No. 26-400

In the Supreme Court of the United States

NESTLÉ USA, INC.,

Petitioner,

v.

MARIE FALCONE,

Respondent.

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

BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, THE CONSUMER BRANDS ASSOCIATION, FOOD MARKETPLACE, INC. D/B/A FMI – THE FOOD INDUSTRY ASSOCIATION, AND THE NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI CURIAE*[1]

The Product Liability Advisory Council (PLAC) is a non-profit association of companies that constitute a broad cross-section of product manufacturers.[2] These companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of manufacturers of products and those in product supply chains.

PLAC's perspective is based on the experiences of members that span a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred of the leading product litigation defense attorneys are sustaining (non-voting) members of PLAC.

Since 1983, PLAC has filed more than 1,200 briefs as *amicus curiae* in both state and federal courts, including this Court, on behalf of its members, presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product risk management.

The Consumer Brands Association (CBA) is a trade association that represents and has as its members manufacturers of consumer packaged goods from

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties received notice at least 10 days before the due date of the intention of *amici* to file this brief.

[2] PLAC's corporate members are identified on its website. See https://plac.com/PLAC/PLAC/Membership/Corporate_Membership.aspx.

across the United States. CBA champions an industry whose products Americans depend on every day, including packaged food and beverage products. Its membership plays a vital role in powering the Nation's economy: just last year this industry contributed $2.5 trillion to the U.S. gross domestic product and supported more than 20 million American jobs.

Food Marketplace, Inc. d/b/a FMI – The Food Industry Association (FMI) works with and on behalf of the entire food industry to advance a safer, healthier and more efficient consumer food supply. FMI brings together a wide range of businesses—from retailers who sell to consumers to producers who supply the food, as well as the many companies providing critical services—to demonstrate the collective work of the industry. FMI's membership includes nearly 1,000 supermarket member companies that collectively operate almost 45,000 food retail outlets and employ approximately 6 million workers. Those companies also operate approximately 12,000 pharmacies inside retail grocery stores throughout the United States.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $3.0 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

Amici have a significant interest in the issues presented in this case. *Amici*'s members frequently are subject to suits alleging that products have been misleadingly labeled. Applying a legally erroneous, lax class-certification standard in these cases opens the door to improperly certified class actions containing huge numbers of individuals. PLAC's members also face putative class-action lawsuits from product purchasers alleging that a product contains a defect that *could* cause the product to malfunction, and who argue that individual issues of injury do not preclude class certification.

The Ninth Circuit, resting on entrenched circuit precedent, upheld class certification here by applying impermissibly lax standards that conflict with decisions of other courts of appeals and this Court's precedents. First, it concluded that Rule 23(b)(3)'s predominance and superiority requirements were met for a putative class containing numerous uninjured members—without even addressing how those uninjured individuals could be weeded out, let alone explaining how that necessarily individualized inquiry would not predominate over any common issues.

Second, the Ninth Circuit applied its rule that a named plaintiff has standing to seek classwide injunctive relief under Rule 23(b)(2) in a case targeting alleged misleading product labeling even though the plaintiff's own complaint demonstrates that the plaintiff could not be misled in the future because her complaint states that the labeling is misleading. Both of these erroneous holdings subject *amici*'s members to improperly certified class actions that harm not only those members, but also their workers, customers, and shareholders, and the Nation's economy.

Amici therefore submit this brief to explain why the Court should grant review and reverse the Ninth Circuit's rulings.

INTRODUCTION AND SUMMARY OF ARGUMENT

Class certification is a critical step in civil litigation. "Certification of a large class may so increase the defendant's potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense." *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 476 (1978). Indeed, class-action litigation costs in the United States are astonishingly high, reaching a record $4.5 billion in 2025. See *2026 Carlton Fields Class Action Survey* at 6-7 (2026), https://ClassActionSurvey.com (*2026 Survey*). Because of the certification decision's crucial significance, this Court requires courts to rigorously analyze whether class-certification requirements are met.

