No. 24-724

IN THE

Supreme Court of the United States

THE HAIN CELESTIAL GROUP, INC.,
WHOLE FOODS MARKET, INC.,
Petitioners,

v.

SARAH PALMQUIST, INDIVIDUALLY AND AS NEXT FRIEND OF E.P., A MINOR, GRANT PALMQUIST,
Respondents.

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

REPLY BRIEF

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INTRODUCTION

The first question presented is an exceptionally important issue of federal law on which courts of appeals are intractably divided: whether a court of appeals *must* vacate a district court's final judgment in a removed diversity case when it determines that the district court erred earlier in dismissing a nondiverse party after removal. Respondents' Brief in Opposition confirms the circuit conflict, and along the way both underscores its practical implications and—remarkably—accidentally concedes that the approach adopted below and by the Eleventh Circuit is wrong. This Court should grant the Petition to decide the first question presented and reverse.

As to the second (and wholly independent) question presented, this Court decided *Royal Canin U.S.A., Inc. v. Wullschleger*, 145 S. Ct. 41 (2025), just over a week after the Petition was filed in this case. As explained in the Petition (at 27-31), if the Court opts not to grant plenary review of either question presented, the Court may wish to grant the petition, vacate the judgment below, and remand for further consideration in light of its decision in *Royal Canin*.

I. The Court Should Grant Review Of The First Question Presented.

As explained in the Petition, the decision below further entrenches an existing circuit conflict between the Fifth and Eleventh Circuits on one side, and the Fourth, Eighth, and Ninth Circuits on the other. Respondents' rambling and inapplicable discussion of waiver cannot obscure the conflict, which could not be more stark: on materially identical facts, the Eighth

Circuit reached the opposite conclusion to the Fifth Circuit here. *Junk v. Terminix Int'l Co.*, 628 F.3d 439, 442–43 (8th Cir. 2010). Even Respondents cannot explain away that conflict, and their efforts to distinguish the other conflicting decisions are unpersuasive.

On the merits, Respondents accidentally concede that the Fifth Circuit's holding is wrong because it is contrary to this Court's decision in *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826 (1989). Respondents *agree* with Petitioners that, under *Newman-Green*, the Fifth Circuit could have dismissed a dispensable nondiverse party (like Whole Foods) in order to cure any lingering jurisdictional problem, thereby preserving the district court's final judgment. BIO 23-24. But the Fifth Circuit *disagreed*, holding instead that, "[w]here a jurisdictional defect lingers … through judgment in the district court," the case *must be* remanded because the federal court lacked jurisdiction." Pet.App. 22a-23a (emphasis added). As Respondents inadvertently acknowledge, that view is foreclosed by *Newman-Green*.

Finally, Respondents do not dispute that the approach adopted by the Fifth and Eleventh Circuits would guarantee that enormous judicial and party resources will go to waste in those circuits. This Court should put an end to such waste by granting the petition to settle this important jurisdictional question.

A. The Circuits Are Divided.

The Fifth Circuit's holding that the district court's judgment *must* be vacated because the district court erred in dismissing Whole Foods as fraudulently joined deepens an existing circuit conflict between the

Fifth and Eleventh Circuits on one side and the Fourth, Eighth, and Ninth Circuits on the other. Far from rebutting the existence of that conflict, Respondents devote the bulk of their brief to discussing how this Court and various circuit courts have addressed a question that has already been decided by this Court and is not presented here—*i.e.*, whether a plaintiff *waives* her right to challenge a district court's refusal to remand when she does not immediately appeal that order pursuant to 28 U.S.C. § 1292(b). That discussion is simply not responsive to the question whether there is a circuit conflict; but it is helpful in underscoring the practical importance of the first question presented.

