No. _____

In the
# Supreme Court of the United States

POLARIS INDUSTRIES INC., *et al.*,

*Petitioners*,

v.

JEREMY ALBRIGHT,

*Respondent*.

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## PETITION FOR WRIT OF CERTIORARI


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## QUESTION PRESENTED

Federal courts have a strict duty to exercise the jurisdiction Congress confers upon them, including the jurisdiction conferred by the Class Action Fairness Act of 2005, 28 U.S.C. §§1332, 1453, 1711-15, ("CAFA"). Nevertheless, the Ninth Circuit held in this case that if a class action plaintiff asserting a claim for equitable relief has an adequate legal remedy, a federal district court cannot reject the claim on the merits but must instead decline CAFA jurisdiction, dismiss the claim without prejudice, and allow it to be re-filed in state court, because of a lack of "equitable jurisdiction." That erroneous decision creates a new and unauthorized abstention doctrine, forces claim splitting, departs from near-uniform circuit consensus about the subject-matter jurisdiction conferred by CAFA, and contravenes Congress's efforts to prevent forum shopping and class action abuse.

The question presented is:

Whether CAFA's mandatory grant of subject matter jurisdiction and enumeration of limited equitable bases authorizing abstention require district courts with CAFA jurisdiction to reach the merits of an equitable claim rather than dismissing it for re-filing in state court based on a lack of "equitable jurisdiction."

## PARTIES TO THE PROCEEDING

Petitioners are Polaris Inc., Polaris Industries Inc. and Polaris Sales Inc. Petitioners were the defendants in the district court and appellees in the Ninth Circuit.

Respondent is Jeremy Albright, an individual, who was plaintiff in the district court and appellant in the Ninth Circuit.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioner Polaris Industries Inc. (now known as Polaris Inc.) discloses that there are no parent corporations or any other publicly held corporations that own more than 10% of its stock. Petitioner Polaris Sales Inc. is wholly owned by Polaris Industries Inc. (Delaware), which is wholly owned by Polaris Inc.

## STATEMENT OF RELATED PROCEEDINGS

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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## PETITION FOR WRIT OF CERTIORARI

The Constitution grants Congress the authority not only to establish lower courts, but also to define their jurisdiction. U.S. Const. art. III, §1. Accordingly, Congress enacted the Class Action Fairness Act of 2005, 28 U.S.C. §§1332, 1453, 1711-15, ("CAFA"), which is intended to ensure that federal courts will hear and decide sweeping class actions predicated on state-law claims. In this case, the district court did exactly that when it granted summary judgment to petitioner Polaris in respondent's putative state-law class action. The Ninth Circuit nonetheless held that even though the district court indisputably had subject-matter jurisdiction, the court lacked "equitable jurisdiction" given respondent's inability to establish entitlement to his claimed equitable remedy. As a result, the Ninth Circuit required the district court to decline to exercise its jurisdiction over the merits and instead to dismiss the case without prejudice to respondent's re-filing his exact same claim in state court.

In the Ninth Circuit's view, a plaintiff's adequate legal remedy requires courts to "decline" the jurisdiction that Congress required them to assume through CAFA. The panel's reasoning directly contradicts this Court's explicit limitations on the grounds for abstention, *see Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996), CAFA's clear and exhaustive grounds for statutory abstention, *see* 28 U.S.C. §1332(d)(3), (4), and the reasoning of a majority of circuits that have held that a decision declining to exercise CAFA jurisdiction is, in fact, a decision on the merits. The Ninth Circuit's erroneous opinion, and its

flagrant disregard for Congressional authority, cries out for this Court's review.

The stakes are high. Congress enacted CAFA to provide a federal forum for large-scale class actions. Defendants routinely utilize CAFA's federal-court protections, particularly in the Ninth Circuit, where notoriously permissive state laws encourage aggregation of dubious claims into mass actions. By requiring class action suits to be re-filed in plaintiff-friendlier state courts in the all-too-familiar scenario in which a plaintiff asserts only equitable claims but has an adequate legal remedy, the decision below guts CAFA's safeguards. It creates an absurd situation—already playing out in the lower courts—whereby district courts must remand cases to state courts due to a lack of "equitable jurisdiction," but defendants have the statutory right to re-remove to federal court given subject-matter jurisdiction under CAFA. And it incentivizes *in terrorem* suits designed to extract a quick settlement, while encouraging forum-shopping and claims-splitting that capitalize on the Ninth Circuit's refusal to enforce jurisdictional principles set forth by Congress and this Court. These pernicious consequences only underscore the urgent need for certiorari in this case.

## OPINIONS BELOW

The opinion of the Ninth Circuit is reported at 49 F.4d 1308 and reproduced at App.1-16. The district court's opinion is available at 2021 WL 2021454 and reproduced at App.19-55.