This case involves two significant questions, on which courts of appeals are divided, regarding the treatment of class members' standing at the class-certification stage. The Ninth Circuit has taken an impermissibly lenient approach to both. The combined effect of those rulings subjects a broad range of defendants to class actions seeking massive damages and broad injunctive relief, even though Rule 23's requirements are not satisfied.

First, in *TransUnion LLC* v. *Ramirez*, this Court expressly reserved the question of how courts should address putative class members' standing at the class-certification stage. 594 U.S. 413, 423, 431 n.4 (2021). It subsequently granted certiorari to resolve this question in *Laboratory Corporation of America*

Holdings v. *Davis*, 145 S. Ct. 1133, 1134 (2025), before dismissing the case as improvidently granted, 605 U.S. 327 (2025).

This case is an excellent vehicle to resolve the question left unanswered in *Laboratory Corporation*, which continues to divide the courts of appeals. The decision below upheld certification of a damages class notwithstanding undisputed evidence that large numbers of class members lack the requisite Article III injury. Determining whether each absent class member suffered the necessary injury is an inherently individualized inquiry—many class members may not have seen the labeling challenged in this suit or placed any weight on the label's sustainability representations in purchasing petitioner's products. The Ninth Circuit nonetheless affirmed class certification without identifying any practical method for weeding out uninjured class members.

That violates Rule 23. When the named plaintiff cannot prove concrete injury on a class-wide basis, courts almost always should deny certification of damages classes containing uninjured class members. The nature of the individualized proof required, and the corresponding burdens on the parties and the court, generally means that the putative class cannot satisfy Rule 23(b)(3)'s predominance and superiority requirements.

Second, the decision to certify the Rule 23(b)(2) class rests on the Ninth Circuit's longstanding rule that a named plaintiff has Article III standing to pursue classwide injunctive relief even though she has no risk of being injured by the defendant's allegedly misleading labeling in the future.

The Ninth Circuit stands alone in concluding that a plaintiff who knows the facts she claims make the defendant's labeling misleading can nonetheless seek classwide injunctive relief to avoid somehow being misled again. Every other court of appeals to address the issue has held that such a plaintiff cannot establish Article III injury. The practical consequences of the Ninth Circuit's erroneous approach are enormous: it allows plaintiffs without standing to seek classwide injunctive relief against any company subject to suit in the Ninth Circuit—which is virtually every company that does business nationwide.

Together, the Ninth Circuit's erroneous standards permit the routine certification of improperly constituted damages and injunctive-relief classes. But compliance with Rule 23 is critically important. "Overbroad and incorrectly certified classes threaten massive liability" for class-action defendants. *Laboratory Corp.*, 605 U.S. at 333 (Kavanaugh, J., dissenting from dismissal).

The Ninth Circuit's erroneous standards amplify the hydraulic settlement pressure that class certification generally places on defendants and encourage plaintiffs' lawyers to propose inflated classes full of uninjured members. That maximizes total damages exposure and corresponding settlement leverage, regardless of how many class members suffered real-world harm and would be ultimately eligible to recover damages. And settlement pressure is further increased by the ability to seek classwide injunctive relief—and thereby potentially force companywide labeling or marketing changes, often at significant expense—without identifying a plaintiff at any risk of future harm. The Court should grant review, reverse the Ninth Circuit's errant approach, and make clear

that Rule 23 bars these abuses of the class-action device.

ARGUMENT

I. This Court Should Review And Reverse The Ninth Circuit Rule Permitting Certification Of Damages Classes With Significant Numbers Of Uninjured Members Who Can Only Be Excluded Through Individualized Determinations.

This Court's decision in *TransUnion LLC* v. *Ramirez* makes clear that *each* member of a certified damages class "must have Article III standing in order to recover individual damages." 594 U.S. 413, 431 (2021). That is because "Article III does not give federal courts the power to order relief to *any* uninjured plaintiff, class action or not." *Ibid.* (emphasis added) (quoting *Tyson Foods, Inc.* v. *Bouaphakeo*, 577 U.S. 442, 466 (2016) (Roberts, C.J., concurring)).

When a named plaintiff has Article III standing and injury for all class members can be determined on a class-wide basis, Article III and Rule 23 may permit class certification.

