No. 24-

IN THE

Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and STATE FARM FIRE AND CASUALTY COMPANY,

Petitioners,

v.

FAYSAL A. JAMA, JAMES KELLEY, and ANYSA NGETHPHARAT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

PETER W. HERZOG III
WHEELER TRIGG O'DONNELL LLP
211 N. Broadway, Suite 2825
St. Louis, MO 63102

ERIC L. ROBERTSON
WHEELER TRIGG O'DONNELL LLP
370 17th Street, Suite 4500
Denver, CO 80202

THEODORE J. BOUTROUS JR.
Counsel of Record
BRADLEY J. HAMBURGER
DANIEL R. ADLER
MATT AIDAN GETZ
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
tboutrous@gibsondunn.com

OLIVIA GOLDBERG
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036

Counsel for Petitioners

QUESTIONS PRESENTED

Auto insurance policies typically promise to pay policyholders the "actual cash value" of insured vehicles that are deemed a total loss. To determine that value, insurers use a variety of methods to estimate a vehicle's pre-accident fair market value. Policyholders across the country have brought class actions against insurers alleging that the methods they use to determine actual cash value violate a statute, regulation, or contract. Disagreeing with the Fifth Circuit, the divided Ninth Circuit panel below held that plaintiffs are entitled to class certification based on that allegation alone, no matter whether any class member was actually shortchanged as a result of the insurer's valuation method.

The questions presented are:

1. Whether a Rule 23(b)(3) damages class can be certified based on an alleged violation of a statute, regulation, or contract, even if determining whether the violation resulted in any real-world harm to each class member would require highly individualized proceedings.

2. Whether a Rule 23(b)(3) damages class can be certified when some members of the proposed class lack any Article III injury.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

1. Petitioners State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company were the defendants in the district court and the appellees below. State Farm Fire and Casualty Company is a wholly owned subsidiary of State Farm Mutual Automobile Insurance Company. State Farm Mutual Automobile Insurance Company is a mutual insurance company with no parent company and no shareholders. Thus no publicly held company owns 10 percent or more of stock in either petitioner.

2. Respondents Faysal A. Jama, James Kelley, and Anysa Ngethpharat were the plaintiffs in the district court and the appellants below.

STATEMENT OF RELATED PROCEEDINGS

Under this Court's Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- *Jama* v. *State Farm Mutual Automobile Insurance Co.*, No. 22-35449 (9th Cir.) (judgment entered Aug. 19, 2024; rehearing en banc denied Oct. 28, 2024);
- *Ngethpharat* v. *State Farm Mutual Automobile Insurance Co.*, No. 2:20-cv-454 (W.D. Wash.) (class certification granted July 1, 2021; consolidated with No. 2:20-cv-652 (W.D. Wash.) on Aug. 2, 2021; class decertified May 4, 2022); and
- *Jama* v. *State Farm Fire & Casualty Co.*, No. 2:20-cv-652 (W.D. Wash.) (class certification granted July 1, 2021; consolidated with No. 2:20-cv-454 (W.D. Wash.) on Aug. 2, 2021; class decertified May 4, 2022).

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Regulations

Rules

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioners State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a) is reported at 113 F.4th 924. The decision and order of the district court granting petitioners' motions to decertify the classes (Pet. App. 38a) is unreported but available at 2022 WL 1404526. The prior decisions and orders of the district court certifying the classes in Nos. 2:20-cv-454 (Pet. App. 50a) and -652 (Pet. App. 83a) are reported at 339 F.R.D. 154 and 339 F.R.D. 255, respectively.

JURISDICTION

The judgment of the court of appeals was entered on August 19, 2024. Pet. App. 1a. A timely petition for rehearing en banc was denied on October 28, 2024. Pet. App. 121a-22a. On January 15, 2025, this Court granted petitioners' application to extend the time to file this petition to February 25, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, §§ 1-2 of the Constitution are reproduced at Pet. App. 123a-24a. The Rules Enabling Act, 28 U.S.C. § 2072, is reproduced at Pet. App. 124a. Federal Rule of Civil Procedure 23 is reproduced at Pet. App. 124a-34a.

STATEMENT

Federal courts across the Nation face a "raft" of "materially identical" class actions challenging the way insurers resolve claims involving vehicles that are declared a total loss. *Reynolds* v. *Progressive Direct Ins. Co.*, 346 F.R.D. 120, 125 (N.D. Ala. 2024). Plaintiffs have sought class certification based on allegations that the insurer's method of valuing totaled vehicles violates a statute, regulation, or contract—whether or not class members actually received less than their vehicles were worth as a result of that valuation method. The question courts must resolve in these cases is straightforward but significant: can plaintiffs obtain certification under Rule 23(b)(3) merely by alleging such a violation, or must they also show that there will be evidence capable of resolving, on a classwide basis, that each class member was actually shortchanged as a result?

As the dissent below recognized, the circuits are now divided on that consequential question. The Fifth Circuit holds that plaintiffs must show that each class member suffered a real-world injury—and because disputes over the value of vehicles involve so many individualized questions, that means class certification is inappropriate. But the Ninth Circuit disagrees. The resulting conflict on this critical, recurring issue will have dramatic consequences for class actions across the country in a variety of contexts.

Insurance policies typically promise that when a vehicle is deemed a total loss, the insurer will pay the "actual cash value"—i.e., fair market value—of the vehicle right before the accident. Plenty of datapoints help shed light on a totaled vehicle's fair market value, including advertised prices for similar vehicles

offered by used car dealers. But because no two vehicles are the same, insurers adjust those datapoints to make sure they reflect the fair market value of the totaled vehicle.

These commonplace valuation methods have come under attack in a spate of class actions involving plaintiffs from over 40 states. But disputes over the fair market value of thousands of vehicles would require individualized mini-trials incompatible with Rule 23. So plaintiffs have asked courts to overlook those valuation issues and focus only on their allegations that the insurer's valuation method somehow violates a statute, regulation, or contract.

The Fifth Circuit rejects that shortcut. It holds that plaintiffs must show that a valuation method actually caused real-world harm by leading the insurer to pay less than fair market value for each totaled vehicle. Because it's impossible to determine the fair market value of thousands of individual vehicles "in one stroke," *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 350 (2011), such Rule 23(b)(3) classes can't be certified. *Sampson* v. *USAA*, 83 F.4th 414, 422-23 (5th Cir. 2023) (Higginson, J.); *Bourque* v. *State Farm Mut. Auto. Ins. Co.*, 89 F.4th 525, 528-29 (5th Cir. 2023) (Clement, J.).

