NO. _____

In the Supreme Court of the United States

CAMELLIA GRILL HOLDINGS, INC.,
Petitioner,

v.

GRILL HOLDINGS, L.L.C.; CHARTRES GRILL, L.L.C., DOING BUSINESS AS GRILL; UPTOWN GRILL OF DESTIN, L.L.C.; RANO, L.L.C.; HICHAM KHODR; K & L INVESTMENTS, L.L.C.; ROBERT'S GUMBO SHOP, L.L.C.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court should resolve the circuit split in the wake of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005) and elucidate the proper application of the "inextricably intertwined" test in the context of the *Rooker-Feldman* doctrine.

2. Whether contractual terms create an exception pursuant to *Lance v. Dennis*, 546 U.S. 459 (2006) in which *Rooker–Feldman* may be applied against a party not expressly named in an earlier state proceeding.

3. Whether *sua sponte* transfer of intellectual property asset ownership, which was not pled, not contested, and upon which the opposing party submitted no evidence to meet its burden, deprives the Petitioner of property rights in violation of the Due Process Clause.

CORPORATE DISCLOSURE STATEMENT

Petitioner Camellia Grill Holdings, Inc. is not a subsidiary or affiliate of a publicly owned corporation that owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

The Grill Holdings, L.L.C. v. Camellia Grill Holdings, Inc., 120 So. 3d 294 (La. App. 4th Cir. 2013), *writ denied*, 125 So. 3d 433 (La. 2013).

Uptown Grill, LLC v. Michael Shwartz, et al., United States District Court for the Eastern District of Louisiana, Case Nos. 13–6560, 14–810, 14–837 (Judgments entered July 10, 2015, April 18, 2018, and September 14, 2021).

Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc., United States Court of Appeals for the Fifth Circuit, Case No. 15–30617 (Judgment entered March 23, 2016).

Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc., United States Court of Appeals for the Fifth Circuit, Case No. 18-30515 (Judgment entered March 29, 2019).

Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc., United States Court of Appeals for the Fifth Circuit, Case No. 21-30639 (Judgment entered August 23, 2022).

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Petitioner Camellia Grill Holdings, Inc. respectfully petitions for a writ of certiorari to review the judgment and orders of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The August 23, 2022 opinion of the Fifth Circuit Court of Appeals is reported at *Uptown Grill, LLC v. Shwartz*, 46 F.4th 374 (5th Cir. 2022) and reproduced in Appendix A. The March 29, 2019 opinion of the Fifth Circuit Court of Appeals is reported at *Uptown Grill, LLC v. Shwartz*, 920 F.3d 243 (5th Cir. 2019) and reproduced in Appendix C. The March 23, 2016 opinion of the Fifth Circuit Court of Appeals is reported at *Uptown Grill, LLC v. Shwartz*, 920 F.3d 243 (5th Cir. 2016) and reproduced in Appendix F.

The opinions of the District Court for the Western District of Louisiana are found at *Uptown Grill, LLC v. Shwartz*, No. CV 13-6560, 2021 WL 269710 (E.D. La. Jan. 27, 2021), reproduced in Appendix B; *Uptown Grill, LLC v. Shwartz,* No. CV 13-6560, 2017 WL 2312882 (E.D. La. May 26, 2017), reproduced at Appendix D; and Uptown Grill, L.L.C. v. Shwartz, 116 F. Supp. 3d 713 (E.D. La. 2015), reproduced at Appendix G.

BASIS FOR JURISDICTION

The order of the Fifth Circuit Court of Appeals was entered on August 23, 2022. On October 19, 2022, Justice Alito extended the time for filing this petition to December 20, 2022. Application No. 22A327. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE

28 U.S.C. § 1331: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

28 U.S.C. § 1257: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari. . ."

United States Constitution, Amendment Five: "No person shall be. . .deprived of life, liberty, or property, without due process of law."

INTRODUCTION

Camellia Grill Holdings, Inc. ("CGH") petitions this Court in connection with over a decade of convoluted, piecemeal litigation. This matter originates from CGH's licensure of the Camellia Grill restaurant's intellectual property. After numerous breaches by the licensees, CGH pursued its rights in state court. The state judiciary confirmed CGH's ownership rights in its intellectual property and terminated the license agreement through a series of multiple judgments. Within thirty days of the exhaustion of their state remedies, the licensees filed suit in federal court directly challenging the legal and factual determinations of the state judgments. The federal district court and the Fifth Circuit Court of Appeals ultimately rendered these state judgments effectively void and *sua sponte* stripped CGH of all its ownership rights in its trademarks, trade dress, and goodwill, awarding these assets to the licensees.

As is illustrated in this case, the federal courts' inconsistent application of the *Rooker-Feldman* doctrine and the resulting disparate consequences provide this Court with the opportunity to opine upon this doctrine for the first time in nearly two decades. The lower courts found the *Rooker-Feldman* doctrine to be inapplicable based primarily upon their misapplication of the "inextricably intertwined" concept. This confusion is widespread far beyond this case, on the heels of *Exxon Mobil Corp. v. Saudi Basic*

Industries Corp., 544 U.S. 280 (2005), and has resulted in sharp divergence within the circuits.

The lower courts are similarly confused regarding the "state-court loser" aspect of *Rooker-Feldman* following this Court's opinion in *Lance v. Dennis*, 546 U.S. 459 (2006). While the Court clarified the limited applicability of *Rooker-Feldman* to parties not named in the underlying state litigation, the Court acknowledged that certain circumstances give rise to exceptions. In this case, the license agreement's terms bound the licensee's affiliates and sublicensees. Although the state litigation involved only the licensee in name, it was contractually binding upon the licensee's affiliates and sublicensees. As a result, this matter presents the ideal vehicle for this Court to expand upon such exceptions and address the applicability of *Rooker-Feldman* where a non-party is contractually bound to a state judgment.

Furthermore, the *Rooker-Feldman* doctrine misapplication coupled with the *sua sponte* actions at issue in this case create a grave public policy issue, eroding the autonomy and authority of the state judiciary throughout the United States. If allowed to stand unchallenged, this case sets a dangerous precedent for rampant federal review, modification, and vitiation of state judgments. If the federal courts are permitted to forge state-court losers into federal court winners, state judgments will have no preclusive effects nor provide litigants with finality. This Court must address this critical issue so that

other state-court litigants do not suffer the same fate of suspended animation within the federal court system.

