watered-down version of Rule 702 and *Daubert* depending on how much work the expert has put in. Where an expert has developed the testimony he or she intends to offer at trial, a "full-blown *Daubert* assessment" into the admissibility of that testimony may be appropriate. Pet. App. 12a (quoting *Lytle*, 114 F.4th at 1031). But where, as here, the expert's analysis is incomplete, a district court may apply a "limited *Daubert* analysis," under which plaintiffs need only show the expert has identified a reliable methodology, *id.* (quotations omitted), and "chart out a path to obtain all necessary data and demonstrate that the proposed method will be viable as applied to the facts of a given case," Pet. App. 13a (quoting *Lytle*, 114 F.4th at 1032).

Applying this framework, the Ninth Circuit affirmed the district court's conclusions that Dr. Roberts's preliminary testimony was sufficiently reliable to support class certification and that Petitioner's "challenges to Dr. Roberts' opinion evidence were 'not

ripe.'" Pet. App. 14a (quotations omitted). It did so despite concluding later in the opinion that Dr. Roberts had proposed to *miscalculate* the class's damages. Pet. App. 16a-17a. After judicially correcting Dr. Roberts's preliminary approach to the class's damages, Pet. App. 17a, the court below justified its refusal to require admissible evidence by insisting that Petitioner later "be given the opportunity to test the admissibility and reliability of Dr. Roberts' model once it has been fully executed," Pet. App. 20a.

5. Petitioner timely petitioned for rehearing en banc. Pet. App. 45a. On September 3, 2025, the court denied the petition. *Id.*

REASONS FOR GRANTING THE PETITION

The courts of appeals are openly and intractably divided over whether a plaintiff can carry her burden to satisfy Rule 23's requirements with expert testimony without proving that the testimony is admissible under Rule 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). This case is an ideal vehicle to resolve this important question—which the Court expressly reserved in *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013)—and bring much needed clarity to the law of class actions.

A. The Courts of Appeals Are Divided Over Whether Expert Testimony Must Be Admissible Under Rule 702 And *Daubert* To Satisfy The Requirements Of Rule 23.

There is a well-recognized "circuit split" over whether expert testimony must "be admissible to be considered at the class certification stage." *Sali v. Corona Reg'l Med. Ctr.*, 907 F.3d 1185, 1189 (9th Cir.

2018) (Bea, J., dissenting from the denial of rehearing en banc); *see Lytle v. Nutramax Lab'ys, Inc.*, 114 F.4th 1011, 1030 (9th Cir. 2024) (noting "divergence among the Circuits"); *In re Nissan N. Am., Inc. Litig.*, 122 F.4th 239, 253 (6th Cir. 2024) (Sutton, C.J.) (same); 3 Newberg & Rubenstein on Class Actions § 7:24 (6th ed. 2025) (same); *see also Allen v. Ollie's Bargain Outlet, Inc.*, 37 F.4th 890, 906-07 (3d Cir. 2022) (Porter, J., concurring) (acknowledging broader split over applicability of Federal Rules of Evidence at class certification).

The minority view, shared by the Eighth and Ninth Circuits, is that a plaintiff need not establish the admissibility of expert testimony under Rule 702 and *Daubert* to justify certifying a class. In these circuits, district courts may apply a "limited" *Daubert* analysis "that scrutinizes expert testimony only in light of Rule 23's class certification requirements or evaluates whether the testimony may eventually develop to be admissible at trial (as opposed to whether it is admissible at the time of class certification)." *Newberg*, *supra* § 7:24. The "majority view," shared by the Third, Fifth, Sixth, Seventh, and Eleventh Circuits, is that Rule 702 applies in full to evidence offered in support of class certification. *Nissan*, 122 F.4th at 253. In these circuits, a plaintiff cannot certify a class based on expert evidence that does not withstand scrutiny under Rule 702 and *Daubert*.[2]

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[2] Because *Daubert* interpreted, and was later incorporated into, Rule 702, *see* Fed. R. Evid. 702, Comm. Notes on 2000 Amend., many federal appellate opinions use *Daubert* as a shorthand for Rule 702. *See, e.g.*, *Nissan*, 122 F.4th at 253; *Allen*, 37

1. The Eighth and Ninth Circuits hold that expert testimony need not be admissible under Rule 702 and *Daubert* to satisfy the requirements of Rule 23.

a. *Eighth Circuit*. As the Newberg class-action treatise explains, the Eighth Circuit historically has been the "leading proponent of a limited *Daubert* approach." *Newberg*, *supra* § 7:24. Under this "limited" approach, a district court is not required to evaluate the "ultimate admissibility of an expert's opinion" when faced with a challenge to expert testimony offered in support of class certification. *Cody v. City of St. Louis ex rel. Medium Sec. Inst.*, 103 F.4th 523, 535 (8th Cir. 2024) (emphasis omitted).

