

No. 26-8014

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

ANDREW CORZO, ET AL.,
Plaintiffs-Respondents,

v.

CORNELL UNIVERSITY, ET AL.,
Defendants-Petitioners.

On Petition for Permission to Appeal from a Class Certification Order
by the United States District Court for the Northern District of Illinois,
No. 1:22-cv-00125-MFK Before the Honorable Judge Kennelly

**PETITIONERS' REPLY IN SUPPORT OF THEIR PETITION
FOR PERMISSION TO APPEAL**

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INTRODUCTION

Plaintiffs attempt to defend the district court's deficient class certification decision by hiding behind the court's earlier *Daubert* and summary judgment rulings. Indeed, they cite the *Daubert* decision 26 times and the summary judgment decision another 12 times in their opposition. In doing so, Plaintiffs make the same mistake the district court made: Plaintiffs disregard that class certification requires a "rigorous analysis" that cannot be supplanted by the more forgiving *Daubert* analysis or by summary judgment rulings on an entirely different matter. *See Arandell Corp. v. Xcel Energy Inc.*, 149 F.4th 883, 894 (7th Cir. 2025).

Plaintiffs imply that, because *Arandell* was already decided, the district court's failure to follow it is an improper basis for 23(f) review. But interlocutory review is proper where it will "inform class action law" or where "district courts will benefit from additional guidance on the application" of Seventh Circuit law. *Reliable Money Order, Inc. v. McKnight Sales Co.*, 704 F.3d 489, 497 (7th Cir. 2013). Although *Arandell*'s instruction is clear, this case demonstrates that courts continue to struggle with the appropriate level of scrutiny to apply to

expert analyses at class certification. This petition presents an ideal vehicle to address such confusion.

Interlocutory review is also warranted given the immense damages now at stake in this 220,000-member class. The district court's certification order expanded Defendants' potential liability 17,000-fold, from approximately \$100,000 to upwards of \$1.7 billion. Dkt.760 at 29; Opp. n.8. Contrary to Plaintiffs' suggestion (at 1), it is irrelevant that other defendants reached settlement *before* class certification. In cases like this involving substantial claimed damages, "a grant of class status can put considerable pressure on the defendant to settle, even when the plaintiff's probability of success on the merits is slight." *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 834 (7th Cir. 1999) (describing standards for granting Rule 23(f) appeals). This Court's immediate review is necessary.

ARGUMENT

I. THE DISTRICT COURT DID NOT MEANINGFULLY INVESTIGATE PLAINTIFFS' EXPERT OPINION PURPORTING TO ESTABLISH COMMON IMPACT

In granting class certification, the district court relied solely on Singer's regression analysis as evidence of common antitrust impact,

without so much as mentioning Defendants’ rebuttal experts. Pet.15-21. Plaintiffs’ five attempts to compensate for this error fail.

First, Plaintiffs argue (at 10-13) that the district court “incorporated its prior [*Daubert*] decision” into its class certification decision and that there was no need to examine “*the same arguments and evidence*” again. Plaintiffs fundamentally misunderstand the court’s duty to resolve factual disputes at the class certification stage. Admissibility under *Daubert* is a mere threshold—“just because expert evidence is admissible does not mean that it will justify class certification.” *Arandell*, 149 F.4th at 894.

Like the district court, Plaintiffs improperly collapse the *Daubert* and class-certification analyses, and they do so largely by misstating the court’s *Daubert* opinion. Plaintiffs claim (at 13) that “the court did not merely hold that Singer’s evidence was ‘admissible’ ... it *found* that [Defendants’] critiques were just plain *wrong*.” But Plaintiffs miss that the court’s analysis was focused on *Daubert*’s and Rule 702’s “twin concerns of ... relevance and reliability,” Dkt.1160 at 7, and its findings were framed by those considerations. For example, Plaintiffs argue (at 13-14) that the *Daubert* opinion “*found* as a matter of *fact* that Singer’s

model *did not* assume uniform conduct or ‘impose a finding of common impact.’” Opp. 13-14 (quoting Dkt.1160 at 21). But the court made these “finding[s]” in support of its holding that it was “not persuaded” that evidence of varied conduct by Defendants “render[s] Singer’s impact regression *unreliable and therefore inadmissible*.” Dkt.1160 at 21 (emphasis added). The court then went on to acknowledge: “[t]hough defendants bring up several fair points that may limit or undermine the probative value of Singer’s impact regression, that is a matter regarding the weight to be given to the analysis, *not a basis for its exclusion*.” *Id.* (emphasis added).

