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April 2, 2026

Via email: RulesCommittee_Secretary@ao.uscourts.gov

Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544

Re: Rule 23 Proposal – Clarification of the Superiority Requirement of Rule 23(b)(3)

Dear Ms. Dubay:

Shell USA, Inc. respectfully requests the Advisory Committee to consider whether Federal Rule of Civil Procedure 23(b)(3) would benefit from a targeted clarification confirming that, in assessing whether class treatment is “superior,” trial courts may consider existing, effective nonjudicial remedies— including voluntary remediation programs and governmental settlements—alongside traditional litigation alternatives.

As other submitters have observed, the current text and the word “adjudicating” have been read by some courts to narrow the superiority inquiry to comparisons among forms of in-court adjudication, rather than allowing courts to weigh practical, out-of-court solutions that may already provide prompt and meaningful relief. That interpretation can prevent courts from evaluating whether “other available methods” such as refunds, warranties, customer-care programs, private claim-resolution processes, remediation efforts, and consent judgments are more effective for affected individuals than class litigation.

This interpretive divergence has contributed to inconsistent outcomes across jurisdictions and has generated unnecessary motion practice and delay. Amazon’s March 10, 2026 letter to this Committee provides a detailed explanation of the effects of these different outcomes.

From a case-administration perspective, a clarification would serve three practical interests. First, it would reduce duplicative proceedings where the principal relief sought has already been provided (or is being provided) through a robust remediation program or regulatory settlement. Second, it would mitigate incentives for follow-on or “tag-along” filings that seek largely duplicative relief while imposing substantial litigation costs, including attorneys’ fees, that can erode net recovery for class members. Third, it would better align Rule 23’s operation with policy goals that encourage prompt, voluntary redress and efficient resolution without judicial intervention, while preserving the

court's discretion to assess the adequacy, scope, accessibility, and fairness of any asserted nonjudicial remedy on a case-specific record.

Shell is not suggesting that the existence of a nonjudicial remedy should automatically defeat certification. Rather, the proposed clarification would confirm that courts may consider such remedies as part of the Rule 23(b)(3) superiority inquiry and determine, based on the facts presented, whether class treatment offers meaningful value beyond available alternatives. In Shell's view, this clarification would address an ambiguity that has produced conflicting approaches and would assist courts in allocating judicial resources to disputes where class treatment meaningfully advances fair and efficient resolution.

Shell appreciates the Committee's consideration of this suggestion and would be pleased to provide additional information that may assist the Committee's evaluation.

Respectfully Submitted,

Kind regards,

A handwritten signature in black ink, appearing to read "Kimberly R. Phillips", with a long, sweeping horizontal flourish extending to the right.

Kimberly R. Phillips
Executive Vice President Legal Policy & Advocacy