Class Actions or Crass Actions? The Latest on Class Action Litigation in North America

IADC Annual Meeting 2026

Chip Magid
Dorsey & Whitney LLP
Washington, DC

I. Does Rule 702 Apply at Class Certification?

Motions for class certification often rely on expert reports or declarations. Federal Rule of Evidence 702 sets forth the criteria that must be met before a witness may testify as an expert. Federal Rule of Evidence 101(a) provides that the Rules of Evidence apply in *all* proceedings in federal courts unless excepted in Federal Rule of Evidence 1101; Rule 23 proceedings are not among the excepted proceedings. The U.S. Supreme Court has said that whether a particular methodology is "permissib[le] turns not on the form a proceeding takes — be it a class or individual action—but on the degree to which the evidence is reliable in proving or disproving the elements of the relevant cause of action. *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 455 (2016) (citing Fed. R. Evid. 401, 403, and 702). Accordingly, most Circuits have held that expert testimony proffered in support of or in opposition to a class certification motion must satisfy Rule 702. *See In re Blood Reagents Antitrust Litig.*, 783 F.3d 183 (3d Cir. 2015); *Prantil v. Arkema Inc.*, 986 F.3d 570 (5th Cir. 2021); *In re Nissan N. Am., Inc. Litig.*, 122 F.4th 239 (6th Cir. 2024); *Am. Honda Motor Co. v. Allen*, 600 F.3d 813 (7th Cir. 2010); *Sher v. Raytheon Co.*, 419 F. App'x 887 (11th Cir. 2011). The Eighth and Ninth Circuits, however, have held otherwise. *See In re Zurn Pex Plumbing Prod. Liab. Litig.*, 644 F.3d 604 (8th Cir. 2011); *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996 (9th Cir. 2018).

Although ensuring that proffered expert testimony satisfies Rule 702 is part of a district court's "gatekeeping" responsibilities, many courts view methodological flaws as issues of weight rather than of admissibility. The 2023 amendments to Rule 702 made clear that this view is mistaken: "[M]any courts have held that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a)." Rule 702 Advisory Committee cmt. 2023; *see also Engilis v. Monsanto Co.*, 151 F.4th 1040, 1049 (9th Cir. 2025) ("Properly applied, Rule 702 requires that challenges to an expert's opinion go to the weight of the evidence only if a court first finds it more likely than not that an expert has a sufficient basis to support an opinion."); *In re Keurig Green Mtn. Singleserve Coffee Antitrust Litig.*, 2025 WL 354671, at *2 (S.D.N.Y. Jan. 30, 2025) (quoting Rule 702 Advisory Committee cmt. 2023) (a court "cannot bypass this gatekeeping responsibility and pass it off to the jury by declaring 'questions of the sufficiency of an expert's basis, and the application of the expert's methodology, [to be] questions of weight and not admissibility.'") (alternation in original).

II. What Is Required to Establish Price Premium Damages?

Federal Rule of Civil Procedure 23(b)(3) requires, as a condition of certifying a class, that the court find "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." The U.S. Supreme Court has made clear that plaintiffs must "establish[] that damages are capable of measurement on a classwide basis" to satisfy Rule 23(b)(3). *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013). This poses a problem for plaintiffs when damages among class members differ – or when some class members suffer no damages at all. Plaintiffs in consumer class actions have sought to circumvent the problem by asserting that allegedly misleading advertising or labeling allows the defendant to charge a "price premium" for the product – essentially, that the defendant charges more for the product than it could without the advertising or labeling and thereby overcharges *all* purchasers, regardless of their subjective valuations of the product.

Typically, plaintiffs base a "price premium" theory on a "choice-based conjoint survey" that purports to measure the difference between consumers' "willingness-to-pay" for the defendant's product as-is and consumers' "willingness-to-pay" for the product without the allegedly deceptive advertising or labeling. A choice-based conjoint survey identifies the primary attributes of a product and asks survey respondents to make choices among attributes. For example, a choice set in a survey involving smartphones might ask respondents to choose among (a) an Apple phone with 512 GB of memory, a 6.9 inch screen, five camera zoom options, and a $1400 price; (b) an Apple phone with 256 GB of memory, a 6.5 inch screen, three camera zoom options, and a $1000 price; (c) a Samsung phone with 512 GB of memory, a 6.3 inch screen, five camera zoom options, and a $900 price; or (d) none of the choices. In theory, by varying the "attributes" such as memory, screen size, zoom options, and price in the choice sets given to a large number of respondents, the "part worth" of each attribute – that is, the relative effect each attribute has on product choice – can be measured.