But in many cases invoking Rule 23(b)(3), it is clear at the class-certification stage—based on the nature of the claims, the proposed class definition, and the undisputed class-certification evidence—that the putative class includes uninjured members (often many or most putative class members) who would lack standing to pursue their claims individually.

Nestlé USA's petition explains (Pet. 24-25) that allowing uninjured class members to pursue their claims in federal court raises serious constitutional concerns. Before certifying a class, and thereby

exercising jurisdiction over the merits of the absent class members' claims, the district court must ensure that it has a basis to do so. After all, "[c]lass certification is the thing that gives an Article III court the power to 'render dispositive judgments' affecting unnamed class members." *Flecha* v. *Medicredit, Inc.*, 946 F.3d 762, 770 (5th Cir. 2020) (Oldham, J., concurring) (quoting *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995)).

Separately, Rule 23(b)(3) itself will almost always bar certification of a damages class when injury cannot be determined on a class-wide basis and the proposed class includes uninjured individuals.

This Court has recognized the problem—also present here, see Pet. 27-33—that arises where determining the amount of damages for class members is individualized: "Questions of individual damage calculations will inevitably overwhelm questions common to the class." *Comcast Corp.* v. *Behrend*, 569 U.S. 27, 34 (2013).

An even greater obstacle to class certification arises when the proposed class includes uninjured individuals—because the requirements of Article III and Rule 23 combine to bar class certification. The nature of the individualized inquiry necessary to establish each class member's concrete injury will almost always prevent the court from determining that common issues "predominate" and class treatment is "superior" to other methods for "fairly and efficiently" adjudicating the controversy. Fed. R. Civ. P. 23(b)(3).

The Ninth Circuit failed to conduct the required analysis here.

A. Rule 23(b)(3) requires rigorous analysis before certifying a damages class.

Class actions are an "'exception to the usual rule'" that cases are litigated individually; courts therefore must apply "rigorous analysis" to the requirements governing class certification before approving class treatment. *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 348, 351 (2011) (quoting *Califano* v. *Yamasaki*, 442 U.S. 682, 700-701 (1979)). Moreover, this Court has repeatedly recognized that Rule 23 should be interpreted to guard against the potential for abuse of the class-action device. *E.g.*, *Comcast*, 569 U.S. at 33; *Dukes*, 564 U.S. at 367; *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 629 (1997).

The proponent of a damages class—in addition to satisfying Rule 23(a)'s four requirements—must satisfy Rule 23(b)(3). Rule 23(b)(3)'s predominance requirement mandates that "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). The superiority inquiry, in turn, asks whether "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Ibid.* District courts must consider, among other factors, "the likely difficulties in managing a class action." *Id.* 23(b)(3)(D).

Because Rule 23(b)(3) is an "adventuresome innovation" that is "designed for situations in which class-action treatment is not as clearly called for," courts have a "duty to take a close look at whether common questions predominate over individual ones." *Comcast*, 569 U.S. at 34 (quotation marks and citations omitted).

These Rule 23(b)(3) inquiries cannot be satisfied by a mechanical tallying up of common and individualized issues. Rather, they require "more of a qualitative than quantitative analysis." *Cordoba* v. *DIRECTV, LLC*, 942 F.3d 1259, 1274 (11th Cir. 2019) (quotation marks omitted). And they require courts to "consider how a trial on the merits would be conducted if a class were certified," to ensure that the case will not "degenerat[e] into a series of individual trials" that are incompatible with class treatment. *Gene & Gene LLC* v. *BioPay LLC*, 541 F.3d 318, 326 (5th Cir. 2008) (quotation marks omitted).

The "aim of the predominance inquiry is to test whether any dissimilarity among the claims of class members can be dealt with in a manner that is not inefficient or unfair"—which requires that "adjudication" of the individualized issues must be "both administratively feasible and protective of defendants' Seventh Amendment and due process rights." *In re Asacol Antitrust Litig.*, 907 F.3d 42, 51-52 (1st Cir. 2018) (quotation marks omitted).

B. Rule 23(b)(3) requires consideration of defendants' right to identify and exclude uninjured absent class members.

The Rules Enabling Act and due process principles—and, where applicable, the Seventh Amendment—give class-action defendants the right to a judicial determination whether absent class members have experienced real-world harm caused by the defendant's conduct.