The Ninth Circuit now disagrees. Reversing the district court's denial of certification in this case, the Ninth Circuit embraced the same theory the Fifth Circuit rejected—that a class can be certified under Rule 23(b)(3) whether or not the insurer's valuation method caused an actual injury to class members by undervaluing their vehicles. That decision departs from the Fifth Circuit and creates significant tension

with decisions of the Seventh and Eighth Circuits, which in related contexts have required plaintiffs to prove that an insurer's "unlawful" valuation method actually caused them harm. E.g., *Kartman* v. *State Farm Mut. Auto. Ins. Co.*, 634 F.3d 883, 889-91 (7th Cir. 2011); *In re State Farm Fire & Cas. Co.* (*LaBrier*), 872 F.3d 567, 576-77 (8th Cir. 2017).

The Ninth Circuit's decision can't be reconciled with this Court's precedents, either. The court of appeals approved certification based on what amounts to a presumption rather than actual proof of real-world injury. That approach relieved respondents of their burden to prove that Rule 23's requirements were "*in fact*" met and stripped State Farm of its right to present individualized evidence concerning whether particular class members can recover. *Dukes*, 564 U.S. at 350, 357. And it created a class covering members who received every dollar to which their policies entitled them and who lack Article III standing as a result. See *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 427, 431 (2021).

The question presented is exceptionally important. The Ninth Circuit's permissive approach will result in class actions that wouldn't be certified in the Fifth Circuit or elsewhere. Those erroneous certification decisions, in turn, will create the potential for staggering damages awards—resulting in hydraulic pressure to settle even meritless claims and harming insurers and policyholders alike. This Court's intervention is needed now to avoid that outcome, restore the consensus, and dispel the confusion.

At minimum, the Court should hold this petition pending the disposition of *Laboratory Corp. of America* v. *Davis*, No. 24-304. *Labcorp* involves the second question presented here—whether a Rule 23(b)(3) class can be certified when it contains members who suffered no Article III injury. Indeed, in a class action materially identical to this one, the Third Circuit ordered dismissal based on the same Article III problems that the Ninth Circuit sidestepped below. *Lewis* v. *GEICO*, 98 F.4th 452, 459-61 (3d Cir. 2024).

1. A vehicle is deemed a total loss (i.e., "totaled") when, following an accident or similar incident, "the cost of repair exceeds [the vehicle's] pre-accident market value." *United States* v. *Holmes*, 646 F.3d 659, 661 (9th Cir. 2011). When a vehicle insured under one of its policies is totaled, State Farm owes the policyholder the "actual cash value" of the vehicle before it was totaled. Pet. App. 5a. Actual cash value means "fair market value." *Value*, Black's Law Dictionary (12th ed. 2024); accord, e.g., Wash. Admin. Code § 284-30-320(1) ("'Actual cash value' means the fair market value of the loss vehicle immediately prior to the loss."). And fair market value in turn means the price "an informed buyer would willingly pay and an informed seller would accept." *DePhelps* v. *Safeco Ins. Co. of Am.*, 65 P.3d 1234, 1240 (Wash. Ct. App. 2003); accord *Value*, *supra*. Actual cash value—as a measure of an insured vehicle's worth—is central to auto insurance in general and total-loss claims in particular.

Estimating a totaled vehicle's fair market value involves many variables. After all, once a vehicle has been totaled, it can't be offered for sale in its pre-accident condition. And the price on which a willing seller and buyer would settle depends on countless factors,

including the condition and features of the vehicle and available alternatives in the local market.

For help with estimating a vehicle's pre-accident value, State Farm, like other major insurers, turns to third-party valuation services. Pet. App. 6a-7a. Those services typically collect and use available data showing the prices that dealers have listed for comparable used vehicles in the local market. *Id.* at 7a. Such advertised prices often are more current and easily accessible than the prices at which vehicles are ultimately sold. The valuation services then adjust the data on nearby comparable vehicles to better approximate the pre-accident fair market value of the totaled vehicle. *Ibid.*

State Farm has used software called Autosource for that purpose. Pet. App. 7a. Autosource draws from a database of over 70 million vehicles, identifying potentially comparable vehicles of the same make, model, year, and fuel type in the local market. No. 2:20-cv-454, Dkt. 86, at 3. The listed prices of those comparable vehicles provide a useful starting point. But to ensure that they accurately estimate the fair market value of the totaled vehicle, Autosource adjusts the prices in multiple ways.

Most of the figures in Autosource's database are the prices at which dealers advertised the used vehicles for sale. But as every savvy buyer knows, most vehicles sell for less than the advertised price after bargaining between the seller and buyer. Pet. App. 7a. Because the final sale price more accurately reflects "[t]he price that a seller is willing to accept and a buyer is willing to pay," *Value*, *supra*, Autosource (where appropriate) adjusts the advertised

prices to better estimate the price that the policyholder's totaled vehicle would have fetched in an arm's length transaction. Pet. App. 54a-55a. Autosource works hard to ensure that the negotiation adjustments it applies are sound—for example, it doesn't apply the adjustment to prices from "no-haggle" dealerships that don't negotiate prices with customers. *Id.* at 54a.

Another key determinant of a vehicle's fair market value is its condition. So in estimating a totaled vehicle's value, Autosource compares the pre-accident condition of that vehicle to the typical condition of vehicles of the same type and age in the same area. Pet. App. 5a. If the policyholder's vehicle was in above-average condition before it was totaled, the valuation goes up. See *id.* at 14a. If the condition was below average, the valuation goes down. *Ibid.*

2. Washington regulations governing total-loss claims define "[a]ctual cash value" as "the fair market value of the loss vehicle immediately prior to the loss." Wash. Admin. Code § 284-30-320(1). The regulations then detail methods insurers can use to estimate a totaled vehicle's pre-accident fair market value. *Id.* § 284-30-391. Insurers can rely on comparable vehicle data, licensed dealer quotes, advertised-price comparisons, or a statistically sound computerized estimate. *Id.* § 284-30-391(2). If the insurer and policyholder can't agree, then either "may invoke * * * appraisal" to have the vehicle valued by an experienced neutral. *Id.* § 284-30-391(3).

3. Respondents are Washington residents who filed insurance claims with State Farm after their vehicles were totaled. Pet. App. 39a. State Farm paid

respondents Kelley and Jama based on the value estimated in the Autosource reports prepared on their totaled vehicles. *Id.* at 54a, 86a-87a. Respondent Ngethpharat objected to that estimated value, so State Farm paid her instead based on quotes from local dealers. *Id.* at 53a-54a.

