No. 11-983

In the

Supreme Court of the United States

TICKETMASTER; TICKETMASTER, LCC; ENTERTAINMENT PUBLICATIONS, INC.; and IAC/INTERACTIVECORP.,
Petitioners,

v.

STEPHEN C. STEARNS; CRAIG JOHNSON; JOHN MANCINI; *et al.*,
Respondents.

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

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

In this class action, the Ninth Circuit Court of Appeals held that a federal class action could be certified even though some members of the putative class did not have standing to bring suit on their own. That decision raises these questions:

1. In federal court, must all members of a putative class—not just the named plaintiff—have Article III standing to sue?

2. Did the Ninth Circuit err in choosing to follow a state's rule that only a named plaintiff need have standing to sue, regardless of the lack of standing of putative class members, and thereby disregarding the requirements of Article III standing?

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INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37.2(a), Pacific Legal Foundation (PLF) respectfully submits this brief amicus curiae in support of the Petitioners.[1]

PLF was founded more than 35 years ago and is widely recognized as the largest and most experienced nonprofit legal foundation of its kind. PLF litigates matters affecting the public interest at all levels of state and federal courts, and represents the views of thousands of supporters nationwide. In furtherance of PLF's continuing mission to defend individual and economic liberties, the Foundation operates its Free Enterprise Project, that seeks, among other things, to uphold the constitutional limitations on government action, including limits on the judiciary mandated by Article III standing requirements. PLF has litigated numerous cases involving Article III standing, as well as the consequences of permitting class actions to include noninjured class members. *See*, *e.g.*, *First American Financial Corp. v. Edwards*, pending, Docket No. 10-708; *Summers v. Earth Island Institute*, 555 U.S. 488 (2009); *Massachusetts v. EPA*, 549 U.S. 497 (2007); *Bennett v. Spear*, 520 U.S. 154 (1997);

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[1] Pursuant to this Court's Rule 37.2(a), all parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the Amicus Curiae's intention to file this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992); *In re Tobacco II Cases*, 46 Cal. 4th 298 (2009).

INTRODUCTION AND SUMMARY OF REASONS FOR GRANTING THE PETITION

California often marches to the beat of a different drummer. This is certainly the case with regard to the state's Unfair Competition Law (UCL), which stands as an open invitation to plaintiffs with trivial and even nonexistent injuries to bludgeon the last businesses remaining in the state with "consumer protection" lawsuits. California voters attempted to check the Legislature's gift to the trial bar when they enacted Proposition 64, which required plaintiffs suing under the UCL to have actually suffered some injury. But the state high court eviscerated the standing requirement by permitting noninjured members of a purported class to be represented by a single lead class member who could demonstrate some injury. *In re Tobacco II Cases* (*Tobacco II*), 46 Cal. 4th 298, 315-16 (2009).

California has suffered and will continue to suffer for the pro-litigation, anti-business results of its laws and judicial decisions. Fortunately, Article III offers a bulwork to prevent California's uniquely generous standing doctrine from infecting the federal judiciary. Yet courts are split as to whether a statute can, by itself, generate Article III standing. This Court is addressing this question in the context of a federal statute in *First American Financial Corp. v. Edwards*, Docket No. 10-708, and this case presents the same question in the context of a state statute. Because the courts are in nearly evenly divided conflict over the answer to this question, and because of the significant

national ramifications of permitting noninjured plaintiffs to aggregate in a class so long as the named plaintiff can demonstrate an injury, this Court should grant the petition for writ of certiorari.

ARGUMENT

I

THE EXISTING AND GROWING CONFLICT OVER WHETHER ARTICLE III STANDING APPLIES TO UNNAMED CLASS MEMBERS WARRANTS A GRANT OF CERTIORARI

Petitioner Ticketmaster identifies the key points of conflict between the decision below and decisions of this Court and the federal circuit courts of appeals. In addition, the question in this case has caused a nearly even division among the federal district courts that have attempted to discern how claims brought under California's Unfair Competition Law, which requires standing only of the named representatives, should be considered under Article III standing principles. A Lexis search of all federal cases within the past two years, combining the terms "Tobacco II" and "Article III" in a single paragraph, returned 22 results, a clear indication that is a growing issue. The quantity of cases addressing this issue has identified no clear trend; instead, the lower courts are dividing into two diametrically opposed camps.

