No. 22-1133

United States Court of Appeals for the First Circuit

XAVIER, ET AL.,

Plaintiffs-Appellants,

v.

EVENFLO COMPANY, INC., ET AL.,

Defendants-Appellees.

Appeal from the U.S. District Court
for the District of Massachusetts

MDL No. 1:20-md-02938

AMICI CURIAE BRIEF OF THE JUVENILE PRODUCTS MANUFACTURERS ASSOCIATION, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS, AND NATIONAL RETAIL FEDERATION IN SUPPORT OF APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, counsel states that the Juvenile Products Manufacturers Association, Chamber of Commerce of the United States of America, National Association of Manufacturers, and National Retail Federation have no parent corporations and have issued no stock.

Dated: July 29, 2022

/s/ Philip S. Goldberg
Philip S. Goldberg

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

The Juvenile Products Manufacturers Association (JPMA), Chamber of Commerce of the United States of America (U.S. Chamber), National Association of Manufacturers (NAM), and National Retail Federation (NRF) support the District Court's dismissal of this case on account of Appellants' failure to plead sufficient injury for Article III standing. *Amici* are concerned that if the District Court's ruling is overturned, the result would lead to the proliferation of abusive class filings where proposed class members did not suffer and do not allege any concrete harms.

The JPMA is the voice of the industry on quality and safety for baby and children's products. It strives to advocate for safety through product certification programs and legislative and regulatory involvement; support a broad and diverse membership through member-only programming and industry promotion; and act as a comprehensive source for baby product information and education. JPMA members represent a significant majority of the prenatal to preschool products in North America. As a result, the JPMA has an interest in class actions that assert liability based on allegations related to safety in baby and children's products.

[1] The parties provided consent to the filing of *amicus curiae* briefs. No counsel for a party authored this brief in whole or in part; and no party, party's counsel, or other person or entity—other than *amici curiae*, their members, or their counsel—contributed money intended to fund the preparation or submission of this brief.

The U.S. Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community. The U.S. Chamber has a strong interest in the proper enforcement of Article III prerequisites for standing at the pleading stage.

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12.7 million men and women, contributes $2.71 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for nearly two-thirds of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The NRF is the world's largest retail trade association and the voice of retail worldwide. The NRF's membership includes retailers of all sizes, formats and channels of distribution, as well as restaurants and industry partners from the United

States and more than 45 countries abroad. In the United States, the NRF represents the breadth and diversity of an industry that is the nation's largest sector employer with more than 52 million employees and contributes $3.9 trillion annually to GDP. The NRF has filed numerous briefs in support of the retail community on issues such as the Article III standing requirement for class actions that present grave danger to our Main Street businesses in a wide variety of contexts.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This putative class action provides a stark example of the no-injury class actions the U.S. Supreme Court cautioned against in *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016), and *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021). The proposed class members have not sustained concrete harm: they are not alleging any defect with the booster seats they purchased, that their booster seats failed to perform properly, that any misrepresentations or defect caused them or their children any physical injury, or that they sustained actual economic loss. Instead, this action is premised solely on theoretical harm. They claim that if Evenflo had not made certain assertions about the subject booster seat's suitability for children of a certain weight or the value of its side-impact testing, they may have made different economic choices. Their pleadings, however, are devoid of any information demonstrating any actual economic loss based on any such real-world choices.

The District Court properly dismissed the action pursuant to Supreme Court precedent. The Supreme Court has instructed that, to establish a case or controversy over which the federal courts have jurisdiction, "a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo*, 578 U.S. at 339 (quoting *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560 (1992)). This requirement applies "at all stages" of litigation, including the pleadings stage. *TransUnion*, 141 S. Ct. at 2208. Thus, to pursue economic injury based on Appellants' benefit-of-the-bargain theory, Appellants had to allege in their pleadings a loss "calculated based on the difference in value between what was bargained for and what was received." Order at 7 (citing *In re Johnson & Johnson Talcum Powder Prod. Mktg., Sales Prac. & Liab. Litig.*, 903 F.3d 278, 283 (3d Cir. 2018)). They failed to do so.