## JURISDICTION

The Ninth Circuit issued its opinion on September 29, 2022, and denied a timely petition for rehearing on

November 9, 2022. App.17. On February 7, 2023, Justice Kagan extended the time for filing this petition to and including April 7, 2023. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

## STATUTORY PROVISIONS INVOLVED

Relevant provisions of 28 U.S.C. §1332(d)(2)-(4) are reproduced at App.56-58.

## STATEMENT OF THE CASE

### A. Albright's Suit and the District Court's Summary Judgment Decision

Polaris sells various models of off-road vehicles that allow occupants to sit side by side. App.20. Polaris's vehicles utilize roll cages, also known as rollover protective structures ("ROPS"), the shape, configuration, and design of which vary across models. App.20.

When manufacturing its ROPS, Polaris voluntarily complies with the American National Standards Institute/Recreational Off-Highway Vehicle Association safety standards, meaning that the ROPS meet the performance requirements of either International Organization for Standardization standard 3471 or 29 C.F.R. §1928.53. App.20. Polaris labels certain of its ROPS with a sticker stating that "[t]his ROPS Structure meets OSHA requirements of 29 C.F.R. §1928.53" while also providing the relevant vehicle model and its test gross vehicle weight ("GVW"). App.20.

Respondent Jeremy Albright purchased a Polaris off-road vehicle in 2016. App.21. In August 2019, Albright, along with co-plaintiff Paul Guzman (who purchased a Polaris off-road vehicle in 2018), filed a

complaint against Polaris in the United States District Court for the Central District of California alleging that the ROPS label is false and misleading because Polaris's vehicles purportedly do not actually meet the requirements of 29 C.F.R. §1928.53. App.22. Specifically, according to Albright, Polaris tested its vehicles based on the GVW, rather than the "maximum power take off horsepower or 95% of the net engine flywheel," which plaintiffs claim is required by §1928.53. App.22.

In their First Amended Complaint, Albright and Guzman asserted claims under the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§17200 *et seq.*; the California False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§17500, *et seq.*; and the California Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§1750 *et seq.* *See Guzman v. Polaris Indus.*, 2020 WL 2477684, at *2 (C.D. Cal. Feb. 13, 2020). Albright and Guzman sought damages and equitable relief, including equitable restitution, on behalf of a putative class of all persons in California who purchased in the preceding four years a Polaris vehicle claimed as being ROPS compliant with 29 C.F.R. §1928.53. *Id.* at *1. Plaintiffs premised federal jurisdiction on CAFA. App.23.

The district court granted Polaris's motion to dismiss the First Amended Complaint. The court concluded that Albright and Guzman had failed to sufficiently allege reliance, defeating their UCL, FAL, and CLRA claims. *Guzman*, 2020 WL 2477684, at *4. It also concluded that Albright's CLRA and FAL claims were time-barred by the applicable three-year statute of limitations, and it dismissed those claims

for that additional reason. *Id.* The court allowed plaintiffs to amend their non-time-barred claims; it did not permit Albright to amend his time-barred CLRA and FAL claims. *Id.*

Albright and Guzman filed their Second Amended Complaint on March 3, 2020. App.22. They again sought relief on behalf of a class of all persons in California who, in the prior four years, purchased a Polaris vehicle claiming compliance with 29 C.F.R. §1928.53, and they again asserted federal jurisdiction under CAFA. App.22. Although Guzman restated his UCL, FAL, and CLRA claims, Albright asserted only a UCL claim given the court's prior decision. App.23.

After discovery, Polaris moved for summary judgment. Among other points, Polaris argued that Albright's UCL claim for equitable relief could not be maintained because he had an adequate legal remedy—specifically, his CLRA claim for damages, notwithstanding that it was time-barred. Polaris cited the Ninth Circuit's opinion in *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020), which held that if a plaintiff has an adequate legal remedy, he cannot also maintain equitable claims in federal court. *Id.* at 844.

The district court granted summary judgment for Polaris. App.54-55. The court again held that Guzman had failed to sufficiently allege reliance on the ROPS label, and it granted judgment to Polaris on all of his claims. App.24-36. The court held that Albright had sufficiently alleged reliance, but it nevertheless granted judgment to Polaris on his UCL claim. App.36-42. Citing *Sonner*, the district court explained that Albright "must establish he lacks an

adequate remedy at law to maintain his equitable restitution claim under the UCL." App.50. Albright did not lack an adequate remedy at law, however, because he "previously sought legal damages under the CLRA," and, although that claim was time-barred, "a plaintiff's failure to timely comply with the requirements to obtain a remedy at law does not make the remedy inadequate." App.51-52. In the court's words, "[t]hat Albright can no longer obtain a legal remedy is insufficient to establish that he did not have an adequate remedy at law in the first instance." App.52.