The Eighth Circuit adopted this framework in *In re Zurn Pex Plumbing Products Liability Litigation*, 644 F.3d 604 (8th Cir. 2011). There, the district court certified a class after conducting "focused *Daubert* analysis which scrutinized the reliability of the expert testimony in light of the criteria for class certification and the current state of the evidence." *Id.* at 614. In conducting its analysis, the district court did not find that the experts' testimony would be "admissible at trial." *Id.* at 611. Indeed, it candidly acknowledged

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F.4th at 904-05 (Porter, J., concurring). For clarity, this petition refers to both Rule 702 and *Daubert*, even though *Daubert* is a gloss on the Rule's requirements. The analytical question in all these cases is whether "expert evidence used to certify a class action must be admissible under Federal Rule of Evidence 702," as interpreted in cases like *Daubert*. *Allen*, 37 F.4th at 905 (Porter, J., concurring).

that one expert's testimony "may or may not be admissible," depending on how the record developed after class certification. *Id.* at 612.

On appeal, the defendant argued that the district court erred in not applying a "full and conclusive *Daubert* review" into the admissibility of the experts' testimony. *Zurn*, 644 F.3d at 611. Expressly rejecting a Seventh Circuit decision to that effect, *see infra* at 17-18, the Eighth Circuit held that a district court is not required to decide whether expert testimony offered in support of class certification "will ultimately be admissible," *Zurn*, 644 F.3d at 611, 612-14. Instead, the court held, a district court may "examine the reliability of the expert testimony in light of the existing state of the evidence and with Rule 23's requirements in mind." *Id.* at 612. Under this relaxed evidentiary framework, the Eighth Circuit affirmed the district court's decision to certify a class based in part on evidence the district court acknowledged "may or may not" prove to be "admissible." *Id.*

The Eighth Circuit is committed to this approach. In *Cody*, the defendant argued that classes should not have been certified because "there was no *admissible* evidence in the record to" support a common finding on an element of the classes' claims. 103 F.4th at 535. Following *Zurn*, the Eighth Circuit rejected "the argument [a]s beside the point." *Id.*; *see also Smith v. ConocoPhillips Pipe Line Co.*, 801 F.3d 921, 925 n.2 (8th Cir. 2015) ("full and conclusive … inquiry under *Daubert*" not required at class certification).

b. *Ninth Circuit.* The Ninth Circuit uses the same basic approach. In *Lytle*, the Ninth Circuit held "there is no requirement that the evidence relied upon

by Plaintiffs to support class certification be presented in an admissible form." 114 F.4th at 1024-25. Instead, "an inquiry into the evidence's ultimate admissibility should go to the weight the evidence is given" in evaluating whether Rule 23's requirements are met. *Id*. at 1025 (quotations omitted). The Ninth Circuit further explained that in assessing expert evidence presented in support of class certification, district courts may account for how much work the expert has put in. "[W]here an expert's model has yet to be fully developed," district courts may apply a "limited" Rule 702 inquiry. *Id*. at 1031.

Although the plaintiffs in *Lytle* argued to this Court that the Ninth Circuit's discussion of admissibility was "dicta," Respondents' Br. in Opp. 2, *Lytle*, *supra* (U.S. No. 24-576), the Ninth Circuit applied *Lytle*'s rule here to decide Petitioner's appeal. Noohi's bid for class certification rested on Dr. Roberts's "opinion that the determination of economic damages for this case is possible (and highly probable) by properly designing and implementing" a two-phase model. 3-ER-270. Obviously, that opinion does not satisfy Rule 702. It would not assist the jury "to determine a fact in issue." Fed. R. Evid. 702(a). Rather, it is a legal conclusion that Rule 23(b)'s requirements, as construed in *Comcast*, are met. *See, e.g.*, *United States v. Diaz*, 876 F.3d 1194, 1197 (9th Cir. 2017) ("expert witness cannot give an opinion as to her *legal conclusion*" (quotations omitted)). And any opinion Dr. Roberts might derive from his model just as obviously does not satisfy the requirements of Rule 702. That yet-to-be-developed opinion is not "based on sufficient facts or data," Fed. R. Evid. 702(b), nor does it

"reflect[] a reliable application of the principles and methods to the facts of the case," *id.* 702(d). In fact, by Dr. Roberts's own admission, the reliability of any such testimony will depend on the work of some other undisclosed expert that had not yet been performed at the time Noohi moved for class certification. *Supra* at 7-8.