Due process requires that a defendant have "'an opportunity to present every available defense.'" *Lindsey* v. *Normet*, 405 U.S. 56, 66 (1972) (quoting *American Sur. Co.* v. *Baldwin*, 287 U.S. 156, 168

(1932)); see also, *e.g.*, *United States* v. *Armour & Co.*, 402 U.S. 673, 682 (1971) (recognizing that the "right to litigate the issues raised" in a case is "guaranteed * * * by the Due Process Clause").

That due process right does not change in a class-action lawsuit. The class action is merely a procedural device, "ancillary to the litigation of substantive claims." *Deposit Guar. Nat'l Bank* v. *Roper*, 445 U.S. 326, 332 (1980); see also *Shady Grove Orthopedic Assocs., P.A.* v. *Allstate Ins.*, 559 U.S. 393, 408 (2010) (plurality opinion) (a class action "leaves the parties' legal rights and duties intact and the rules of decision unchanged").

Rule 23's requirements therefore must be interpreted to honor these due process principles. As this Court put it, "a class cannot be certified on the premise that [the defendant] will not be entitled to litigate its * * * defenses to individual claims." *Dukes*, 564 U.S. at 367. Other courts have similarly recognized that defendants have "Seventh Amendment and due process rights to contest every element of liability and to present every colorable defense." *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 934 F.3d 619, 625 (D.C. Cir. 2019); see *Asacol*, 907 F.3d at 53 (similar).

A contrary approach to class certification also violates the Rules Enabling Act, which embodies the due process principle that procedural rules cannot "abridge, enlarge or modify any substantive right." 28 U.S.C. 2072(b); see *Dukes*, 564 U.S. at 367. The Rules Enabling Act's "pellucid instruction that use of the class device cannot abridge any substantive right" bars courts from "giving plaintiffs and defendants different rights in a class proceeding than they could have asserted in an individual action." *Tyson Foods*, 577 U.S. at 455, 458 (quotation marks and alterations

omitted); see also *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 845 (1999) ("[N]o reading of [Rule 23] can ignore the Act's mandate that rules of procedure shall not abridge, enlarge or modify any substantive right.") (quotation marks omitted); *Amchem*, 521 U.S. at 613 ("Rule 23's requirements must be interpreted in keeping with * * * the Rules Enabling Act.").

To comport with this clear mandate, the proponent of a damages class must demonstrate that uninjured class members can be weeded out prior to final judgment in a manner consistent with the defendant's due process and Seventh Amendment rights and Rule 23(b)(3)'s standards.

Moreover, certifying a class without grappling with the need to prove absent class members' real-world injury will—in nearly all cases—mean that disputed issues of injury are never resolved. After a district court certifies a class, the case is highly likely to settle—and never reach a trial on the merits. See page 23, *infra*. Therefore, waiting until after trial to address absent class members' lack of injury in many cases forces defendants to settle even if they have valid objections to many putative class members' claims, effectively negating defendants' due process right to raise "every available defense." *Lindsey*, 405 U.S. at 66 (quotation marks omitted).

C. Proper application of the predominance and superiority requirements will bar certification when individualized determinations are required to weed out uninjured class members.

When Article III injury cannot be determined on a class-wide basis, the individualized inquiries required will typically overwhelm any common questions,

making clear that common issues do not predominate—and thereby properly precluding class certification.

There is rarely a simple test to identify and exclude uninjured class members, and the burden of such individualized determinations grows with the class size. Without a "reliable means of proving class-wide injury in fact," it is usually the case that "[c]ommon questions of fact cannot predominate." *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d 244, 252-253 (D.C. Cir. 2013).

This case illustrates the problem. It involves a damages claim based on allegedly misleading sustainability labeling on petitioner's chocolate products. Pet. App. 1a-2a. The damages class encompasses millions of members. Pet. 7. And injury turns on purchaser-specific facts: whether each class member even saw the challenged labeling, and, if so, whether the challenged sustainability representations had any impact on their valuation of Nestlé's products. The implausibility of plaintiff's contention that the challenged representations rendered Nestlé's popular products worthless to millions of purchasers makes this an especially compelling case for review.