Respondents then brought putative class actions against State Farm, alleging that Autosource's adjustments for negotiation and condition violate Washington regulations governing total-loss claims. Pet. App. 39a. Although the regulations don't expressly prohibit adjustments for negotiation, respondents argued that such a prohibition should be implied. See *id.* at 8a. And while Washington law permits condition adjustments in many circumstances, respondents alleged that State Farm's adjustments "lack sufficient empirical foundation." *Ibid.*

In urging class treatment, respondents argued that because the negotiation and condition adjustments were "unlawful," all class members were necessarily injured by, and entitled to recover in the exact amount of, those adjustments. See Pet. App. 5a, 72a-73a. Given that theory, respondents contended that the district court wouldn't "need to make any individual determination" of the fair market value of either their totaled vehicles or those of potential class members. *Id.* at 98a.

4. The district court initially certified classes of State Farm policyholders who received payments for totaled vehicles based on Autosource valuations including a negotiation or condition adjustment. Pet. App. 81a, 118a-19a. The court reasoned that respond-

ents and all class members could "challenge only the legality of the deduction[s]" and didn't need to prove that they received less than their vehicles' fair market value. *Id.* at 67a. Without those individualized valuation questions, the court reasoned, respondents could prove compliance with Rule 23(b)(3)'s predominance requirement, which precludes certification when resolving the claims of all class members would require the court to answer too many questions for which the evidence "'varies from member to member.'" *Id.* at 108a.

After an intervening Ninth Circuit decision, the district court decertified the classes. It reasoned that even where a valuation practice is alleged to be "'illegal' and impermissible," a plaintiff still must provide "evidence of injury" resulting from the alleged violations. Pet. App. 46a (citing *Lara* v. *First Nat'l Ins. Co. of Am.*, 25 F.4th 1134, 1139-40 (9th Cir. 2022)). The district court explained that a plaintiff cannot satisfy that requirement "merely by proving that the insurer failed to follow [a state's] regulatory process" for estimating actual cash value. *Id.* at 43a. Instead, the plaintiff must show that the challenged method caused an actual injury—i.e., that he received less than fair market value for his vehicle. *Id.* at 43a-44a. Because in this case respondents didn't show that the fair market value of each class member's vehicle could be resolved on a classwide basis, the district court vacated its certification order. *Id.* at 44a-47a, 49a.

5. The Ninth Circuit reversed in relevant part in a published, divided opinion. The majority left undisturbed the district court's decision to decertify the class relating to Autosource's condition adjustment.

Pet. App. 23a-24a. But it held that the claims challenging Autosource's negotiation adjustment were fit for class treatment. *Id.* at 14a-23a.

The Ninth Circuit's holding rested on the notion that while adjustments for condition are *sometimes* permissible under Washington law (though not, respondents alleged, in the way State Farm used them), adjustments for negotiation are "flatly prohibit[ed]." Pet. App. 16a-17a (distinguishing *Lara*). Because "Washington law does not permit State Farm to apply a discount for typical negotiation *at all*," the Ninth Circuit reasoned, every class member necessarily was injured in the exact "amount of the negotiation adjustment that State Farm made." *Id.* at 17a-18a. The Ninth Circuit concluded that under that theory, any illegal adjustment would yield a "'classic pocketbook injury'" sufficient for Article III standing. *Id.* at 27a.

Judge Rawlinson dissented, recognizing that the panel decision "creates an unnecessary circuit split." Pet. App. 29a; accord *id.* at 33a-34a. As she explained, the Fifth Circuit, in two cases involving similar total-loss claims, has rejected the notion that plaintiffs can obtain class certification merely by contending that an insurer used an illegal valuation method. *Id.* at 33a-35a (citing *Sampson*, 83 F.4th at 422-23, and *Bourque*, 89 F.4th at 528-29). By departing from those decisions and permitting certification based on nothing more than an alleged legal violation, Judge Rawlinson concluded, the majority inappropriately relieved plaintiffs and class members of their burden to prove injury. *Id.* at 35a-37a.

The Ninth Circuit denied panel and en banc rehearing. Pet. App. 121a-22a.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT THE PETITION TO RESOLVE A RECOGNIZED SPLIT ON AN IMPORTANT CLASS-CERTIFICATION ISSUE.

The Ninth Circuit's decision created a circuit split on a discrete, recurring class-action issue with immense practical importance across the country: is an allegation that an insurer's valuation method violates a statute, regulation, or contract—even if it causes no actual injury by depriving policyholders of the value to which they're entitled—enough to justify certifying a damages class under Rule 23(b)(3)?

The Fifth Circuit says no, holding in two essentially identical cases that a Rule 23(b)(3) class can't be certified unless the plaintiff shows that the fair market value of each vehicle can be established on a classwide basis. But the Ninth Circuit here said yes—over a dissent that recognized the split the majority created—holding that allegations that a valuation method is unlawful are all a plaintiff needs for class certification. That decision creates a split with the Fifth Circuit as well as considerable tension with the decisions of other circuits, which have held that plaintiffs must be able to show that a challenged valuation method caused each class member a real-world loss.

The Ninth Circuit's decision can't be squared with this Court's precedents, either. Rule 23(b)(3)'s "demanding" predominance requirement bars courts from relying on any class model that either suppresses individualized issues affecting each class member's ability to recover or requires hundreds or thousands of mini-trials to resolve those issues. E.g., *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 623-25 (1997).

Classes likewise can't be certified "on the premise that [the defendant] will not be entitled to litigate" its defenses "to individual claims." *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 367 (2011) (citing 28 U.S.C. § 2072(b)). And the class-action device can't be used to award damages to people who suffered no Article III injury. *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 431 (2021). But the Ninth Circuit's decision violates each rule, approving a class that suppresses key individualized questions and that's loaded with uninjured members.

That untoward result has serious practical consequences—and not just for the insurance class actions exploding across the country. Courts are giving short shrift to Rule 23's "stringent requirements," *Am. Express Co.* v. *Italian Colors Rest.*, 570 U.S. 228, 234 (2013), and as a result defendants are facing staggering demands, crushing costs, and the well-recognized pressure to settle even meritless claims once wrongly certified, *Microsoft Corp.* v. *Baker*, 582 U.S. 23, 41-42 (2017). This case is an excellent vehicle to resolve the split, restore uniformity on a recurring, important issue of class-action law, and provide clarity on the importance of faithful adherence to Rule 23's requirements.

A. The Ninth Circuit's Decision Conflicts With Decisions Of Several Courts Of Appeals.

The Ninth Circuit's decision openly splits from decisions of the Fifth Circuit and is irreconcilable with decisions of the Seventh and Eighth Circuits as well.

1. As Judge Rawlinson's dissent recognizes (Pet. App. 29a, 33a-35a), the Ninth Circuit's decision creates

a direct conflict with multiple decisions of the Fifth Circuit in virtually identical class actions.

