

IN THE  
**United States Court of Appeals**

FOR THE ELEVENTH CIRCUIT

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Case No. 20-14283

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PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI, on its own  
behalf and on behalf of those similarly situated,

Plaintiff-Appellee,

v.

ACUITY BRANDS, INC.; VERNON J. NAGEL; RICHARD K. REECE; MARK  
A. BLACK,

Defendants-Appellants

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On Appeal from the United States District Court  
for the Northern District of Georgia  
No. 1:18-cv-02140-MHC, Hon. Mark H. Cohen

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**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES  
OF AMERICA AS *AMICUS CURIAE*  
IN SUPPORT OF DEFENDANTS-APPELLANTS**

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**CERTIFICATE OF INTERESTED PERSONS**

To *amicus curiae*'s knowledge, there are no interested persons other than those identified in the opening brief.

/s/ Adam G. Unikowsky

## **CORPORATE DISCLOSURE STATEMENT**

*Amicus curiae* certifies that it has no outstanding shares or debt securities in the hands of the public, and it does not have a parent company. No publicly held company has a 10% or greater ownership interest in *amicus curiae*.

/s/ Adam G. Unikowsky

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\* Authorities upon which we chiefly rely are marked an asterisk.

All parties consent to the filing of this brief.<sup>1</sup>

### **IDENTITY AND INTEREST OF *AMICUS***

The Chamber of Commerce of the United States of America (the “Chamber”) is the world’s largest business federation. It represents 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, 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* briefs in cases that raise issues of vital concern to the Nation’s business community. In particular, the Chamber has participated as an *amicus* in numerous cases regarding class actions and securities-fraud class actions in particular.

The Chamber has a strong interest in this case. This Court granted leave to appeal under Federal Rule of Civil Procedure 23(f) and directed the parties “to address (1) whether *Comcast Corp. v. Behrend*, 569 U.S. [27] (2013), applies in a securities-fraud scenario, and (2) if so, whether the plaintiff’s model is flawed under *Comcast*.” In *Comcast*, the Supreme Court held that courts must undertake “a

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<sup>1</sup> Pursuant to Fed. R. App. P. 29(a)(4)(E), *amicus curiae* states that no party’s counsel authored this brief in whole or in part, and that no one other than the *amicus curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

rigorous analysis” of putative class actions to ensure that both “the prerequisites of Rule 23(a)” and “Rule 23(b)(3)’s predominance criterion” have been satisfied before any class is certified. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33-34 (2013) (citations omitted). *Amicus*’s members are frequent targets of securities-fraud class actions and have a strong interest in ensuring that courts adhere to *Comcast*’s interpretation of Rule 23 in all class-action cases, including those alleging securities fraud. *Amicus*’s members similarly have an interest in ensuring that this Court hold that the plaintiff’s model is defective under *Comcast*. Such a ruling would appropriately establish a precedent that plaintiffs cannot obtain class certification unless they prove that their damages models are capable of being applied classwide.

### **QUESTIONS PRESENTED AND STATEMENT OF THE CASE**

The Questions Presented, as stated in this Court’s order granting the Rule 23(f) petition, are: “(1) whether *Comcast Corp. v. Behrend*, 569 U.S. [27] (2013), applies in a securities-fraud scenario, and (2) if so, whether the plaintiff’s model is flawed under *Comcast*.” The Chamber has no additions to the Statement of the Case as stated in the opening brief.

### **SUMMARY OF ARGUMENT**

*Comcast Corp. v. Behrend*, 569 U.S. 27 (2013), applies to securities-fraud cases. In *Comcast*, the Supreme Court made clear that it was interpreting Federal Rule of Civil Procedure 23, not applying an antitrust-specific rule. *Id.* at 34. Rule

23 applies to all class action cases, including securities-fraud cases. *See Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 263 (2014). Hence, *Comcast* fully applies to securities-fraud cases.

Adherence to *Comcast* in securities fraud cases serves important public policy interests. The presumption of *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988), as reaffirmed in *Halliburton*, offers a mechanism for class counsel to obtain class certification without offering direct evidence that a misrepresentation affected the stock price. This creates a risk that courts will certify classes in which there is no realistic way to calculate damages for any, let alone all, class members—to the detriment of defendants and investors alike. Rigorous adherence to *Comcast* guards against that risk. As such, *Comcast* is not only consistent with the *Basic* presumption, but serves a uniquely important role in light of that presumption.