Appellants' pleadings were devoid of any "plausible explanation" for any lost value. Order at 11. As the District Court noted, "Plaintiffs have alleged no estimate (aside from a bare claim that the seats were 'worthless' to them) of how much the Big Kid would diminish in value, or any facts giving rise to same." *Id.* at 10. "Plaintiffs have not alleged an actual defect in the product, nor are they suggesting any resale value of the Big Kid or diminution of value of the current Big Kid." *Id.* Most plaintiffs offered no data about the age, height or weight of their child (to

plausibly suggest their child was below the respective age, height and weight requirements of the Big Kid) or that they "exclusively purchased the seat because of its ability to protect against side impact collisions." *Id*. at 10-11. Further, they pled no facts showing they could have paid less for the Big Kid or some other company's comparable booster. Appellant's threadbare claims of diminished value, therefore, were properly disregarded as conclusory.

No-injury class actions can wreak havoc on the judicial system. They often lead to prolonged litigation, vacuous settlements that provide no real benefits to the class, and outcomes inconsistent with product liability and other substantive areas of law. When district courts enforce the concrete-injury requirement at the pleading stage, they help minimize these problems. Because the trial court properly applied the law, *amici* respectfully request that the Court affirm the ruling below.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED THIS CASE BECAUSE THE PLEADINGS FAILED TO DEMONSTRATE ANY CONCRETE INJURY SUFFICIENT FOR ARTICLE III STANDING

Article III prohibits a federal court from awarding relief to persons without standing. In the Rule 23 context, Article III prohibits a putative class action from surviving a motion to dismiss if the pleadings do not show that the named plaintiffs and proposed class members sustained a concrete injury. As the Supreme Court has stated, concrete injury-in-fact is an essential element of the "irreducible

constitutional minimum" of Article III standing. *Spokeo*, 578 U.S. at 338 (quoting *Lujan*, 504 U.S. at 560). The plaintiffs must plead and ultimately prove that they have suffered an injury that "actually exist[s]"—it must be "real" rather than "abstract." *Id.* at 340.

Thus, Appellants cannot rely on conclusory pleadings to establish standing. *See Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 731 (1st Cir. 2016) ("Neither conclusory assertions nor unfounded speculation can supply the necessary heft."). The First Circuit has defined a "conclusory allegation" as "one which simply asserts a legal conclusion, such as 'I was retaliated against,' not a specific factual allegation, such as 'my supervisor threw a book at me,' that merely lacks some surrounding context." *Rodriguez-Vives v. Puerto Rico Firefighters Corps*, 743 F.3d 278, 289 (1st Cir. 2014) (cleaned up). Allegations appearing "factual" may be conclusory if "threadbare" or "presented as an *ipse dixit*, unadorned by any factual assertions that might lend it plausibility." *Id.*; *A.G. ex rel. Maddox v. v. Elsevier, Inc.*, 732 F.3d 77, 80-81 (1st Cir. 2013) (same); *see also Legal Sea Foods, LLC v. Strathmore Ins. Co.*, 36 F.4th 29, 33 (1st Cir. 2022) (denying standing when factual allegations "are too meager, vague, or conclusory").

As *amicus* U.S. Chamber detailed in a recent report, before *Spokeo* and *TransUnion*, courts would see "a barrage of no-injury class actions, asserting that the entire class could recover damages simply by proving a statutory [or other

technical] violation even if class members suffered no harm from that violation." U.S. Chamber Inst. for Legal Reform, *TransUnion and Concrete Harm: One Year Later*, at 5 (2022). "Rather than claim a product caused physical harm, the lawsuits [would] often seek to recover for alleged pecuniary losses" from an unmanifested defect or alleged misrepresentation. Victor E. Schwartz & Cary Silverman, *The Rise of "Empty Suit" Litigation: Where Should Tort Law Draw the Line?*, 80 Brook. L. Rev. 599, 628 (2015).

