No. 24-2708

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ELLIOTT AMBROSIO and SIERRA TRENHOLM,
on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,
v.

PROGRESSIVE PREFERRED INSURANCE COMPANY;
PROGRESSIVE ADVANCED INSURANCE COMPANY,

Defendants-Appellees.

On Appeal from the United States District Court for the
District of Arizona, No. 2:22-cv-00342-SMB
Hon. Susan M. Brnovich

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Amici curiae certify that they have no outstanding shares or debt securities in the hands of the public, and they do not have a parent company. No publicly held company has a 10% or greater ownership interest in *amici curiae.*

/s/ Adam G. Unikowsky

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STATEMENT REGARDING CONSENT

All parties consent to the filing of this *amicus* brief.[1]

IDENTITY AND INTEREST OF *AMICI*

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community, including cases involving class actions.

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent 65% of both the overall U.S. property-casualty insurance

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), *amici curiae* state that no party's counsel authored this brief in whole or in part and that no person or entity other than the *amici curiae*, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief.

market and over 64% of Arizona's personal automobile insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members and their policyholders in legislative and regulatory forums at the federal and state levels and submits *amicus curiae* briefs in significant cases before federal and state courts.

The District Court correctly declined to certify the putative class. Progressive's insurance contracts require it to pay the "actual cash value" (ACV) of its insureds' totaled cars. Plaintiffs contend that one component of Progressive's "actual cash value" valuation—its application of a "Projected Sold Adjustment" (PSA)—is inaccurate. But as the District Court correctly concluded, resolution of that contention would not be a sufficient basis to decide Progressive's liability to *any*—let alone *every*—class member. "[T]he PSA is only part of one method of ACV calculations," and "even if Plaintiffs established that a PSA should not have been applied under the Mitchell method, Progressive would still be entitled to show that despite the PSA deduction, a plaintiff was still paid their vehicle's correct ACV." 1-ER-14, 15. Hence, as the District Court rightly held, common questions do not predominate over individualized ones. 1-ER-15. Indeed, the District Court should have held that the putative class did not even satisfy Rule 23's commonality requirement. Commonality requires not "the raising of common 'questions'—even in droves—but rather, the capacity of a class-wide proceeding to generate common

answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51 (2011) (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)). Here, the "legitimacy of PSAs as a means of calculating ACV" cannot generate any common answers because even if PSAs are inaccurate, a court would still have to determine, in every individual insured's case, whether the use of a PSA led to a valuation that was lower than ACV.

The District Court correctly held that the putative class does not satisfy the rigorous standards for class certification. The Chamber, APCIA, and their members have a strong interest in ensuring that courts comply with those standards.

SUMMARY OF ARGUMENT

The District Court held that Plaintiffs satisfied Rule 23's commonality requirement, but did not satisfy Rule 23's predominance requirement. In *amici*'s view, the District Court should have held that Plaintiffs satisfied neither requirement.

Plaintiffs claim that Progressive failed to pay the ACV of class members' totaled cars. Their theory is that PSAs—which are one type of adjustment that Progressive folds into its valuation analysis—are inaccurate. But that showing, even if it could be made, would not establish Progressive's liability to any—much less every—class member. Plaintiffs would still have to prove, for each class member, that the PSA actually produced a valuation below ACV.

The District Court found that Rule 23's commonality requirement was satisfied because "'the legitimacy of PSAs as a means of calculating ACV' is a question common to the class." 1-ER-9 (citation omitted). That ruling is incorrect. Because "the legitimacy of PSAs as a means of calculating ACV" is not a question that can drive resolution of the litigation, it is not a common question under Rule 23.

But the District Court's predominance analysis was correct. Regardless of whether PSAs are a "legitimate" means of calculating ACV, deciding whether Progressive is liable to any, let alone every, class member will require an individualized analysis. Just as in *Lara v. First National Insurance Co. of America*, 25 F.4th 1134 (9th Cir. 2022), "figuring out whether each individual putative class member was harmed would involve an inquiry specific to that person." *Id.* at 1139. "Because this would be an involved inquiry for each person, common questions do not predominate." *Id.*

This Court's recent decision in *Jama v. State Farm Mutual Automobile Insurance Co.*, 113 F.4th 924 (9th Cir. 2024), does not undermine that reasoning. *Jama* holds that a plaintiff can show commonality and predominance when the plaintiff claims that an insurer's use of an adjustment violates a state regulation specifically barring the use of that adjustment. Here, Plaintiffs are making no such claim. Instead, Plaintiffs argue that Progressive breached a contractual requirement

to provide ACV. Unlike in *Jama*, determining whether Progressive provided ACV requires an individualized analysis.