The Fifth Circuit holds that even where class members can "show that an insurer's use of [a valuation method] was unlawful," they still must "prove an actual underpayment" to each class member. *Sampson* v. *USAA*, 83 F.4th 414, 422-23 (5th Cir. 2023). Because that showing cannot "be made on a class-wide basis," no class can be certified consistent with Rule 23(b)(3). *Bourque* v. *State Farm Mut. Auto. Ins. Co.*, 89 F.4th 525, 528-29 (5th Cir. 2023).

Sampson involved a challenge to the insurer's reliance on market-valuation reports that the plaintiffs claimed violated state statutes. 83 F.4th at 416. Like respondents here, the plaintiffs there argued that because the insurer's valuation method was unlawful, they were necessarily injured. *Id.* at 416-17. The Fifth Circuit disagreed. In a unanimous opinion authored by Judge Higginson, the *Sampson* panel reasoned that even where a challenged method is "unlawful," the plaintiffs still must be able to "prove an actual underpayment by class-wide proof." *Id.* at 422. Emphasizing that "no less than due process is implicated in class certifications," the Fifth Circuit vacated class certification for lack of predominance. *Id.* at 422-23 (cleaned up).

The Fifth Circuit did the same thing in *Bourque*, a "nearly identical" case involving a challenge to the insurer's reliance on Autosource reports. 89 F.4th at 526-27. As in *Sampson*, the Fifth Circuit in *Bourque* held that even where a valuation method is alleged to be "unlawful," "proof of injury is required." *Id.* at 529. Because the plaintiffs there "failed to establish [that

such a showing] can be made on a class-wide basis," Rule 23(b)(3) forbade class certification. *Id.* at 528-29.

Initially, the Ninth Circuit had its foot in that camp. In *Lara* v. *First National Insurance Co. of America*, 25 F.4th 1134 (9th Cir. 2022), it held that plaintiffs had to show not only that a challenged method "violate[d] * * * state regulations," but also that each class member was injured as a result—a showing that would "require an individualized determination for each" class member inconsistent with Rule 23(b)(3). *Id.* at 1138; see *id.* at 1138-40.

But in the decision below, the Ninth Circuit abandoned *Lara* for valuation methods claimed to be wholly "impermissible." Pet. App. 19a. As the majority saw it, where state law "flatly prohibits" a valuation method, each class member necessarily suffers an injury "equal to the amount of" the challenged adjustment, and no individualized inquiries into each vehicle's fair market value are required. *Id.* at 17a.

Judge Rawlinson, dissenting, instead would have hewed to the approach taken in *Lara* and by the Fifth Circuit in *Sampson* and *Bourque*. Pet. App. 29a-37a. Under that view, plaintiffs who claim that a valuation method is illegal "still have to show harm," necessitating "individualized inquiries" into "the *actual* pre-accident value of the car" as compared to "what each person was offered." *Id.* at 32a-33a (cleaned up).

So as things stand, the Fifth and Ninth Circuits—which together decide over one-third of the cases in the regional courts of appeals—are in open conflict

over a recurring, important issue of federal class-action law.[1]

2. More broadly, the Ninth Circuit's decision is in considerable tension with decisions of the Seventh and Eighth Circuits involving other insurance valuation disputes.

The Seventh Circuit holds that when policyholders bring class actions challenging the way insurers resolve claims, they must prove that each member of the proposed class wasn't "fully compensated" as a result. *Kartman* v. *State Farm Mut. Auto. Ins. Co.*, 634 F.3d 883, 890 (7th Cir. 2011). *Kartman* involved homeowners' insurance covering "accidental direct physical loss" to property, such as hail damage. *Id.* at 887. The plaintiffs sued their insurer, claiming that it was violating the law by failing "to implement a uniform 'reasonable, objective' standard for assessing hail-damaged roofs." *Ibid.* The Seventh Circuit held that those claims weren't susceptible to class treatment under Rule 23(b)(3). *Id.* at 889-91.

As the Seventh Circuit explained, the "essence of an insurance policy is a promise by the insurer to compensate the insured for the loss of something of value." *Kartman*, 634 F.3d at 890. No matter the method used, "[i]f a given policyholder was fully compensated for the [covered] damage," then the insurer has fulfilled that promise, and the policyholder can't recover. *Ibid.* And given Rule 23(b)(3)'s requirements, "the class-action

---

[1] *U.S. Courts of Appeals—Cases Commenced, Terminated, and Pending During the 12-Month Periods Ending March 31, 2023 and 2024*, U.S. Courts, https://tinyurl.com/r4933jbw (accessed Feb. 15, 2025).

device is not appropriate for resolving * * * highly individualized questions of fact" about whether each class member was in fact underpaid. *Id.* at 891.

The Eighth Circuit's rule is the same. Take *In re State Farm Fire & Casualty Co.* (*LaBrier*), 872 F.3d 567 (8th Cir. 2017). There, homeowners' policies provided that State Farm would pay the "actual cash value" of damaged property, and the plaintiffs claimed that State Farm's "practice of deducting 'labor depreciation' from estimated replacement cost in determining actual cash value" violated the policies "every time State Farm employ[ed]" that method. *Id.* at 570-71, 576 (emphasis omitted). The Eighth Circuit reversed class certification. *Id.* at 576-77. It reasoned that the key question for class-certification purposes wasn't whether the labor-depreciation method was permitted, but whether it yielded a reasonable estimate of actual cash value—and that question "may only be determined based on all the facts surrounding a particular insured's * * * loss." *Ibid.* Because those individualized inquiries would predominate over common questions, no class could be certified. *Id.* at 577; see also *Halvorson* v. *Auto-Owners Ins. Co.*, 718 F.3d 773, 779-80 (8th Cir. 2013) (rejecting certification under Rule 23(b)(3) in a case challenging an insurer's use of a percentile-based reduction of the cost of local medical services, reasoning that "individual inquiries regarding what is 'usual and customary' for each class member will predominate" over common questions).

* * *

Had this case been filed in the Fifth Circuit, no Rule 23(b)(3) class could have been certified because

there's no "class-wide proof" capable of showing "an actual underpayment" to each class member. *Sampson*, 83 F.4th at 422. The decisions of the Seventh and Eighth Circuits in similar cases indicate that they would reach the same conclusion. But in the Ninth Circuit, allegations of an "unlawful" valuation method were all respondents needed to obtain certification. That stark conflict is untenable, and this Court's review is needed to resolve it.

B. The Ninth Circuit's Decision Is Wrong.

The decision below is wrong in far-reaching ways. In trying to avoid the individualized inquiries needed to resolve fact-intensive valuation disputes, the Ninth Circuit relieved class-action plaintiffs of their burden to prove all elements of their claims. It stripped class-action defendants of their rights to present valid defenses to individual claims. And it approved certification of classes containing untold numbers of members who suffered no injury and lack standing under Article III.