STATEMENT OF THE CASE

I. INCEPTION OF THE DISPUTE.

In 1946, Michael Shwartz's family founded the Camellia Grill, a landmark New Orleans diner, located at 626 South Carrollton Avenue (the "Carrollton Location") and dedicated their lives to operating the restaurant, including the invention and implementation of its distinctive trade dress. Pet.App.156a. In 1999, Shwartz founded CGH to own and ultimately license the federally registered Camellia Grill trademarks[1] and trade dress. *Id.*

After evacuating New Orleans due to Hurricane Katrina in 2005, Shwartz suffered a minor stroke and did not resume operations of the Carrollton Location. *Id.* Although the Camellia Grill was not for sale, Hicham Khodr pursued Shwartz to assume operations of the shuttered restaurant and expand the Camellia Grill brand to include ancillary units. In 2006, Shwartz and Khodr negotiated an agreement in which Khodr would purchase the real property at the Carrollton Location for $500,000.00 and license the intellectual property for a fee of $1,000,000.00. Pet.App.157a. The parties never discussed nor intended a sale of the intellectual property. The

[1] U.S.P.T.O. Registration Nos. 1440249, 1471729, 1471728, and 1446870. Pet.App.274a.

restaurant was also not sold as a going concern as it was shuttered at the time of the sale, and Khodr only purchased the real property.

Khodr subsequently incorporated three entities: RANO, LLC ("RANO") to purchase the real property; The Grill Holdings, LLC ("Grill Holdings") to license the intellectual property and manage the Carrollton Location; and Uptown Grill, LLC ("Uptown Grill") to operate the Carrollton Location (collectively the "Khodr Parties"). Pet.App.35a-36a. Khodr has been the sole member and manager of these entities throughout their existence. Pet.App.175a.no4.

Khodr indicated that he wished to immediately begin renovations of the restaurant, the parties proceeded with the real property closing in advance of the intellectual property license agreement. Khodr's lender's counsel, Randy Opotowsky, expressed concerns about the license agreement not being in place at the time of the real property closing. As a gratis accommodation, Shwartz agreed to the temporary inclusion of "trademarks" within the Bill of Sale transferring the personal property located at the Carrollton Location. As established through the deposition testimony of Opotowsky and Shwartz, this language was included as a two-week "placeholder" until a license agreement was executed.

In August of 2006, the parties executed a series of three contracts. Pet.App.3a. On August 11, 2006, Shwartz, individually, executed the Carrollton Location real property sale to RANO for $490,000.00.

Shwartz, individually and on behalf of CGH and Camellia Grill, Inc. ("CGI"), executed the Bill of Sale for Tangible Personal Property to Uptown Grill for $10,000.00. Pet.App.4a. The Bill of Sale purported to transfer "tangible personal property" including "[a]ll furniture, fixtures and equipment, cooking equipment, kitchen equipment, counters, stools, tables, benches, appliances, recipes, trademarks, names, logos, likenesses, etc., and all other personal and/or movable property owned by Seller located within or upon [626 South Carrollton Ave]." *Id.* On or about August 27, 2006, CGH, entered into the License Agreement ("License") with Grill Holdings wherein CGH agreed to license the rights in all Camellia Grill trademarks, trade dress, menus, blueprints, and recipes associated with Camellia Grill (collectively defined as "Marks") for $1,000,000.00, plus certain royalty payments. Pet.App.4a-5a. The License is the only contract in which the term "trade dress" appears. *Id.*

The License contains several currently relevant provisions:

1. Section 1.3: License governs all "restaurants bearing the Marks." Pet.App.255a.
2. Section 4.10: "Licensee" includes "all affiliates, subsidiaries or related companies of Grill Holdings, LLC." Pet.App.266a.
3. Section 5: All "right, title, and interest" in the Marks remains the property of CGH. *Id.*

4. Section 6.4: Licensee shall cause any sublicensee "to abide by all of the provisions of this Agreement." Pet.App.268a.
5. Section 10.3: "Licensee will not attack the title or any rights of Licensor in and to the Marks" and "will not claim adversely to Licensor . . . with respect to any right, title or interest in or to the Marks." Pet.App.269a.
6. Section 17.5: License was the "complete and exclusive statement of agreement among the Parties" and "replaces and supersedes all prior written and oral agreements or statements by and among the Parties." Pet.App.275a.

Following the execution of the License, Uptown Grill, the Bill of Sale's purchaser, sublicensed rights from Grill Holdings. Pet.App.83a. Khodr subsequently formed numerous other entities to act as sublicensees and to operate ancillary Camellia Grill restaurants in Destin, Florida and Chartres Street in New Orleans. Pet.App.36a. All of these entities were unconditionally bound to all of the License's terms via Section 6.4.

II. STATE COURT LITIGATION.

A. CGH's First Final Judgment.

In April of 2007, almost immediately after the Carrollton Location's reopening, the Khodr Parties began committing numerous breaches of the License which they refused to remediate upon written notice.

Pet.App.222a-223a. On August 8, 2008, Grill Holdings affirmatively filed suit against CGH in Louisiana state court in connection with one of these disputed breaches, seeking a declaratory judgment that CGH did not have the right to audit the books and records of its food operations at the Carrollton Location. Pet.App.203a. CGH filed a counterclaim requesting that the court order Grill Holdings to submit to the audit. *Id.* The trial court granted CGH's motion for summary judgment, finding that CGH was entitled to a full and complete audit. *Id.* Grill Holdings appealed to the Louisiana Fourth Circuit Court of Appeals (the "Fourth Circuit"). *Id.*

On May 14, 2009, the Fourth Circuit rendered its opinion and final judgment, affirming the ruling of the trial court. Pet.App.212a. Based in part on Grill Holdings' own pleadings, the Fourth Circuit conclusively found CGH to be the owner of the Camellia Grill trademarks, trade dress, blueprints, menus, and recipes. Pet.App.203a-204a. The Khodr Parties only permitted CGH's audit after they were held in contempt of this judgment. Pet.App.223a

B. CGH's Second Final Judgment.

Despite this litigation, the Khodr Parties' litany of other License breaches remained uncured. On May 31, 2011, CGH issued a letter to the Khodr Parties formally terminating the License, which they ignored. Pet.App.240a. On June 6, 2011, CGH filed suit against Grill Holdings in Louisiana state court to terminate the License. Pet.App.222a. The court

entered a judgment in favor of CGH terminating the License Agreement "effective May 25, 2012, restoring all rights to the licenses marks to the mover, CAMELLIA GRILL HOLDINGS, INC" and awarded CGH's attorney's fees. Pet.App.214a-215a.

On May 8, 2013, the Fourth Circuit affirmed this judgment and modified the effective date of termination retroactively to June 1, 2011. Pet.App.221a. The Fourth Circuit found the License to be "clear and explicit and thus should not be subject to any further interpretation by the court."[2] Pet.App.238a. Grill Holdings subsequently filed a Writ of Certiorari to the Louisiana Supreme Court which was denied on November 1, 2013. Pet.App.242a-243a.