Establishing injury would require individualized testimony from each class member, which Nestlé would be entitled to challenge, including through cross-examination. The Ninth Circuit simply failed to grapple with whether the millions of individualized determinations required to weed out uninjured class members would predominate over any common questions.

Denying class certification when uninjured class members cannot be easily identified and excluded also

is compelled by Rule 23(b)(3)'s superiority requirement—particularly Rule 23(b)(3)(D)'s directive to assess whether the class action will be manageable. That requirement ensures that defendants who do not succumb to settlement pressure are not forced to expend time and money litigating a certified class action through trial only for a court to conclude at final judgment that significant portions of the class lack standing.

Indeed, forcing a defendant to bear these burdens and face the threat of gigantic damages liability in a case involving numerous uninjured class members is neither a "fair[]" nor "efficient[]" mechanism for "adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The uninjured class members do not have an Article III case or controversy belonging in federal court in the first place, so a federal class action cannot be a superior method to resolve their claims. And the need for millions of individual mini-trials on each class member's standing presents overwhelming and insuperable "difficulties in managing [the] class action." *Id.* 23(b)(3)(D).

Both predominance and superiority "require envisioning what a class trial would look like." *Crutchfield* v. *Sewerage & Water Bd.*, 829 F.3d 370, 375 (5th Cir. 2016). For a damages class to satisfy Rule 23(b)(3) superiority, a "*fair* administration of the class claims" must "save the resources of both the court and the parties." *Sacred Heart Health Sys.* v. *Humana Mil. Healthcare Servs., Inc.*, 601 F.3d 1159, 1184 (11th Cir. 2010) (quoting *General Tel. Co. of Sw.* v. *Falcon*, 457 U.S. 147, 155 (1982)) (alterations omitted). That requirement is not satisfied when, as in this case, weeding out uninjured class members consistent with defendants' due process and Seventh Amendment rights

would be enormously burdensome and time-consuming.

The decision below is just the latest in a long line of Ninth Circuit rulings upholding class certification without meaningfully addressing whether individualized trials to prove standing for the certified class's absent members would predominate over common questions. The panel relied on the court's en banc decision in *Olean Wholesale Grocery Coop., Inc.* v. *Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir. 2022), where the Ninth Circuit affirmed certification of a class notwithstanding evidence that a significant portion of the class—potentially about twenty-eight percent—had suffered no injury. See *id.* at 680-681; see also *id.* at 686 (Lee, J., dissenting).

The Ninth Circuit has also relied on its holding in *Olean* to brush past the necessarily individualized inquiry required to weed out uninjured class members in numerous other cases, including *Davis* v. *Laboratory Corporation of America Holdings*, 2024 WL 489288, at *2 n.1 (9th Cir. Feb. 8, 2024), in which this Court subsequently granted review.

This case represents a particularly striking example of the consequences of the Ninth Circuit's impermissibly lax approach. As Nestlé explains, *millions* of individualized determinations would be required to weed out the numerous class members who lack Article III standing. See Pet. 19. Yet the Ninth Circuit simply responded that it "ha[d] previously held that the possibility that some class members suffered no injury does not, by itself, defeat class certification." Pet. App. 3a n.1. That conclusory statement falls far short of the rigorous analysis Rule 23 requires.

II. The Court Should Review And Reverse The Ninth Circuit Rule Allowing Uninjured Plaintiffs To Assert Claims For Classwide Injunctive Relief.

"[S]tanding is not dispensed in gross," and plaintiffs therefore "must demonstrate standing for each claim that they press and for each form of relief that they seek." *TransUnion*, 594 U.S. at 431. And standing requires harm that "actually exist[s]" and is not "'abstract.'" *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 340 (2016).

The Ninth Circuit has repeatedly disregarded these bedrock Article III principles and allowed a named plaintiff to pursue classwide injunctive relief even though she faces no risk of future harm from the defendant's allegedly misleading labeling. That outlier position, rejected by every other court of appeals to address the issue, should be corrected by this Court.