Numerous district courts have reached the conclusion that standing "is assessed solely with respect to class representatives, not unnamed members of the class." *See In re Google Adwords Litig.*, No. 5:08-cv-3369-EJD, 2012 U.S. Dist. LEXIS 1216, *32, *45-

*46 (N.D. Cal. Jan. 5, 2012) (finding Article III standing for absent class members but denying certification because common issues did not predominate); *Zeisel v. Diamond Foods, Inc.*, No. C-10-01192, 2011 U.S. Dist. LEXIS 60608, *14 (N.D. Cal. June 7, 2011) ("in general, standing in a class action is assessed solely with respect to class representatives, not unnamed members of the class") (internal citation omitted); *Greenwood v. Compucredit Corp.*, No. 08-04878-CW, 2010 U.S. Dist. LEXIS 127719, *10 (N.D. Cal. Nov. 19, 2010) (holding that "Plaintiffs are not required to establish absent class members' individual reliance and personal standing"),[2] *Chavez v. Blue Sky Natural Bev. Co.*, 268 F.R.D. 365, 376 (N.D. Cal. 2010) ("[U]nnamed class members in an action under the [California] Unfair Competition Law . . . are not required to establish standing."); *Bruno v. Quten Research Inst., LLC*, No. SACV-11-00173-DOC(ex), 2011 U.S. Dist. LEXIS 132323, *18 (C.D. Cal. Nov. 14, 2011) ("[W]here the class representative has established standing and defendants argue that class certification is inappropriate because unnamed class members' claims would require individualized analysis of injury or differ too greatly from the plaintiff's, a court should analyze these arguments through Rule 23 and not by examining the Article III standing of the class representative or unnamed class members.").

Meanwhile, many district courts have found just the opposite: that even absent class members must

[2] This Court later issued a ruling in this case on the question of whether the Credit Repair Organizations Act precludes enforcement of an arbitration agreement, but the decision only notes without further comment that the lawsuit was brought as a class action and does not address the standing issue at all. *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665, 668 (2012).

establish Article III standing. *See Gonzales v. Comcast Corp.*, No. 10-cv-01010-LJO-BAM, 2012 U.S. Dist. LEXIS 196, *25 (Jan. 3, 2012), adopted in full 2012 U.S. Dist. LEXIS 7271 (Jan. 23, 2012) ("[I]t is insufficient, for standing purposes, to allege . . . that Comcast's porting practices violate the UCL or CLRA. Injuries [to the putative class members] must also flow from these wrongful acts."); *O'Shea v. Epson Am., Inc.*, No. CV-09-8063-PSG(CWx), 2011 U.S. Dist. LEXIS 105504, at *28-*31 (C.D. Cal. Sept. 19, 2011) (holding that absent class members must satisfy the requirements of Article III); *Sanders v. Apple Inc.*, 672 F. Supp. 2d 978, 991 (N.D. Cal. 2009) (same); *Webb v. Carter's Inc.*, 272 F.R.D. 489, 497 (C.D. Cal. 2011) ("Although there is no controlling authority requiring absent class members, as opposed to the named plaintiffs, to satisfy Article III's standing requirements, the Court is persuaded by authority indicating that they must."); *In re Light Cigarettes Mktg. Sales Practices Litig.*, 271 F.R.D. 402, 418-19 (D. Me. 2010) ("Regardless of the specific requirements of the California UCL and Washington D.C. CPPA, however, this Court's jurisdiction is limited by Article III standing" and "federal courts cannot certify a class 'that contains members lacking Article III standing.'") (citations omitted); *Burdick v. Union Sec. Ins. Co.*, No. CV-07-4028-ABC(JCx), 2009 U.S. Dist. LEXIS 121768, *4 (C.D. Cal. Dec. 9, 2009) (Requiring all class members to satisfy Article III's requirements "conforms to the Supreme Court's instruction that courts be 'mindful that Rule 23's requirements must be interpreted in keeping with Article III constraints.'") (internal quotations omitted)); *cf. Stationary Eng'rs Local 39 Health & Welfare Trust Fund v. Philip Morris, Inc.*, No. C-97-01519-DLJ, 1998 U.S. Dist. LEXIS 8302,

*51-*52 (N.D. Cal. Apr. 30, 1998) (holding that a union's claims against tobacco companies for harm caused by cigarette smoking "would necessarily involve individualized proof as to the amount of medical expenses incurred due to smoking related illness" and that thus the court lacked Article III jurisdiction to hear plaintiffs' UCL claim brought on behalf of their members and beneficiaries).