For five years throughout these state court proceedings, the Khodr Parties never asserted any alternative ownership rights to the Marks under the Bill of Sale. Instead, the Khodr Parties affirmatively and repeatedly pleaded that CGH was the owner of the Marks and that the purpose of the License was to allow the use of the Marks at the Carrollton Location.

C. Effects of the License's Termination.

The License contains two provisions which address the "effects of termination." Section 12.1 maintains, "Licensee shall avoid any action or the continuance of any condition which might suggest to

[2] Nonetheless, the federal courts have modified numerous provisions of the License without CGH's consent.

the public that Licensee has any right to the Marks," post-termination. Pet.App.270a. Section 12.2 further provides, "all rights and privileges granted to Licensee hereunder will immediately cease and will revert to Licensor. Licensee will discontinue use of all Marks." *Id.* As a result, upon the termination of the License by the state courts, all rights under the License reverted to CGH, and the Khodr Parties were required to immediately discontinue use of the Marks at all locations.[3]

III. FEDERAL COURT LITIGATION.

A. CGH's Federal Litigation.

Shortly after the Fourth Circuit's 2013 opinion, CGH discovered that the Khodr Parties were attempting to designate the Carrollton Location's trademarked façade as a historic landmark. Pet.App.38a-39a. Such designation would not allow alterations to the building, effectively circumventing the final state judgment terminating the License and requiring the Khodr Parties to cease use of the Marks. Pet.App.39a.no11.

On July 24, 2013, CGH filed suit before the United States District Court for the Eastern District of Louisiana against the Khodr Parties and the City of New Orleans seeking to enjoin this designation. *See Camellia Grill Holdings, Inc. v. New Orleans City*, No.

[3] None of the state judgments contain an exception for the Carrollton Location.

13-5148, 2013 WL 4431344 (E.D. La. 2013). In response, the Khodr Parties again affirmatively asserted that CGH owned the Marks and that the License governed the Carrollton Location. The district court ultimately denied CGH's claims as premature due to the Khodr Parties' then pending appeal to the Louisiana Supreme Court. Pet.App.39a. CGH voluntarily dismissed its Complaint without prejudice. *Id.*

B. Khodr's Federal Litigation.

Throughout the pendency of the state litigation, the Khodr Parties continued to employ the Marks at the Carrollton and Chartres Locations. On November 4, 2013, shortly after the writ denial, CGH sent a cease-and-desist letter pursuant to the License's termination provisions in an effort to enforce the finalized state judgments. Pet.App.39a. CGH demanded that the Khodr Parties immediately cease all use of the previously licensed Marks or be subject to an infringement suit based upon the License's post-termination language.

In direct response to this cease-and-desist letter, on December 3, 2013, Uptown Grill filed suit against Shwartz, CGH, and CGI, the sellers under the Bill of Sale before the United States District Court for the Eastern District of Louisiana. Pet.App.39a. Uptown Grill primarily sought to be declared "the rightful owner of the 'recipes, trademarks, names, logos, likenesses, etc.' and other tangible personal

property located within or upon [the Carrollton Location]."[4] Pet.App.247a.

On July 10, 2015, the district court entered a judgment in favor of Uptown Grill. Pet.App.172-173a. The district court noted that it had "doubts about what the parties subjectively intended when they entered into the transactions at issue." Pet.App.198a. Nonetheless, the district court ruled that the Bill of Sale, which purported to sell "tangible personal property," clearly and unambiguously transferred the intangible Camellia Grill trademarks to Uptown Grill. Pet.App.174a. In reaching this determination, the court refused to attribute the Khodr Parties' licensed use of the trademarks as inuring to the benefit of CGH.[5] Rather, the court determined that CGH lost its incontestable federal trademark rights through its lack of personal use during this licensure period. Pet.App.197-198a. Based on this rationale, the court *sua sponte* awarded Uptown Grill ownership of all Camellia Grill trademarks, goodwill, and trade dress not only at the Carrollton Location, but nationwide. Pet.App.172a-173a. CGH appealed.

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[4] The Khodr Parties never amended their pleadings to seek additional relief beyond trademarks or relief outside of the Carrollton Location.

[5] *See* 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 18:45.50 (5th ed.) ("A licensee's use inures to the benefit of the licensor-owner of the mark and the licensee acquires no ownership rights in the mark itself. This is the rule at common law and has been codified in Lanham Act § 5. Thus, properly licensed use by licensees will serve to fortify the legal and commercial strength of the licensed mark.")

On March 23, 2016, the Fifth Circuit affirmed the district court's award of the the trademark ownership at the Carrollton Location via the "mis-drafted" Bill of Sale, but reversed its *sua sponte* grant of ownership rights beyond that location and remanded for further findings. Pet.App.170a-171a.

On remand, CGH filed a motion for summary judgment seeking, in relevant part, to be declared the owner of the Camellia Grill trademarks outside the Carrollton Location. Pet.App.115a. The Khodr Parties did not contesting CGH's ancillary trademark ownership. *Id.* Nonetheless, the district court *sua sponte* ruled that CGH has no "remaining protectable interest under trademark law" and further ruled that "any protectable trade dress relative to the Carrollton Location was transferred as part of the Bill of Sale." Pet.App.118a, 120a. However, the district court held that the Khodr Parties were contractually precluded by the License from using the Camellia Grill trademarks[6] beyond the Carrollton Location and that any such use constitutes a breach of the License. Pet.App.124a. On April 17, 2018, the district court subsequently enjoined Chartres Grill, Grill Holdings, and Uptown Grill from using the Camellia Grill trademarks "at any location other than the

[6] The district court declined to apply the trade dress provision of the License beyond the Carrollton Location because the trade dress elements were not specifically itemized in the License. Pet.App.120a-121a.

Carrol[l]ton Location" and awarded CGH attorney's fees. Pet.App.91a-92a.

CGH again appealed to the Fifth Circuit. On March 29, 2019, the Fifth Court ruled that the Bill of Sale assigned all Camellia Grill trademarks, trade dress, and goodwill rights to Uptown Grill both at the Carrollton Location and nationwide. Pet.App.100a-101a. However, the Court reversed the district court's determination regarding the enforceability of the trade dress provision of the License and remanded the issue of whether the use of Camellia Grill trade dress at the Chartres Location constituted a breach of the License. Pet.App.101a-102a.

On the final remand, CGH pursued the breach of contract claims, but also filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction under the *Rooker-Feldman* doctrine, asserting that the district court lacked subject matter jurisdiction to grant the Khodr Parties' declaratory judgment claims. Pet.App.43a.