A. To pursue injunctive relief, a plaintiff must face an imminent and substantial risk of future harm.

"[A] person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least *so long as the risk of harm is sufficiently imminent and substantial*." *TransUnion*, 594 U.S. at 435 (emphasis added). That principle applies fully in the class-action context. "That a suit may be a class action adds nothing to the question of standing, for even named plaintiffs who represent a class must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to

represent." *Lewis* v. *Casey*, 518 U.S. 343, 357 (1996) (quotation marks and alteration omitted).

The Ninth Circuit has failed to apply these settled principles in product-labeling cases like this one.

The issue is whether a plaintiff who alleges that she purchased a misleadingly labeled product may pursue classwide injunctive relief, even though that plaintiff now recognizes the label is allegedly misleading and has brought suit based on that very basis. Such a plaintiff plainly has no risk of future harm based on the label's contents. Yet the Ninth Circuit's settled precedent, applied in the decision below, allows such a plaintiff to pursue injunctive relief, at least at the pleading stage. See Pet. App. 2a-3a (citing *Davidson* v. *Kimberly-Clark Corp.*, 889 F.3d 956, 970 (9th Cir. 2018)).

The Ninth Circuit turns a blind eye to the obvious consequence of the plaintiff's own complaint alleging that a product label is misleading by stating that injunctive relief can be pursued as long as the plaintiff alleges that she "will be unable to rely on the product's advertising or labeling in the future, and so will not purchase the product although she would like to," or "might purchase the product in the future, despite the fact it was once marred by false advertising or labeling, as she may reasonably, but incorrectly, assume the product was improved." *Davidson*, 889 F.3d at 969-970. Unsurprisingly, plaintiffs seeking injunctive relief in the Ninth Circuit in product-labeling suits routinely include such allegations in their complaints.

But that speculative reasoning, even at the pleadings stage, is insufficient for a plaintiff to show that she is "realistically threatened by a repetition" of past wrongful conduct. *City of Los Angeles* v. *Lyons*, 461

U.S. 95, 109 (1983); see also *Friends of the Earth, Inc.* v. *Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-181 (2000) (to maintain a claim for forward-looking relief, plaintiff must show that she faces "actual or imminent," not "conjectural or hypothetical," harms).

Certainly, the future "injury" the Ninth Circuit finds sufficient—that the plaintiff "would like" to purchase the product but won't because she doesn't trust the labeling, Pet. App. 2a—falls far short of something that qualifies as "concrete." Rather, it is a "hypothetical" harm invented to attempt to manufacture Article III standing.

Here, plaintiff also claimed the labeling was misleading because it did not accurately state the ways in which Nestlé seeks to address supply-chain labor issues. But an "accurate" label would not alleviate any concerns plaintiff may have about supply-chain labor issues if she continues to believe a company has not sufficiently addressed those issues. And plaintiff therefore presumably would decline to purchase the company's product. Which means that plaintiff's "injury" does not satisfy Article III's redressability requirement either. See *TransUnion*, 594 U.S. at 423; Pet. 16.

B. The Ninth Circuit stands alone in allowing certification of injunctive-relief classes in this situation.

As Nestlé's petition explains, other courts of appeals squarely reject the Ninth Circuit's approach, holding that a named plaintiff in this situation lacks standing and that an injunctive-relief class therefore cannot be certified. Pet. 11-15.

The Second Circuit, for example, has noted that "past purchasers of a consumer product who claim to

be deceived by that product's packaging * * * have, at most, alleged a past harm." *Berni* v. *Barilla S.p.A.*, 964 F.3d 141, 147 (2d Cir. 2020). Such purchasers are unlikely to suffer future harm, because "once they become aware they have been deceived, that will often be the last time they will buy that item." *Ibid.* And even if they do purchase the product again, they would do so "with exactly the level of information that they claim they were owed from the beginning." *Id.* at 148. Because "there is no likelihood of future harm, there is no standing to seek an injunction, and so no possibility of being certified as a Rule 23(b)(2) class." *Id.* at 149.