### B. The Ninth Circuit's Decision

The Ninth Circuit reversed summary judgment against Albright and remanded with instructions for the district court to dismiss Albright's UCL claim without prejudice to refiling in state court. App.15-16. In a decision authored by District Judge Robreno (sitting by designation from the Eastern District of Pennsylvania), the panel agreed with Polaris that Albright "could not bring his equitable UCL claim in federal court because he had an adequate legal remedy in his time-barred CLRA claim." App.8. As the panel explained, "Albright had an adequate remedy at law through his CLRA claim for damages, even though he could no longer pursue it," and "the district court was therefore required to dismiss his equitable UCL claim." App.10. As the panel put it, Albright "cannot have neglected his opportunity to pursue his CLRA damages claim … and then be rewarded with that neglect with the opportunity to pursue his equitable UCL claim in federal court." App.10.

That should have been the end of the matter, but the panel did not require Albright to bear the consequences of his own "neglect." Instead, adopting an argument that Albright only first raised in his reply brief in the Ninth Circuit, the panel held that "[b]ecause the district court lacked equitable jurisdiction, it should have denied Polaris' motion for summary judgment and dismissed Albright's UCL claim without prejudice." App.12. The court recognized that "[e]quitable jurisdiction is distinct from subject matter jurisdiction," but nevertheless held that "both are required for a federal court to hear the merits of an equitable claim." App.13. And "[b]ecause the district court lacked equitable jurisdiction over Albright's UCL claim, it could not, and did not, make a merits determination as to liability and should not have granted summary judgment in favor of Polaris on this claim." App.14. The panel analogized to "abstention principles or the doctrine of *forum non conveniens*" in concluding that "a federal court that dismisses a claim for lack of equitable jurisdiction necessarily declines 'to assume the jurisdiction and decide the cause.'" App.14 (quoting *Yuba Consol. Gold Fields v. Kilkeary*, 206 F.2d 884, 887 (9th Cir. 1953)).

The panel acknowledged that "a California court might allow Albright to pursue his UCL claim." App.15. And it concluded that "the district court should have dismissed Albright's UCL claim without prejudice to refiling the same claim in state court." App.15. The panel thus reversed the grant of

summary judgment and remanded with instructions to dismiss Albright's UCL claim without prejudice.[1]

The Ninth Circuit denied Polaris's timely petition for *en banc* review. App.17.

## REASONS FOR GRANTING THE PETITION

Once again, the Ninth Circuit has departed from the precedent of this Court and its sister circuits, this time by manufacturing a novel procedural device that unjustifiably gives plaintiffs a second bite at the apple of liability. The Ninth Circuit's holding not only disregards Congress's mandatory grant of jurisdiction in CAFA, but also ignores this Court's repeated efforts "'to ward off profligate use of the term'" jurisdiction. *Ft. Bend County, Tex. v. Davis*, 139 S. Ct. 1843, 1848 (2019). The decision below wrongly confuses limits on the availability of equitable remedies—a merits issue—with subject matter jurisdiction. As a result, the Ninth Circuit has not only ignored the plain language of CAFA but eviscerated the statute's purpose of enabling class actions to be resolved entirely in federal court.

Federal courts lack the authority to expand, contract, or—absent certain narrow circumstances—decline to exercise their own jurisdiction. Instead, once a federal court satisfies itself of its jurisdiction over the parties and subject matter, it *must* proceed to evaluate the merits of the action. Those merits

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[1] In a separate opinion, the same panel reversed the grant of summary judgment on all of Guzman's claims, concluding that Guzman had sufficiently raised a factual dispute regarding his own claimed reliance. *Guzman v. Polaris Indus. Inc.*, 2022 WL 4547785, at *1-*2 (9th Cir. Sept. 29, 2022).

necessarily include whether a party establishes the requisite elements of a given claim for relief. And, where, after extensive discovery, a court determines that a party fails to establish a claim for relief, the court must enter a final judgment on the merits. Courts routinely apply this principle to conclude that a plaintiff's failure to establish the right to equitable relief because of the existence of an adequate legal remedy warrants a final adjudication.

The Ninth Circuit's decision eviscerates Congress's decision in CAFA to grant jurisdiction to federal district courts over class actions where the matter in controversy exceeds $5 million. Ignoring the context and reasoning of the very cases it cited, the Ninth Circuit wrongly concluded that the application of federal common law requires a court to "decline[] 'to assume [its] jurisdiction and decide the cause" before it. App.14. And while analogizing to the only two recognized exceptions to the obligatory exercise of jurisdiction—dismissal for *forum non conveniens* and abstention—the Ninth Circuit crafted a third based on the hoary doctrine of "equitable jurisdiction."

Even worse, the Ninth Circuit ignored CAFA's clear statutory text. In CAFA, Congress enumerated circumstances where a federal court can "decline to exercise jurisdiction[.]" 28 U.S.C. §1332(d)(3). And it promulgated an exhaustive list of factors "based on consideration of" which a district court "may, in the interests of justice … decline" its jurisdiction. *Id.* §1332(d)(3). The Ninth Circuit failed to mention any of those factors, and regardless, a lack of "equitable jurisdiction" is not among them. CAFA also requires courts to "decline" jurisdiction if certain factors favor

adjudication in state court. *See id.* §1332(d)(4). Yet the Ninth Circuit, emphasizing the "import of" its rule "because … a California court might allow Albright to pursue his UCL claim," never mentioned CAFA or its jurisdictional tests while announcing a new ground upon which a court could decline jurisdiction based on the absence of equitable jurisdiction. App.15.