The claims would generally allege that consumers overpaid for the products and seek the difference between the purchase price and the hypothetical lower market value of the product resulting from an allegedly undisclosed risk not experienced by the plaintiffs. *See id.* at 628-29. This difference between the purchase price and a hypothetical lower price, as here, is referred to as the "benefit of the bargain." Phrasing a class's injury as a benefit of the bargain loss became a popular way for lawyers to try to avoid individualized issues that regularly arose in claims related to product-based injuries or reliance on allegedly deceptive statements.

As the First Circuit has properly recognized, even if "benefit of the bargain" is a viable theory, it still requires a factual basis at the pleading stage. *Shaulis v. Nordstrom, Inc.*, 865 F.3d 1, 12 (1st Cir. 2017) ("claims of injury premised on 'overpayment' for a product, or a loss of the benefit of the bargain, require an objective measure against which the plaintiff's allegations may be evaluated"). A

plaintiff must specify the value of the bargain she believed she would receive versus the value of the bargain she contends she actually received. She may not simply allege that she overpaid without factual support. Otherwise, the overpayment declaration is nothing more than *ipse dixit. See A.G.*, 732 F.3d at 80-81. In many cases, there is a "question as to whether any value can realistically be placed on the benefit of the bargain that a 'no injury' consumer expected." Edward Sherman, "*No Injury" Plaintiffs & Standing*, 82 Geo. Wash. L. Rev. 834, 844 (2014).

Here, the gravamen of Appellants' complaint is that they were supposedly deceived into buying Big Kid booster seats that they contend were not as safe as they believed. *See in re Evenflo Co., Inc. Marketing, Sales Practices & Prods. Liab. Litig.*, MDL No. 20-md-02938-DJC, 2022 WL 252331, at *3 (D. Mass. Jan. 27, 2022).[2] Yet, Appellants offered only unsupported conclusory statements that they were harmed by these transactions. They never provided any plausible factual basis that the Big Kid booster seats lacked value, that they were overcharged, or that a viable less expensive alternative existed. So, even if these allegations of overpayment are, as the Appellants argue, "garden variety" consumer-protection allegations, they never buttressed their "garden variety" claims with "garden variety" facts to sufficiently plead those claims.

[2] Appellants assert their present injury "is not contingent upon any manifestation of a future harm or reflective of the present cost of mitigation." App. Br. at 32. It is purely a "past economic injury." *Id.* at 3.

In an effort to counter this point, Appellants argue that "the law does not require that damages be pled with precision or with expert analysis of 'but for' pricing." App. Br. at 7, 8 (cleaned up). This worry-about-it-later approach reflects a misunderstanding of the injury requirement for standing. Standing may not require a plaintiff to plead an expert analysis of "but for" pricing, but it *does* require a plaintiff to plead facts rather than conclusory statements. *See Legal Sea Foods*, 36 F.4th at 33. Otherwise, as here, a plaintiff is merely presenting an abstract question of whether it would have been better if a company acted as they wished.

The truth is that each member of this proposed class received the full benefit of the bargain: they paid for a booster seat, they received a booster seat, and they used the booster seat without suffering harm. Their claims were properly dismissed.

II. ALLOWING NO-INJURY CLASS ACTIONS TO PROCEED PAST THE PLEADING STAGE OFTEN LEADS TO ABUSIVE IN TERROREM SETTLEMENTS—NOT JUSTICE

In addition to being mandated by Article III, requiring concrete injury to be pled in the complaint serves an important purpose in class actions: it protects the courts and defendants from prolonged, expensive litigation, as well as abusive, *in terrorem* settlements driven by defendants' risk aversion, not justice. As the Supreme Court has observed, merely having to litigate a putative class action, regardless of the merits, "may so increase the defendant's potential damages liability and litigation costs that he may feel it economically prudent to settle and to abandon

a meritorious defense." *Coopers & Lybrand v. Livesay* 437 U.S. 463, 476 (1978); *accord Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 740 (1975).