On January 27, 2021, the district court entered an Order and Reasons addressing the pending motions.[7] Pet.App.42a-43a. The court denied CGH's Motion to Dismiss. Pet.App.65a. In reaching this decision, the court held that Uptown Grill was not a "state-court loser," relying primarily upon the 2016 Fifth Circuit opinion's laches analysis and this Court's

[7] For purposes of brevity, this summary discusses only the *Rooker-Feldman* analysis.

limitations in *Lance*, 546 U.S. 459. Pet.App.57a. In considering the "inextricably intertwined" concept, the court ignored the language of the state judgments which unequivocally adjudicated ownership rights to CGH, instead holding "this Court's ruling in favor of Uptown Grill did not require this Court to overrule or question any finding made by the state courts." Pet.App.61a.

CGH made its third and final plea to the Fifth Circuit to remedy the clearly erroneous path of the federal litigation, reciting the parties' extensive history and highlighting the Khodr Parties' direct attacks on the final state judgments. On August 23, 2022, the Fifth Circuit affirmed the district court's holdings. Pet.App.3a. In considering the *Rooker-Feldman* doctrine, the Fifth Circuit declined to address the "state-court loser" elements of the *Rooker-Feldman* analysis. Pet.App.20a. The court agreed with the district court's conclusion that "the [federal] case does not constitute a complaint of an injury caused by a claim 'inextricably intertwined' with a state court decision." Pet.App.20a. In considering this issue, the court summarily determined that the federal and state claims were independent, discounting that Uptown Grill's federal complaint directly sought to overturn CGH's final state judgments. Pet.App.23a. Rather, the court concluded that because the litigation in federal court "has been centered on the Bill of Sale," it "did not directly attack

the state court judgments nor invited district court rejection of those judgments." *Id.*

REASONS FOR GRANTING WRIT

I. THE CIRCUITS ARE SPLIT REGARDING A KEY ASPECT OF THE *ROOKER-FELDMAN* ANALYTICAL FRAMEWORK: THE INEXTRICABLY INTERTWINED TEST.

The Fifth Circuit's opinion in this case only deepens the entrenched circuit conflict and confusion regarding the analytical framework of the *Rooker-Feldman* doctrine and the application of the "inextricably intertwined" test after this Court's most recent guidance in *Exxon Mobil Corp.,* 544 U.S. 280. and *Skinner v. Switzer*, 562 U.S. 521 (2011). This case presents the opportunity for this Court to provide a bright line rule regarding the application of the "inextricably intertwined" concept to guide the lower courts regarding the doctrine's lingering uncertainties.

A. The *Rooker-Feldman* Doctrine Jurisprudence.

The origins of the *Rooker-Feldman* doctrine are found in 28 U.S.C. §1257, which provides "[f]inal judgments or decrees rendered by the highest court of a State…may be reviewed by the Supreme Court." This Court relied on this statute when deciding *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) holding that only the Supreme Court can exercise

appellate jurisdiction over the highest court in a state. Likewise, when deciding *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), this Court again relied upon §1257 to find that only the Supreme Court could review the final decisions of the highest court in a jurisdiction. The Court also introduced the inextricably intertwined test and explained "[i]f the constitutional claims presented to a United States district court are inextricably intertwined with the state court's denial in a judicial proceeding . . ., then the district court is in essence being called upon to review the state-court decision, which it may not do." *Id.*

In *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987), the Court considered a case involving overlapping jurisdictional issues, which included several concurrent opinions discussing *Rooker-Feldman*. *Id.* In particular, Justice Marshall opined regarding the application of the inextricably intertwined test:

> [I]t is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a

> prohibited appeal of the state-court judgment."

Id. at 25. A number of lower federal courts have since adopted Marshall's test in analyzing *Rooker-Feldman*.

After over twenty-years of silence, this Court provided long-awaited direction regarding the *Rooker-Feldman* doctrine in the 2005 *Exxon Mobil* opinion.[8] 544 U.S. 280 (2005). The focus of this opinion was the applicability of *Rooker-Feldman* in the context of concurrent federal and state litigation. *Id.* at 292. The Court explained that the doctrine "is confined to ... cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.* at 284. The Court acknowledged the *Feldman* opinion's use of the "inextricably intertwined" language, but did not apply it to *Exxon Mobil's* facts. *Id.* at 286.

In 2011, the Court briefly addressed *Rooker-Feldman* for the last time to date in *Skinner v. Switzer*, 562 U.S. 521 (2011). In *Skinner*, the plaintiff federally challenged the constitutionality of a Texas statute that had been adversely construed against him by prior state judgments. *Id.* at 532. The Court again declined to address the inextricably intertwined

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[8] "The few decisions that have mentioned *Rooker* and *Feldman* have done so only in passing or to explain why those cases did not dictate dismissal." *Id.* at 287.

test, rather focusing on the concept of independent claims. *Id.* at 532. In holding that Skinner's federal claims were not barred by *Rooker-Feldman*, the Court explained, "A state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action." *Id.*

B. The "Inextricably Intertwined" Circuit Split.

In the years following these opinions, the Court's lack of discussion of the "inextricably intertwined" test in *Exxon Mobil* and *Skinner* resulted in confusion amongst the lower courts as to the proper analysis of this principle. Legal scholars have noted that circuits "are torn on whether the inextricably intertwined test, formerly the touchstone of the *Rooker-Feldman* analysis, remains intact after *Exxon Mobil* and if so, to what extent." Bradford Higdon, *The Rooker-Feldman Doctrine: The Case for Putting It to Work, Not to Rest*, 90 U. Cin. L. Rev. 352, 363 (2021). The circuits currently take a variety of approaches in applying the "inextricably intertwined" test leading to disparate results.

The Third[9] and Eleventh Circuits utilize a claim preclusion approach that is heavily blended

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[9] *See*, Jonas v. Gold, 627 F. App'x 134, 137 (3d Cir. 2015);; Feingold v. Office of Disciplinary Counsel, 415 Fed.Appx. 429, 431 (3d Cir. 2011); Easley v. New Century Mortg. Corp., 394 Fed.Appx. 946, 948 (3d Cir. 2010); Mayercheck v. Judges of Pa. Sup. Ct., 395 Fed.Appx. 839, 842, (3d Cir. 2010); and Van Tassel v. Lawrence Cnty. Domestic Relations Sections, 390 Fed.Appx. 201, 203 (3d Cir. 2010).

with the inextricably intertwined language. Courts in these circuits find *Rooker–Feldman* to be applicable if "a claim was either (1) one actually adjudicated by a state court or (2) one 'inextricably intertwined' with a state court judgment." *Target Media Partners v. Specialty Mktg. Corp.*, 881 F.3d 1279, 1286 (11th Cir. 2018). Federal claims are considered "inextricably intertwined" if they request to "effectively nullify the state court judgment, or it succeeds only to the extent that the state court wrongly decided the issues." *Id.*