1. "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 (2013). The party seeking certification bears the burden of "justify[ing] a departure from that rule." *Dukes*, 564 U.S. at 348. That's no light burden. Rule 23's requirements are "stringent" by design, and "in practice [they] exclude most claims." *Italian Colors*, 570 U.S. at 234.

The burden is heavier still for damages classes under Rule 23(b)(3), "an adventuresome innovation" "designed for situations in which class-action treatment is not as clearly called for." *Comcast*, 569 U.S. at 34

(cleaned up). That's why Congress created additional "safeguards" for damages class actions, including "Rule 23(b)(3)'s predominance criterion," which is "even more demanding than Rule 23(a)." *Ibid.* Predominance precludes certification wherever resolving each class member's entitlement to relief would require the court to conduct extensive individualized proceedings. *Amchem*, 521 U.S. at 623-25.

Any analysis of "whether 'questions of law or fact common to class members predominate' begins, of course, with the elements of the underlying cause of action." *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 563 U.S. 804, 809-10 (2011). But in approving certification here, the Ninth Circuit sidestepped a core element necessary to the claims of respondents and all class members, and for which highly individualized factfinding would be required—proof of injury.

The Washington regulations respondents invoked here don't create any private right of action. *Pain Diagnostics & Rehab. Assocs., P.S.* v. *Brockman*, 988 P.2d 972, 975-76 (Wash. Ct. App. 1999); *Lara*, 25 F.4th at 1140. So respondents instead sued State Farm for breach of contract, claiming that the regulations were "incorporated into" their policies. Pet. App. 6a. To prevail on those contract claims, respondents must prove not only breach of a contractual duty, but also that "the breach proximately cause[d] [them] damage." E.g., *C 1031 Props., Inc.* v. *First Am. Title Ins. Co.*, 301 P.3d 500, 503 (Wash. Ct. App. 2013). Respondents also asserted consumer-protection claims, Pet. App. 6a, which likewise require proof of an "injury" caused by the defendant's asserted violation, *Panag* v. *Farmers Ins. Co. of Wash.*, 204 P.3d 885, 889 (Wash. 2009). So both sets of claims require proof that because of the

valuation method they challenge, respondents received less for their vehicles than what their policies promised.

State Farm's policies entitle policyholders only to the "actual cash value" of totaled vehicles. Pet. App. 5a; see No. 2:20-cv-454, Dkt. 186-1, at 31 (32 of 45). Everyone—the Ninth Circuit majority included—agrees that means "fair market value," Pet. App. 6a (quoting Wash. Admin. Code § 284-30-320(1)), or what "an informed buyer would willingly pay and an informed seller would accept," *DePhelps* v. *Safeco Ins. Co. of Am.*, 65 P.3d 1234, 1240 (Wash. Ct. App. 2003). At bottom, then, the policies require determining what price the vehicle would have sold for right before it was totaled.

That's the sticking point here. Claims that hinge on deprivation of fair market value are generally unsuitable for class treatment because they "require[] an independent and individualized assessment of each absent class member's property." *Tarrify Props., LLC* v. *Cuyahoga County*, 37 F.4th 1101, 1106 (6th Cir. 2022). Total-loss valuation is a particularly individualized enterprise, turning on myriad features of each vehicle and each local market. In a case like this, resolving whether each class member received less than fair market value would require the district court to conduct endless mini-trials over each vehicle's value. Nothing about that is consistent with the "demanding" predominance requirement. *Comcast*, 569 U.S. at 34.

The Ninth Circuit sought a way around that problem, reasoning that any "illegal" adjustment applied in valuing a vehicle could be deemed to cause an injury in the exact amount of the adjustment, no matter

the vehicle's true value. Pet. App. 12a, 17a-19a. But in doing so, the court of appeals contradicted this Court's precedents in two further ways.

For one, "Rule 23 does not set forth a mere pleading standard"—instead, the "party seeking class certification must affirmatively demonstrate his compliance with the Rule" by being "prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Dukes*, 564 U.S. at 350. As this Court has repeatedly emphasized, all aspects of Rule 23 "'must be satisfied' by plaintiffs '*before* class certification.'" *Goldman Sachs Grp., Inc.* v. *Ark. Teacher Ret. Sys.*, 594 U.S. 113, 119 (2021) (emphasis added). To the extent it deferred questions affecting each class member's injury until trial, the Ninth Circuit violated the correct order of operations.

For another, the Rules Enabling Act "forbids interpreting Rule 23 to 'abridge, enlarge or modify any substantive right.'" *Dukes*, 564 U.S. at 367 (quoting 28 U.S.C. § 2072(b)). The decision below thumbs its nose at that prohibition, too. If a policyholder came to court as an individual plaintiff, challenging an insurer's valuation method but declaring that he would refuse to offer any proof or engage in any factfinding about his vehicle's fair market value, his claim would fail. Under the Rules Enabling Act, the policyholder's claim can't be made stronger through the class-action device. But that's exactly the effect of the Ninth Circuit's decision, which approves certification of a class containing members who couldn't show the injury that their claims require.

2. The Ninth Circuit's decision is equally problematic with respect to State Farm's rights.

Courts can no more "abridge" a defendant's substantive rights than they can "enlarge" a plaintiff's. 28 U.S.C. § 2072(b). Accordingly, "a class cannot be certified on the premise that [the defendant] will not be entitled to litigate" whatever defenses it has "to individual claims." *Dukes*, 564 U.S. at 367. The Due Process Clause lends that command further support: it ensures that defendants have the "'opportunity to present every available defense.'" *Lindsey* v. *Normet*, 405 U.S. 56, 66 (1972); see *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 842, 845-46 (1999) (highlighting that the Rules Enabling Act and Due Process Clause "counsel against adventurous application[s]" of Rule 23).

In an individual total-loss case, an insurer would have every right at trial to present its own evidence about the fair market value of the totaled vehicle. The insurer might marshal alternative valuation reports or guidebooks, solicit testimony from local dealers, present expert testimony, or request appraisals. See *supra* at p. 7. All that evidence would be relevant to the fair market value of the individual plaintiff's vehicle, and thus to his ability to recover.

But once the claims of thousands of policyholders are lumped together in a sprawling class, the insurer no longer can present such evidence, at least not without requiring extensive individualized proceedings that would render any class trial unmanageable. As this Court's decisions underscore, the defendant can't be faulted for insisting on its rights, and the necessary outcome is to deny certification—not to suppress the defendant's rights and press forward with class litigation anyway. *Dukes*, 564 U.S. at 367.