To credit Singer’s model, the district court would have needed to find as a matter of fact that—contrary to the evidence presented by Defendants—all schools participated in the alleged conspiracy in exactly the same way over the entire class period. At the *Daubert* stage, the district court did not (and could not) make that necessary finding. But at class certification, “weighing” critical disputes is “integral to the rigorous analysis Rule 23 demands.” *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 323 (3d Cir. 2008).

Second, Plaintiffs argue that the district court was not “‘required to resolve every expert dispute’ on class certification.” Opp. 12 (quoting *Arandell*, 149 F.4th at 894). Of course not. But Plaintiffs fail to grapple with this Court’s instruction that “where the defendants have offered admissible evidence that, if credited, would mean individual questions would predominate over common questions, then the district court must ‘investigate[] the realism’ of the expert evidence.” *Arandell*, 149 F.4th at 894.

Plaintiffs do not dispute that the district court’s certification decision did not address how Singer’s model (which utilized a single on/off conduct dummy variable) could prove common antitrust injury in the face of extensive, unrebutted expert and record evidence that Defendants’ conduct varied widely—over time and across schools. Pet.17-19. That is particularly important because simply allowing the model to vary the impact by school showed that there was *no* common impact—and even a complete *absence* of impact at several of the defendant schools. Dkt.755-27 ¶32 & figs.S4.2-S4.3.

Moreover, Plaintiffs do not dispute that the class-certification order did not address the fact that Singer’s analysis generates results

untethered from the challenged conduct and common sense. Pet.10-11.

Neither the certification order nor Plaintiffs' opposition even

acknowledges that Singer's in-sample prediction model finds that students who paid *nothing* to attend school were "overcharge[d]."

Dkt.1263 at 99:14-20. Nor do they acknowledge that the same model

estimates wild and inexplicable year-to-year swings in individual

students' purported overcharges and undercharges. Pet.10 & A75;

Dkt.1263 at 71:12-23; A75 (demonstrative). Worse still, Plaintiffs fail to

grasp (at 7-8, 14) the significance of the fact that Singer's in-sample

prediction model improbably calculates the precisely identical

overcharge for 85% of class members. Pet.11, 19. This "second step"

model is meant to go beyond the "average" calculated by Singer's "step

one" impact regression and measure individualized impact. But instead

of doing so, it merely posits individualized year-to-year overcharges and

undercharges that, when added together and divided by the number of

years a student attended a defendant school, conveniently amount to

the \$1,202 average of step one. *See* Pet.11 & A75.

Third, Plaintiffs (at 14) cite the district court's reliance on Singer's "Yale Model" in its *Daubert* opinion as evidence that the court

considered Defendants’ experts’ critiques and found they had been “addressed.” Opp. 14 (emphasis omitted). But the Yale Model directly contradicts the uncontroverted record. Pet.19; *see* Dkt.864-39 (Yale decreased its “scholarship budget” by roughly \$12 million after departing the 568 Group); Dkt.789-32 ¶44 n.49 (182 Yale students received full rides only after Yale re-joined the Group in 2018); Dkt.789-16 ¶122 (Yale increased its home equity cap after departing). And regardless, the Yale Model is nothing more than Singer’s in-sample prediction model applied to class members who attended a single school around a single point in time. Dkt.756-38 ¶72. Had Singer used the same methodology to create a “Penn Model,” a “Notre Dame Model,” or a “Georgetown Model,” it would have shown *no harm at all*. Pet.20; *see* Dkt.755-27 ¶32 & figs.S4.2-S4.3. The Yale Model is unrealistic even for Yale. It cannot show harm at sixteen other schools over twenty years.