The Seventh and Ninth Circuits include the inextricably intertwined test as part of their two-step *Rooker-Feldman* analysis with varying degrees of deference. The Seventh Circuit relies upon it as the initial consideration.[10] It first determines "whether a plaintiff's federal claims are 'independent' or, instead, whether they 'either directly challenge a state court judgment or are 'inextricably intertwined[11] with one" *Andrade,* 9 F.4th at 950. It then determines "whether the plaintiff had a reasonable opportunity to raise the issue in state court proceedings." *Id.* Comparatively, the Ninth Circuit applies the "inextricably intertwined" test as the secondary

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[10] *See e.g.*, Andrade v. City of Hammond, Indiana, 9 F.4th 947, 950 (7th Cir. 2021); Swartz v. Heartland Equine Rescue, 940 F.3d 387 (7th Cir. 2019); Jakupovic v. Curran, 850 F.3d 898 (7th Cir. 2017); and Sykes v. Cook Cty. Cir. Ct. Prob. Div., 837 F.3d 736 (7th Cir. 2016).

[11] This circuit defines inextricably intertwined as "'there must be no way for the injury complained of by [the] plaintiff to be separated from [the] state court judgment." *Id., quoting Jakupovic,* 850 F.3d at 903.

consideration after first considering whether the case involves "a forbidden *de facto* appeal under *Rooker–Feldman*." *Cooper v. Ramos*, 704 F.3d 772, 778 (9th Cir. 2012). These courts then determine if the cases are "inextricably intertwined," *id est* "the relief requested in the federal action would effectively reverse the state court decision or void its ruling." *Id.* at 779.

In sharp contrast, several circuits have entirely abandoned the "inextricably intertwined" test in the wake of *Exxon Mobil*. The First Circuit has not substantively addressed the "inextricably intertwined" since *Exxon Mobil.*[12] The Second Circuit held "the phrase 'inextricably intertwined' has no independent content" and "is simply a descriptive label attached to claims that meet the requirements outlined in *Exxon Mobil*." *Hoblock v. Albany Cnty. Bd. of Elections,* 422 F.3d 77, 87 (2d Cir. 2005).[13] The Fourth Circuit has noted, "Under *Exxon*, then, *Feldman's* 'inextricably intertwined' language does

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[12] *See e.g.*, Tyler v. Supreme Jud. Ct. of Massachusetts, 914 F.3d 47 (1st Cir. 2019) and States Res. Corp. v. The Architectural Team, Inc., 433 F.3d 73 (1st Cir. 2005).

[13]Of note, the Second Circuit has revived the inextricably intertwined test and has treated it as a separate test in recent opinions. *See*, Chris H. v. New York, 764 F. App'x 53, 56 (2d Cir. 2019) ("[The *Rooker-Feldman* doctrine] also prohibits federal court review of claims 'that are "inextricably intertwined" with state court determinations. A claim is inextricably intertwined under *Rooker-Feldman* when at a minimum, a federal plaintiff had an opportunity to litigate a claim in a state proceeding (as either the plaintiff or defendant in that proceeding), and the claim would be barred under the principles of preclusion."

not create an additional legal test for determining when claims challenging a state-court decision are barred, but merely states a conclusion." *Davani v. Virginia Dep't of Transp.*, 434 F.3d 712, 719 (4th Cir. 2006).[14] The Sixth Circuit has opined, "the phrase 'inextricably intertwined' only describes the conclusion that a claim asserts an injury whose source is the state court judgment, a claim that is thus barred by *Rooker–Feldman*." *McCormick v. Braverman*, 451 F.3d 382, 394–95 (6th Cir. 2006).[15] The Tenth Circuit has declined to apply the "inextricably intertwined" concept at all due to confusion regarding its meaning.[16]

C. The Fifth Circuit's Inconsistent Application of the "Inextricably Intertwined" Test.

The Fifth Circuit's precedent is similarly unclear even amongst itself. In *Truong v. Bank of Am., N.A.*, the Fifth Circuit held that, post-*Exxon Mobil,* "'inextricably intertwined' does not enlarge the core holding of *Rooker* or *Feldman*." 717 F.3d 377, 385 (5th Cir. 2013). The court relied on precedent from the

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[14] *See also*, Jonathan R. by Dixon v. Just., 41 F.4th 316, 340 (4th Cir. 2022).

[15] *See also*, Kovacic v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs., 606 F.3d 301 (6th Cir. 2010).

[16] Campbell v. City of Spencer, 682 F.3d 1278, 1282-83 (10th Cir. 2012) ("It is unclear whether a claim could be inextricably intertwined with a judgment other than by being a challenge to the judgment .... We think it best to follow the Supreme Court's lead, using the *Exxon Mobil* formulation and not trying to untangle the meaning of inextricably intertwined."

Second and Fourth Circuits in treating the concepts of "independent claims" and "inextricably intertwined" as "labels," rather than analytical elements of the *Rooker-Feldman* analysis. *Id.*

In more recent cases, the Fifth Circuit has treated the "inextricably intertwined" test as an additional element of the *Rooker -Feldman* analysis, following the Second Circuit's evolving approach. In *Burciaga v. Deutsche Bank Nat'l Tr. Co.*, the Fifth Circuit described the doctrine as being comprised of the four *Exxon Mobil* elements. 871 F.3d 380, 384–85 (5th Cir. 2017). However, it elaborated, "Further, in addition to the precise claims presented to the state court, *Rooker–Feldman* prohibits federal court review of claims that are 'inextricably intertwined' with a state court decision." *Id.*

D. The Application of *Rooker-Feldman* and the Inextricably Intertwined Test to the Instant Case.

In analyzing the current case, the Fifth Circuit quoted both *Truong* and *Burciaga*, but again, applied a different legal framework. Pet.App.19a-20a. The court declined to apply the four enumerated *Exxon Mobil* elements or the "inextricably intertwined" standard outlined in *Burciaga*. Pet.App.21a. Rather, the court focused exclusively on whether the federal claims were "independent" from the state claims. Pet.App.22a. Although the federal claims at issue directly challenged the legal conclusions of the final state judgments, the Fifth Circuit determined that

the *Rooker-Feldman* doctrine was not applicable. The sole basis of this conclusion was that the federal litigation involved the Bill of Sale which was not litigated before the state court. Pet.App.22a-23a. This omission was due entirely to the Khodr Parties' failure to assert the Bill of Sale as a defense and to challenge CGH's ownership rights in the Marks at any point during the state litigation. However, the court did not acknowledge that issue.