Yet the Ninth Circuit held Dr. Roberts's testimony was sufficient to satisfy Rule 23. In doing so, the Ninth Circuit explained that, in evaluating expert testimony offered in support of class certification, "the court considers only if expert evidence is useful in evaluating whether class certification requirements have been met," not whether the expert's testimony complies with the requirements of Rule 702 and *Daubert*. Pet. App. 12a (quoting *Lytle*, 114 F.4th at 1031). All a plaintiff must do to rely on expert testimony to prove class certification is "chart out a path to obtain all necessary data and demonstrate that the proposed method will be viable as applied to the facts of a given case"—i.e., chart out a path for the expert to develop an admissible opinion on an element of the class's claims in the future. Pet. App. 13a (quotations omitted). Based on this rule, the court below affirmed the district court's certification order. Pet. App. 12a-14a, 19a, 29a.

2. The outcome of this appeal would have been different in the Third, Fifth, Sixth, Seventh, and Eleventh Circuits. In these circuits, "expert testimony [must] be admissible to be considered at the class certification stage." *Sali*, 907 F.3d at 1189 (Bea, J., dissenting from the denial of rehearing en banc).

a. *Third Circuit*. In the Third Circuit, "expert evidence used to certify a class action must be admissible under [Rule] 702." *Allen*, 37 F.4th at 905 (Porter, J., concurring) (citing *In re Blood Reagents Antitrust Litig.*, 783 F.3d 183 (3d Cir. 2015)). In *Blood Reagents*, the district court held that expert testimony could satisfy Rule 23 so long as it "could evolve to become admissible evidence at trial." 783 F.3d at 188 (quotations omitted). The Third Circuit rejected this approach, holding "that a plaintiff cannot rely on challenged expert testimony, when critical to class certification, to demonstrate conformity with Rule 23 unless the plaintiff also demonstrates, and the trial court finds, that the expert testimony satisfies the standard set out in *Daubert*." *Id*. at 187. "Expert testimony that is insufficiently reliable to satisfy the *Daubert* standard," the court explained, cannot prove that Rule 23's prerequisites have "in fact" been met. *Id*. (quoting *Comcast*, 569 U.S. at 33).

b. *Fifth Circuit*. The Fifth Circuit applies the same approach, finding the Third Circuit's reasoning in *Blood Reagents* "particularly instructive." *Prantil v. Arkema Inc.*, 986 F.3d 570, 575 (5th Cir. 2021); *see also Unger v. Amedisys Inc.*, 401 F.3d 316, 319 (5th Cir. 2005) ("findings must be made based on adequate admissible evidence to justify class certification"). In *Prantil*, for example, the district court expressed doubt as to "whether a full *Daubert* analysis at the class certification stage is required," and was "not as searching in its assessment … as it would have been outside the certification." 986 F.3d at 576 (quotations omitted). The Fifth Circuit held that this was error, "insist[ing]" that when class certification turns on

contested expert evidence, "the metric of admissibility [is] the same for certification and trial." *Id.* at 575; *see also Ga. Firefighters' Pension Fund v. Anadarko Petroleum Corp.*, 99 F.4th 770, 774-75 (5th Cir. 2024) (vacating and remanding where "district court failed to perform a full *Daubert* analysis").

c. *Sixth Circuit.* The Sixth Circuit recently adopted the "majority view" that "[i]f challenged expert testimony is material to a class certification motion," it must satisfy the requirements of Rule 702 and *Daubert*. *Nissan*, 122 F.4th at 253. Following decisions from the "Third, Fifth, Seventh, and Eleventh Circuits" over decisions from the "Eighth and Ninth Circuits," the Sixth Circuit held that "if expert testimony is insufficiently reliable to satisfy *Daubert*, it 'cannot prove that the Rule 23(a) prerequisites have been met in fact through acceptable evidentiary proof." *Id.* (quoting *Blood Reagents*, 783 F.3d at 187).[3]

d. *Seventh Circuit.* So too in the Seventh Circuit. In *American Honda Motor Co. v. Allen*, 600 F.3d 813 (7th Cir. 2010) (per curiam), the Seventh Circuit held a "district court must perform a full *Daubert* analysis before certifying the class" if the expert's testimony is critical to class certification and timely challenged. *Id.* at 816. There, the district court had "acknowledged" and "largely agreed" with the defendants' concerns about the reliability of the expert testimony