1. To begin with, Respondents do not meaningfully dispute that the decision below directly conflicts with the Eighth Circuit's decision in *Junk v. Terminix International Co.*, 628 F.3d 439 (8th Cir. 2010). And for good reason: faced with materially identical facts in *Junk*, the Eighth Circuit reached the opposite conclusion to the decision below. After holding that the district court erred in dismissing a nondiverse defendant and refusing to remand, the Eighth Circuit nevertheless affirmed the district court's grant of final judgment to the defendant (based, as here, on the plaintiff's failure to establish causation). *Id.* at 444, 447. The court reasoned that, upon dismissal of the nondiverse defendant, "the [district] court's diversity jurisdiction was perfected and the litigation could proceed" as to the remaining diverse defendants." *Id.* at 447. The Eighth Circuit thus affirmed final judgment in favor of the diverse defendants, reversed the dismissal of the nondiverse defendant, and ordered the plaintiff's claim *only as to that nondiverse defendant*

remanded to state court. That is the opposite of what the Fifth Circuit did in this case. The two decisions cannot be reconciled.

Respondents similarly fail in their efforts to downplay the conflict with the Ninth and Fourth Circuits. As explained in the Petition, the outcome of the appeal in this case would have been different in both of those courts. Like the Eighth Circuit, the Ninth Circuit has held that, when a court of appeals determines that a district court erred by denying a motion to remand, it need not disturb a final judgment if "diversity jurisdiction would have existed if the case had been filed in the posture it had at the time" final judgment was entered. *Dep't of Fair Emp. & Hous. v. Lucent Techs., Inc.*, 642 F.3d 728, 736 (9th Cir. 2011); *accord*, *Gould v. Mut. Life Ins. Co. of N.Y.*, 790 F.2d 769, 774 (9th Cir. 1986) (affirming final judgment despite error in dismissing nondiverse party when, at the time of judgment "[t]he only parties before the court [are] diverse").

Similarly, the Fourth Circuit in *Able v. UpJohn Co., Inc.* relied on principles of "judicial economy and finality" to leave in place a district court's final judgment regardless of whether the district court had erred in refusing to remand the case to state court. 829 F.2d 1330, 1331, 1333 (4th Cir. 1987). As explained in the Petition, this Court overruled *Able* to the extent it held that a plaintiff waives her ability to challenge a refusal to remand by not appealing immediately. *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 74 n.11 (1996). But the now-settled question of waiver is different from the remedy question presented here, which turns in large part on the considerations of finality and efficiency that formed the basis of the

decision in *Able*. And when, as here, a plaintiff successfully challenges on appeal a refusal to remand, those considerations counsel in favor of leaving a final judgment undisturbed in circumstances like these.

The bottom line is that the courts of appeals are intractably divided over what *remedy* to impose when they determine that a district court erred in refusing to remand a case to state court and then proceeded to final judgment. In three courts of appeals, the final judgment may stand if any lingering jurisdictional problem can be cured. In the Fifth and Eleventh Circuits, the court of appeals *must* vacate the final judgment no matter what. Pet.App. 22a-23a; *Henderson v. Wash. Nat'l Ins. Co.*, 454 F.3d 1278, 1284 (11th Cir. 2006). Without this Court's intervention, parties in these situations will be subject to different jurisdictional regimes in different parts of the country, with dramatic consequences for defendants and for the administration of justice. The Court should grant the Petition to resolve the conflict.

2. In attempting to rebut the clear circuit conflict, Respondents devote a huge portion of their brief to discussing a question that has already been resolved by this Court and is not at issue in this case: whether a plaintiff waives her right to appeal a district court's refusal to remand if she does not seek to appeal that decision immediately. *See* BIO 11-18. In the end, Respondents' discussion only underscores the practical importance of the first question presented.

As Respondents explain, BIO 9-11, 19-23, this Court held in *Caterpillar* that a plaintiff who objects to a district court's refusal to remand need not seek permission to immediately appeal the denial in order to preserve her objection in any later appellate

proceedings. 519 U.S. at 74. Although courts were divided on that question before *Caterpillar*, it is now settled law in all circuits that plaintiffs can challenge a refusal to remand on appeal from a final judgment. But this case is not about waiver. Petitioners are not arguing that Respondents waived their objection to the refusal to remand by not immediately appealing. The question presented here is what *remedy* was appropriate when, on appeal from final judgment, the Fifth Circuit determined that the district court should have remanded the case to state court. And on *that* question, the courts of appeals are divided, as explained above.