It is clear from the face of the Khodr Parties' federal claims and the state judgments that the Khodr Parties necessarily sought the review and reversal of the state judgments. One month after the final adjudication of the state litigation by the Louisiana Supreme Court, Uptown Grill sought a federal declaratory judgment that:

> **UPTOWN GRILL is the rightful owner of the 'recipes, trademarks, names, logos, likenesses, etc.' and other tangible personal property located within or upon the real property known as 'The Camellia Grill'** wherever located within or upon the buildings and improvements bearing Municipal No. 626 South Carrollton Avenue, New Orleans, Louisiana.

Pet.App.247a (emphasis added). The "controversy" supporting this request was that CGH "claimed complete ownership of, among other things, the

"recipes, trademarks, names, logos, likenesses, etc." by virtue of the finalized state judgment. Pet.App.250a. This request for relief and the underlying assertions were in clear contravention to and directly complained of injuries emanating from the prior final state judgments.

The 2009 Fourth Circuit Court judgment specifically held:

> **[CGH] is the owner of the "Camellia Grill" trademark, the trade dress associated with the "Camellia Grill" restaurant located at 626 S. Carrollton Avenue**, New Orleans, Louisiana, **all rights** to the blueprints, plans and specifications for ancillary "Camellia Grill" restaurants, and **all menus and recipes** developed by or used in the "Camellia Grill" restaurants.

Pet.App.203a-204a (emphasis added). Similarly, in its 2012 judgment, the state trial court terminated the License "**restoring all rights to the licenses marks to the mover, CAMELLIA GRILL HOLDINGS, INC.**" Pet.App.215a (emphasis added).

The Khodr Parties further alleged that the purpose of the License was to allow them "to open additional restaurants nationwide." Pet.App.249a. This position is divergent to the 2009 final state judgment which specifically held, "The purpose of the License Agreement between Camellia Grill

[Defendant] and Grill Holdings was to allow Grill Holdings to operate the Camellia Grill business located at 626 S. Carrollton Avenue, New Orleans, Louisiana using the "Camellia Grill™" name and marks." Pet.App.204a.

As illustrated above, it was a legal impossibility for the district court grant Uptown Grill's claims to be the owner of the Camellia Grill intellectual property without revisiting and overturning the state judgments which previously found CGH to be the owner of the same assets. As Marshall explained, "the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Pennzoil Co.,* 481 U.S. at 25. This precise scenario exists in this matter as the district court acknowledged in own *Rooker-Feldman* analysis, "It is undisputed that, under both this Court and the Fifth Circuit's holdings, Shwartz lost rights to the Bill of Sale that the state courts otherwise attributed to him under the License Agreement." Pet.App.61a. Thus, by the district court's own admission, it acted as an appellate court in overturning the rights attributed to CGH by virtue of the state final judgments. Nonetheless, the district court conversely concluded "the state and federal claims in this matter are not 'inextricably intertwined,' and this Court does not risk an implicit overruling of the state courts' decisions." Pet.App.64a.

With the Louisiana state action litigated to finality, Uptown Grill's declaratory action suit was a transparent effort to use the federal courts to further appeal the final state judgments and re-litigate issues addressed and concluded through the state litigation. This point is further emphasized through the Khodr Parties' shifting positions depending upon the status of the License and state court litigation. While the License was effective, Uptown Grill bound itself as a sublicensee and consistently acknowledged CGH's ownership rights, only to reverse this position and fraudulently claim ownership rights through the Bill of Sale after the exhaustion of its remedies in state court following the termination of the License. Uptown Grill's claims can be reduced to one goal—overrule and effectively void two prior final state judgments in contravention of 28 U.S.C. § 1257 and the intent of the *Rooker-Feldman* doctrine.

The facts of this matter make it uniquely suited for consideration by this Court. This case specifically embodies the bellwether *Rooker-Feldman* principle that "lower federal courts possess no power whatever to sit in direct review of state court decisions" either directly or indirectly. *Feldman*, 460 U.S. at 483, quoting *Atlantic Coast Line R. Co. v. Engineers*, 398 U.S. 281 (1970). This matter also necessitates an analysis of the "inextricably intertwined" test where "the district court is in essence being called upon to review the state-court decision." *Feldman*, 460 U.S. at 486. Considering the face of the state judgments and

federal pleadings alone, this case presents a prima facie example of this principle and is an ideal vehicle for the Court to clarify the "inextricably intertwined" test.

Furthermore, while the outcome and precedent established by this case is particularly troubling, these issues are not unique to CGH. The widespread confusion and diverging analyses within the circuits is resulting in inconsistent, inequitable rulings that have far-reaching implications regarding the finality and sanctity afforded to state judgments, which is a concern for all state court litigants.

II. THIS MATTER PRESENTS A UNIQUE INTELLECTUAL PROPERTY LICENSING CASE OF FIRST IMPRESSION WHICH SHOULD BE SETTLED BY THE COURT WITHIN THE CONTEXT OF THE *LANCE* PARTY EXCEPTION.

In a similar vein, this case presents a second novel *Rooker-Feldman* issue that merits this Court's consideration: a second exception to the *Lance* "state court loser" parameters. In this case, the lower federal courts declined to find Uptown Grill to be a "state-court loser" within the *Rooker-Feldman* framework because Uptown Grill was not explicitly named as a party to the state ligation. This conclusion was based upon a strict application of *Lance*, 546 U.S. 459, and did not consider the contractual nature of Uptown Grill's relationship to the state judgments as an affiliate and sublicense to the License. As a result, this matter presents the opportunity for the Court to

expand upon non-party exceptions referenced in *Lance* and address the applicability of *Rooker-Feldman* upon a federal litigant who is not explicitly named in the underlying state litigation, but is contractually bound to a state judgment.

A. Post-*Lance* "State-Court Losers."

While the phrase "state-court loser" may seem self-explanatory at first blush, the lower courts have struggled with framing its scope and exceptions. In 2006, the Court provided guidance regarding the constraints of the "state-court loser" definition in the *Lance* opinion. 546 U.S. 459. In *Lance*, the Court reviewed a congressional redistricting suit. *Id.* The district court dismissed the federal complaint of several citizen-plaintiffs on the ground that they were in privity with the state legislature, a losing party in prior state litigation. *Id.* at 460. The Court held that, "The *Rooker–Feldman* doctrine does not bar actions by nonparties to the earlier state-court judgment ***simply because***, for purposes of preclusion law, they could be considered in privity with a party to the judgment." *Id.* at 466 (emphasis added). However, the Court qualified this position, stating, "In holding that *Rooker–Feldman* does not bar the plaintiffs here from proceeding, we need not address whether there are *any* circumstances, however limited, in which *Rooker–Feldman* may be applied against a party not named in an earlier state proceeding—*e.g.*, where an estate takes a de facto appeal in a district court of an earlier state decision involving the decedent." *Id.* at 466, n.2.