Fourth, Plaintiffs fall back (at 1, 6, 11) to claiming that in-sample prediction is “broadly accepted,” implying that it excuses the court’s cursory analysis. But whether or not an approach is “broadly accepted” is no substitute for the court’s independent evaluation. *See Arandell*, 149 F.4th at 894. Regardless, Plaintiffs’ claim of broad acceptance is

fiction. Singer's two-step approach is widely criticized in the field, including by leading antitrust expert Professor Herbert Hovenkamp. See *Econometrics Experts Amicus Br.* 4-7.

Fifth, as to the *Comcast* requirement (Pet.20-22), Plaintiffs assert that Singer's model accurately reflects Plaintiffs' theory that "Defendants violated the Sherman Act by agreeing to suppress competition over financial aid awards." Opp. 14-15. That raises the level of generality so high as to obscure the blatant contradiction between Singer's model and Plaintiffs' working theory of liability, rendering *Comcast*—which Plaintiffs never cite—a dead letter. What matters is *how* Plaintiffs claim Defendants suppressed competition. On that score, Plaintiffs now concede the 568 Group never developed a single "formula that [schools] should use." Dkt.865-30 at 20:2-10.

As for the mismatch between EIP and EFC, Singer conceded that the alleged conspiracy made no sense without a packaging component (which drives EIP), Dkt.865-30 at 92:3-93:12, and yet also conceded that not all Defendants coordinated on packaging, Dkt.755-11 at 41:22-43:22, 59:24-60:20. In light of that (necessary) concession, the court's failure to define the scope of the alleged conspiracy and explain how

that conspiracy could have common impact on the class is all the more consequential.¹

II. THE CERTIFIED CLASS CONTAINS A “GREAT MANY” UNINJURED PERSONS

The class should not have been certified because it includes a “great many persons who have suffered no injury.” *Kohen v. Pacific Invest. Mgmt. Co.*, 571 F.3d 672, 677 (7th Cir. 2009); *see* Pet.24-26; Ass’n of Am. Univs. Amicus Br. 5-6. Plaintiffs’ counterarguments are unpersuasive.

First, Plaintiffs contend (at 16) that the district court adequately addressed Defendants’ argument that the class had too many uninjured class members. But, again, Plaintiffs cite the *Daubert* opinion, which analyzed the separate question of whether Singer’s regression analysis was so methodologically unreliable that it could not be admitted. *See* Opp. 16 (citing Dkt.1160 at 20-21, 23-27). When the district court had occasion (and was required) to address the prevalence of uninjured class members, it failed to do so. Pet.26.

¹ Plaintiffs claim (at 15) it is sufficient that Singer found that the “conspiracy inflated *both* EIPs *and* EFCs.” But Singer found only \$515 of the \$1,202 EIP overcharge attributable to an increase in EFC, meaning that the majority of the alleged overcharge had nothing to do with the alleged conspiracy and instead related to packaging and list price. Dkt.756-38 ¶57.

Second, Plaintiffs assert (at 17 n.6) that Singer’s finding that “35% of awards were unimpacted in a calendar year does not undermine common impact” because it implies that 96% of the class suffered harm on at least one transaction. But this assertion rests on the implausible premise that a student whose award is unimpacted in one year is equally or more likely than any other student to have an impacted award in another year. Common sense dictates the opposite. If a student’s award in one year was unaffected by the challenged conduct, there is nothing in the record that would explain why that student’s aid award would be affected another year when their same college applied substantially similar financial aid methodology each year.

Third, Plaintiffs (at 3) again point to Singer’s Yale Model, claiming it shows “at least 93% of class members had been injured.” But the 93% figure Plaintiffs cite (and Singer testified about) is conjured from thin air. It appears nowhere in Singer’s actual analysis or his reports. As Singer himself explained, he “d[id] not measure impact by calculating the share of Class Members *ever* impacted at least once in this analysis.” Dkt.756-38 ¶73. And even if he did, the Yale Model would provide no basis to extrapolate to the whole class because the sample—

limited to a point in time at one school—is non-representative. *See EEOC v. Kaplan Higher Educ. Corp.*, 748 F.3d 749, 754 (6th Cir. 2014).