The question of whether courts should first assess whether class action plaintiffs have Article III standing or whether it is enough to state a claim under the relevant statute has arisen in other contexts. That is, some courts are willing to deem unnamed class members as having Article III standing without the members demonstrating any type of injury, solely because the statute under which they are pursuing relief permits non-injury standing. The question becomes whether the federal court must first address the Article III standing of all named and unnamed plaintiffs; or whether Article III standing can be presumed if the plaintiffs meet the standing requirements of the statute. For example, in *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 825 (9th Cir. 2011), the Ninth Circuit reversed a district court ruling that failed to analyze whether an antitrust plaintiff had Article III standing prior to considering whether the plaintiff had standing under the Lanham Act. Unlike the *Ticketmaster* decision, the Ninth Circuit panel in *TrafficSchool.com* based its decision on the premise that "standing under the antitrust laws 'affects a plaintiff's ability to recover, but does not implicate the subject matter jurisdiction of the court,' as the absence of Article III standing would." *Id.* (citing *Gerlinger v. Amazon.com Inc.*, 526 F.3d 1253, 1256 (9th Cir. 2008)). *See also Ford v.*

NYLCare Health Plans of Gulf Coast, Inc., 301 F.3d 329, 332 n.1 (5th Cir. 2002) ("[W]herever possible, Article III standing must be addressed before all other issues 'because it determines the court's fundamental power even to hear the suit.' In the absence of Article III standing, we have no right to opine on issues of prudential standing.") (internal citation omitted).

This recurring and wide-ranging issue, going to the heart of the federal courts' jurisdiction, warrants review by this Court.

II

WHETHER CLASS ACTIONS IN FEDERAL COURT MAY INCLUDE UNINJURED PARTIES IS AN ISSUE OF NATIONAL IMPORTANCE

A. Just as Representative Plaintiffs Must Have Suffered the Same Injury as the Class They Seek To Represent, Unnamed Class Members Must Suffer the Same Injury as the Representative Plaintiffs

The requirement that all members of the class have Article III standing reflects the constitutional limitations on federal courts. If that were not the rule, a class could include members who could not themselves bring suit to recover, thus permitting a windfall to those class members and allowing Federal Rule of Civil Procedure 23—a procedural rule—to enlarge substantive rights. *See*, *e.g.*, *Avritt v. Reliastar Life Ins. Co.*, 615 F.3d 1023, 1035 (8th Cir. 2010) (a class must be defined in such a way that all members have Article III standing); *Denney v. Deutsche Bank AG*, 443 F.3d 253, 263-64 (2d Cir. 2006) (same); *Kohen*

v. Pac. Inv. Mgmt. Co., 571 F.3d 672, 677 (7th Cir. 2009) (A class cannot be defined "so broad[ly] that it sweeps within it persons who could not have been injured by the defendant's conduct.").

This Court has held that representative plaintiffs cannot use the procedural requirements of Rule 23 to create standing if it otherwise does not exist. *Allee v. Medrano*, 416 U.S. 802, 828-29 (1974) ("[A] named plaintiff cannot acquire standing to sue by bringing his action on behalf of others who suffered injury which would have afforded them standing had they been named plaintiffs; it bears repeating that a person cannot predicate standing on injury which he does not share. Standing cannot be acquired through the back door of a class action.") (Burger, C.J., concurring in the result in part and dissenting in part). *See also Weiner v. Bank of King of Prussia*, 358 F. Supp. 684, 690, 694-95 (E.D. Pa. 1973) ("[A] procedural rule cannot supply a substantive element" and thereby confer standing upon the plaintiff.). This has not been a controversial principle; both federal and state courts (relying on federal law as persuasive authority) have long demanded standing from lead plaintiffs in class actions. *See Fernandez v. Takata Seat Belts, Inc.*, 108 P.2d 917, 920 (Ariz. 2005) (plaintiff who cannot state an individual claim for lack of injury has no standing to represent a class of potentially injured plaintiffs); *M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W.3d 704, 707-08 (Tex. 2001) (without actual injury, plaintiff had no standing to bring class action); *Landesman v. General Motors Corp.*, 377 N.E.2d 813, 815 (Ill. 1978) (where the plaintiff has no individual cause of action, it necessarily follows that any attempted class action must also fail); *Kid's Care, Inc. v. Alabama Dep't of Human Resources*, 843 So.2d 164,