If *Comcast* is applied to this case, the outcome is foreordained: the class certification order must be reversed. *Comcast* is substantively indistinguishable from this case. In *Comcast*, the plaintiffs' damages model purportedly demonstrated harm arising from multiple sources, but was incapable of isolating the damages attributable to the alleged theory of injury. The Court held that this defect precluded a showing of predominance for purposes of Rule 23(b)(3). In this case, the plaintiffs' damages model suffers from the identical defect: Plaintiff has not shown the model can isolate the damages attributable solely to the remaining

alleged false statements.. The outcome should be the same as in *Comcast*: the class certification order should be reversed.

## ARGUMENT

### I. *Comcast* Applies in Securities-Fraud Cases.

In the Court’s order granting leave to appeal, the Court asked the parties to address “whether *Comcast Corp. v. Behrend*, 569 U.S. [27] (2013), applies in a securities-fraud scenario.” The answer is yes. *Comcast* interprets Federal Rule of Civil Procedure 23. Although *Comcast* happened to present antitrust claims, its reasoning applies with identical force regardless of the underlying cause of action. Hence, *Comcast* is binding precedent in all cases involving Rule 23, including securities-fraud cases.

Begin from first principles. “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*, 569 U.S. at 33 (citation omitted). “A class action, no less than traditional joinder (of which it is a species), merely enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010). “And like traditional joinder,” a class action “leaves the parties’ legal rights and duties intact and the rules of decision unchanged.” *Id.* In other words, class actions do not provide litigants with any more substantive rights than they

otherwise would have had if their claims had proceeded individually. Class actions are simply a procedural vehicle that provides “‘the manner and the means’ by which the litigants’ rights are ‘enforced’” without “alter[ing] ‘the rules of decision by which [the] court will adjudicate [those] rights.’” *Shady Grove*, 559 U.S. at 406-07 (citations omitted) (alterations in original).

Rule 23 ensures adherence to those principles. Under Rule 23(a), a class cannot be certified unless the plaintiff proves commonality. The plaintiff’s claim “must depend upon a common contention[.] ... That common contention, moreover, must be of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Only in that scenario can a class action live up to its billing as a mere procedural rule that alters no substantive rights.

Further, in damages class-actions under Rule 23(b)(3), the plaintiff must prove predominance. “If anything, Rule 23(b)(3)’s predominance criterion is even more demanding than Rule 23(a).” *Comcast*, 569 U.S. at 34. To establish predominance, the plaintiff must show not only that common questions *exist*, but that they *predominate* over individual ones. *Id.*

It is straightforward to see why damages class actions require predominance. If individual questions predominate over common questions, one of two scenarios

will transpire. One possibility is that the proceeding will be swamped by a welter of individualized proceedings, obviating the purpose of the class-action device. The other possibility is that, for convenience's sake, the district court will force the defendant to forsake individualized defenses—an outcome inconsistent with the principle that class actions are a procedural device that does not alter substantive rights. Rigorous adherence to the predominance requirement ensures that class actions improve litigation efficiency without prejudicing the defendant's substantive rights.

Rule 23 applies to *all* class actions. Securities-fraud class actions are simply one species of class action, and they are governed by Rule 23, just like every other type of class action. To be sure, the Supreme Court has held that, at the class-certification stage, the plaintiff may show reliance by “invoking a presumption that the price of stock traded in an efficient market reflects all public, material information.” *Halliburton*, 573 U.S. at 263. But that holding does not reflect a *divergence* from Rule 23. Instead, it reflects an interpretation of the substantive law of securities fraud, which operates as an input into Rule 23's generally-applicable procedural requirements. As the Supreme Court explained: “In securities class action cases, the crucial requirement for class certification will usually be the predominance requirement of Rule 23(b)(3). The *Basic* presumption does not relieve plaintiffs of the burden of proving—before class certification—

that this requirement is met. ... *Basic* does not, in other words, allow plaintiffs simply to plead that common questions of reliance predominate over individual ones, but rather sets forth what they must prove to demonstrate such predominance.” *Id.* at 276.