Fourth, Plaintiffs argue (at 18) that the court was correct to conclude that even students who had their tuition paid by parents were injured. But a plaintiff who has not purchased the at-issue product from a defendant is not a direct purchaser and thus lacks antitrust standing. *In re Apple iPhone Antitrust Litigation*, 2025 WL 3124160, at *1-2 (N.D. Cal. Oct. 27, 2025), is directly analogous. There, plaintiffs brought Sherman Act claims alleging that Apple charges app developers a supra-competitive commission, which developers pass on to consumers who download their apps or make in-app purchases. Plaintiffs sued on behalf of a putative class consisting of persons who either purchased iOS applications or made in-app purchases. *Id.* The district court excluded expert testimony and decertified the class in part because the expert “sought to match ‘names’ rather than ‘payors’” when determining the direct purchaser. *Id.* at *12. The court explained:

Children often use their parent’s credit card to purchase apps or make in-app purchases in Apple’s App store through their own Apple ID. Here, although the parent paid Apple for the transaction, and was therefore the direct purchaser, [the expert’s] analysis viewed the child—who did not directly pay Apple—as a payor.

Id.

Plaintiffs' citations (at 18) to *Rynasko v. New York University*, 63 F.4th 186, 195 n.9 (2d Cir. 2023), and *In re Mercedes-Benz Anti-Trust Litigation*, 157 F. Supp. 2d 355, 366 (D.N.J. 2001), are unavailing. *Rynasko* addressed Article III standing, not antitrust injury. 63 F.4th at 193. And, as the district court here observed, "the parents' lack of standing does not necessarily imply that the students have standing." Dkt.1210 at 37. Plaintiffs likewise cannot rely on the *Mercedes-Benz* district court opinion, which concerned factually distinct circumstances wherein a purchaser received a loan and *still paid* themselves. *See* 157 F. Supp. 2d at 366. Here, Plaintiffs have never contended they obtained loans from their parents to pay Defendants. Dkt.1216-1 at 9-11, 14; Dkt.789-62 at 158:18-24.

III. THE DISTRICT COURT ERRED IN CERTIFYING A CLASS REPRESENTED BY COUNSEL FOUND TO HAVE MISLED THE COURT IN CONFLICT WITH THE CLASS

Denial of class certification was "require[d]" because Plaintiffs' counsel engaged in ethical misconduct that "prejudice[d] the class or create[d] a direct conflict between counsel and the class." *Reliable Money*, 704 F.3d at 498; *see* Pet.27-29.

Plaintiffs principally argue (at 19) that “[t]he district court specifically found that counsel’s actions *did not* actually impact the award of fees and expenses or otherwise harm the class.” But the court unambiguously found that Plaintiffs’ counsel had made “material” misstatements “capable of influencing the intended decisionmaker, namely the Court.” A56. The adequacy determination cannot turn merely on whether acts of deception hit their mark.

Regardless, *Reliable Money* requires the denial of class certification not only when the class has been prejudiced, but also when there is a “direct conflict between counsel and the class.” 704 F.3d at 498. Defendants do not contend, as Plaintiffs claim (at 20), that *any* misconduct by counsel warrants denial of class certification. Instead, misconduct that is “all part of an effort to get more for counsel at the expense of the class” does. A58.

Plaintiffs also assert (at 20) that Defendants “do not dispute” that counsel’s lack of candor would not affect their “zealous prosecution of the case going forward.” That is baffling. *See* Dkt.1269 at 5-6 (noting “concerns about whether new counsel will be able to check existing counsel going forward” and challenging that “the combination of firms

will fairly and adequately protect the interests of the class”); *see also* Pet.27-28. The problem is not, as Plaintiffs state (at 19) “that the lawyers *formerly* representing the plaintiffs sought to benefit themselves at the class’s expense.” The problem is that *all* then-existing counsel (including two firms still representing the class) submitted false statements to the court to maximize their share of the class’s recovery at the expense of the class.

CONCLUSION

For these reasons, the Court should grant the Rule 23(f) petition.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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/s/ Seth P. Waxman

SETH P. WAXMAN

July 2, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July 2026, the foregoing Reply in Support of Petition for Permission to Appeal was filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I certify that service will be accomplished by the appellate CM/ECF system on all counsel of record in this case.

/s/ Seth P. Waxman

SETH P. WAXMAN