Plaintiffs' experts then use the "willingness-to-pay" differential identified by the choice-based conjoint survey and multiply that percentage by the defendant's total sales to between the defendant's product to posit a damages total. For example, if the conjoint survey suggests that a manufacturer of a food product labeled "all natural" but containing a synthetic preservative charges 20 percent more for the product than the manufacturer could charge without the "all natural" claim on its label, and if the total retail value of the product's sales are $500,000,000, plaintiffs will claim "price premium" damages of $100 million.

There are multiple problems with this approach, even if the conjoint survey is appropriately designed (which it usually is not).

First, measuring the "part worths" of various attributes doesn't accurately address the legal issue. A conjoint survey might determine that, in the abstract, consumers would pay (or, more accurately, *say* that they would pay) 20 percent more for "all natural" food products than for food products that were not "all natural," but that does not necessarily mean that consumers would pay 20 percent more for a particular product labeled "all natural" than for the same product without an "all natural" label, or a label that included an "all natural" claim with an asterisk noting that the product also contained citric acid. The mismatch between a false advertising or mislabeling claim and a measurement of "attributes" would seem to run afoul of the Supreme Court's admonition that a damages methodology cannot satisfy Rule 23(b)(3) if it "identifies damages that are not the result of the wrong." *Comcast*, 569 U.S. at 37.

Second, a conjoint survey only measures (if anything) what consumers say they would pay – that is, the *demand* for a product. A price, however, is a function of both demand *and* supply. A conjoint survey says nothing about the supply side of the equation. Typically, plaintiffs' experts brush over the absence of any analysis of the supply side by simply assuming a vertical supply curve – that is, by making the dubious assumption that the defendant would sell the same amount of product in the "but for" world with a different label, advertisement, or formulation that it does in the real world. A few courts have taken issue with the failure to address the supply side. *See, e.g., In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 500 F. Supp. 3d 940, 949 (N.D. Cal. 2020), *aff'd sub nom. Schell v. Volkswagen AG*, 2022 WL 187841 (9th Cir. Jan. 20, 2022) (a damages model that "examines only what consumers say they would be willing to pay" but "ignores the 'supply' part of the supply/demand curve" "does not actually calculate a market price premium."); *In re NJOY Consumer Class Action Litig.*, 120 F. Supp. 3d 1050, 1119 (C.D. Cal. 2015) ("A consumer's subjective valuation of the [challenged] message, measured by their relative willingness to pay for products with or without the message, is not an accurate indicator of [ ] damages, because it does not permit the court to calculate the true market price of [the product] absent the purported misrepresentations"); *In re Gen. Motors Ignition Switch Litig.*, 407 F. Supp. 3d 212, 236 (S.D.N.Y. 2019) (a conjoint analysis that does not analyze defendant's willingness to sell at different price points "does not provide competent proof of damages."). But the vast majority of courts are willing to accept the notion posited in *Hadley v. Kellogg Sales Co.*, 324 F. Supp. 3d 1084, 1105 (N.D. Cal. 2018), that "conjoint analyses can adequately account for supply-side factors – and can therefore be utilized to estimate price premia without running afoul of *Comcast* – when (1) the prices used in the surveys underlying the analyses reflect the actual market prices that prevailed during the class period; and (2) the quantities used (or assumed) in the statistical calculations reflect the actual quantities of products sold during the class period." *See, e.g., Sharpe v. A&W Concentrate Co.*, 2021 WL