That's the insight animating the Fifth Circuit's opinions on the other side of the split. In *Sampson* and *Bourque*, the plaintiffs challenged the insurers' reliance on third-party valuation reports, claiming that the insurers instead should have used the values found in a guidebook published by the National Automobile Dealers Association. *Sampson*, 83 F.4th at 416-17; *Bourque*, 89 F.4th at 527. The problem, the Fifth Circuit explained, was that the plaintiffs' theory required the court to focus on "NADA and NADA alone," to the exclusion of "other valuation methods, including Kelley Blue Book and others," that might shed light on each vehicle's fair market value. *Bourque*, 89 F.4th at 528-29 (cleaned up) (quoting *Sampson*, 83 F.4th at 419). Focusing on NADA alone may have been convenient for the plaintiffs—but only because it would have impermissibly suppressed other evidence affecting each class member's ability to recover.

The Ninth Circuit committed the same error the Fifth Circuit rectified in *Sampson* and *Bourque*. The Ninth Circuit focused exclusively on respondents' preferred valuation method—the Autosource reports—and merely "add[ed] back * * * the amount of the unlawful negotiation discount." Pet. App. 19a. By treating that contrived value as the sole measure of injury and damages, the decision impedes State Farm's right to present competing evidence showing that, in reality, class members were paid as much as (or even more than) their vehicles were actually worth.

3. The Ninth Circuit's decision also contravenes Article III. "Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *Tyson Foods, Inc.* v. *Bouaphakeo*, 577 U.S. 442, 466 (2016) (Roberts, C.J., concurring). So as

this Court has held, "[e]very class member must have Article III standing in order to recover individual damages." *TransUnion*, 594 U.S. at 431. Not only that, but conforming to that requirement requires proof of real harms, not mere "'legal infractions,'" because "an injury in law is not an injury in fact." *Id.* at 427; accord *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 341 (2016) ("Article III standing requires a concrete injury even in the context of a statutory violation.").

The Ninth Circuit's decision cannot be reconciled with those precedents. It gives undue weight to a mere injury in law—i.e., that State Farm performed adjustments that supposedly were "flatly prohibit[ed]." Pet. App. 17a. It then treats that asserted legal violation as if it were, on its own, an injury in fact, deeming respondents and all class members injured "in the exact amount of the impermissible negotiation deduction." *Id.* at 19a. And it relieves respondents and class members of the central burden Article III imposes: to show that the supposed violation caused them real-world harm.

The Ninth Circuit dismissed these Article III concerns by theorizing that absent the adjustments, all class members "would have been paid more," yielding "'a classic pocketbook injury.'" Pet. App. 27a. But the relevant comparator is what each class member *is owed*—i.e., "the fair market value of the loss vehicle immediately prior to the loss," Wash. Admin. Code § 284-30-320(1)—not whatever value the Autosource reports would have yielded without negotiation adjustments. And there's no way to determine whether each class member received fair market value without considering individualized evidence unique to each vehicle. Respondents cannot simply "stake their claim

on an isolated intermediate step" in a broader valuation process without showing "real-world financial injury" at the end of the process. *Lewis* v. *GEICO*, 98 F.4th 452, 460 (3d Cir. 2024).

A hypothetical highlights the Ninth Circuit's error. Say a driver totals a car that before the accident had a fair market value of $10,000. The insurer, in a flight of fancy, decides to resolve all total-loss claims by randomly generating a value between $1,000 and $20,000 and discounting that value by 5 percent. The insurer clicks a button, gets a value of $20,000, applies the 5 percent discount, and cuts the driver a check for $19,000. The driver may have all sorts of objections to the insurer's method. But the one thing the driver can't say is that he suffered an actual injury because of the method—after all, he walked away with $19,000 for a car worth $10,000 and so was $9,000 better off. But that's the Ninth Circuit's reasoning in a nutshell: it would ignore the bottom-line question of what the car was worth and instead treat the driver as injured simply because the insurer applied an improper discount that took $1,000 off the initial estimate.

That reasoning buries, rather than answers, the relevant questions (how much was each vehicle worth, and what did the policyholder get for it?)—and the highly individualized factual issues involved in answering those questions for every member of a sweeping class.

C. The Question Is Important, And This Case Is An Excellent Vehicle For Resolving It.

The question that has divided the circuits has enormous implications not just for the many total-loss class actions across the country, but also for insurance

litigation and class actions more generally. This is the ideal case for this Court to address the issue.

1. As things stand, dozens of "materially identical" total-loss class actions are pending in federal courts from coast to coast. *Reynolds* v. *Progressive Direct Ins. Co.*, 346 F.R.D. 120, 125 (N.D. Ala. 2024); accord, e.g., *Costello* v. *Mountain Laurel Assurance Co.*, 2024 WL 239849, at *1 n.1 (E.D. Tenn. Jan. 22, 2024) (describing the case as "one of many similar actions pending in districts across the country").[2] Those cases

[2] E.g., *Abbassy* v. *Gov't Emps. Ins. Co.*, No. 2:24-cv-5853 (D.N.J.); *Ambrosio* v. *Progressive Preferred Ins. Co.*, No. 2:22-cv-342 (D. Ariz.); *Bartee* v. *Progressive Advanced Ins. Co.*, No. 4:22-cv-342 (E.D. Mo.); *Bibbs* v. *Allstate Ins. Co.*, No. 1:23-cv-1968 (N.D. Ohio); *Chadwick* v. *State Farm Mut. Auto. Ins. Co.*, No. 4:21-cv-1161 (E.D. Ark.); *Chick* v. *GEICO Gen. Ins. Co.*, No. 2:24-cv-1124 (E.D.N.Y.); *Clippinger* v. *State Farm Mut. Auto. Ins. Co.*, No. 2:20-cv-2482 (W.D. Tenn.); *Costello* v. *Mt. Laurel Assurance Co. (TV3)*, No. 2:22-cv-35 (E.D. Tenn.); *Curran* v. *Progressive Direct Ins. Co.*, No. 1:22-cv-878 (D. Colo.); *Dinicola-Ortiz* v. *GEICO Indem. Co.*, No. 1:22-cv-6228 (D.N.J.); *Drummond* v. *Progressive Specialty Ins. Co.*, No. 5:21-cv-4479 (E.D. Pa.); *Ellis* v. *State Farm Mut. Auto. Co.*, No. 6:22-cv-1005 (M.D. Fla.); *Fennell* v. *Safeco Ins. Co. of Ill.*, No. 1:23-cv-2125 (N.D. Ohio); *Free* v. *Artisan & Truckers Cas. Co.*, No. 6:24-cv-1945 (D. Or.); *Freeman* v. *Progressive Direct Ins. Co.*, No. 1:21-cv-3798 (D.S.C.); *Golla* v. *Allstate Ins. Co.*, No. 1:23-cv-1469 (N.D. Ohio); *Gulick* v. *State Farm Mut. Auto. Ins. Co.*, No. 2:21-cv-2573 (D. Kan.); *Holmes* v. *Progressive Universal Ins. Co.*, No. 1:22-cv-894 (N.D. Ill.); *Jones* v. *Progressive Universal Ins. Co.*, No. 2:22-cv-364 (E.D. Wis.); *Knight* v. *Progressive Nw. Ins. Co.*, No. 3:22-cv-203 (E.D. Ark.); *Lewis* v. *GEICO*, No. 1:18-cv-5111 (D.N.J.); *Milligan* v. *GEICO Gen. Ins. Co.*, No. 2:16-cv-240 (E.D.N.Y.); *Muhammad* v. *State Farm Indem. Co.*, No. 2:22-cv-6149 (D.N.J.); *Narcisse* v. *Progressive Cas. Ins. Co.*, No. 1:23-cv-4690 (S.D.N.Y.); *Newton* v. *Progressive Haw. Ins. Corp.*, No. 4:24-cv-47 (E.D. Tenn); *Nichols* v. *State Farm Mut. Auto. Ins. Co.*, No. 2:22-cv-16 (S.D. Ohio); *Petri* v. *Drive N.J. Ins. Co.*, No. 1:21-cv-