*Comcast* reflects an interpretation of Rule 23—an interpretation that applies to all class actions, not just securities-fraud class actions. In *Comcast*, the plaintiff class proffered a damages model that purported to show that the aggregate classwide damages arising from four different theories of antitrust injury was \$875,576,662. 569 U.S. at 31-32. But the district court ruled that only one of those theories was legally viable. *Id.* The Supreme Court held that the class should not have been certified. *Id.* at 34. The Court’s reasoning was straightforward. First, in any litigation—whether class action litigation or individualized litigation—a plaintiff is entitled to only those damages that arise from the asserted theory of injury. That means that the plaintiff was legally required to isolate the damages arising from the viable theory of antitrust impact. *See id.* at 35 (noting that the plaintiffs would be “entitled only to damages” resulting from the “theory of antitrust impact accepted for class-action treatment by the District Court”); *id.* at 38 (“The first step in a damages study is the translation of the *legal theory of the harmful event* into an analysis of the economic impact of *that event.*” (quotation marks omitted)).

Second, the plaintiff's damages model was incapable of determining the damages for *any*—let alone *every*—class member, because it did not isolate the damages arising from the viable theory of antitrust impact. The Court explained that “a model purporting to serve as evidence of damages in this class action must measure only those damages attributable to that theory. If the model does not even attempt to do that, it cannot possibly establish that damages are susceptible of measurement across the entire class for purposes of Rule 23(b)(3).” *Id.* at 35. “Without presenting another methodology, respondents cannot show Rule 23(b)(3) predominance: Questions of individual damage calculations will inevitably overwhelm questions common to the class.” *Id.* at 34.

Notably, the Court made clear that its decision “turn[ed] on the straightforward application of class-certification principles,” rather than turning on “substantive antitrust law.” *Id.* Indeed, the Court applied the single most basic class-action principle: a class action cannot be certified unless the class action can be efficiently conducted on a classwide basis without extinguishing individualized defenses. Any classwide proceeding in *Comcast* would inevitably have degenerated into one of the two scenarios identified above. Suppose a jury had accepted the plaintiff's expert's theory of injury and determined that the aggregate impact of the four alleged injuries was, indeed, \$875,576,662. Then what? One possibility is that for *every* class member, the court would conduct a mini-trial in

which the plaintiff would have to meet its burden of isolating the damages attributable to the sole viable theory of antitrust injury—a mini-trial that might well differ from class member to class member. *Id.* at 37-38 (noting that class members in different geographic areas might have been injured for different reasons, and that “[t]he permutations involving four theories of liability and 2 million subscribers located in 16 counties are nearly endless”). The other possibility is that, to streamline matters, the court would have simply deducted some amount from the total damages award, and then apportioned the damages evenly among the class members—thus nullifying the plaintiff’s burden of proving damages as to each class member, and impermissibly using the class action as a mechanism to extinguish substantive rights. These outcomes are precisely what Rule 23’s predominance requirement is designed to prevent.

Thus, the answer to this Court’s first question in its Rule 23(f) order boils down to a straightforward syllogism. Rule 23 applies to all class action cases, not just antitrust class action cases. *Comcast* interprets Rule 23. Hence, *Comcast* applies to all class action cases, including securities fraud class actions.

Although the district court did not definitively resolve this question, it asserted that “[t]here is a substantial question whether *Comcast* has any applicability to the securities fraud context.” R.130 at 16. It pointed to “two cases in this district which have rejected such applicability.” *Id.* at 17-18 (citing *Monroe*

*Cnty. Emps.' Ret. Sys. v. S. Co.*, 332 F.R.D. 370, 397 (N.D. Ga. 2019), and *City of Sunrise Gen. Emps.' Ret. Plan v. FleetCor Techs., Inc.*, No. 1:17-CV-02207, 2019 WL 3449671 (N.D. Ga. July 17, 2019)). The district court misinterpreted dicta in both those cases, which was incorrect dicta in any event.

First, *Monroe* and *City of Sunrise* did not suggest that *Comcast* is inapplicable in securities-fraud cases. In the portions of *Monroe* and *City of Sunrise* quoted by the district court, those courts were merely opining that *Comcast* did not require plaintiffs to articulate a damages model capable of calculating damages on a classwide basis. *Monroe*, 332 F.R.D. at 397-98 (“[W]hile the Court must determine whether Plaintiffs have articulated a damages model capable of calculating damages stemming from the Defendants’ actions on a class-wide basis, a determination in the negative is not necessarily fatal to class certification”); *City of Sunrise*, 2019 WL 3449671, at \*6 (similar). The courts were not suggesting that there existed any securities fraud-specific rule.