The Ninth Circuit's decision is not only wrong but opens up a gaping circuit split. Almost every other federal circuit has treated CAFA's abstention provisions as non-jurisdictional requirements. Because Congress, not the courts, determines the lower courts' jurisdiction, it makes little sense to treat statutory abstention doctrines—which do not divest courts of jurisdiction—differently from ones that the judiciary creates for itself.

This Court's review is imperative. Beyond its clear error, the Ninth Circuit's decision has created pernicious consequences for the same class action defendants that Congress sought to protect through CAFA. Already, courts in the Ninth Circuit have begun remanding to state court cases that class action defendants properly removed to federal court, despite the statutory ability of those same defendants to re-remove to federal court under CAFA—creating an untenable ping-pong match between the federal and state courts and routinely resulting in claim-splitting. Moreover, by providing class-action plaintiffs with an opportunity to avoid CAFA's effects, the Ninth Circuit's decision invites blatant forum shopping. Unless this Court intervenes, class action plaintiffs will unquestionably continue to take advantage of the gaping hole the Ninth Circuit has created in CAFA.

## I. The Ninth Circuit's Decision Is Egregiously Wrong.

The Ninth Circuit plainly erred in holding that, when a plaintiff fails to establish the right to equitable relief because of the availability of an adequate legal remedy, a federal court lacks jurisdiction over the equitable claim and must remand it to state court. This Court has "urged that a rule should not be referred to as jurisdictional unless it governs a court's adjudicatory capacity, that is, its subject-matter or personal jurisdiction." *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011). The Ninth Circuit emphasized that "[e]quitable jurisdiction is distinct from subject matter jurisdiction," going instead to "whether … the court may exercise its remedial powers" consistent with equitable principles. App.13 (citing *Schlesinger v. Councilman*, 420 U.S. 738, 754 (1975)). Yet the Ninth Circuit's exposition of equitable jurisdiction and its elements "commits the error of 'conflating the jurisdictional question with the merits'" of a claim. *United States v. Denedo*, 556 U.S. 904, 915 (2009) (quoting *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 628 (2009)); *accord Schlesinger*, 420 U.S. at 749. Simply put, the Ninth Circuit's decision "speaks to the scope of the [cause of action], not the [district court's] jurisdiction to" hear it. *Denedo*, 556 U.S. at 916.

The Ninth Circuit's holding requiring district courts to dismiss equitable state law claims prior to reaching the merits also ignores both CAFA's plain text and this Court's limited recognition of abstention doctrines. Despite this Court's confirmation that statutory discretion and abstention doctrines provide the only exceptions to Congress's grants of mandatory

jurisdiction to federal courts, *see City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 174 (1997), the Ninth Circuit now recognizes a third based on limits on equitable relief (*i.e.*, a lack of "equitable jurisdiction"). Even read charitably, the Ninth Circuit's holding announces novel grounds for federal abstention in favor of a state forum. If the availability of relief in state court is as imperative an interest as comity and federalism, the prerogative to make that decision properly rests with this Court, not the Ninth Circuit.

As the parties acknowledged below, there is no question that CAFA confers subject matter jurisdiction on federal district courts—and that it conferred subject matter jurisdiction on the district court here. Yet the Ninth Circuit ignored CAFA to conclude that other considerations—namely, the absence of "equitable jurisdiction"—prohibit a district court from reaching the merits of a class action complaint despite undisputed personal and subject matter jurisdiction. In so holding, the Ninth Circuit elided this Court's careful explication of jurisdictional doctrines over the last thirty years, the plain text of CAFA, and nearly a century of abstention jurisprudence.

### A. Absent Congressional or Supreme Court Authorization, a Federal Court Must Reach the Merits of a Case Over Which It Has Personal and Subject-Matter Jurisdiction.

In the decision below, the Ninth Circuit conflated antecedent jurisdictional questions—*i.e.*, whether the court has the power to hear and decide a particular

case—with questions on the merits—*i.e.*, focusing on whether a plaintiff is entitled to the requested form of relief. As this Court has described "jurisdiction," particularly in its recent jurisprudence, the district court plainly had jurisdiction to hear and decide Albright's claim and reject it on summary judgment. The doctrine of "equitable jurisdiction" merely refers to a court's ability to issue equitable relief in a given case. That authority is neither jurisdictional as this Court's precedents define that term nor in any way antecedent to the merits, and it does not provide any basis for a court to decline to decide the merits—much less for a court of appeals to categorically require that outcome.