3721392, at *8 (E.D.N.Y. July 23, 2021); *Schechner v. Whirlpool Corp.*, 2019 WL 4891192, at *7 (E.D. Mich. Aug. 13, 2019); *McMorrow v. Mondelez Int'l, Inc.*, 2021 WL 859137 (S.D. Cal. Mar. 8, 2021); *Hasemann v. Gerber Prods. Co.*, 2024 WL 1282368, at *18 (E.D.N.Y. Mar. 25, 2024); *In re Folgers Coffee Mktg. Litig.*, 2024 WL 4068851, at *5 (W.D. Mo. July 31, 2024); *Fitzhenry-Russell v. Dr Pepper Snapple Grp., Inc.*, 326 F.R.D. 592, 606 (N.D. Cal. 2018); *Lessin v. Ford Motor Co.*, 2024 WL 5007092, at *5 (S.D. Cal. Oct. 31, 2024); *Andrews v. Sazerac Co., Inc.*, 2025 WL 1808797, at *9 (S.D.N.Y. July 1, 2025). This approach has no logical merit. Using "actual prices" in a conjoint survey may make the survey better than a survey that simply invents prices, but the survey still only measures consumers' stated demand. It says nothing about supply. Similarly, historical sales volumes say nothing about how sellers would react in the "but for" world posited by plaintiffs' experts; rather, it reflects a dubious assumption that sellers will sell the same amount of product in the "but for" world. (If, for example, a product costs 90 cents to produce and retails for $1.00, but the conjoint survey says that consumers will only pay 70 cents for the product if the label is changed, why should one assume that the selling company will choose to lose 20 cents on every product by maintaining its "historical sales volumes" rather than selling fewer units at a profit?) The issue is currently before the U.S. Court of Appeals for the Ninth Circuit in *Sazerac Company, Inc. v. Myers*, No. 25-4833, an appeal in which the IADC has submitted an amicus brief. (Briefs attached.)

III. Voucher Settlements

In response to numerous class action "coupon" settlements in which plaintiffs' counsel received sizeable fee awards but class members received nearly valueless coupons for a discount on future purchases – essentially product promotions – Congress enacted 28 U.S.C. § 1712 as part of the Class Action Fairness Act ("CAFA"). Section 1712(a) provides:

> If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney's fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.

28 U.S.C. § 1712(a). Redemption in the CAFA context means coupons actually redeemed, not merely coupons issued to claimants. *In re Easysaver Rewards Litig.*, 906 F.3d 747, 755 (9th Cir. 2018). Congress placed these restrictions on coupon settlements "out of a concern that the full value of coupons was being used to support large awards of attorney's fees regardless of whether class members had any interest in using the coupons." *Id.* "By requiring courts to use the redemption-rate value of the coupons instead of the face value, CAFA 'ensures that class counsel benefit[s] only from coupons that provide actual relief to the class.'" *McKinney-Drobnis v. Oreshack*, 16 F.4th 594 (9th Cir. 2021) (quoting S. Rep. No. 109-14 at 15-

20 (2005)). In addition to CAFA, Fed. R. Civ. P. 23(e)(C)(2) require that the relief provided to the class be "adequate" in comparison with a fee award.

The most obvious implication of CAFA is that coupon or voucher settlements will be subjected to considerable scrutiny.

The Second Circuit and Eleventh Circuit view *any* settlement involving vouchers as constituting coupon settlements. In *Moses v. New York Times*, 79 F.4th 235 (2d Cir. 2023), the Second Circuit looked to dictionary definitions of "coupon" and held that any "item that entitles its user to free or discounted products or services" is a coupon. *Id*. at 247 – 249. Although both the class representative and the defendant argued that access codes to online *New York Times* content "differ from coupons because they 'provide an entire product free of charge, not merely a discount;' 'do not require class members to hand over more of their money in order to enjoy the Settlement's benefit;' and 'feature a long period of usability and are freely transferrable,'" *id*. at 249, the appeals court sided with the settlement objector and held that "[t]he Access Codes are coupons under the plain meaning of the word: they are, in substance, digital vouchers that are 'surrendered in order to obtain' a one-month subscription to a NYT publication." *Id*.

The Eleventh Circuit has concluded that a "coupon," for purposes of the Class Action Fairness Act, is "a voucher, certificate, or form that can be exchanged for one or more goods or services, or for a discount on one or more goods or services." *Drazen v. Pinto*, 106 F.4th 1302, 1349 (11th Cir. 2024).

The Seventh Circuit, too, has "rejected a narrow definition of 'coupon' by rejecting, for purposes of § 1712, a proposed distinction between 'vouchers' (good for an entire product) and 'coupons' (good for price discounts)." *In re Southwest Airlines Voucher Litig*., 799 F.3d 701, 706 (7th Cir. 2015) (quoting *Redman v. RadioShack Corp*., 768 F.3d 622, 636-37 (7th Cir. 2014)).