are turbocharged by plaintiffs' efforts to obtain certification of classes that, together, would include millions of class members.

Take auto-collision claims alone. In 2021, nearly ten million such claims were filed, and about 25 percent of them—nearly two and a half million—involved a total loss.[3] Total-loss claims are on the rise in general, "having increased 29% since 2020."[4] And all major insurers, like State Farm here, have turned to valuation reports with adjustments to estimate the

---

20510 (D.N.J.); *Rancher* v. *ALFA Mut. Ins.*, No. 2:24-cv-439 (N.D. Ala.); *Reynolds* v. *Progressive Direct Ins. Co.*, No. 5:22-cv-503 (N.D. Ala.); *Schmidt* v. *State Farm Mut. Auto. Ins. Co.*, No. 2:22-cv-12926 (E.D. Mich.); *Schroeder* v. *Progressive Paloverde Ins. Co.*, No. 1:22-cv-946 (S.D. Ind.); *See* v. *Gov't Emps. Ins. Co.*, No. 2:21-cv-547 (E.D.N.Y.); *Sibert* v. *Progressive Select Ins. Co.*, No. 1:22-cv-1179 (D. Md.); *Taxer* v. *Progressive Universal Ins. Co.*, No. 3:22-cv-1255 (D. Or.); *Thurston* v. *Progressive Cas. Ins. Co.*, No. 1:22-cv-375 (D. Me.); *Varela* v. *State Farm Mut. Auto. Ins. Co.*, No. 0:22-cv-970 (D. Minn.); *Wade* v. *Progressive N. Ins. Co.*, No. 1:23-cv-4434 (N.D. Ill.); *Watson* v. *Progressive Direct Ins. Co.*, No. 5:22-cv-203 (E.D. Ky.); *Wensel* v. *Progressive Direct Ins. Co.*, No. 4:24-cv-400 (D. Idaho); *Wiggins* v. *State Farm Mut. Auto. Ins. Co.*, No. 8:21-cv-3803 (D.S.C.); *Williams* v. *State Farm Mut. Auto. Ins. Co.*, No. 1:22-cv-1422 (N.D. Ill.); *Wright* v. *Progressive Direct Ins. Co.*, No. 2:24-cv-761 (D. Nev.).

[3] There were over 232 million drivers in the United States as of 2021. *How Many People Drive in the U.S.?: 2025*, Consumer Affairs (updated Jan. 24, 2024), https://tinyurl.com/yck2ajku. About 4.2 collision claims were filed per 100 drivers that year. *How Many Car Insurance Claims Are Filed Each Year?: 2025*, Consumer Affairs (updated Feb. 22, 2024), https://tinyurl.com/ytdv8rwx. Of those claims, 24 percent were total losses. LexisNexis Risk Solutions, A Hard Collision with Profitability 4 (2023), https://tinyurl.com/mr4cmpa2.

[4] LexisNexis Risk Solutions, Key Insights for the Road Ahead 6 (2024), https://tinyurl.com/48u4eupj.

actual cash value of totaled vehicles. E.g., *Schroeder* v. *Progressive Paloverde Ins. Co.*, 713 F. Supp. 3d 523, 529-30 (S.D. Ind. 2024) (Progressive); *Lewis*, 98 F.4th at 457 (GEICO); *Kronenberg* v. *Allstate Ins. Co.*, 743 F. Supp. 3d 465, 479 (E.D.N.Y. 2024) (Allstate); *Sampson*, 83 F.4th at 417 (USAA); *Lara*, 25 F.4th at 1136-37 (Liberty Mutual).[5]

The financial exposure in these cases is staggering. Plaintiffs often claim that the adjustments they challenge automatically entitle each class member to more than $500 per vehicle, no matter what each class member was already paid, e.g., *Murphy* v. *State Auto. Mut. Ins. Co.*, 2020 WL 13548251, at *4 (E.D. Ark. Feb. 18, 2020) ($966 adjustment); *Reynolds*, 346 F.R.D. at 138 n.4 ($847 adjustment)—to say nothing of statutory penalties and punitive damages on top of that. And the size and sweep of the proposed classes in these cases can make the exposure figures astronomical. In just one total-loss case involving a challenge to one adjustment made by one insurer in one state, the plaintiffs estimated a class size of over 80,000 and damages of about $70 million. See Mot. for Final Approval, *Volino* v. *Progressive Cas. Ins. Co.*, No. 1:21-cv-6243, Dkt. 388 at 11-12 & n.3, 19 (S.D.N.Y. Nov. 26, 2024). Combining the many pending cases involving different insurers, valuation methods, and states yields exposure in the billions.