Plaintiffs' arguments against the District Court's decision lack merit. Plaintiffs argue that the need for individualized damages assessments should not preclude class certification, but in this case, determining *liability* will require individualized analysis. Plaintiffs further contend that Progressive has not adequately substantiated its damages model. But the plaintiff—not the defendant—bears the burden of establishing that Rule 23's requirements are satisfied. Plaintiffs have not done so.

ARGUMENT

I. Plaintiffs Failed to Prove Commonality and Predominance.

The District Court concluded that there was a question "common to the class," Fed. R. Civ. P. 23(a), but concluded that the question did not "predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b). The District Court should have held that Rule 23(a)'s commonality requirement was not satisfied. As to predominance, however, the District Court got it right.

A. Common questions do not exist—and certainly do not predominate—because ACV must be assessed on a vehicle-by-vehicle basis.

"The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Comcast Corp. v. Behrend*, 569 U.S. 27, 33-34 (2013) (citation omitted). "[P]laintiffs wishing to proceed

through a[n opt-out] class action must actually *prove*—not simply plead—that their proposed class satisfies each requirement" of Rule 23(b)(3)—commonality, predominance, and superiority. *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014). "[C]ertification is proper only if 'the trial court is satisfied, after a rigorous analysis, that the prerequisites of [Rule 23] have been satisfied.'" *Comcast*, 569 U.S. at 33 (quoting *Dukes*, 564 U.S. at 350-51).

In this case, Plaintiffs have not proven that any common question exists. Plaintiffs seek to certify a class of Progressive's insureds who purchased an insurance policy that promises to pay "actual cash value" (ACV) of totaled automobiles. Progressive calculates ACV using a system designed by Mitchell International, Inc. When calculating the Mitchell valuation, Progressive applies an adjustment known as the "[p]rojected [s]old [a]djustment" (PSA) to account for the fact "consumers will negotiate a used car down from its listed price." 1-ER-3. Plaintiffs claim that the PSA is "bunk." Opening Br. 10. According to Plaintiffs, "[s]peculating that a vehicle might sell for less than list price at some indefinite future date—much less rigging data to 'support' that speculation—has no place in a sound, good-faith appraisal of actual cash value." *Id.*

But as the District Court correctly concluded, Progressive's use of PSAs does not necessarily result in a payment below ACV for *all* class members. "Although Progressive uses this system to estimate ACV, that method is not required by

contract and there are at least two other alternative methodologies for providing an ACV estimate, including the National Automobile Dealers Association ('NADA') and Kelly Blue Book ('KBB')." 1-ER-3. Moreover, "these other two sources have, in some circumstances, returned with the same or a lower ACV estimate than Mitchell's estimate which included a PSA." 1-ER-14. If, for those plaintiffs, the use of the alternative would result in a payment of ACV, then the use of the Mitchell Valuation—which served to *increase* the ACV calculation—cannot possibly have yielded a breach of contract. As the District Court put it: "This alone makes determining whether Plaintiffs were paid less than ACV difficult to determine on a class-wide basis. It would require the Court, and a jury, to look at not just the Mitchell valuation, but also several other valuations to determine whether *each individual Plaintiff* was paid below market." 1-ER-14-15.

The District Court nonetheless concluded that Plaintiffs established commonality because "'the legitimacy of PSAs as a means of calculating ACV' is a question common to the class—which is enough for Plaintiffs to meet the relatively light burden under Rule 23(a)'s commonality requirement." 1-ER-9. That reasoning was misguided. To begin, Rule 23(a)'s commonality requirement does not impose a "relatively light burden"—*all* provisions of Rule 23 require a "rigorous analysis." *Comcast*, 569 U.S. at 33. More fundamentally, the District Court misunderstood Rule 23(a)'s commonality requirement. As the Supreme Court has explained,

"commonality also requires not just 'the raising of common "questions"—even in droves—but rather, the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Dukes*, 564 U.S. at 350-51 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)). Here, "the legitimacy of PSAs as a means of calculating ACV" is not a common question under Rule 23 because no common answer to that question could drive the resolution of the litigation. Suppose Plaintiffs prove that PSAs are systematically inaccurate and should never be applied. That finding would still not drive the resolution of the litigation with respect to *any* putative class member, because that finding would not answer the question that matters: did Progressive breach the contract by paying less than ACV? For every class member, the determination of whether Progressive breached the contract would still require an individualized analysis of whether the amount of money the class member received is lower than ACV. Plaintiffs therefore cannot show any common questions in the sense relevant to Rule 23.