With only one example, the lower courts have grappled with identifying the distinctive circumstances in which *Rooker-Feldman* is applicable against a party not named in the state litigation. This confusion has resulted deviating conclusions within the circuits.[17] For example, the Tenth Circuit determined that "'parties' to a state-court judgment for *Rooker–Feldman* purposes include all persons directly bound by the state-court judgment, whether or not they appear in the case caption." *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1235.no2 (10th Cir. 2006), *discussing Kenmen Eng'g v. City of Union*, 314 F.3d 468, 481 (10th Cir. 2002). The court concluded that *Lance* "did not necessarily repudiate the narrow holding of *Kenmen Engineering* concerning parties directly bound by the state-court judgment—who would seem to fall squarely within the definition of "state-court losers." *Id.* The Sixth Circuit has maintained its narrow privity approach: "A state party may not circumvent the Article III jurisdictional provisions simply by substituting a privy's name for his own in the federal claim. This is especially true because the source of the injury to the state court loser and his privy would be one and the same: the state

[17]"A federal court plaintiff is not subject to the *Rooker-Feldman* doctrine limiting the power of lower federal courts to review state court judgments unless the plaintiff has lost in state court. However, there is authority holding that a person in privity with the party who lost in state court may be deemed a state-court loser for purposes of the *Rooker-Feldman* doctrine." 21 C.J.S. Courts § 287.

court judgment." *McCormick v. Braverman*, 451 F.3d 382, 396 (6th Cir. 2006). Comparatively, the Fifth Circuit takes a strict approach that seemingly affords no exceptions as illustrated in the instant matter.

B. The Application of "State-Court Loser" to the Instant Case.

In this case, Uptown Grill's sister company, Grill Holdings, was the signatory of the License. Upon execution, the License was immediately binding upon Uptown Grill as Section 4.10 defines "Licensee" to "mean all affiliates, subsidiaries or related companies of Grill Holdings." Pet.App.168a. Grill Holdings subsequently sublicensed to Uptown Grill, binding it further through the License's provision that sublicenses must be made to "abide by all of the provisions of this Agreement." *Id.* Section 12, which is undisputedly binding on Uptown Grill, provided that upon termination "all rights and privileges granted to Licensee hereunder will immediately cease and will revert to Licensor." Pet.App.270a. As a result, the final state judgment, terminating the License, terminated not only Grill Holdings' rights as a named party to that litigation, but also Uptown Grill's rights as an affiliate and sublicensee. Based on the clear and explicit terms of the License, CGH was not required to name Uptown Grill and all other Grill Holdings' affiliates and sublicensees as parties to that litigation to achieve this effect.

The lower federal courts have followed this logic. The 2016 Fifth Circuit opinion determined

Uptown Grill to be an "affiliate" of Grill Holdings, required to follow all of the License's terms, including the termination provisions. Pet.App.168a. The district court similarly found that Uptown Grill's "use of the registered Camellia Grill trademarks outside of Carrollton Avenue is a breach of the License Agreement" and enjoined "the parties to the License Agreement: The Grill Holdings, Uptown Grill, and Chartres Grill" from further use of the Marks and ordered these parties to pay CGH's attorney's fees Pet.App.83a. As a result, the courts clearly treated Uptown Grill as a "state-court loser" who lost its rights under the License due to the state litigation.

However, the courts contradictorily disregarded Uptown Grill's status as a party to the License in applying the *Rooker-Feldman* doctrine. The district court applied this Court's guidance from *Lance* and simplistically concluded that, "As Uptown Grill was not a party to the state court proceedings, it cannot be the 'state court loser' as required by *Rooker-Feldman*." Pet.App.57a. This conclusion fails to acknowledge the law of the case regarding the binding effects of the License upon Uptown Grill and its subsequent loss of rights due to the state court's termination of the License. These conditions render Uptown Grill a state-court loser.

Although this Court clearly contemplated certain exceptions, *Lance's* seemingly narrow-construction of a "state-court loser" currently constitutes this Court's only substantive guidance.

However, a federal litigant who is contractually bound to a state judgment should not be permitted to skirt the boundaries of *Rooker-Feldman* simply because it was not explicitly named as a party to the state court action. As a result, this issue requires the Court's guidance in delineating an exception for this important and frequently occurring scenario involving licensing and sublicensing of intellectual property rights.

III. THE LOWER COURTS GROSSLY DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS BY *SUA SPONTE* DEPRIVING CGH OF ITS PROPERTY WITHOUT DUE PROCESS.

A profound issue exists when a court rules on matters which were not contested by the litigants, involved no presentation of evidence or legal arguments, and provided no fair opportunity for the aggrieved party to respond. The judicial system and the due process constitutional protections are intended to prevent such a situation, yet this scenario is precisely what occurred in this case.

Here, Khodr Parties sought only a declaration of ownership of the Camellia Grill trademarks at the Carrollton Location and affirmatively waived any claims beyond this sole geographic location. The Khodr Parties similarly never asserted trade dress or goodwill ownership claims. Nonetheless, the district court and Fifth Circuit *sua sponte* declared the Khodr

Parties to be the owner of trademarks, trade dress, and goodwill nationwide without the Khodr Parties' ever seeking those assets, proffering evidence, or presenting arguments with regard to the issues. When procedural and property rights become so ephemeral, this Court's review and intervention are necessitated.

A. The Fundamental Right of Procedural Due Process.

Notice is a fundamental right inherent in judicial dispute resolution. "For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (internal marks omitted). "An elementary and fundamental requirement of due process in any proceeding . . . is notice reasonably calculated, . . . [to] afford [interested parties] an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). "[W]ithout notice, without disclosure of any reasons justifying [a decision affecting the rights of Parties], without opportunity to meet the undisclosed evidence or suspicion on which [said decision] may have been based, and without opportunity to [object affirmatively,] . . . the mere sayso of [the decisionmaker] . . . is so devoid of fundamental fairness as to offend the Due Process Clause of the Fifth Amendment." *Joint Anti-Fascist*

Refugee Comm. v. McGrath, 341 U.S. 123, 161 (1951) (Frankfurter, J., concurring).

This Court "has emphasized that prior notice is a prerequisite to a *sua sponte* grant of summary judgment." *ING Bank N.V. v. M/V Temara*, 892 F.3d 511, 523-24 (2d Cir. 2018), *citing Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). "In our adversarial system of adjudication, we follow the principle of party presentation … in the first instance and on appeal … we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *United States v. Sineneng-Smith*, 140 S.Ct. 1575, 1579 (2020) (citations and quotations omitted).

> "[O]ur system is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief. … courts are essentially passive instruments of government … They do not, or should not, sally forth each day looking for wrongs to right. They wait for cases to come to them, and when cases arise, courts normally decide only questions presented by the parties."