[3] The Sixth Circuit applies a different rule for non-expert evidence, *Nissan*, 122 F.4th at 254 (distinguishing *Lyngaas v. Curaden Ag*, 992 F.3d 412 (6th Cir. 2021)), thus to some degree underscoring the need for this Court's guidance on the applicability of the Rules of Evidence to class certification motions more broadly.

submitted in support of certification. *Id.* But the court declined to exclude the expert's report. *Id.* The Seventh Circuit held that the district court's "fail[ure] to clearly resolve the issue of its admissibility before certifying the class" was error. *Id.* at 817.

It then proceeded to apply *Daubert* and decertify the class. After concluding that "exclusion [wa]s the inescapable result when the *Daubert* analysis was carried to its conclusion," *Am. Honda*, 600 F.3d at 817, the Seventh Circuit held that the plaintiffs were "left with too little to satisfy Rule 23(b)(3)'s predominance prong," *id.* at 819; *see also Howard v. Cook Cnty. Sheriff's Off.*, 989 F.3d 587, 601 (7th Cir. 2021) ("Before relying on [plaintiffs' expert's] opinions [in its Rule 23 analysis] … the court should have ensured that they lived up to the standards of *Daubert* and Rule 702."); *Messner v. Northshore Univ. HealthSys.*, 669 F.3d 802, 812 (7th Cir. 2012).

e. *Eleventh Circuit.* Finally, the Eleventh Circuit has required a "full *Daubert*" analysis where the defendant challenged expert testimony critical to class certification. *Sher v. Raytheon Co.*, 419 F. App'x 887, 890-91 (11th Cir. 2011). Much like this case, the plaintiffs in *Sher* presented testimony from an expert "that he could develop a … model to determine … damages without resorting to … individualized consideration." *Id.* at 889. The defendant challenged the expert testimony, but the district court refused to "inquir[e] into the admissibility of Plaintiffs' proposed expert testimony" before certifying a class. *Id.* (quotations and emphasis omitted). Finding the Seventh Circuit's opinion in *American Honda* "persuasive," the Eleventh Circuit "agree[d]" that a district court must

"'resolve any challenge to the reliability of information provided by an expert if that information is relevant to establishing any of the Rule 23 requirements for class certification.'" *Id.* (quoting *Am. Honda*, 600 F.3d at 816).

B. The Question Presented Is Important, And This Case Is An Ideal Vehicle To Resolve It.

As *Comcast* confirms, the question presented is worthy of this Court's attention. This case provides an excellent vehicle to resolve the question *Comcast* left open.

1. There is no doubting the importance of the question presented. "A district court's ruling on the certification issue is often the most significant decision rendered in … class-action proceedings." *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980). "[W]hen damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once, the risk of an error will often become unacceptable" to even the most surefooted defendants, who may be "pressured into settling questionable claims." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011). Likewise, "the certification decision is typically a game-changer, often the whole ballgame, for plaintiffs and plaintiffs' counsel." *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 592 n.2 (3d Cir. 2012). A decision denying class certification often spells the "death knell of the litigation," for it will frequently be uneconomical for a single plaintiff to go it alone. *Blair*

v. Equifax Check Servs., Inc., 181 F.3d 832, 834 (7th Cir. 1999) (Easterbrook, J.).

Given these stakes, it is unsurprising that this Court regularly grants certiorari in cases involving Rule 23's requirements. *See, e.g.*, *Lab'y Corp. of Am. Holdings v. Davis*, 145 S. Ct. 1133, *pet. for certiorari dismissed as improvidently granted*, 605 U.S. 327 (2025); *Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys.*, 594 U.S. 113 (2021); *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442 (2016); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014); *Comcast*, 569 U.S. 27; *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

Indeed, this Court has already signaled that the question presented here warrants the same attention. In *Comcast*, the Court granted certiorari to decide "[w]hether a district court may certify a class action without resolving whether the plaintiff class has introduced admissible evidence, including expert testimony, to show that the case is susceptible to awarding damages on a class-wide basis." 567 U.S. 933 (2012). But the Court did not resolve this question in *Comcast* because the plaintiffs failed to satisfy Rule 23 regardless of whether their expert's testimony was admissible. 569 U.S. at 32 n.4.