The District Court was correct, however, in holding that Plaintiffs could not show predominance. "The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016). "The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or

important than the non-common, aggregation-defeating, individual issues." *Id.* (quotation marks and citation omitted).

Here, as the District Court persuasively explained, individualized issues predominate for a straightforward reason: it is *inevitable* that there will be individual liability trials with respect to *every single* class member. As already explained, even if Plaintiffs were to prove, following class certification, that PSAs rest on outdated assumptions about the market for used cars, that fact would teach precisely nothing about whether Progressive is liable to any particular class member. For every single class member, the court would still have to ask the question: was the payment *in fact* lower than ACV? That question would depend on individualized evidence regarding the characteristics of the class member's particular car. The asserted flaw in PSAs, if proven, might be one piece of relevant evidence supporting the insured's case, but a court would still have to weigh that evidence alongside all the other insured-specific evidence before making a determination regarding that particular insured. Individualized questions predominate because the court would need to review particularized evidence with respect to every putative class member before determining whether any of them were entitled to damages.

B. *Lara*, not *Jama*, is the applicable precedent.

This Court has twice addressed class-certification orders in cases concerning ACV payments for totaled cars. *See Jama v. State Farm Mut. Auto. Ins. Co.*, 113

F.4th 924 (9th Cir. 2024); *Lara v. First Nat'l Ins. Co. of Am.*, 25 F.4th 1134 (9th Cir. 2022). In *Jama*, the Court held that one subclass of plaintiffs *could* show predominance, while in *Lara*, the Court held that the plaintiff class *could not* show predominance. *Lara*, not *Jama*, controls this case.

In *Lara*, the insurer applied a "condition adjustment," which "account[ed] for the difference between the average car owned by a private person and the cars for sale at dealerships." 25 F.4th at 1137. The plaintiffs alleged that "Liberty violates Washington's insurance regulations by not itemizing or explaining this downward 'condition adjustment,' which makes it impossible to verify." *Id.* The court held that individualized questions predominated over common questions. The court reasoned that because the insurer "only owed each putative class member the actual cash value of his or her car, if a putative class member was given that amount or more, then he or she cannot win on the merits." *Id.* at 1139. "But figuring out whether each individual putative class member was harmed would involve an inquiry specific to that person." *Id.* Even if the insurer applied the adjustment, "the district court would have to look into the actual value of the car, to see if there was an injury." *Id.* The court rejected the plaintiffs' argument that "these individualized issues of harm are 'damages issues' that can be tried separately": "if there's no injury, then the breach of contract and unfair trade practices claims must fail. That's not a damages issue; that's a merits issue." *Id.* That reasoning could have been

written for this case. Exactly as in *Lara*, deciding whether the PSA was inaccurate would not move the ball forward in deciding whether Progressive is liable to any of its insureds, because liability turns on whether Progressive paid *ACV*, not on whether one particular adjustment is accurate.

In *Jama*, this Court distinguished *Lara* and found that a putative class of insureds satisfied Rule 23's predominance requirement.[2] The insureds challenged State Farm's use of a "negotiation adjustment," which "assumes that the typical customer negotiates with the dealer and buys a car for less than the advertised price and is designed to capture that price difference." 113 F.4th at 927. Unlike in this case, however, the plaintiffs did *not* contend that the use of this adjustment resulted in a less-than-ACV payment for each class member. Instead, the plaintiffs' theory was that "Washington law does not permit State Farm to apply a discount for typical negotiation *at all*." *Id.* at 933 (citing Wash. Admin. Code § 284-30-391(4)(b)) (emphasis in original). The Court found that the plaintiffs satisfied Rule 23's predominance requirement, distinguishing *Lara* as follows: "A class member in *Lara* might have been subject to the challenged condition deduction but been uninjured by it because a greater or equal condition addition could also have been lawfully applied. This would lead a class member to receive the actual cash value

[2] *Amici* respectfully disagree with the majority opinion in *Jama* and believe that Judge Rawlinson's dissent is correct. But even accepting *Jama* as binding precedent, this case is closer to *Lara*.

of their vehicle or more. All members of the negotiation class in this case, however, received less than they were owed in the exact amount of the impermissible negotiation deduction." *Id.* (footnote omitted).

Jama's reasoning does not apply here. Plaintiffs do not rely on a state regulation that targets the use of PSAs. Instead, Plaintiffs advance a garden-variety breach of contract claim in which they claim that Progressive paid less than ACV. To prevail on their claim, Plaintiffs cannot merely show that PSAs are inaccurate—they must show that Progressive, in fact, paid less than ACV. That is the exact type of claim that, under *Lara*, cannot be litigated on a classwide basis.