167 (Ala. 2002) (if named plaintiff has not been injured by wrong alleged in complaint, then no case or controversy is presented and plaintiff has no standing to sue either on his own behalf or on behalf of a class); *Hamilton v. Ohio Sav. Bank*, 694 N.E.2d 442, 450 (Ohio 1998) (to have standing to sue as a class representative, the plaintiff must possess the same interest and suffer the same injury shared by all members of the class that he seeks to represent); *Savannah R-III School Dist. v. Public School Retirement System of Mo.*, 950 S.W.2d 854, 857-58 (Mo. 1997) (named plaintiffs who represent class must allege and show that they personally have been injured, not that injury has been suffered by other members of class which they purportedly represent); *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d 741, 746 (Iowa 1985) (while class membership is not expressly required by the Iowa class actions rule, it is implicit in that rule that class representative be class member); *Doe v. Governor*, 412 N.E.2d 325, 327 (Mass. 1980) (if the individual plaintiffs may not maintain the action on their own behalf, they may not seek relief on behalf of class).

Just as representative plaintiffs may not bootstrap their own standing from the alleged injuries to unnamed class members, so to the converse should be true: unnamed plaintiffs may not bootstrap their own standing from a representative plaintiff. Certification cannot provide individuals a right to relief in federal court that the Constitution would deny them if they sued individually. That result would violate the Rules Enabling Act because "no reading of the Rule can ignore the Act's mandate that 'rules of procedure "shall not abridge, enlarge or modify any substantive right,"'" *Ortiz v. Fibreboard Corp.*, 527 U.S. 814, 845 (1999)

(citing *Amchem Prods., Inc., v. Windsor*, 521 U.S. 591, 612-13 (1997) ("Rule 23's requirements must be interpreted in keeping with Article III constraints.")). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 130 S. Ct. 1431, 1443 (2010) (Assuming that each unnamed class member shares the named plaintiff's injury, the Court noted that defendant Allstate's "aggregate liability, however, does not depend on whether the suit proceeds as a class action. Each of the 1,000-plus members of the putative class could (as Allstate acknowledges) bring a free-standing suit asserting his individual claim.").

The Constitution mandates a strong standing requirement. The decision below replaced that requirement with an open-ended theory permitting people who are not harmed and who do not claim to be harmed to sue in the name of those who may be able to allege such harm, and thus warrants a grant of certiorari.

B. "Noninjury" Class Actions Are Ripe for Abuse Because They Are Conducted for the Benefit of Lawyers, Not Any Individually Harmed Person

Permitting a noninjury claim to move forward invites abuse of the class action procedure. Even under the best circumstances, most class actions proceed under the leadership of lawyers who have never entered into contractual representation—or even met—the vast majority of the class members whom they purport to represent. Even the "class representative" whose claims are supposed to typify those of absent class members usually is a figurehead who exercises little, if any, meaningful supervision over the litigation. As a practical matter, the class counsel

themselves serve as agents for the class. Richard A. Nagareda, *The Preexistence Principle and the Structure of the Class Action*, 103 Colum. L. Rev. 149, 150-51 (2003).

Class members need an increased level of protection because they are not there to defend themselves. Their only chance to avoid unfair practices by a "representative" who is not a member of the class is to opt-out, and it is hardly fair to place the "risk and burden on the essentially innocent party who happens to have the least information." Jeremy Gaston, *Standing on Its Head: The Problem of Future Claimants in Mass Tort Actions Notes,* 77 Tex. L. Rev. 215, 244 (1999). Because the class action binds these absent and informationally impoverished "litigants," due process requires a class representative both capable of and willing to act in the interest of all the members of the class. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (opining that "the Due Process Clause . . . requires that the named plaintiff at all times adequately represent the interests of the absent class members"). Without adequate representation, any judgment obtained through the class action becomes subject to collateral attack. *Id.*