Although not their intent, Respondents' focus on the waiver question reinforces the need for this Court's review. When a plaintiff immediately appeals a refusal to remand and prevails, it is easy to see that remand to state court is the appropriate remedy, at least where proceedings in the district court remain on hold pending appeal of the threshold issue. In such a case, the district court has not entered final judgment and no judicial or party resources have been expended in pursuit of final judgment. In such a case, the "overriding" and "overwhelming" "considerations of finality, efficiency, and economy" that motivated this Court's decision in *Caterpillar*, 519 U.S. at 75, would play no role in deciding how to remedy the earlier error. But where, as here, the court of appeals finds an error in refusing to remand *after* final judgment, the fact that judicial and party resources were expended in reaching final judgment is necessarily relevant to determining the appropriate remedy. That is not a question of waiver; it is a question of whether or when it is appropriate to impose an

"exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice" by vacating a final judgment and returning parties to the starting line in state court. *Caterpillar*, 519 U.S. at 77. The panel below held that it was *required* to impose those costs. This Court should grant the Petition to hold that courts should avoid imposing those costs when any jurisdictional problems have been cured by the time of final judgment or are curable by dismissal of an indispensable party.

B. Respondents Accidentally Concede That The Decision Below Is Wrong.

As explained in the Petition, the Fifth Circuit's decision ignores the principles this Court announced in *Caterpillar* and *Newman-Green*—principles that prioritize preserving final judgments as to completely diverse parties in cases that lack complete diversity at the time of removal or filing (or even final judgment). This case falls somewhere on the jurisdictional spectrum between *Caterpillar* (which lacked complete diversity at removal but was completely diverse by final judgment) and *Newman-Green* (which lacked complete diversity from filing, through final judgment and appeal). *Caterpillar*, 519 U.S. at 64, *Newman-Green*, 490 U.S. at 828-30. In those cases, the Court held that appellate courts should preserve a district court's final judgment where the parties had cured a jurisdictional defect before final judgment, *Caterpillar*, 519 U.S. at 73, or where the court could take steps to cure a lingering jurisdictional defect by dismissing a nondiverse dispersible party, *Newman-Green*, 490 U.S. at 838.

As this Court explained in *Grupo Dataflux v. Atlas Global Group, L.P.*, it has long been the practice in federal courts to cure jurisdictional defects in diversity cases by dismissing dispensable nondiverse parties and entering or preserving judgment as to the remaining diverse parties. 541 U.S. 567, 572-73 (2004); *accord Newman-Green*, 490 U.S. at 833-36; *see Horn v. Lockhart*, 17 Wall. 570, 579 (1873) ("[T]he question always is, or should be, when objection is taken to the jurisdiction of the court by reason of the citizenship of some of the parties, whether ... they are indispensable parties, for if their interests are severable and a decree without prejudice to their rights may be made, the jurisdiction of the court should be retained and the suit dismissed as to them."). In practice, "[c]ourts frequently employ Federal Rule of Civil Procedure 21 to preserve diversity jurisdiction over a case by dropping a nondiverse party if the party's presence in the action is not required under Federal Rule of Civil Procedure 19." 7 Wright & Miller, *Federal Practice and Procedure* § 1685 (3d ed. 2001); *accord* 4 *Moore's Federal Practice* § 21.05 (2025) (same).*

In light of this precedent, it is manifestly clear that the Fifth and Eleventh Circuits are wrong that a court of appeals *must* vacate a final judgment and remand a case to state court when the court of appeals determines that the district court erred by dismissing a nondiverse defendant. Respondents agree.

* Respondents' reliance on the rule that "a case that is not removable initially does not become removable by an involuntary action," BIO 21, is inapplicable here. That rule applies to involuntary changes that happen in *state* court prior to removal. 16 *Moore's Federal Practice* § 107.140[3][a][ii][C].