II. Plaintiffs' Contrary Arguments Lack Merit.

Plaintiffs' opening brief offers no basis for disturbing the District Court's persuasive decision. Plaintiffs insist that they can prevail in this case merely by showing that PSAs are inaccurate, but they are wrong: liability requires the distinct showing that Progressive failed to pay ACV. Plaintiffs also contend that Progressive provided insufficient evidence of a countermodel that would disprove Plaintiffs' damages theory, but Progressive was under no obligation to provide such a countermodel at the class-certification stage. Indeed, such a model would have been impossible to provide because an individualized analysis is required as to every class member, which is the very reason class certification is unwarranted.

A. Plaintiffs conflate the accuracy of PSAs with the ultimate question of Progressive's liability.

Plaintiffs emphasize that under the insurance policies, ACV is "determined by the market value, age, and condition of the vehicle at the time the loss occurs." 2-ER-98. According to Plaintiffs, Progressive "violated its express duty to pay ACV as 'determined by [] *market value*,' and instead determined ACV by a false, rigged, artificially lowered 'market' of its own invention." Opening Br. 33. But the insurance policy recites that Progressive will pay ACV, as "determined by" market price and other factors. There is no separately enforceable promise with respect to "market value." And even if there were a separately enforceable promise, Plaintiffs' argument would—at most—show that *one input* into the "market value" calculation (the PSA) rests on inaccurate assumptions. It would not show that the ACV calculation *in fact* rests on an inaccurate "market value," and hence would not establish Progressive's liability to any class member.

Thus, Plaintiffs are simply wrong to characterize Progressive as arguing that "[w]hat really matters … is whether a class member would recover *damages* for that breach in the limited instances in which a lowball guidebook estimate was even lower than the WCTL's market value." Opening Br. 37. If the ACV for a particular car is equal to or higher than the amount Progressive actually paid, there is no breach of contract *at all*.

Plaintiffs fixate on the following statement by the District Court: "Further, even if Plaintiffs established the PSA was a policy violation, Progressive would still be entitled to present individualized evidence that it did not breach any one Plaintiff's contract." 1-ER-15; *see also* Opening Br. 36. Plaintiffs argue that this statement implicitly concedes that Plaintiffs could establish that "PSA was a policy violation"—thus resolving liability on a classwide basis—and hence establishes that the class should have been certified. This is an unreasonable reading of the District Court's statement, given that—in the very same sentence—the District Court acknowledged that Progressive could present "individualized evidence that it did not breach any one Plaintiff's contract." 1-ER-15. In context, the District Court was saying that even if Plaintiffs could show that the PSA was *generally inaccurate*, Progressive could still present an individualized defense. Indeed, the District Court's very next sentence clarifies this point: "Therefore, even if Plaintiffs established that a PSA should not have been applied under the Mitchell method, Progressive would still be entitled to show that despite the PSA deduction, a plaintiff was still paid their vehicle's correct ACV." *Id.*

Plaintiffs also insist that because *their theory* of liability requires only a finding that the PSA is inaccurate, the class should be certified, irrespective of whether that theory is meritorious. Opening Br. 33. But as the District Court rightly recognized, a court may not take the plaintiff's theory of liability at face value; it

must *evaluate* that theory to assess whether Rule 23's requirements are satisfied. This may result in a partial analysis of the merits of the plaintiff's claim at the class-certification stage. But that is an inevitable and common feature of class-action litigation. The Supreme Court has repeatedly "emphasized that it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question," and "[s]uch an analysis will frequently entail overlap with the merits of the plaintiff's underlying claim." *Comcast*, 569 U.S. at 33-34 (internal quotation marks omitted). "That is so because the class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action." *Id.* at 34 (quotation marks omitted). That is precisely the case here. The question "would proof that PSAs are generally inaccurate establish Progressive's liability with respect to each class member?"—the relevant inquiry for commonality under Rule 23—overlaps with the question "did Progressive breach the contract by using PSAs?"—the relevant inquiry for liability. But notwithstanding this overlap, the Court must resolve the commonality question prior to class certification.

If the Court adopts Progressive's reasoning, enterprising plaintiffs could extend this Court's precedent to manufacture class certification in every single case. They could simply assert that a legal theory exists that would allow the defendant's liability to be adjudicated on a classwide basis—and if the defendant argues that the

legal theory is faulty, the plaintiffs could say that this is an issue to be resolved after class certification.