A discussion of federal jurisdiction must start at the beginning: Article III of the Constitution provides that the "judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States," and, in relevant part, "to Controversies between … Citizens of different States[.]" U.S. Const., art. III, §2. Accordingly, while all cases must meet Article III's minimum "Cases and Controversies" requirement, Congress alone establishes the existence and jurisdiction of lower courts. By extension, "[b]ecause Congress decides whether federal courts can hear cases at all, it can also determine when, and under what conditions, federal courts can hear them. Put another way, the notion of 'subject-matter' jurisdiction obviously extends to 'classes of cases … falling within a court's adjudicatory authority[.]'" *Bowles v. Russell*, 551 U.S. 205, 213 (2007) (internal citations omitted).

Nevertheless, due to careless usage, "jurisdiction" became "'a word of many, too many, meanings.'" *Davis*, 139 S. Ct. at 1848 (quoting *Kontrick v. Ryan*, 540 U.S. 443, 454 (2004)). In response, this Court has endeavored to restrict the term "jurisdictional" to "prescriptions delineating the classes of cases a court may entertain (subject-matter jurisdiction) and the persons over whom the court may exercise adjudicatory authority (personal jurisdiction)." *Id.* (quoting *Kontrick*, 540 U.S. at 455). The Fifth and Fourteenth Amendments set limits on the extent to which courts in a given forum may exercise personal jurisdiction over parties. On the other hand, "[o]nly Congress may determine a lower federal court's subject-matter jurisdiction." *Kontrick*, 540 U.S. at 452-53 (citing U.S. Const., art. III, §1). Unlike certain mandatory rules, "which require parties to raise arguments themselves and to do so at certain times," "[j]urisdictional bars … 'may be raised at any time' and courts have a duty to consider them *sua sponte*." *Wilkins v. United States*, 598 U.S. ___, at *4 (2023) (slip op.) (quoting *Henderson v. Shinseki*, 562 U.S. 428, 434 (2011)). "Other rules, even if important and mandatory … should not be given the jurisdictional brand." *Henderson*, 562 U.S. at 435.

As part of its push for jurisdictional discipline, this Court has recognized the need to police its own previous use of the "jurisdictional" label. As the Court very recently confirmed in *Wilkins*:

> The mere fact that this Court previously described something 'without elaboration' as jurisdictional therefore does not end the inquiry [into whether it

> is actually jurisdictional]. To separate the wheat from the chaff, this Court has asked if the prior decision addressed whether a provision is "'technically jurisdictional'"—whether it truly operates as a limit on a court's subject-matter jurisdiction—and whether anything in the decision "turned on that characterization." If a decision simply states that "the court is dismissing for 'lack of jurisdiction' when some threshold fact has not been established," it is understood as a "drive-by jurisdictional rulin[g]" that receives 'no precedential effect' [in this Court's review].

*Wilkins*, 598 U.S. __, at *6 (slip op) (internal citations omitted) (alterations adopted).

Of particular relevance to this case, the Court has provided significant guidance explaining the difference between subject-matter jurisdiction and the availability of certain remedies in federal court. *See Steel Co. v Citizens for a Better Env't*, 523 U.S. 83, 96 (1998) (explaining that "uncertainty about whether a cause of action exist[s]" is "*not* … an Article III 'redressability' question."). Specifically, a question that "is 'not squarely directed at jurisdiction itself, but rather at the existence of a remedy'" is "'not of the jurisdictional sort.'" *Id.* (quoting *Lake Country Estates, Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 398 (1979)). A plaintiff's entitlement to a particular remedy raises an issue on the merits, not whether the court has the power to hear the case.

The careful distinction between jurisdictional and non-jurisdictional rules is not semantic: "[w]ithout jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co.*, 523 U.S. at 94 (citing *Ex parte McCardle*, 7 Wall. 506, 514 (1868)). Consequently, federal courts must satisfy themselves of their own jurisdiction at the outset of a case—before reaching the merits. *Steel Co.*, 523 U.S. at 94-95. Of course, some cases "involve[] overlapping questions about [merits] and subject-matter jurisdiction." *Brownback v. King*, 141 S. Ct. 740, 749 (2021). When merits and jurisdictional questions become "intertwined," "a court can decide 'all … of the merits issues' in resolving a jurisdictional question, or vice versa." *Id.* (quoting *Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 137 S. Ct. 1312, 1319 (2017)).

Nevertheless, citing its own precedent and unrelated cases from this Court, the Ninth Circuit held that equitable jurisdiction is both "distinct from subject matter jurisdiction" and yet equally "required for a federal court to hear the merits of an equitable claim." App.13 (quoting *Schlesinger*, 420 U.S. at 754). That simply does not follow. As an initial matter, the cases the Ninth Circuit cited "almost all predate this Court's effort to 'bring some discipline' to the use of the term 'jurisdictional.'" *Boechler, P.C. v. Comm'r*, 142 S. Ct. 1493, 1500 (2022) (quoting *Henderson*, 562 U.S. at 435). Accordingly, the inquiry depends on whether a provision is "'technically jurisdictional'"—truly operating as a limit on a court's subject-matter jurisdiction—and if anything in the decision "turned

on that characterization." *Wilkins*, 598 U.S. __, at *6 (slip op.).