The Eleventh Circuit, citing the Second Circuit's decision in *Berni*, has similarly held that plaintiffs claiming to have been misled by asserted misrepresentations regarding a product cannot establish future harm. *Williams* v. *Reckitt Benckiser LLC*, 65 F.4th 1243, 1254-1256 (11th Cir. 2023). Nor do vague claims that a plaintiff "would like to purchase [the defendant's] products," but are "unable to rely on [the defendant's] representations regarding the [products'] effectiveness" suffice to establish a threat of imminent or actual harm. *Ibid.* And the court emphasized that the need for such an injury to support a claim for injunctive relief "appl[ies] with no less force in the class-action context." *Id.* at 1253.

The Third Circuit agrees. In *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Liab. Litig.*, 903 F.3d 278, 292-293 (3d Cir. 2018), the court held that the plaintiff lacked standing to seek an injunction requiring the defendant to alter its advertising to disclose alleged health risks associated with its product. "To state the obvious, * * * [the plaintiff] is presently aware of" the allegedly undisclosed

health risks, and the court expressed skepticism that the plaintiff "could possibly be deceived again into buying [the product] without being aware of those same risks." *Ibid.* Granting the plaintiff "the dignity of assuming that [she] act[s] rationally, in light of the information [she] possess[es]," the court declined to countenance her "'stop me before I buy again' claim." *Id.* at 293.

The First, Seventh, and D.C. Circuits all similarly hold that Article III bars such claims for injunctive relief. Thus, the D.C. Circuit holds that a plaintiff cannot establish standing to seek classwide injunctive relief where "the entire premise of the complaint is that" the named plaintiff knows that a product's labeling is misleading. See *Animal Legal Def. Fund, Inc.* v. *Vilsack*, 111 F.4th 1219, 1228 (D.C. Cir. 2024). Such a plaintiff cannot explain why it is substantially likely that she will continue to purchase the product or why any "reliance on labels she knows to have been misleading could be something other than a self-inflicted injury." *Ibid*; see also *In re Evenflo Co., Inc., Mktg., Sales Pracs. & Prods. Liab. Litig.*, 54 F.4th 28, 41 (1st Cir. 2022) (ruling plaintiffs alleging that they had purchased car seats based on misleading advertising lacked standing to seek forward-looking relief); *Conrad* v. *Boiron, Inc.*, 869 F.3d 536, 542 (7th Cir. 2017) (holding plaintiff lacked standing to seek injunctive relief regarding homeopathic flu remedy labeling, where "he is fully aware of the fact that [the company's product] is nothing but sugar water").

The Ninth Circuit stands alone in permitting injunctive-relief claims to proceed and be certified under Rule 23(b)(2) based on its contorted approach to Article III standing. It is not surprising, then, that the Ninth Circuit has become a magnet for these

illegitimate claims, making this Court's intervention all the more necessary.

Indeed, the Ninth Circuit has reaffirmed the erroneous rule first adopted in its 2018 *Davidson* decision, notwithstanding its rejection by other courts of appeals. See, *e.g.*, *Moore* v. *Mars Petcare US, Inc.*, 966 F.3d 1007, 1021 n.13 (9th Cir. 2020).

And district courts in the Ninth Circuit, bound by these appellate precedents, allow plaintiffs to seek classwide injunctive relief against a range of defendants in cases raising a variety of challenges to purportedly misleading advertising, product labeling, or other representations. See, *e.g.*, *Meltzer* v. *Mazda Motor of Am., Inc.*, 779 F. Supp. 3d 1120, 1134 (C.D. Cal. 2025) (car advertising and labeling); *Gradney* v. *Polar Beverages*, 797 F. Supp. 3d 1016, 1031 (N.D. Cal. 2025) (flavored seltzer water labeling); *Berrin* v. *Delta Air Lines, Inc.*, 2024 WL 5371340, at *5 (C.D. Cal. Dec. 11, 2024) (airline's carbon-neutral representations); *Nacarino* v. *Chobani, LLC*, 668 F. Supp. 3d 881, 899 (N.D. Cal. 2022) (yogurt labeling); *Marek* v. *Molson Coors Beverage Co.*, 580 F. Supp. 3d 848, 863 (N.D. Cal. 2022) (alcoholic beverage labeling and marketing); *Paschoal* v. *Campbell Soup Co.*, 2022 WL 4280645, at *5 (N.D. Cal. Sept. 15, 2022) (baby food advertising and labeling).