Second, the dicta in *Monroe* and *City of Sunrise* is incorrect. Under *Comcast*, if the plaintiffs cannot articulate a damages model capable of calculating damages on a classwide basis, a class cannot be certified. It is impossible for common issues to predominate over individualized issues if—for every single plaintiff—a mini-trial will be necessary to determine whether the plaintiff sustained damages, and if so, how much. This conclusion reflects the four corners

of *Comcast*'s holding—the Court held that the class should be decertified, and the Court's sole basis for that conclusion was that the plaintiffs could not adequately proffer a damages model. This conclusion also follows directly from Rule 23: it is impossible for common issues to predominate over individualized ones if the district court must conduct a full-fledged damages trial for every class member in order to determine the extent of the defendant's liability.

To be clear, class certification does not require that damages be *the same* for all class members. Suppose, for instance, the *Comcast* plaintiffs alleged that Comcast overcharged its subscribers by a fixed amount each month. Because some class members may have been Comcast subscribers for longer than others, damages would vary from class member to class member. Yet in that scenario, if the plaintiffs could proffer a damages model that could allow each class member's damages to be determined by multiplying the per-month damages amount by the number of months each class member subscribed, the variance among class members might not defeat class certification. But, at a minimum, class certification requires that the plaintiff prove that there is a mechanism for showing damages for every class member that does not depend on an individualized mini-trial for every class member. In *Comcast*, the plaintiff was unable to make that showing—which the Court deemed fatal to class certification as a matter of law. That holding applies in all class actions, including securities fraud class actions.

## II. Adherence to *Comcast* in Securities Fraud Class Actions Serves Important Public Policy Interests.

Although *Comcast* applies to all class action cases, it is especially important that courts adhere to *Comcast* in the context of securities fraud class actions. *Basic* gave class action plaintiffs a powerful tool to facilitate class certification in securities fraud class actions. If courts do not rigorously apply *Comcast* in securities fraud cases, then classes will be certified in cases that are manifestly unfit for classwide adjudication—to the detriment of class members and defendants alike.

As explained above, *Basic* was a substantive interpretation of Rule 10b-5's reliance requirement, not a procedural interpretation of Rule 23. That said, *Basic*'s rule considerably facilitates a plaintiff's burden of showing predominance under Rule 23. To prove securities fraud, a plaintiff must prove that it relied on a misrepresentation *to its detriment*—which requires showing that the misrepresentation affected the stock price. Under *Basic*, “if a plaintiff shows that the defendant's misrepresentation was public and material and that the stock traded in a generally efficient market, he is entitled to a presumption that the misrepresentation affected the stock price.” *Halliburton*, 573 U.S. at 279. As such, the class-action plaintiff does not bear the burden of directly proving price impact in order to obtain class certification. *Id.* Although the defendant is entitled to present evidence at the class certification stage that the misrepresentation *did not*

affect the stock price, the burden of production rests on the defendant; the plaintiff bears no affirmative obligation to provide a price impact model in order to establish that reliance can be resolved on a classwide basis. *Id.*<sup>2</sup>

Because securities fraud plaintiffs do not bear the burden of production on the question of price impact, there is a serious risk that securities fraud classes will be certified even without any realistic way of resolving such cases on a classwide basis. The problem is that a plaintiff can show *Basic*'s prerequisites—a public and material misrepresentation and a generally efficient market—without providing any mechanism for disentangling the effect of the allegedly actionable misstatements and other statements that may have affected the stock price during the relevant period. This creates a risk that a court will certify a securities fraud class merely by finding that the *Basic* prerequisites have been satisfied without any realistic way of actually resolving the magnitude of price impact for the class as a whole, let alone for any particular class member. That outcome would contravene Rule 23's core goal of ensuring that classes are not certified unless the plaintiff proves that the case is genuinely amenable to classwide resolution.