Defendants are placed in an untenable position. Defense costs can run into tens of millions of dollars. *See* Adeola Adele, *Dukes v. Wal-Mart: Implications for Employment Practices Liability Insurance* 1 (July 2011) (noting defense costs of up to $100 million). And these actions can drag on for years, even before a court takes up class certification. *See* U.S. Chamber Inst. for Legal Reform, *Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions*, at 1 (Dec. 2013) ("Approximately 14 percent of all class actions remained pending four years after they were filed, without resolution or even a determination of whether the case could go forward on a class-wide basis.").[3] When the costs of litigating far exceed the settlement demand, taking the case to trial is generally not a viable option.

Because of these dynamics, merely allowing a putative class action to survive a motion to dismiss can enable plaintiffs to leverage the inefficiencies of the judicial system "to extort settlements from innocent companies." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 149 (2008); *accord AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (noting the "risk of 'in terrorem' settlements that class actions entail"). This risk of this injustice is heightened, as the

[3] https://instituteforlegalreform.com/research/transunion-and-concrete-harm-one-year-later/

late Justice Ruth Bader Ginsburg observed, when "a class action poses the risk of massive liability unmoored to actual injury." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 445 n.3 (2010) (Ginsburg, J., dissenting). Experience has shown that it is particularly difficult to value a class action for settlement purposes where the class members have not suffered concrete, measurable injury. *See generally* Geoffrey P. Miller & Lori S. Singer, *Nonpecuniary Class Action Settlements*, 60 L. & Contemporary Problems 97 (1997).

As a result, even when the parties try to settle no-injury claims, few, if any, benefits end up going to the class. Often, there is little interest among absent class members to claim an award. They do not feel aggrieved and view returning the claim form not worth the return. *See* Linda S. Mullenix, *Ending Class Actions as We Know Them: Rethinking the American Class Action*, 64 Emory L.J. 399, 419 (2014) (finding "very small percentages of class members actually file and receive compensation from settlement funds"). In a 2019 study of class actions generally, the Federal Trade Commission found a weighted mean claims rate of just 4%—meaning that 96% of class members in consumer class settlements recovered nothing. *See* Fed. Trade Comm'n, *Consumers and Class Actions: A Retrospective*

and Analysis of Settlement Campaigns, at 11 (Sept. 2019).[4] Undoubtedly, the claims rate is lowest in cases where the class has not sustained any concrete harms.

In light of these trends, the parties in these cases sometimes resort to *cy pres* or coupon settlements, which have become clear signs the underlying classes have no real injuries. Also, uninjured class members have little incentive to monitor the litigation and hold their counsel accountable; they "have individually too little at stake to spend time monitoring the lawyer—and their only coordination is through" such counsel. *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Tr. Co. of Chi.*, 834 F.2d 677, 681 (7th Cir. 1987). The result is that "class counsel effectively appoint themselves as agents for the class, wielding a power to transact in class members' rights." Richard A. Nagareda, *The Preexistence Principle and the Structure of the Class Action*, 103 Colum. L. Rev. 149, 150-51 (2003). It is not surprising, then, that the bulk of the money in these actions ends up going to class counsel.

For example, in *Chapman v. Tristar Prods., Inc.*, 940 F.3d 299 (6th Cir. 2019), a class action alleging certain pressure cookers had defective lids "which exposed the user to possible injury" resulted in a settlement offering coupons and warranty extensions worth $1.02 million to the class, and $1.98 million in attorneys' fees. The

[4] *See also* The State of Class Actions Ten Years After the Enactment of the Class Action Fairness Act, Hearing Before the Subcomm. on the Constitution and Civil Justice of the H. Comm. on the Judiciary, 114th Cong. 6 (Feb. 27, 2015) (statement of Andrew Pincus on behalf of the U.S. Chamber) (reporting on empirical analysis by his law firm).

settlement was so lopsided it drew an objection from the Arizona Attorney General. *See id*. at 302. In *Chambers v. Whirlpool Corp*., 980 F.3d 645 (9th Cir. 2020), a class action alleging that dishwashers had a propensity to overheat, class counsel sought $14.8 million in attorneys' fees based on $116.7 million of "available" relief, even though actual payments to the class totaled only $4.2 million.