Respondents correctly explain that "the Fifth Circuit might have cured" any lingering jurisdictional problem by dismissing Whole Foods as a dispensable party and note that the panel "was invited" to do just that. BIO 23-24; *see* CA5 Appellee Br. 28. Although Respondents obviously do not desire that result, their acknowledgment that the Fifth Circuit *could have* preserved the district court's final judgment by dismissing Whole Foods is tantamount to a concession that the panel erred in holding that it "must" vacate the judgment and remand the case to state court. Pet.App. 22a. Whole Foods was plainly a dispensable party: the district court proceedings demonstrate that Whole Foods' presence was not necessary for the court to afford complete relief among the remaining parties, and no party was prejudiced by dismissal of Whole Foods. *See* Fed. R. Civ. P. 19 (standard for determining if a party is necessary). Under this Court's precedents—not to mention logic and common sense—the Fifth Circuit erred in holding that it had no choice but to vacate the district court's final judgment and remand the entire matter to state court. If left uncorrected, the Fifth Circuit's approach will continue to visit asymmetrical prejudice on defendants going forward by allowing plaintiffs who lose on the merits in federal court to get a brand-new bite at the apple in state court.

C. Review Is Warranted Now.

The first question presented is important and recurring. Rules governing federal jurisdiction in removed cases and the remedies available for erroneous dismissals of nondiverse parties are recurring issues that are critical to the uniform administration of justice. The outcome below is profoundly unfair

and, if left uncorrected, will lead to an enormous waste of judicial and party resources. Respondents had a full and fair opportunity to litigate their state-law claims against Hain, and the Fifth Circuit identified no error in the district court's holding that Respondents failed to establish causation. But now Respondents can start over in state court, hoping for a different result based on the same facts and law. This Court should not countenance that waste of resources and the violence it does to principles of finality.

Respondents err in arguing that this issue does not arise sufficiently often to warrant this Court's attention. BIO 8-9. As explained in the amicus brief for the National Association of Manufacturers and others, NAM Amicus Br. 17, there is a "virtual epidemic" of removals and remand motions contesting fraudulent joinder, "in the federal courts in the recent past, most notably in the courts of the Fifth and Eleventh Circuits." 13F Wright & Miller, *Federal Practice & Procedure* § 3641.1 (3d ed. 2024). In those circuits in particular, defendants therefore routinely bear the risk that if they defeat a remand motion based on fraudulent joinder and then prevail at final judgment, they may nevertheless end up back at the starting line in state court if the Fifth or Eleventh Circuit disagrees with the district court's fraudulent-joinder decision.

* * * * *

Respondents identify no advantage to the approach adopted by the Fifth and Eleventh Circuits. And none is apparent, as that approach will inevitably waste judicial and party resources, and undermine finality. This Court should grant the Petition to resolve

the circuit split on this important and recurring question of federal jurisdiction.

II. The Court May Wish To GVR With Respect To The Second Question Presented.

The Petition presents two independent questions; reversal on either question would afford Petitioners the relief they seek. With respect to the second question presented, as explained in the Petition, the Fifth Circuit independently erred in holding that the district court was required to consider the non-jurisdictional factual allegations Respondents newly alleged after removal that had the effect of converting a claim that was not colorable at the time of removal into what the Fifth Circuit viewed as a colorable claim. Pet. 27-31; Pet.App. 13a-21a. Just over a week after the Petition was filed, this Court decided *Royal Canin U.S.A., Inc. v. Wullschleger*, 145 S. Ct. 41 (2025). Although that case involved federal-question jurisdiction, not diversity jurisdiction, the Court's comprehensive discussion of removal, the time-of-filing rule, and federal jurisdiction more broadly will inevitably inform the approach that courts of appeals take going forward with respect to issues like the second question presented. And resolution of the second question presented, in light of the principles set out in *Royal Canin*, will have important implications for both diverse and nondiverse defendants by establishing guardrails governing plaintiffs' ability to manipulate their pleadings to defeat diversity jurisdiction in cases over which a district court plainly has subject matter jurisdiction at the time of removal.

If this Court opts not to grant plenary review of either question presented, it may wish to grant the

petition, vacate the Fifth Circuit's decision, and remand for reconsideration in light of *Royal Canin*.

CONCLUSION

For the reasons set forth above and in the Petition for a Writ of Certiorari, the Court should grant the Petition.

Respectfully submitted,

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