More specifically, those cases deal with entirely inapposite circumstances, demonstrating the Ninth Circuit's misunderstanding of limits on equitable remedies and abstention. For instance, the only two cases that the court cited more than once—this Court's decision in *Schlesinger v. Councilman*, 420 U.S. 738 (1975), and its own in *Yuba*, 206 F.2d 884 (9th Cir. 1953)—not only well predate this Court's jurisdictional revolution but deal with a request for a federal court to enjoin proceedings in different fora. *See Schlesinger*, 420 U.S. at 755-61 (reversing an injunction to prevent a military court-martial based on "strong considerations favoring exhaustion of remedies" and "the integrity of military court processes"); *Yuba*, 206 F.2d at 889 (explaining that, when deciding whether to enjoin multiple lawsuits, if the district court "determines that there is no plain, adequate remedy at law and that this is a proper case for the exercise of equity jurisdiction … he should grant the injunction").

*Yuba* and *Schlesinger* in fact confirm the Ninth Circuit's error. In *Yuba*, the Ninth Circuit, reversing the district court's dismissal of a corporate plaintiff's claim for a bill of peace, identified the grounds on which a district court could decline to enjoin and consolidate multiple actions against a defendant. 206 F.2d at 884-92. *Yuba* did not hold that every exercise of equitable discretion relates to jurisdiction. To the contrary, *Yuba* affirmed that, in an action to consolidate actions into a new case, a district court has

equitable discretion to deny the injunction necessary to bring the cases within its actual jurisdiction.

After the plaintiff, a gold mining business, accidentally caused massive flooding throughout California, over one hundred victims filed six separate suits for payment. *Id.* at 886. The plaintiff filed a bill of peace, seeking to enjoin all six actions and require all claimants to proceed together in a single suit before the district court. *Id.* at 887. After the district court dismissed the action for failure to state a claim, the Ninth Circuit reversed, pointing out that the complaint's allegations, taken as true, sufficiently stated a claim. *Id.* at 889.

But the *Yuba* court also distinguished between the standard for surviving a motion to dismiss and prevailing on a claim for an injunction pursuant to a bill of peace. As the court explained: "'Jurisdiction' in the strict meaning of the term, is the power to hear and determine the subject matter of the class of actions to which the particular case belongs. Reference to 'equity jurisdiction' does not relate to the power of the court to hear and determine a controversy but relates to whether it ought to assume the jurisdiction and decide the cause." *Id.* at 887.

In context, the *Yuba* court's reference to "assum[ing] the jurisdiction and decid[ing] the cause" makes perfect sense: granting injunctive relief would require the court to assume jurisdiction over a single, consolidated action; denying the injunction would decline jurisdiction over the requested vehicle. But in the decision below, the panel did not heed context or ordinary meaning; instead, it isolated a quotation

from a seventy-year-old case and extrapolated an extraordinary meaning from it.

Likewise, the panel's reliance on *Schlesinger* reveals its misunderstanding of the remedy requested in that case, and, as a result, this Court's contextual use of ordinary language. At bottom, *Schlesinger* is a case involving two jurisdictional questions: (1) whether Title 76 of the Uniform Code of Military Justice divests district courts of federal question jurisdiction over collateral attacks on court-martials; and (2) if not, whether the district court should have enjoined further court-martial proceedings, requiring it to exercise jurisdiction over the officials responsible—including the Secretaries of Defense and of the Army, and the Staff Judge Advocate of Fort Sill. As to the first question, this Court held that the district court had subject matter jurisdiction over collateral attacks on court-martial proceedings. 420 U.S. at 749-53.

Nevertheless, this Court reversed based on its answer to the second question. Emphasizing that equitable jurisdiction is concerned "not with whether the claim falls within the limited jurisdiction conferred on the federal courts, but with whether consistently with the principles governing equitable relief the court may exercise its remedial powers[,]" this Court concluded that, based on principles of comity, the district court should have abstained. *Id.* at 753-60. But, as discussed further in Section I.B, *infra*, abstention is a unique creature of equitable discretion foreclosed by statute in the present case. Indeed, "[f]ederal courts … have 'no more right to decline the exercise of jurisdiction which is given, than

to usurp that which is not given.'" *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (quoting *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821)).

The Ninth Circuit's formulation below of equitable principles as a prerequisite to hearing the merits of a claim is also irreconcilable with many of this Court's decisions on equitable remedies. For instance, in *eBay Inc. v. MercExchange, L.L.C.*, this Court held that equity's traditional four-part test to award permanent injunctive relief to a prevailing plaintiff, including the inadequacy of a legal remedy, applies to the Patent Act. 547 U.S. 388, 391-94 (2006). Yet, if this Court shared the Ninth Circuit's view of equitable jurisdiction, then it would have needed to vacate and remand the lower-court decisions in *eBay* based on the simple fact that the plaintiff also requested, and a jury awarded, damages in that case, which would have precluded equitable relief. Instead, this Court held that "the Patent Act expressly provides that injunctions 'may' issue 'in accordance with the principles of equity'"—presumably the same principles upon which the Ninth Circuit predicated its opinion. *Id.* at 391 (quoting 35 U.S.C. §283). And, although the California Supreme Court has not definitively weighed in, California courts routinely apply these same equitable principles to determine whether a plaintiff is entitled to equitable remedies under the UCL and other California statutes. *See Prudential Home Mortg. Co. v. Superior Ct.*, 66 Cal.App.4th 1236, 1250 (1998) (explaining that where other statutes provide legal remedies, courts "must assume the statutory remedies are adequate, thus precluding equitable relief under the Business and Professions Code"); *Collins v. eMachines, Inc.*, 202