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<sup>2</sup> This Term, in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, No. 20-222, the Supreme Court will resolve whether a defendant seeking to rebut the *Basic* presumption has only a burden of production or also the ultimate burden of persuasion. In the Chamber's view, the defendant has the burden of production, but the plaintiff bears the ultimate burden of persuasion. Regardless of how the Supreme Court resolves *Goldman Sachs*, however, adherence to *Comcast* is necessary to ensure that securities fraud classes are not improperly certified.

To the extent Plaintiff argues that applying *Comcast* would conflict with *Basic*, that contention is meritless. *Halliburton*, which reaffirmed *Basic*, cited *Comcast* with approval, implying that the two cases are in harmony. 573 U.S. at 275. And indeed they are. *Basic* is a case about a plaintiff's burden in showing *reliance*. It sets forth what individual plaintiffs must show in order to prove that they relied on misrepresentations to their detriment. *Comcast*, by contrast, is a case about *damages*. It imposes the burden on a plaintiff to proffer a damages model at the class-certification stage capable of calculating damages for every class member. It is perfectly consistent for a court to apply *Basic*'s criteria for proving reliance, while adhering to *Comcast*'s requirement of ensuring that individualized damages inquiries will not predominate. Adhering to *Comcast* is not only required by Supreme Court precedent, but would also serve laudable public policy purposes. An abundant academic literature catalogues how securities fraud class actions enrich lawyers while harming both defendants and investors alike. *See, e.g.*, William W. Bratton & Michael L. Wachter, *The Political Economy of Fraud on the Market*, 160 U. Pa. L. Rev. 69, 72-74 (2011) (arguing that *Basic* presumption has not protected investors or deterred wrongful conduct); John C. Coffee, Jr., *Reforming the Securities Class Action: An Essay on Deterrence and Its Implementation*, 106 Colum. L. Rev. 1534, 1546-47 (2006) (explaining that securities fraud class actions largely serve to enrich the parties' counsel). Indeed,

the Supreme Court has acknowledged that securities fraud class actions have a unique potential to be vexatious. *See, e.g., Stoneridge Inv. Partners, LLC v. Sci.-Atl., Inc.*, 552 U.S. 148, 163-64 (2008) (“[E]xtensive discovery and the potential for uncertainty and disruption in a [securities fraud] lawsuit allow plaintiffs with weak claims to extort settlements from innocent companies.”); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 739 (1975) (noting that Rule 10b-5 poses “a danger of vexatiousness different in degree and in kind from that which accompanies litigation in general.”). Although the Supreme Court reaffirmed *Basic* in *Halliburton*, the Court did not endorse the social utility of *Basic* or securities fraud class actions in general, but instead adhered to *Basic* in the name of *stare decisis*. 573 U.S. at 274, 279.

Deviating from *Comcast* will make the situation worse. From defendants’ perspective, not only will they continue to face a high volume of securities fraud class actions facilitated by *Basic*, but they will face adverse class certification orders in cases where there is no realistic mechanism for fair class resolution—placing further unfair settlement pressure on defendants. From investors’ perspective, class counsel’s inability to proffer a plausible damages model will prevent realistic calculation of any class member’s damages. This creates the risk that a class member’s compensation following a settlement will bear no correlation to the class member’s actual injury. And in the unusual case where the defendant

fights it out, class counsel's inability to proffer a plausible damages model might result in a complete defense win, thus foreclosing class members from pursuing their own remedies. In sum, rigorous adherence to *Comcast* is especially necessary in securities fraud class actions to protect all stakeholders.

### **III. Under *Comcast*, the Class Certification Order Should Be Reversed.**

If *Comcast* applies to securities-fraud class actions, the outcome of this case is foreordained. This case is indistinguishable from *Comcast*. In *Comcast*, the plaintiff's damages model measured the impact of four different antitrust injuries, but only one was legally viable. Hence, the Supreme Court held that the damages model was incapable of measuring damages for each class member, foreclosing class certification. Here, the plaintiff's damages model measures the impact of numerous statements, only a subset of which are legally viable bases for securities fraud liability. Hence, this Court should hold that the damages model is incapable of measuring damages for each class member, foreclosing class certification.