Without stricter policing of Rule 23(b)(3)'s limits, this sort of financial pressure will have harmful consequences. Even an erroneous class-certification order "may force a defendant to settle rather than run the

[5] See Asis, *Largest Auto Insurance Companies*, Business Insider (Aug. 5, 2024), https://tinyurl.com/ypjpn3af (with State Farm, these companies comprise over two-thirds of the private car-insurance market).

risk of potentially ruinous liability." *Baker*, 582 U.S. at 41-42 (cleaned up). That's because the prospect of reversal on appeal from a final judgment doesn't erase the "extensive discovery and the potential for uncertainty and disruption" that forces class-action defendants to settle in the first place. *Stoneridge Inv. Partners LLC* v. *Sci.-Atlanta, Inc.*, 552 U.S. 148, 163 (2008); accord, e.g., *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011). Those pressures are real and already have led to settlements in total-loss cases.[6] Ultimately, the more insurers are saddled with the financial burden of liability beyond the true value of the vehicles they've contracted to insure, the more consumers will bear some of that cost through higher rates.[7]

2. The question presented reverberates beyond the total-loss context. Many other insurance class actions involve similar issues. Auto insurers often need to estimate the value of damaged (but not totaled) vehicles, and policyholders frequently challenge those estimates in class actions, resulting in disputes over whether the predominance requirement is met. See, e.g., *Baker* v. *State Farm Mut. Auto. Ins. Co.*, 2022 WL 3452469, at *1 (11th Cir. Aug. 18, 2022) (per curiam) (involving method for estimating diminished value of vehicle after repair); *Achziger* v. *IDS Prop. Cas. Ins.*

---

[6] E.g., Araullo, *Progressive Settles Michigan Class Action over Total Loss Claims*, Ins. Bus. (Nov. 26, 2024), https://tinyurl.com/3btah674; Lowery, *Progressive Reaches $48M Class Action Actual Cash Value Settlement*, Repairer Driven News (July 9, 2024), https://tinyurl.com/2vd7u3wp.

[7] E.g., Wile, *Consumer Prices Moved Higher in March. Auto Insurance Costs Were a Major Reason*, NBC News (Apr. 10, 2024), https://tinyurl.com/2h7w33hz (identifying litigation costs as a reason for increased rates).

Co., 772 F. App'x 416, 417 (9th Cir. 2019) (same). Similar disputes arise in other cases where insurers must estimate some covered value, such as real property or medical services. See, e.g., *Halvorson*, 718 F.3d at 779-80; *Kartman*, 634 F.3d at 889-90; *Sims* v. *Allstate Fire & Cas. Ins. Co.*, 2024 WL 3908739, at *1 (W.D. Tex. Aug. 21, 2024). And the theory the court of appeals embraced below could easily rear its head in any case in which plaintiffs challenge the lawfulness of an isolated step of a broader valuation process. Answering the question here will provide much-needed guidance to the lower courts in those contexts, too.

More broadly, a course correction is needed (especially in the Ninth Circuit) to ensure that Rule 23's requirements (especially predominance) are diligently observed. All too often, the Ninth Circuit has allowed plaintiffs to "sidestep" Rule 23's requirements. *Senne* v. *Kan. City Royals Baseball Corp.*, 934 F.3d 918, 962-63 (9th Cir. 2019) (Ikuta, J., dissenting); accord, e.g., *Olean Wholesale Grocery Coop., Inc.* v. *Bumble Bee Foods LLC*, 31 F.4th 651, 686 (9th Cir. 2022) (en banc) (Lee, J., dissenting) (majority's decision on predominance was "no[t] true to the rule"); *Owino* v. *CoreCivic, Inc.*, 60 F.4th 437, 456 (9th Cir. 2022) (VanDyke, J., dissenting from denial of rehearing en banc) (majority had "created a new rule of commonality"). That overly permissive approach has made the Ninth Circuit a magnet for class actions.

These problems are not going away. Class actions have exploded in recent years, with "around 10,000" filed each year. *Olean*, 31 F.4th at 686 (Lee, J., dissenting). The costs of defending those suits have ballooned, too, more than doubling over the last

decade.[8] And if class-action plaintiffs can further inflate their demands by funneling an indeterminate number of uninjured members into their proposed classes, then the hydraulic settlement pressure on defendants will only get worse.

3. This is an excellent vehicle for addressing the problem, resolving the split, and restoring uniformity on a recurring, important issue of class-action law. The question whether respondents had to offer class-wide proof that the challenged adjustment caused each class member to receive less than actual cash value was squarely pressed and passed upon in the district court, Pet. App. 43a-48a (decertification); *id.* at 61a-68a, 71a-77a, 95a-105a, 107a-14a (certification), and the court of appeals, *id.* at 14a-23a (panel majority), 29a-37a (dissent). By denying panel and en banc rehearing, the Ninth Circuit has declined to resolve the conflict it created. And no factual or prudential roadblocks stand in the way of this Court's review.

II. AT MINIMUM, THE PETITION SHOULD BE HELD PENDING *LABCORP*.

This Court recently granted certiorari to decide "[w]hether a federal court may certify a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) when some members of the proposed class lack any Article III injury." *Lab'y Corp. of Am.* v. *Davis*, — S. Ct. —, 2025 WL 288305 (Jan. 24, 2025) (No. 24-304). At minimum, this petition should be held for that case.

The second question presented here is the same one this Court granted certiorari to resolve in *Labcorp*. Under the Ninth Circuit's approach in this case,

---

[8] Carlton Fields, Class Action Survey 7 (2024), https://tinyurl.com/5as9thwc.

the certified class unquestionably includes members who suffered no injury in fact because they were fully compensated for the fair market value of their vehicles. That approach wouldn't have flown in circuits holding that classes can't be certified when they contain more than a de minimis number of uninjured members, e.g., *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 934 F.3d 619, 624-25 (D.C. Cir. 2019), and certainly not in circuits where "no class may be certified that contains members lacking Article III standing," e.g., *Denney* v. *Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006); accord, e.g., *Halvorson*, 718 F.3d at 778.

In fact, the Third Circuit has squarely disagreed with the Ninth Circuit's approach to Article III standing in this exact context. In *Lewis*, another total-loss case, the plaintiffs challenged the insurer's use of condition adjustments, arguing that because the adjustments were supposedly unlawful, the insurer had necessarily caused a financial injury to them and all members of the proposed class. 98 F.4th at 460. The Third Circuit rejected that argument as "impermissibly divorc[ing] their standing to sue from any real-world financial injury." *Ibid.* As it explained, a "bare violation of [state] insurance rules," "divorced from any concrete harm," does "not suffice for Article III standing." *Id.* at 461 (quoting *TransUnion*, 594 U.S. at 440).

This Court is poised to address these same questions. At the very least, then, this petition should be held for *Labcorp*.

CONCLUSION

The petition for a writ of certiorari should be granted. At minimum, the petition should be held for *Laboratory Corp. of America* v. *Davis*, No. 24-304, and then granted and disposed of as appropriate in light of this Court's decision in that case.

Respectfully submitted.

PETER W. HERZOG III
WHEELER TRIGG O'DONNELL LLP
211 N. Broadway, Suite 2825
St. Louis, MO 63102

ERIC L. ROBERTSON
WHEELER TRIGG O'DONNELL LLP
370 17th Street, Suite 4500
Denver, CO 80202

THEODORE J. BOUTROUS JR.
Counsel of Record
BRADLEY J. HAMBURGER
DANIEL R. ADLER
MATT AIDAN GETZ
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
tboutrous@gibsondunn.com

OLIVIA GOLDBERG
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036

Counsel for Petitioners

February 25, 2025