The Ninth Circuit takes a more flexible view of what constitutes a "coupon" for purposes of CAFA. The court, in *Easysaver*, summarized three factors to be considered in determining whether a settlement involved a "coupon:"

> (1) whether class members have 'to hand over more of their own money before they can take advantage of' a credit, (2) whether the credit is valid only 'for select products or services,' and (3) how much flexibility the credit provides, including whether it expires or is freely transferrable.

In re Easysaver Rewards Litig., 906 F.3d 747, 755 (9th Cir. 2018) (quoting *In re Online DVD-Rental Antitrust Litig*., 779 F.3d 934, 951 (9th Cir. 2015)).

Applying these considerations, the Ninth Circuit in *In re Online DVD* (an antitrust case arising out of an agreement between Netflix and Walmart in which the companies divided the DVD business between them, with Netflix conceding sales of DVDs to Walmart and Walmart ceding DVD rentals to Netflix) concluded that a settlement providing class members with $12 Walmart gift cards was not a coupon settlement. The Ninth Circuit in *In re Online DVD* looked to the legislative history of the 2005 amendments to CAFA that added restrictions on coupon settlements. The court concluded that Congress, in enacting 28 U.S.C. § 1712(a), was concerned with settlements that provided class members with "little or no value" and with "settlements that involve a discount – frequently a small one – on class members' purchases from the settling defendant." *In re Online DVD*, 779 F.3d at 950 – 51. The court distinguished the Walmart gift cards from the "coupons" that concerned Congress by noting that $12 – "while not a lot of money these days even at Walmart" – was "still $12" and therefore not of "little or no value." *Id.* at 950. Further, unlike the settlements that drew Congress's ire, the settlement in *In re Online DVD* "gives class members $12 to spend on any item carried on the website of a giant, low-cost retailer. The class member need not spend any of his or her own money and can choose from a large number of potential items to purchase." *Id.* at 951.

The Ninth Circuit viewed the proposed settlement differently in *Easysaver*, which involved claims that an online business enrolled customers in a rewards program without the customers' consent and charged them an activation fee and a recurring monthly fee. The district court approved a settlement that awarded $8.7 million in attorneys' fees, $200,000 in litigation costs to plaintiffs' counsel, $80,000 in incentive payments to the named plaintiffs, $3.5 million for class administration and reimbursement of class members' membership fees, and a $20 credit for each class member that could be used on defendant's website. Only 3,000 class members sought refunds of their membership fees, for a total of $225,000. The district court valued the total value of the settlement at $38 million. An objector appealed, challenging the attorneys' fee award.

The Ninth Circuit vacated the attorneys' fee award, concluding that the $20 credits were "coupons." The Court of Appeals analyzed the credits as follows:

> To begin, the credits are categorically different from the Walmart gift cards [in *In re Online DVD*]. Defendants are decidedly not "giant . . . retailer[s]" in the mold of Walmart or other similar stores, and class members can only use the credits to purchase items from a limited universe of products: flowers, chocolates, and other similar gifts. This universe is even smaller if confined to products that class members can purchase without spending any of their own money – Defendants only claim to sell "15-25 products" for under $20. And that meager list does not even account for shipping charges. When asked in the fairness hearing whether class members could purchase anything from one of Defendants' websites for $20 or under if shipping charges are included, counsel responded: "If you include shipping, I'm not sure, but the

> defendants don't make money off the shipping." Regardless of whether money spent on shipping benefits Defendants, however, class members who spend money on shipping are required "to hand over more of their own money before they can take advantage of the coupon."
>
> Moreover, in *In re Online DVD*, Walmart's extensive inventory was significant in part because class members could use the gift cards without obtaining the product – DVDs – that led to their suit in the first place. Here, in contrast, class members cannot use these credits without purchasing an item from Defendants. And, to do so, they must hand over their billing information again to the very company that they believe mishandled that information in the first place, at the very least to pay for shipping. Thus, although class members do not have a product-specific complaint, they cannot reap the benefits of the settlement without reengaging in the same purchasing activity that they believe led to their injury.
>
> The credits at issue here are also far less flexible than those available in *In re Online DVD*. Although freely transferrable, they expire one year after issuance and have a series of blackout periods, including during the days before Valentine's Day, Mother's Day, and other holidays on which consumers most often buy flowers and chocolates.

Easysaver, 906 F.3d at 756 – 57.