This Court's intervention is essential to stop the flood of improperly-certified class claims.

III. Together, The Ninth Circuit's Rules Open The Door To Illegitimate Multi-Million Member Class Actions That Harm Businesses And Consumers, And Undermine The Integrity Of The Judicial System.

The Ninth Circuit's rulings make it trivially easy for plaintiffs to obtain certification of multi-million member classes in cases involving alleged consumer label misrepresentations. They enable just about any consumer misrepresentation claim to produce both a damages and injunctive-relief class action, notwithstanding unrebutted evidence that large numbers of absent class members suffered no injury from the defendant's challenged labeling or sale of the products—and never will.

For damages claims, a plaintiff can obtain class certification no matter how many uninjured members the class may contain. The need for individualized standing determinations to weed out uninjured class members poses no obstacle. That incentivizes plaintiffs' lawyers to bring a challenge on behalf of the broadest possible class, regardless of how many class members suffered any real-world harm. As a result, defendants routinely face the threat of gigantic damages liability and the burden of litigating through trial the claims of numerous uninjured class members, even though it is clear that neither injury nor damages ultimately could be resolved on a classwide basis. Forced settlements are the inevitable result.

And certification of an injunctive class is essentially automatic as long as the plaintiff asserts the "harm" that she would like to buy the product in the future but only with a corrected label, compounding the illegitimate burdens imposed by the Ninth Circuit's approach. Settling a case involving an

improperly certified injunctive class may require costly changes to companywide labeling and marketing practices, along with significant attorneys' fees.

Impermissibly lax class-certification decisions like the ruling here "generate serious real-world consequences." *Laboratory Corp.*, 605 U.S. at 333 (Kavanaugh, J., dissenting from dismissal). Class-action litigation costs in the United States are huge. They hit a record high in 2025, totaling a staggering $4.5 billion and exceeding $4 billion for the second year in a row, continuing a trend of increases that started in 2015. See *2026 Survey* at 6-7.

Consumer fraud and product liability suits represent almost a quarter of these suits and associated litigation costs. See *2026 Survey* at 9. And food and beverage marketing has been a particular target of class-action litigation in recent years, with such litigation increasing 52% from 2017 to 2021. See U.S. Chamber Institute for Legal Reform, *Food Court: Developments in Litigation Targeting Food and Beverage Marketing* 1 (Aug. 2021), https://perma.cc/G2P7-B8JK.

Defendants in class actions already face tremendous pressure to capitulate to what Judge Friendly termed "blackmail settlements." Henry J. Friendly, *Federal Jurisdiction: A General View* 120 (1973); see also *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011) (noting "the risk of 'in terrorem' settlements that class actions entail"); *Shady Grove*, 559 U.S. at 445 n.3 (Ginsburg, J., dissenting) ("[A] class action can result in 'potentially ruinous liability.'") (quoting Advisory Committee's Notes on Fed. R. Civ. P. 23).

That is particularly true when "[o]verbroad and incorrectly certified classes threaten massive

liability" for class-action defendants. *Laboratory Corp.*, 605 U.S. at 333 (Kavanaugh, J., dissenting from dismissal).

For all these reasons, defending and settling these lawsuits designed to extract lucrative settlements and to alter company business practices through illegitimate injunctions require businesses to expend enormous sums. But these huge costs are not felt just by businesses.

"[C]ompanies in turn pass on those costs to consumers in the form of higher prices; to retirement account holders in the form of lower returns; and to workers in the form of lower salaries and lesser benefits. So overbroad and incorrectly certified classes can ultimately harm consumers, retirees, and workers, among others." *Laboratory Corp.*, 605 U.S. at 333 (Kavanaugh, J., dissenting from dismissal). The consequences of overbroad and improperly certified damages class actions are thus "widespread and significant." *Ibid.*

The Court should grant review to correct the Ninth Circuit's improperly permissive approach to class certification, and end the continuing harms it is generating.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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OCTOBER 2026