Consistent with these examples, a 2020 white paper by an international law firm studied 44 class settlements and found that class counsel recovered almost as much as class members. *See* Jones Day, *An Empirical Analysis of Federal Consumer Fraud Class Action Settlements (2010–2018)*, at 12 (Apr. 2020).[5] Another review of 510 consumer class actions found that "the cost of using the consumer class-action procedural device to compensate" the small number of class members that submit claims "outweighs the aggregate amount delivered as compensation to consumers" —sometimes 300%-400% of the actual aggregate class recovery. Jason S. Johnson, *High Cost, Little Compensation, No Harm to Deter: New Evidence on Class Actions under Federal Consumer Protection Statutes*, 2017 Colum. Bus. L. Rev. 1, 5 (2017). "Such disproportionate attorneys' fee awards mostly arise in settlements . . . where the harm to consumers is very small or even arguably nonexistent." *Id.*

[5] https://www.jonesday.com/en/insights/2020/04/empirical-analysis-consumer-fraud-class-action

The truth is that real consumers rarely see value in no-injury lawsuits. Worse, the suits are likely to make the products at issue more expensive, *costing* consumers money. Studies have shown that "litigation expenses, attorney's fees, and settlement costs" are often passed "to consumers through increased prices, fewer innovations, and lower product quality." Joanna Shepherd, *An Empirical Study of No-Injury Class Actions* 23 (Emory Univ. Sch. of Law, Legal Studies Research Paper Series No. 16–402 (2016)). "[S]everal empirical papers confirm" that businesses regularly have to "pass on litigation expenses to consumers." *Id.*

Requiring counsel to include in their pleadings specific allegations of concrete injury helps filter out these worthless, abusive class actions and outcomes from ones that can offer meaningful relief to class members. At the end of the day, putative class actions like this one undermine respect for the judicial system, as the public comes to view class-action litigation as driven by the financial interests of lawyers rather than justice for those they purport to represent.

III. THE COURT SHOULD AFFIRM THE ORDER BELOW TO ENSURE THAT DISTRICT COURTS FOLLOW THE SUPREME COURT'S RULINGS IN *SPOKEO* AND *TRANSUNION*

Upholding the ruling below provides this Court an important opportunity to give effect to the Supreme Court's case law that a plaintiff must allege concrete injury to establish Article III standing. Unfortunately, after *Spokeo*, not all district courts have faithfully applied this rule of law. As stated in the U.S. Chamber's recent

report, some courts found injury-in-fact "based on watered-down standards that did not actually require proof that the plaintiff suffered real-world harm." *TransUnion and Concrete Harm*, *supra*, at 6. In *TransUnion*, however, the Supreme Court reaffirmed that a plaintiff must plead real, concrete harm resulting from the alleged violation in order to have standing in the federal courts. In doing so, the Court "slammed the door on various lower court 'workarounds' that had neutered *Spokeo*'s real-world injury requirement" that applies to every class member. *Id*. at 7.

The allegations at bar represent one such attempted "workaround." As discussed above, class counsel around the country have attempted to disguise "no injury" class actions under inventive damage theories, including "benefit of the bargain" or "diminution of value." They have suggested that the discovery of a potential defect or an alleged misrepresentation, even if it never caused physical harm, created a theoretical risk of harm for them and an undefined economic loss for the entire class based on that unrealized risk. Even when most, if not all, class members were pleased with their products, they would be swept into litigation seeking to monetize this purported risk.

Most courts, including the one below, have been rightly skeptical of these types of actions. In one illustrative case, a car owner testified in deposition that after the manufacturer fixed his brakes, he was "happy" and the car was "working fine." *In re Toyota Motor Corp. Hybrid Brake Mktg., Sales Practices & Prods. Liab. Litig.*,

915 F. Supp. 2d 1151, 1154, 1159 (C.D. Cal. 2013). Yet, he sought to represent a class of purchasers alleging that they did not receive the benefit of the bargain. The court dismissed the case, refusing to allow consumers to fabricate claims. The court stated: "Merely stating a creative damages theory does not establish the actual injury that is required to prevail on [these] product liability claims." *Id.* at 1157-58. The Fifth Circuit has characterized such claims as, "you sold it, I bought it, there was a defect in the product's design or warnings, other patients were injured, pay me." *Rivera v. Wyeth-Ayerst Labs.*, 283 F.3d 315, 321 (5th Cir. 2002).