Since *Comcast*, the issue has continued to arise with "frequency," *Am. Honda*, 600 F.3d at 815, and the disagreement between the circuits has blossomed into a full-blown conflict. Seven circuits have weighed in on the question, and there is no reason to believe

the conflict will abate absent this Court's intervention.

Until this Court intervenes, class-action litigation will diverge sharply depending on the circuit in which the plaintiff files suit. In five courts of appeals, a plaintiff seeking class certification must direct her expert to develop his testimony before class certification and, if challenged, prove that the expert's testimony is admissible under Rule 702 and *Daubert*. By contrast, in the Eighth and Ninth Circuits, a plaintiff may do far less to certify a class. She need only direct her expert to "chart out a path," Pet. App. 13a (quotations omitted), to develop an admissible opinion, and that opinion, if challenged, need not satisfy the requirements of Rule 702 and *Daubert*. The type of expert testimony offered in support of class certification, the degree of scrutiny applied by courts to that testimony, and, ultimately, the classes that are certified vary depending on the circuit. Even the parties' rights to appeal adverse class-certification decisions vary by circuit because of the split in authority on the question presented here. *See infra* at 29.

That state of affairs is intolerable. Identical class actions should not be litigated and adjudicated differently based solely on geography. But as things stand, plaintiffs are free to forum shop, steering cases into friendly circuits to game this uneven playing field. The Federal Rules of Evidence and Civil Procedure were adopted to prevent this kind of forum shopping by ensuring "uniformity" in federal courts across the

country. *Allen*, 37 F.4th at 904 (Porter, J., concurring). This Court should grant certiorari to restore uniformity to the law of class actions.

2. This case is an excellent vehicle for this Court to do so.

a. In support of Noohi's motion for class certification, Dr. Roberts opined only that it was "possible" (if not "highly probable") that he could measure damages on a class-wide basis. 3-ER-270. Petitioner opposed class certification in part on the ground that Dr. Roberts's testimony was inadmissible. Pet. App. 12a; Dist. Ct. Dkt. 80 at 5, 28 n.29; Dist. Ct. Dkt. 80-25. The district court rejected Petitioner's challenge, Pet. App. 42a-43a, and the Ninth Circuit then affirmed in a published opinion. In doing so, the Ninth Circuit did not analyze or apply the requirements of Rule 702. Nor did the Ninth Circuit dispute that, at the time Noohi moved for class certification, Dr. Roberts's "model" did not satisfy the Rule's requirements.

Instead of evaluating whether Dr. Roberts's test satisfies Rule 702 and *Daubert*, the Ninth Circuit held that the district court correctly applied only a "limited *Daubert* analysis," Pet. App. 12a (quotations omitted), under which an expert need only "chart out a path to obtain all necessary data and demonstrate that the proposed method will be viable as applied to the facts of a given case," Pet. App. 13a (quotations omitted). Applying this framework, the court held that Dr. Roberts's promise to develop an opinion on the class's

damages using a reliable methodology was sufficient to warrant certifying a class. Pet. App. 12a-14a.

b. Although this Court recently denied review on a similar question in *Nutramax Lab'ys, Inc. v. Lytle*, 145 S. Ct. 1308 (2025), the obstacles cited by the respondents in opposing review in that case are not present here. In *Lytle*, the Ninth Circuit understood the petitioner's "principal argument on appeal" to be that Rule 23 "categorically prohibits a class-action plaintiff from relying on an unexecuted damages model to demonstrate predominance (at least where that model is the only evidence of classwide injury)." 114 F.4th at 1024. Respondents thus repeatedly emphasized in their brief in opposition that the case did not implicate the question whether a district court must find evidence admissible under Rule 702 and *Daubert* before concluding it satisfies the requirements of Rule 23. Respondents' Br. in Opp. 2, 11, *Lytle*, *supra* (U.S. No. 24-576). Indeed, respondents argued, the district court in *Lytle* "*did* determine that the challenged evidence was relevant and reliable under the standard set out by this Court in *Daubert*." *Id.* at 2. Thus, had this Court granted review in *Lytle*, it risked investing resources into a case where it might not be able to decide the question presented.