This outcome would violate the letter and spirit of Rule 23 and would result in serious harm to class-action defendants. Even if a legal theory undermining a class claim appears meritless, class certification is still a pivotal event. "Certification as a class action can coerce the defendant into settling on highly disadvantageous terms, regardless of the merits of the suit." *Creative Montessori Learning Ctrs. v. Ashford Gear LLC*, 662 F.3d 913, 915 (7th Cir. 2011) (internal quotation marks omitted). "With vanishingly rare exception, class certification sets the litigation on a path toward resolution by way of settlement, not full-fledged testing of the plaintiffs' case by trial." Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 99 (2009).

In the typical case, "extensive discovery and the potential for uncertainty and disruption in a lawsuit allow plaintiffs with weak claims to extort settlements from innocent companies." *Stoneridge Inv. Partners, LLC v. Sci.–Atlanta, Inc.*, 552 U.S. 148, 163 (2008). "Certification of a large class may so increase the defendant's potential damages liability and litigation costs" that even the most surefooted defendant "may find it economically prudent to settle and to abandon a meritorious defense." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978), *superseded by rule as stated*, *Microsoft Corp. v. Baker*, 582 U.S. 23 (2017); *accord Coinbase, Inc.*

v. Bielski, 599 U.S. 736, 743 (2023) ("[T]he possibility of colossal liability can lead to what Judge Friendly called 'blackmail settlements.'" (quoting H. Friendly, *Federal Jurisdiction: A General View* 120 (1973)); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) ("Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims."). This is why "virtually all cases certified as class actions and not dismissed before trial end in settlement." Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 812 (2010). Given that reality, the Court should reaffirm that classes may not be certified based on manifestly faulty legal theories.

B. Progressive was under no obligation to provide a countermodel.

Plaintiffs also contend that Progressive "offered no evidence ACV can be determined through NADA or KBB guidebooks." Opening Br. 40. According to Plaintiffs, the NADA and KBB guidebooks are inaccurate because "they are estimates applied to multi-state regions, not based on market value, and they do not[] … account with precision for mileage, condition, and equipment." *Id.* at 42. As Plaintiffs note, this point is undisputed: Progressive acknowledges that NADA and KBB values cannot be used as ACV "without making further adjustments for factors such as vehicle, age, and condition." *Id.* at 27 (quoting ECF No. 18.1 at 33). Plaintiffs contend that this unremarkable acknowledgement is the death knell of

Progressive's defense to class certification: "Progressive cannot defend a breach of its express duty to determine ACV by 'market value, age, and condition of the vehicle at the time of loss' with guidebooks, random number generators, or dart-slinging monkeys that no one contends would comply with that formula." *Id.* at 44.

Plaintiffs misunderstand how Rule 23 works. Under Rule 23, the plaintiff bears the burden of putting forth a damages model establishing that "damages are susceptible of measurement across the entire class for purposes of Rule 23(b)(3)." *Comcast*, 569 U.S. at 35. The defendant, however, bears no burden of proffering a countermodel establishing how it would defeat every, or even any, class member's claim. Indeed, Progressive argues that no such countermodel is even possible: an individualized analysis is required as to every class member.

Progressive does not contend that one can blindly apply the NADA or KBB guidebook number to determine the ACV of any class member's vehicle. Instead, Progressive argues that this evidence could be presented to the finder of fact as part of Progressive's defense. Suppose this was not a putative class action but instead a suit brought by an individual insured alleging that he did not receive ACV for his totaled car. If the insured argued that ACV should be calculated based on the Mitchell valuation minus the PSA, Progressive would respond that the plaintiff's valuation was inaccurate, perhaps by showing the sharp divergence between the plaintiff's proposed valuation and the appropriately modified NADA or KBB values.

As the defendant, Progressive would be under no obligation to propose an alternative ACV, but it might do so as a matter of defense strategy—and its precise methodology might vary depending on factors such as make, model, age, and condition of the car. Ultimately, the finder of fact would make the final call.

Contrary to Plaintiffs' argument, this type of analysis is not susceptible to classwide resolution. Plaintiffs' observation that the NADA or KBB values cannot be rubber-stamped confirms the point—the very fact that the factfinder would need to conduct a nuanced analysis of the parties' competing valuations demonstrates the inherently individualized nature of ACV calculations.

CONCLUSION

The District Court's order denying class certification should be affirmed.

Dated: September 30, 2024

Respectfully submitted,

/s/ Adam G. Unikowsky

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word limit set forth in Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 4,407 words.

I further certify that this brief complies with the typeface requirements set forth in Federal Rule of Appellate Procedure 32(a)(5)(A) and with the type-style requirements set forth in Federal Rule of Appellate Procedure 32(a)(6).

/s/ Adam G. Unikowsky

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2024 a true and correct copy of the foregoing Brief was served via the court's CM/ECF system.

/s/ Adam G. Unikowsky