Flynn v. FCA US LLC, 327 F.R.D. 206 (S.D. Ill. 2018), provides a particularly valuable illustration of abusive no-injury "benefit of the bargain" class actions. *Flynn* was a class action alleging that Chrysler's Uconnect infotainment system was susceptible to hacking by third parties. None of the plaintiffs had been hacked. The Uconnect system had only been breached once under controlled computer-laboratory conditions. An article in *WIRED* magazine about the security flaw led to a voluntary recall that addressed the issue. Nonetheless, the *Flynn* plaintiffs filed a class action asserting breach of implied warranty, unjust enrichment, and various fraud-based claims on the grounds that they had overpaid for vehicles susceptible to hacking. *See id.* at 214. The district court initially allowed the claims and certified a nationwide implied-warranty class and several statewide statutory-fraud classes. After the Seventh Circuit declined to review, the case was assigned to a different

judge and dismissed on standing grounds. *See Flynn v. FCA US LLC*, No. 15-cv-855-SMY, 2020 WL 1492687 (S.D. Ill. Mar. 27, 2020).

Another genre of these cases has targeted labeling practices: a named plaintiff alleges that she bought a product based on an alleged misperception of a product's size, performance, or ingredients. *See, e.g., Berni v. Barilla, S.P.A.*, 964 F.3d 141 (2d Cir. 2020) (plaintiff alleged he was deceived by the size of a pasta box). In some cases, the remedy sought to justify the award was not monetary damages, but an injunction requiring disclosures to warn future purchasers of the potential confusion—even though the named plaintiff has no ongoing misunderstanding about the product and most class members never did. A study of consumer class actions against food and beverage manufacturers has demonstrated this trend: in 2008, there were only about 19 such claims filed, whereas in 2016, 171 of these cases were filed. *See* Cary Silverman, *In Search of the Reasonable Consumer: When Courts Find Food Class Action Litigation Goes Too Far,* 86 U. Cin. L. Rev. 1, 2 (2018).

Overall, class litigation costs in the United States have exploded in large part due to these illegitimate tactics. The costs totaled a staggering $3.37 billion in 2021, continuing a rising trend that started in 2015. *See* Carlton Fields, *Class Action Survey* 7 (2022).[6] About 57.9% of major companies are engaged in class actions, with the average number of class matters per company rising from 4.4 in 2013 to 8.9 in 2021.

[6] https://classactionsurvey.com

See id. Prospective classes and their counsel have been lured by the notion that filing such an action will allow them to leverage the inefficiencies of the litigation system, evade difficult individualized questions of causation and damage, and foreclose traditional defenses. *See* Schwartz & Silverman, *supra*, 80 Brook. L. Rev. at 635. These class actions do not provide "access to justice"; they open the courthouse to unprincipled and abusive litigation.

In this "era of frequent litigation [and] class actions . . . courts must be more careful to insist on the formal rules of standing, not less so." *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 146 (2011). Here, the District Court properly applied the law and dismissed the claims because the plaintiffs made no showing in their pleadings that they suffered any real world harm. This Court should affirm that ruling to rein in abusive class actions and ensure that judicial resources are spent on claims involving actual injuries.

CONCLUSION

For these reasons, *amici* urge this Court to affirm the ruling below.

Respectfully submitted,

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Dated: July 29, 2022

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32(a)(7), excluding parts exempted by Fed. R. App. P. 32(f) because it contains 4353 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word 2016 in 14 point Times New Roman font for text and footnotes.

Dated: July 29, 2022

/s/ Philip S. Goldberg
Philip S. Goldberg

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the Court's CM/ECF system.

All participants in this case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Philip S. Goldberg
Philip S. Goldberg