None of that is true here. The district court did not decide whether the testimony Dr. Roberts offered at class certification actually complied with the requirements of Rule 702 and *Daubert*. Rather, it held that Petitioner failed to rebut "Noohi's *prima facie* case" that Dr. Roberts would develop an admissible opinion in the future and otherwise rejected Petitioner's challenges to the "preliminary and tentative

nature" of that testimony as "not yet ripe." Pet. App. 43a. And on appeal, the Ninth Circuit squarely rejected Petitioner's "argument … that Dr. Roberts's proposed damages model" was not "admissible or reliable under *Daubert* and Federal Rule of Evidence 702," Pet. App. 11a, on the ground that expert testimony need not be admissible under Rule 702 to satisfy Rule 23, *id.* The question presented by this petition is cleanly teed up by the record, as reflected on the face of the decision below.

C. The Decision Below Is Wrong

The decision below is also profoundly wrong. The admissibility requirements set out in Federal Rule of Evidence 702 and *Daubert* govern expert testimony offered to satisfy Civil Rule 23. The evidentiary framework the Ninth Circuit uses instead finds no support in the Federal Rules of Evidence or Civil Procedure. A "limited" Rule 702 inquiry, Pet. App. 12a (quotations omitted), is not the "rigorous analysis" the Federal Rules require, *Dukes*, 564 U.S. at 351 (quotations omitted).

1. The Federal Rules of Evidence make clear that expert testimony offered in support of class certification must satisfy the requirements of Rule 702. The Rules of Evidence "apply to proceedings in United States courts," and "[t]he specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101." Fed. R. Evid. 101(a). Rule 1101, in turn, provides that the Federal Rules of Evidence apply in all proceedings, except those specifically excepted in Rule 1101(d) or (e). For instance, they do not apply to sentencing or granting or revoking probation or supervised release. Fed. R. Evid.

1101(d)(3). "Rule 23 proceedings," however, "are not among the proceedings excepted." *Allen*, 37 F.4th at 905 (Porter, J., concurring) (quoting *Mars Steel Corp. v. Cont'l Bank N.A.*, 880 F.2d 928, 938 (7th Cir. 1989) (en banc)). That means the Federal Rules of Evidence—including Rule 702—"apply" in those proceedings.

Yet in the Ninth Circuit, plaintiffs are not required to prove their compliance with Rule 702 in class-certification proceedings. Instead, the Ninth Circuit has created from whole cloth an evidentiary framework to govern expert testimony at class certification. Under its framework, the degree of scrutiny applied to the expert's testimony depends on how developed that testimony is. A district court "may" (but not must) apply a "full-blown *Daubert* assessment" if the expert's testimony is fully developed. *Lytle*, 114 F.4th at 1031. But where, as here, the expert's testimony is still under construction, a district court may apply "a limited *Daubert* analysis." Pet. App. 12a (quotations omitted). To survive this "limited" analysis, the plaintiff need only prove that the expert has identified a "reliable" "methodology" (e.g., a conjoint survey), and "chart out a path to obtain all necessary data and demonstrate that the proposed method will be viable as applied." Pet. App. 12a-13a (quotations omitted).

This relaxed evidentiary framework finds no support in the Federal Rules of Evidence. Not Rule 1101, which plainly indicates that Rule 702 applies in class-certification proceedings. And not Rule 702, which affirmatively requires the proponent of the evidence to demonstrate that the expert's testimony *is* compliant

with the Rule. Rule 702(b) requires proof that the expert's "testimony *is* based on sufficient facts or data." Fed. R. Evid. 702(b) (emphasis added). Rule 702(c) requires proof that the expert's "testimony *is* the product of reliable principles and methods." *Id.* 702(c) (emphasis added). And Rule 702(d) requires proof that "the expert's opinion *reflects* a reliable application of the principles and methods to the facts of the case." *Id.* 702(d) (emphasis added).

The Rule's use of "present-tense verbs," *Stanley v. City of Sanford*, 606 U.S. 46, 52 (2025), dictates that when Rule 702 applies—as it does to motions to certify a class—the proponent of expert testimony must demonstrate actual, present compliance with the Rule's requirements. Indeed, Rule 702 was amended in 2023 "to clarify and emphasize that expert testimony may not be admitted unless the proponent demonstrates … that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the Rule." Fed. R. Evid. 702, Comm. Notes on 2023 Amend.