Cal.App.4th 249, 260 (2011) (relying on "the general principle of equity that equitable relief (such as restitution) will not be given when the plaintiff's remedies at law are adequate"). Nevertheless, the Ninth Circuit ignored historical equitable principles by mischaracterizing a ruling on the merits of an equitable claim as jurisdictional.

Finally, the Ninth Circuit's anomalous decision contradicts this Court's decision in *Brownback v. King*. In *Brownback*, this Court held that a district court's order dismissing claims against the United States under the Federal Torts Claims Act constituted a judgment "on the merits" entitled to claim-preclusive effect, even though the district court's ruling that the plaintiff failed to plead that the United States waived its sovereign immunity deprived the court of subject matter jurisdiction. 141 S. Ct. at 748-50. In the process, this Court explained that "[i]n cases … where a plaintiff fails to plausibly allege an element that is both a merit element of a claim and a jurisdictional element, the district court may dismiss the claim under Rule 12(b)(1) or Rule 12(b)(6). Or both." *Id.* at 749 n.8. Here, where California courts have recognized that the inadequacy of a legal remedy is an element of a claim for restitution under the UCL, *see Prudential Home Mortg. Co.*, 66 Cal.App.4th at 1250; *Collins*, 202 Cal.App.4th at 260, the Ninth Circuit lacked any basis for requiring district courts to dismiss such claims pursuant to Rule 12(b)(1).

### B. This Court's Decisions and CAFA Provide Exclusive and Limited Grounds for Abstention, and the Ninth Circuit's Contrary Decision Creates a Circuit Split.

The Ninth Circuit's creation of a new jurisdictional limit and basis for abstention is particularly erroneous when applied to a case brought *under CAFA*. CAFA's plain text establishes an exclusive set of factors that a court may consider in declining to exercise jurisdiction, and a lack of "equitable jurisdiction" is not among them. Moreover, almost every federal circuit court to consider the question acknowledges that declining to exercise CAFA jurisdiction is not the same as saying the court lacks jurisdiction in the first place.

"[F]ederal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress[,]" including CAFA. *Quackenbush*, 517 U.S. at 716 (citing *Colorado River Water Conserv. Dist. v. United States*, 424 U.S. 800, 821 (1976)). Courts "may decline to exercise their jurisdiction, in otherwise 'exceptional circumstances,'" only "where denying a federal forum would clearly serve an important countervailing interest[.]" *Id.* This Court has recognized a limited number of circumstances, for instance, "where abstention is warranted by considerations of 'proper constitutional adjudication,' 'regard for federal-state relations,' or 'wise judicial administration.'" *Id.* (quoting *Colorado River*, 424 U.S. at 817). Among other limited circumstances, courts may abstain from intervening in proceedings before military tribunals, *see Schlesinger*, 420 U.S. at

756-57; state criminal proceedings, *see Younger v. Harris*, 401 U.S. 37 (1971); or cases involving important state interests and bearing on unsettled matters of state law, *see Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 28 (1959)).

Although the power to abstain derives from "the historic discretion exercised by federal courts 'sitting in equity,'" this Court has "recognized that the authority of a federal court to abstain … extends to all cases in which the court has discretion to grant or deny relief." *Quackenbush*, 517 U.S. at 716 (citing *Thibodaux*, 360 U.S. at 28; *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 359 (1989) ("*NOPSI*"). Nevertheless, this Court has "carefully defined … the areas in which such 'abstention' is permissible, and it remains 'the exception, not the rule.'" *NOPSI*, 491 U.S. at 359 (citing *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 246 (1984) (quoting *Colorado River*, 424 U.S. at 813)). The Ninth Circuit's ruling, by contrast, elevates an exception into a categorical command to surrender jurisdiction indisputably established under CAFA.

CAFA "enable[s] defendants to remove to federal court any sizable class action involving minimal diversity of citizenship." *Smith v. Bayer Corp.*, 564 U.S. 299, 317 (2011). The Act's "primary objective" is "ensuring 'Federal court consideration of interstate cases of national importance.'" *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595 (2013) (quoting §2(b)(2), 119 Stat. 5)). Pursuant to CAFA, a class action defendant may always find a home in federal court by removing "without regard to whether any defendant is a citizen of the State in which the action is brought,"

if the amount in controversy exceeds $5,000,000 and at least one class member is a citizen of a State different from the defendant. 28 U.S.C. §§1332(d)(2)(A); 1453(b). CAFA further defines a class action as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure." *Id.* §1332(d)(1)(B).

