

No. 19-1366

In the Supreme Court of the United States

SHIYANG HUANG, PETITIONER

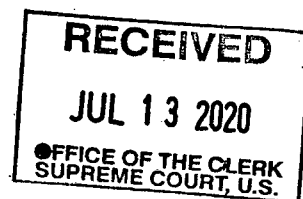
v.

VALESKA SCHULTZ, MELANIE WAUGH, ROSALIND STALEY,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED, ET AL.,

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT*

SECOND SUPPLEMENTAL BRIEF FOR PETITIONER

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SECOND SUPPLEMENTAL BRIEF FOR PETITIONER

Petitioner Shiyang Huang respectfully submits this second supplemental brief in light of the Second Circuit's reversal in *Berni v. Barilla S.p.A.*, —F.3d—, No. 19-1921 (2d Cir. Jul. 8, 2020) (Cabranes, J.). A slip opinion copy is attached to this brief.

In May 2020, Shiyang Huang filed a petition for a writ of certiorari to review the Eighth Circuit's opinion that the class action was maintainable under Article III for Huang to receive prospective relief under Federal Rules of Civil Procedure 23.

In *Berni*, the Second Circuit vacated a Rule 23(b)(2)¹ class certification by *former* pasta buyers to certify a settlement-class for prospective relief on *future* practices. *Berni*, slip. op., at 6-7. The Second Circuit rejected such a class certification because “a class may *not* be certified under Rule 23(b)(2) if *any* class member's injury is not remediable by the injunctive or declaratory relief sought.” *Id.* at 4 (emphasis original). The Second Circuit recognized recurring attempts for “past purchasers” to purportedly demand prospective relief. But it nevertheless demanded *every plaintiff* to “show a likelihood that he . . . will be injured in the future” for such relief. *Id.* at 12.

Judge Cabranes' opinion fits word-for-word for this petition. Petitioner agrees with respondents that “*former participants like [Huang] have no stake in forward-looking relief*” and lacked Article III standing below. Petition 1 (quoting C.A. Plaintiffs Br. 31). Thus, Huang “lack[s] the kind of injury necessary to sustain a case or controversy, and necessary to establish standing, under Article III.” *Berni*, slip op., at 12.

¹ A class may be certified if any “final injunctive relief or corresponding declaratory relief is appropriate respecting the class *as a whole*”. Fed. R. Civ. Proc. 23(b)(2) (emphasis added). But petitioner lacked Article III standing for prospective relief, *contra* Pet. App. 2a, and money judgments alone cannot cause “inconsistency” under Rule 23(b)(1)(A). Petition 1, 5.

Purported “prospective relief” in this case *caused* class certification under Fed. R. Civ. Proc. 23(b)(1)(A), denying Huang’s constitutional right to opt out. *See* Petition 1-2, 16-17. But Huang consistently asserted that he has *no risk* of prospective harm. C.A. Objector Br. 27-28; Petition 15-17; Supp. Brief for Petitioner 2-3. With the great weight of new binding precedents supporting petitioner’s argument, e.g., *Berni* and *Thole v. U.S. Bank, N.A.*, 140 S. Ct. 1615 (2020), *ibid.*, the Court should grant the petition and end an Article III problem² in class-action settlements, as named parties’ non-adverse class certification exceeded limited Article III jurisdiction. It is a real hazardous repetition now splitting nine circuits into four corners; three circuits are already self-split. *See* Petition 12-14.

CONCLUSION

The Court should grant the Petition.

Respectfully Submitted,

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² *E.g.*, Petition 12 n.5 (the Eleventh Circuit’s *en banc* review on plaintiffs’ standing); *Campbell v. Facebook*, 951 F.3d 1106 (9th Cir. 2020); *Frank v. Gaos*, 139 S. Ct. 1041 (2019). These cases all lacked standing analysis below.