When Rule 1101 says that the Federal Rules of Evidence "apply" in a federal proceeding, it means the proponent of the evidence at that proceeding must satisfy the requirements of the Federal Rules. Because Rule 1101 dictates that Rule 702 applies to motions to certify a class, an expert's testimony offered in support of class certification must actually satisfy the requirements of Rule 702—all of them, in full.

Not only is the Ninth Circuit's framework divorced from the text of the Federal Rules of Evidence, it is downright illogical. Under its framework, the proponent of the evidence controls the level of scrutiny a

district court applies: if the plaintiff wishes to benefit from laxer review, he can simply introduce less-developed expert testimony. That makes no sense. The proponent of expert evidence cannot secure less-rigorous review by doing less work. Rule 702 applies the same no matter how much work an expert has put in.

2. Rule 23 likewise counsels rejecting the Ninth Circuit's framework.

"Rule 23 does not set forth a mere pleading standard." *Dukes*, 564 U.S. at 358. Instead, a party seeking to certify a class must satisfy Rule 23 "through evidentiary proof." *Comcast*, 569 U.S. at 33. The district court, in turn, may certify a class only after conducting a "rigorous analysis" to ensure Rule 23's requirements "have been satisfied." *Dukes*, 564 U.S. at 351 (quotations omitted).

A district court that has applied only a "limited" version of Rule 702 has not rigorously analyzed the plaintiff's evidentiary proof in support of class certification. Indeed, in the same opinion in which this Court emphasized the "rigorous analysis" requirement, it expressed "doubt" "that *Daubert* did not apply to expert testimony at the certification stage of class-action proceedings." *Dukes*, 564 U.S. at 354.

For good reason. "A court should be hard pressed to conclude that the elements of a claim are capable of proof through evidence common to a class if the only evidence proffered would not be admissible as proof of anything." *Behrend v. Comcast Corp.*, 655 F.3d 182, 215 n.18 (3d Cir. 2011) (Jordan, J., concurring in part and dissenting in part), *rev'd on other grounds by Comcast*, 569 U.S. 27; *see also Nissan*, 122 F.4th at

253 ("If expert testimony is insufficiently reliable to satisfy *Daubert*, it cannot prove that Rule 23(a) prerequisites have been met in fact through acceptable evidentiary proof." (quotations omitted)). Here, for example, Noohi relied on Dr. Roberts's testimony to satisfy Rule 23(b)(3). But because his testimony was inadmissible under Rule 702, it cannot be "evidentiary proof," *Comcast*, 569 U.S. at 33, that any common question "predominate[s] over any questions affecting only individual members, Fed. R. Civ. P. 23(b)(3).

The point of Rule 23(b)(3), after all, is for the district court to evaluate (rigorously) what the plaintiff's trial presentation will look like to determine whether proceeding on a class-wide basis will "achieve economies of time, effort, and expense." Fed. R. Civ. P. 23, Comm. Notes on 1966 Amend. The district court can undertake this analysis if it applies the Federal Rules of Evidence, including Rule 702, in evaluating motions for class certification. By doing so, it can ascertain what proof will be presented to the jury to determine whether class-wide adjudication will be economical and fair. But if the plaintiff cannot show that the expert testimony offered in support of certification is admissible under Rule 702, then a district court cannot make the required assessment. It cannot find that the plaintiff's "evidentiary proof" allows for class-wide adjudication.

The Ninth Circuit's assertion that class-action defendants will have an opportunity to challenge the admissibility of expert testimony offered in support of class certification at some later stage in the case, Pet.

App. 19a, is also incompatible with Rule 23, for several reasons.

First, the Ninth Circuit's rule imposes substantial costs on the parties and district courts. In the Ninth Circuit, the parties may litigate, and district courts must adjudicate, challenges to expert testimony twice—once when the plaintiff moves for class certification on the basis of a "limited" expert report, and then again when the expert provides enough detail to apply Rule 702 in "full." There is no basis in Civil Rule 23 or Rule of Evidence 702 for this two-tiered approach to expert testimony offered in support of class certification. On the contrary, if a court thinks that expert testimony is not yet developed enough to be admissible, but might later be, the court should simply table class certification instead of certifying a class based on imperfect evidence. *Cf.* Fed. R. Civ. P. 23, Comm. Notes on 2003 Amend. ("A court that is not satisfied that the requirements of Rule 23 have been met should refuse certification until they have been met.").