Other courts agree, holding that an adequate representative is one who is "qualified to serve in a fiduciary capacity as a representative of a class, whose interest is dependent upon the representative's adequate and fair prosecution." *Youngman v. Tahmoush*, 457 A.2d 376, 379 (Del. Ch. 1983); *see also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995). Essentially, this requires that the representative's stake in the case, whatever that may be, rises or falls

on the claims of the other class members. Commonality among plaintiff class members is important because individual differences among class members may impair their ability to obtain adequate compensation for their injuries. Class members with stronger than average claims may not be proportionately compensated, and the weaknesses in other class members' claims may work to the disadvantage of the class as a whole. *See*, *e.g.*, John C. Coffee, Jr., *Rethinking the Class Action: A Policy Primer on Reform*, 62 Ind. L.J. 625, 652-54 (1987). Moreover, the aggregation of claims detracts from the acknowledgment of each plaintiff's particular injuries, a value some courts and commentators recognize as a legitimate end in itself, apart from the end of compensation for injuries. *Developments in the Law—The Paths of Civil Litigation: IV. Class Action Reform: An Assessment of Recent Judicial Decisions and Legislative Initiatives*, 113 Harv. L. Rev. 1806, 1812-13 (2000); *Martin v. Wilks*, 490 U.S. 755, 762 (1989). Denying representative status to uninjured, nonclass members is the only way to protect the interests of the class members. "Foremost, they do not get 'sold down the river' by having their future claims devalued and decided before they even accrue." Gaston, 77 Tex L. Rev. at 237. For "it is not obvious that the settling of future plaintiffs' claims—essentially without their knowledge—is desirable, necessary, or worthwhile to anyone except the defendants and possibly the current claimants." *Id*. at 238.

Lawsuits holding the potential only for a small recovery for each class member, such as this one, are particularly susceptible to abuse:

> The plaintiffs' potential recoveries in a small claimant case are, by definition, minimal. Even if the case succeeds, the plaintiff and class members will receive a minute sum. By contrast, the plaintiffs' attorneys, whose fee is determined by reference to the aggregate amount of the recovery, stand to gain immense financial rewards. Consequently, plaintiffs have little incentive to participate in or monitor the litigation. For all practical purposes, plaintiff's lawyers are the real parties in interest who initiate, finance, and control the litigation. *See, e.g.*, *Mars Steel Corp. v. Continental Ill. Nat'l Bank & Trust Co.*, 834 F.2d 677, 678 (7th Cir. 1987) (Posner, J.).

Samuel M. Hill, *Small Claimant Class Actions: Deterrence and Due Process Examined*, 19 Am. J. Trial Advoc. 147, 148 (1995).

Permitting class members without Article III standing to proceed will flood the federal courts with "lawyers' lawsuits." The Seventh Circuit correctly surmised that plaintiffs "would be tripping over each other on the way to the courthouse if everyone remotely injured by a violation of law could sue to redress it." *North Shore Gas Co. v. EPA*, 930 F.2d 1239, 1242 (7th Cir. 1991). How much more so when plaintiffs who have not even been injured may sue? For "[i]f passionate commitment plus money for litigating were all that was necessary to open the doors" of the courts, they "might be overwhelmed." *People Organized for Welfare & Employment Rights v. Thompson*, 727 F.2d 167, 172 (7th Cir. 1984).

These concerns are compounded and especially worrisome in the context of class action litigation.

> The filing of one class action is often the harbinger of more class action filings. As Professor Mullenix has observed, "Class-action litigation has the propensity to propagate, spreading amoeba-like across federal and state courts. No sooner has an attorney filed a class action than, within days, 'copycat' class actions crop up elsewhere. This spontaneous regeneration of class litigation presents challenging issues for litigants and the judiciary."