Id.

B. Due Process Violations within the Instant Matter.

In this case, the federal courts advanced arguments entitling the Khodr Parties' to *sua sponte* relief, depriving CGH of valuable property without due process. Uptown Grill only sought narrow declaratory relief, seeking ownership of trademarks, signage, and the facade located at the Carrollton Location. Pet.App.252a. Uptown Grill never amended its pleadings to seek additional relief outside of the Carrollton restaurant or to seek ownership of the trade dress or goodwill. Nonetheless, the courts affirmatively stripped CGH of these assets.

The district court initiated this course of action at a pretrial conference on April 29, 2015.[18] The court continued a trial that was scheduled within five weeks and "directed" Uptown Grill to file "additional motions for summary judgment" in addition the parties' pending dispositive motions. *Id.* The court specifically instructed Uptown Grill to address the issue of whether the Bill of Sale was clear and unambiguous. *Id.* In considering this motion, the district court ruled that the Bill of Sale was, in fact, clear and unambiguous and transferred ownership of the trademarks to Uptown Grill. Pet.App.174a. The court further *sua sponte* granted Uptown Grill ownership of all Camellia Grill trademarks, goodwill,

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[18] *See*, Minute Entry in the United States District Court of the Eastern District of Louisiana, No. CV 13-6560, (Apr. 29, 2015), ECF. No. 190.

and trade dress, not only at the Carrollton Location, but nationwide. Pet.App.172a-173a.

The Fifth Circuit affirmed the district court's award of trademark ownership at the Carrollton Location, but reversed its *sua sponte* grant of nationwide ownership and remanded for further proceedings. Pet.App.171a. The Fifth Circuit questioned the district court's "understanding concerning the scope of the parties' agreements" and held that the district court "must take all facts and circumstances of the parties' contractual relations, litigation tactics, and applicable trademark law into consideration before reinstating relief plainly beyond the plaintiffs' pleadings." Pet.App.168a; 171a. The Fifth Circuit cautioned the district court to "consider whether Uptown Grill should be bound by its pleadings, representations in court, and practice with respect to a License Agreement for which its affiliate, Grill Holdings, paid a million dollars." Pet.App.171a.

On remand, CGH sought a declaration that it owned the remaining Camellia Grill trademark rights. The district court set a trial date of January 31, 2017, and the parties filed various pre-trial motions as the trial date approached. Two weeks before the trial, on January 12, 2017, the court "converted" the scheduled trial on CGH's motion for

summary judgment to an oral argument.[19] This trial was the second to be *sua sponte* canceled.

Uptown Grill explicitly elected *not* to pursue trademark ownership rights outside the Carrollton Location. The parties attempted to enter a stipulation regarding this issue both in the Joint Pre-Trial Order and before the court at the commuted oral argument proceeding. Pet.App.143a-144a. The court forced the parties present arguments around this stipulation and uncontested issue. Pet.App.143a-153a. The court advocated insistently on behalf of the Khodr Parties, stating, "Camellia Grill Holdings, Inc. can open up a Camellia Grill restaurant next door on Carrollton Avenue. Is that the position that the parties have taken? And are there no protections?" Pet.App.144a. The court ultimately refused to enter the stipulation during this proceeding. Pet.App.152a.

This theme continued into the court's May 26, 2017 Order and Reasons. The court acknowledged, "[T]he Khodr parties have agreed not to contest the Shwartz Parties' ownership of the registered trademarks outside of the Carrollton location." Pet.App.115a. Despite this complete relinquishment, the district court *sua sponte* ruled that CGH has no "remaining protectable interest under trademark law." Pet.App.118a. The court reached this conclusion despite acknowledging that the Khodr Parties

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[19] Minute Entry in the United States District Court of the Eastern District of Louisiana, No. CV 13-6560, (Jan. 12, 2017), ECF. No. 291.

conceded this position and considered no evidence or argument in support thereof. The district court further ruled that "any protectable trade dress relative to the Carrollton Location was transferred as part of the Bill of Sale," though this one-page document did not include the term "trade dress." Pet.App.120a. As with nationwide trademark ownership, the Khodr Parties never requested trade dress ownership.

This situation was only exacerbated on the parties' second appeal to the Fifth Circuit. The district court only found that CGH had no "remaining protectable interest under trademark law," but did not affirmatively award those rights to the Khodr Parties. Pet.App.118a. The Fifth Circuit *sua sponte* expanded this relief, awarding all Camellia Grill trademark, trade dress, and goodwill rights to the Khodr Parties without geographic exception. Pet.App.100a Again, the Khodr Parties never requested this relief nor presented evidence supporting such sweeping conclusions.

Due to these overreaching *sua sponte* actions, the transfer of ownership of the Camellia Grill trademarks, trade dress, and goodwill have never been tested adversarially, tried by consent, nor developed with meaningful notice. The Khodr Parties did not submit evidence or arguments in support of these holdings and never even affirmatively sought to be awarded the assets in question. Nonetheless, the district courts' *sua sponte* judgments and the Fifth

Circuit's expansion thereof entirely divested CGH of all of its intellectual property assets without due process of law. As this Court has opined, the courts' role is one of "a neutral arbiter of matters the parties present," not a zealous advocate that "sally[s] forth each day looking for wrongs to right" through over-reaching *sua sponte* actions. *Sineneng-Smith*, 140 S.Ct. at 1579. The failure of both the district court and the Fifth Circuit to adhere to these core precepts of fair adjudication beseeches this Court's intervention.

CONCLUSION

This matter is a potentially precedent-setting case. It provides this Court with the vehicle to opine on both the "inextricably intertwined" and "state-court loser" aspects of the *Rooker-Feldman* doctrine and clarify the circuit splits regarding these issues. This case is particularly illustrative of the overarching intent of the *Rooker-Feldman* doctrine and the importance of a clear standard. Although federal claims sought and obtained direct reversal of prior state judgments in clear contravention to the *Rooker-Feldman* doctrine, the lower courts' confusion regarding the appropriate *Rooker-Feldman* analysis resulted in the opposite conclusion.

Perhaps even more egregiously, the federal courts have repeatedly and systematically granted *sua sponte* relief to the Khodr Parties far exceeding the scope of the pleadings and despite their relinquishment of the issues. Both the district court and Fifth Circuit thus deprived CGH of its intellectual

property without due process. This Court must intervene to ensure that the lower courts adhere to the substantive principles of law that form the foundation of an equitable adjudicative process.

Petitioner Camellia Grill Holdings, Inc. respectfully submits that these considerations justify the Court's granting of this Petition for Writ of Certiorari.

Respectfully submitted,

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