Second, the Ninth Circuit's framework frustrates appellate review, in a way that tilts the playing field in plaintiffs' favor. Under Rule 23(f), circuit courts may "permit an appeal from an order granting or denying class-action certification." Fed. R. Civ. P. 23(f). But a district court decision "declin[ing] to change its original certification order" is not appealable under Rule 23(f). *Walker v. Life Ins. Co. of the Sw.*, 953 F.3d 624, 636 (9th Cir. 2020). Thus, if a class is certified after a "limited" Rule 702 inquiry, and the district court declines to decertify the class after the

"full" Rule 702 treatment, the defendant cannot obtain Rule 23(f) review. As a consequence, courts of appeals will be unable to review under Rule 23(f) district court decisions applying "full" Rule 702 scrutiny where the district court adheres to its original certification decision and class-action defendants seek review. They will be allowed to review Rule 23(f) petitions from class-action *plaintiffs* only if a district court *decertifies* upon applying full Rule 702 scrutiny. The Federal Rules of Civil and Appellate Procedure do not sanction that one-sided regime.

Third, it is likely untrue as a practical matter that defendants will have the opportunity to seek "full" review of expert testimony under Rule 702 because most class actions settle once a class is certified. As this Court has recognized on numerous occasions, "[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); *see Concepcion*, 563 U.S. at 350. In asserting that class-action defendants can challenge the admissibility of expert testimony later, after a class is certified, the Ninth Circuit ignored "the *in terrorem* character of a class action," *Kohen v. Pac. Inv. Mgmt. Co.*, 571 F.3d 672, 677-78 (7th Cir. 2009), and lowered the bar for plaintiffs seeking to obtain this settlement leverage by relaxing the evidentiary requirements for certifying a class.

3. The justifications offered by the Ninth Circuit in support of its rule are wholly unpersuasive.

The Ninth Circuit has emphasized that *Daubert* prescribed a "flexible[]" inquiry. *Lytle*, 114 F.4th at 1030. But there is a difference between applying Rule 702's requirements flexibly to the facts at hand and not applying the Rule's requirements as written. In stating that "[t]he inquiry envisioned by Rule 702" is "a flexible one," the *Daubert* Court meant only that the relevant considerations might vary from case to case—peer review might be important in some cases but not others, for example. 509 U.S. at 593-94; *see also* Fed. R. Evid. 702, Comm. Notes on 2000 Amend. (observing that "*Daubert* set forth a non-exclusive checklist for trial courts to use in assessing the reliability of scientific expert testimony"). It did not suggest that Rule 702's requirements do not apply to motions for class certification.

Nor does it matter "what aspect of FRCP 23 is being addressed." *Lytle*, 114 F.4th at 1030. When Rule 702 applies, a plaintiff must demonstrate that expert testimony satisfies its requirements, regardless of whether the testimony is meant to satisfy commonality under Rule 23(a)(2), predominance under Rule 23(b)(3), or any other element of the Rule. While the relevant expert opinion might vary depending on the element of Rule 23 in question, Rule 702's application does not. For similar reasons, "the timing of the class certification decision" does not affect the analysis. *Lytle*, 114 F.4th at 1031. There is only one Rule 702. It applies in the exact same way no matter what purpose the evidence serves or how the parties and the district court choose to structure discovery.

Finally, the Ninth Circuit has stated that its framework is "consistent" with this Court's "general

rule that 'merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Lytle*, 114 F.4th at 1031 (quoting *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013) (brackets omitted). That is a non-sequitur. That "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage," *Amgen*, 568 U.S. at 466, says nothing about how the Federal Rules of Evidence apply to testimony (even testimony related to the merits of the class's claims) that is offered to prove an element of Rule 23. If anything, this principle cuts in the opposite direction. Because expert testimony that touches on the merits is often critical to class certification, it is wholly appropriate to consider the admissibility of that testimony in evaluating whether Rule 23 has been met. *See id.* ("Merits questions may be considered to the extent … that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied."); *see also Tyson Foods*, 577 U.S. at 459.

In any event, other aspects of the Federal Rules answer the question definitively. The Federal Rules of Evidence apply to motions for class certification, and they demand that the proponent of expert evidence in support of certification demonstrate that the expert's testimony complies with, and is admissible under, Rule 702.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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