Scott S. Partridge & Kerry J. Miller, *Some Practical Considerations for Defending and Settling Products Liability and Consumer Class Actions*, 74 Tul. L. Rev. 2125, 2146 (2000) (quoting Linda S. Mullenix, *Dueling Class Actions*, Nat'l L.J., Apr. 26, 1999, at B18). "Noninjury" standing, combined with the class action procedure, would result in targeted businesses facing what federal appellate judges bluntly term, "blackmail." *In Matter of Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1298 (7th Cir. 1995); *West v. Prudential Sec., Inc.*, 282 F.3d 935, 937 (7th Cir. 2002) ("The effect of a class certification in inducing settlement to curtail the risk of large awards provides a powerful reason to take an interlocutory appeal."); *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 746 (5th Cir. 1996) ("[C]lass certification creates insurmountable pressure on defendants to settle, whereas individual trials would not. The risk of facing an all-or-nothing verdict presents too high a risk, even when the probability of an adverse judgment is low. These settlements have been referred to as judicial blackmail.") (internal citations omitted); *Gen. Motors Corp.*, 55 F.3d at 784-85, 789 ("[C]lass actions

create the opportunity for a kind of legalized blackmail: a greedy and unscrupulous plaintiff might use the *threat* of a large class action, which can be costly to the defendant, to extract a settlement far in excess of the individual claims' actual worth.").

The "blackmail" charge comes from the fact that few class actions actually proceed to judgment—the vast majority settle. "[W]hen damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once, the risk of an error will often become unacceptable. Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims." *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1752 (2011). This Court and "[o]ther courts have noted the risk of 'in terrorem' settlements that class actions entail." *Id*. (citations omitted). For this reason, counsel on both sides of class action litigation recognize the decision to certify as the most defining moment in the litigation. As this Court noted, "[c]ertification 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 v. Lybrand*, 437 U.S. 463, 476 (1978). *See also Newton v. Merrill Lynch*, 259 F.3d 154, 164 (3d Cir. 2001) (Once the class is certified, defendant companies are under "hydraulic pressure" to settle.).[3] "In short, class actions today

[3] This pressure to settle was a key factor for courts denying certification in *In re Bridgestone/Firestone, Inc*., 288 F.3d 1012, 1015-16 (7th Cir. 2002) ("Aggregating millions of claims on account of multiple products manufactured and sold across more than ten years makes the case so unwieldy, and the stakes so large, that settlement becomes almost inevitable—and at a price (continued...)

serve as the procedural vehicle not ultimately for adversarial litigation but for dealmaking on a mass basis." Nagareda, *supra*.

With little to gain from representing the interests of the class, such litigation will be used not to redress injury but as a sham to "line lawyers' pockets despite the absence of any substance to the underlying allegations." Robert A. Skitol, *The Shifting Sands of Antitrust Policy: Where It Has Been, Where It Is Now, Where It Will Be in Its Third Century*, 9 Cornell J.L. & Pub. Pol'y 239, 266 (1999). These "suits are not, in any realistic sense, brought either by or on behalf of the class members," but by "private attorneys who initiate suit and who are the only ones rewarded for exposing the defendants' law violations." Martin H. Redish, *Class Actions and the Democratic Difficulty: Rethinking the Intersection of Private Litigation and Public Goals*, 2003 U. Chi. Legal F. 71, 77. Class members "neither make the decision to sue . . . nor receive meaningful compensation." *Id*. Rather, the prospect of significant attorneys' fees "provide[ ] the class lawyers with a

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[3] (...continued)
that reflects the risk of a catastrophic judgment as much as, if not more than, the actual merit of the claims."); *Griffin v. GK Intelligent Sys., Inc.*, 196 F.R.D. 298, 305 (S.D. Tex. 2000) (citing the language in *Castano*, cited *supra*); *Marascalco v. Int'l Computerized Orthokeratology Soc'y, Inc.*, 181 F.R.D. 331, 339 n.19 (N.D. Miss. 1998) (same); *Ex Parte Masonite Corp.*, 681 So.2d 1068, 1086 (Ala. 1996) (Maddox, J., concurring in part and dissenting in part) ("Class actions often place immense pressure on defendants to settle, considering the 'all or nothing' nature of class action verdicts."); *Philip Morris, Inc. v. Angeletti*, 752 A.2d 200, 217 (Md. 2000) ("[G]ranting class certification significantly increases the pressure on a risk-adverse defendant to settle pending class claims rather than face the threat of an exceptional award of damages.").

private economic incentive to discover violations of existing legal restrictions on corporate behavior." *Id.* Thus, noninjury class actions to recover compensation simply permit the "private attorneys [to] act[ ] as bounty hunters." *Id.* The decision below opens the door to the federal courts wide for this type of gross misuse of the justice system.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED: March, 2012.

Respectfully submitted,

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