The district court offered three rationales for its decision, all of which are squarely foreclosed by *Comcast*. First, the district court observed that the defendant's arguments were relevant to, and could be addressed on, the merits. *See, e.g.*, R.130 at 19 ("Defendants' argument that Plaintiffs' damages calculation is improperly based on statements and categories of statements that were excluded from consideration after the MTD Order is more appropriately considered and

decided at a later stage of the litigation”); R.130 at 26 (“Any argument that Plaintiffs’ damages model fails to accurately account for inflation or is otherwise inaccurate is an argument that goes to the merits of Plaintiffs’ claims regarding damages and is not a part of this Court’s inquiry on Plaintiffs’ Motion for Class Certification.”). But as *Comcast* makes clear, that is no basis for deferring resolution of a question when that question is also relevant to class certification. 569 U.S. at 33-34 (class certification “analysis will frequently entail overlap with the merits of the plaintiff’s underlying claim” because “the class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff’s cause of action” (internal quotation marks omitted)).

Second, the district court stated that the plaintiff had *alleged* that its damages model could be applied on a classwide basis, and that the expert did not have to show his work beyond that allegation. R.130 at 23 (citing authority stating that “nothing in *Comcast* requires an expert to perform his analyses at the class certification stage” (quotation marks omitted)). The district court determined that “it is not appropriate at the class certification stage, before fact discovery has concluded, to require Plaintiffs’ expert to commit to the particular method he intends to use to measure inflation in this case.” R.130 at 25. This conclusion is indefensible. *Of course* it was “appropriate” to require Plaintiffs’ expert to commit to a method of determining damages. As *Comcast* explained, Rule 23 “does not

set forth a mere pleading standard. Rather, a party must not only be prepared to prove that ... *in fact*” Rule 23(a)’s requirements are satisfied.” 569 U.S. at 33 (internal quotation marks omitted). “The party must also satisfy *through evidentiary proof* at least one of the provisions of Rule 23(b).” *Id.* (emphasis added). And, applying that legal standard, the Court examined the plaintiff’s evidentiary proof that its damages model satisfied Rule 23(b)(3), and found it wanting. *Comcast* would make no sense if a plaintiff could avoid its holding merely by not even proffering a damages model at the class certification stage.

Third, the district court stated that the plaintiff’s damages model—no matter how flawed—was at least *applicable* to the damages class as a whole. *E.g.*, R.130 at 21 (“Defendants do not argue that ... the damages model is inapplicable to the class as a whole”); R.130 at 23 (“Plaintiffs’ damages model is based on its theory of liability and can be applied on a class-wide basis”). The court appeared to believe that if the damages model could produce *any* answer to the classwide damages inquiry—even if it was plainly a *wrong* answer—the class could be certified, and the model’s defects could be litigated at the merits stage. As *Comcast* makes clear, that holding is as wrong as it sounds. In *Comcast*, the lower court offered virtually identical reasoning: it “simply concluded that respondents ‘provided a method to measure and quantify damages on a classwide basis,’ finding it unnecessary to decide ‘whether the methodology [was] a just and

reasonable inference or speculative.” 569 U.S. at 35 (quoting *Behrend v. Comcast Corp.*, 655 F.3d 182, 206 (3d Cir. 2011), *rev’d*, 569 U.S. 27 (2013) (alteration in original)). The Supreme Court had little difficulty rejecting the argument: “Under that logic, at the class-certification stage any method of measurement is acceptable so long as it can be applied classwide, no matter how arbitrary the measurements may be. Such a proposition would reduce Rule 23(b)(3)’s predominance requirement to a nullity.” *Id.* at 35-36.

The Court should resolve this case by providing clear guidance on how *Comcast* applies at the class-certification stage in securities fraud cases. Specifically, the Court should hold that under *Comcast*, it is the plaintiff’s obligation to *prove* that its damages model will allow damages to be calculated for each class member without individualized proceedings. In the particular context of securities-fraud claims premised on allegedly false statements, the Court should hold that under *Comcast*, it is the plaintiff’s obligation to *prove* that its damages model will isolate the effect of the allegedly false statements for each class member without individualized proceedings. If that inquiry overlaps with the merits, so be it: that is the inquiry that *Comcast*, and Rule 23, demand.

## CONCLUSION

The District Court’s class-certification order should be reversed.

February 3, 2021

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 29(b)(4) because it contains 4,560 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 11th Cir. R. 29-3.

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/s/ Adam G. Unikowsky

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of February, 2021, a true and correct copy of the foregoing Brief was served on all counsel of record in this appeal via CM/ECF.

/s/ Adam G. Unikowsky