The Ninth Circuit returned to the "coupon" question in *McKinney-Drobnis*, in which class members asserted that a membership-based spa-services company increased membership fees in violation of the membership agreement. The district court granted preliminary approval of the settlement, which allowed class members to submit claims for a voucher, which ultimately ranged in value from $36.28 to $180.68 depending upon the fee increase paid by the claimant. The settlement also allowed class counsel to seek a fee award of up to $3.3 million, and included both a "clear sailing" provision (a disfavored provision providing that the defendant would not object to the fee request) and a reverter provision specifying that if the court awarded less than $3.3 million in attorneys' fees, the difference between the actual award and $3.3 million would revert to the defendant.

Utilizing the three-factor framework set forth in *In re Online DVD*, the Ninth Circuit concluded that the vouchers were "coupons" for purposes of the Class Action Fairness Act. The court found the first *In re Online DVD* factor to be weigh in favor of considering the vouchers to be coupons, explaining that although "even class members receiving the smallest voucher, in the amount of $36.28, would be able to purchase entire products without spending their own money," it was also true that "a $36.28 voucher is not enough to purchase most of Massage Envy's services. Class members receiving the $36.28 voucher could not even purchase a single massage –

the service that is the basis for the membership fee that class members were allegedly injured by – without spending their own money." *McKinney-Drobnis*, 16 F.4th at 604. The court found the vouchers to be coupons under the second factor, as well, noting that the 251 products sold by Massage Envy "pale in comparison to the millions of low-cost products that Walmart sells, as in *Online DVD*." *Id*. at 605. The final factor, the court concluded, militated against the conclusion that the vouchers were coupons, because the vouchers were "flexible" – "the vouchers may be transferred, sold, and aggregated" – were valid for more than a year with no blackout dates, and did could be used multiple times until the value of the voucher was extinguished. *Id*. Taken together, the court concluded that the vouchers were coupons subject to 28 U.S.C. § 1712(a). *Id*.

The Fourth Circuit largely adopted the Ninth Circuit's approach in *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices & Prods. Liab. Litig*., 952 F.3d 471, 489-90 (4th Cir. 2020).

The Sixth Circuit, in *Doe v. Déjà Vu Consulting, Inc*., 925 F.3d 886 (6th Cir. 2019), did not specifically delineate what constitutes a "coupon settlement" under CAFA, but rejected objectors' argument that coupons could not be counted toward the total value of the settlement for purposes of determining the reasonableness of an attorneys' fees award on the grounds that the benefits to the class "do[] not require class members to 'hand over more of their own money' to be eligible to redeem the benefits of the Settlement Agreement." *Id*. at 897.

A practical implication of CAFA is that an attorneys' fees award in a voucher settlement must either (a) await judicial approval until "after the coupons' expiration date so that it knows for certain the value of the coupons that *were* actually redeemed," *Drazen*, 106 F.4th at 1350 (emphasis in original); *see also Dardarian v. Officemax N. Am., Inc*., 2013 U.S. Dist. LEXIS 98653, at *9-10 (N.D. Cal. July 12, 2013) ("Assuming final approval, the Court does not expect it can issue a fee award until the merchandise vouchers have been redeemed and the fairness of the settlement ascertained."); (b) be based on expert testimony estimating the redemption rate, *Drazen*, 106 F.4th at 1350; or (c) employ the lodestar method, in which the court applies a "good results" multiplier to the dollar value of hours actually expended by plaintiffs' counsel. *See, e.g., In re Southwest Airlines Voucher Litig*., 799 F.3d 701, 710 (7th Cir. 2015) ("§ 1712 permits a district court to use the lodestar method to calculate attorney fees to compensate class counsel for the coupon relief obtained for the class."); *Drazen*, 106 F.4th at 1350 ("The attorney's fees for coupon settlements under CAFA may be based on the value of the coupons that are redeemed, the lodestar method, or a combination of both.").

IV. Class Actions as an Alternative to Nationwide Injunctions

Injunctive relief is available to a class. Fed. R. Civ. P. 23(b)(2) permits class certification where "the party opposing the class has acted or refused to act on grounds that generally apply to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."

In *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), the U.S. Supreme Court held that judges do not have the power to issue "universal injunctions" – injunctions applicable nationally. The Court recognized, however, that courts retained the power to issue nationwide injunctions on behalf of a class certified under Rule 23. *Id*. at 849-50; *see also id.* at 869 (Kavanaugh, J., concurring) ("plaintiffs who challenge the legality of a new federal statute or executive action and request preliminary injunctive relief may sometimes seek to proceed by class action under Federal Rule of Civil Procedure 23(b)(2) and ask a court to award preliminary classwide relief that may, for example, be statewide, regionwide, or even nationwide.").

In the wake of *Trump v. CASA*, plaintiffs in numerous cases have successfully enjoyed governmental actions through class actions. *See, e.g., Doe v. Musk*, 350 F.R.D. 246 (D. Md. 2025); *Mercado v. Noem*, 800 F. Supp. 3d 526 (S.D.N.Y. 2025); *Thakur v. Trump*, 800 F. Supp. 3d 1044 (N.D. Cal. 2025); *Barbara v. Trump*, 790 F. Supp. 3d 80 (D.N.H. 2025); *L.G.M.L. v. Noem*, 800 F. Supp. 3d 100 (D.D.C. 2025); *CASA, Inc. v. Trump*, 350 F.R.D. 246 (D. Md. 2025).

In many of these cases, plaintiffs sought and obtained "provisional" or "preliminary" class certification – certification that "will dissolve if the injunction does." William Rubenstein, 2 *Newberg and Rubenstein on Class Actions* § 4:30 (6th ed. 2022). The Supreme Court itself recognized the availability of such "provisional" or "preliminary" class certification for purposes of seeking an injunction in *A.A.R.P. v. Trump*, 605 U.S. 91 (2025), holding that "courts may issue temporary relief to a putative class." *Id*. at 98. In order to obtain preliminary injunctive relief in a class action, plaintiffs must meet their burden of establishing all of the elements of Rule 23(a) as well as Rule 23(b). *See, e.g., Barbara*, 790 F. Supp. 3d at 90. The rigor with which a court must analyze plaintiffs' Rule 23 showing is no less than in a regular class action. *Id*. Parties seeking preliminary injunctive relief by means of provisional class certification must, of course, also establish that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities is in their favor, and that preliminary relief is in the public interest. *Id*. at 101.

Note that because plaintiffs seeking provisional class certification may be required to make a later showing that they satisfy all of the elements of Rule 23 in order to obtain final injunctive relief, consideration should be given to seeking class certification on a non-provisional basis where there is no urgent need for preliminary relief.

V. Issue Classes

Fed. R. Civ. P. 23(c)(4) provides that "[w]hen appropriate, an action may be brought or maintained as a class action with respect to particular issues." Where, for example, plaintiffs will have a difficult time showing that common issues may not be able to establish that common issues predominate regarding damages, they may seek certification of numerous "issue classes" as to which common damages issues allegedly predominate.

The Fifth Circuit takes a dim view of such "issue classes" and requires that Rule 23(c)(4) classes may only be certified when "the cause of action, taken as a whole" satisfies the predominance requirement of Rule 23(b)(3). *See Corley v. Orangefield Indep. Sch. Dist.*, 152 F. App'x 350, 355 (5th Cir. 2005).

The District of Colombia Circuit, similarly, requires courts both "to ensure that the common questions within the certified issues predominate over any individual ones" *and* to "evaluate the relationship any certified issues have as to the dispute as a whole" so that a certified issue "encompass[es] a reasonably and workably segregable aspect of the litigation." *Harris v. Med. Transp. Mgmt., Inc.*, 77 F.4th 746, 760-61 (D.C. Cir. 2023).

The Second, Third, Fourth, Sixth, Seventh, and Ninth Circuits require only that the plaintiff "show that common issues predominate *in the resolution of the specific issues that are the subject of the certification motion* and not as to 'the cause of action, taken as a whole.'" *Jacks v. DirectSat USA, LLC*, 118 F.4th 888, 897 (7th Cir. 2024 (citation omitted) (emphasis added); *see also In re Nassau County Strip Search Cases*, 461 F.3d 219, 226 (2d Cir. 2006); *Russell v. Educ. Comm'n for Foreign Med. Graduates*, 15 F.4th 259, 274 (3d Cir. 2021); *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 441 (4th Cir. 2003); *Martin v. Behr Dayton Thermal Prods. LLC*, 896 F.3d 405, 413 (6th Cir. 2018); *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996).