Without any consideration for CAFA, the Ninth Circuit analogized its novel rule to cases in which "federal courts decline to exercise jurisdiction under abstention principles[.]" App.14. But CAFA's plain text requires a different result. Section 1332(d) provides that the "district courts *shall* have original jurisdiction of any civil [class] action" that meets the amount in controversy and minimum diversity requirements. 28 U.S.C. §1332(d)(2) (emphasis added). Going further, §1332(d)(3) provides the exclusive grounds upon which a district court "may … decline to exercise" its CAFA jurisdiction, subject to certain diversity of citizenship requirements. *See* 28 U.S.C. §1332(d)(3). Specifically, courts *may* consider:

> (A) whether the claims asserted involve matters of national or interstate interest; (B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States; (C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction; (D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged

> harm, or the defendants; (E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other state, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and (F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

*Id.* Nothing in the Ninth Circuit's opinion, which directed the district court to dismiss the case without prejudice for lack of jurisdiction, even hinted at the factors upon which a federal court "may" decline otherwise proper CAFA jurisdiction. And in all events, the ground the Ninth Circuit gave for requiring dismissal—the absence of "equitable jurisdiction"—is assuredly not among those factors.

In addition to the discretionary grounds for abstention, §1332(d) establishes the only permissible grounds upon which a district court "shall decline to exercise" its jurisdiction over qualifying class actions:

> (A)(i)(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed; (A)(i)(II) at least 1 defendant is a defendant … from whom significant

> relief is sought by members of the plaintiff class; … whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and … who is a citizen of the State in which the action was originally filed; and (A)(i)(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and (A)(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or (B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

28 U.S.C. §1332(d)(4). Again, the Ninth Circuit failed to mention any of the §1332(d)(4) factors, relying instead only on the absence of equitable jurisdiction, which is unmentioned in §1332(d)(4).

These omissions, by themselves, demonstrate the Ninth Circuit's grievous error. As this Court has explained, in statutory interpretation, "expressing one item of [an] associated group or series excludes another left unmentioned." *United States v. Vonn*, 535 U.S. 55, 65 (2002). And, despite ample opportunity to create a statutory basis for abstention when state courts would make available remedies foreclosed in

federal courts, Congress declined. Congress did not make that choice in a vacuum: rather, it enacted CAFA six years after this Court's decision in *Grupo Mexicano*, in which the Court explicitly declined to address whether the "availability" of an equitable remedy "should be determined by the law of the forum State" rather than federal law. *See Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 n.3 (1999). Nevertheless, the Ninth Circuit's decision circumvents CAFA, and its exhaustive and enumerated abstention grounds, altogether.

This Court's decision in *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156 (1997), is instructive. In *City of Chicago*, the Court, reversing the Seventh Circuit, explained that a federal court could decline to exercise supplemental jurisdiction over state law claims based only on its recognized abstention factors or the specific circumstances Congress identified in the supplemental jurisdiction statute, 28 U.S.C. §1367(c). 522 U.S. at 172-74. Citing *Quackenbush*, the Court acknowledged that, "[i]n addition to their discretion under §1367(c), district courts may be obligated not to decide state law claims … where one of the abstention doctrines articulated by this Court applies." *Id.* at 174.

CAFA's discretionary grounds for declining jurisdiction are even narrower than those set out in §1367(c). Section 1367(c) permits district courts to "[d]ecline to exercise supplemental jurisdiction over a claim … if:

> (1) the claim raises a novel or complex issue of State law, (2) the claim

> substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. §1367(c). By contrast, CAFA's exceptions focus almost exclusively on whether certain geographical factors and the parties' citizenship decrease the likelihood of a biased proceeding in state court. *Compare* 28 U.S.C. §§1332(d)(3)-(4) *with* 28 U.S.C. §1367(c). Critically, CAFA lacks §1367(c)(4)'s broadest grant of discretion to the federal district courts, the ability to consider whether, "in exceptional circumstances, there are other compelling reasons for declining jurisdiction." *Id.* §1367(c)(4).

Accordingly, in terms of CAFA, the Second, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits all recognize that the exercise of discretion to abstain from hearing a case does not indicate that a court no longer has subject-matter jurisdiction to decide a dispute. In numerous recent decisions, the circuits have reiterated that a federal court that possesses subject-matter jurisdiction under CAFA must abstain from a case that falls within the two narrow exceptions Congress articulated in §1332(d)(4). In the process, those circuits have unambiguously held that, even though a federal court must "decline" to exercise its jurisdiction, that instruction tacitly concedes the existence of jurisdiction in the first place. *See Gold v. New York*

*Life Ins. Co.*, 730 F.3d 137, 142 (2d Cir. 2013) (concluding that "Congress's use of the term 'decline to exercise' means that the [home state] exception is not jurisdictional"); *Scott v. Cricket Commc'ns, LLC*, 865 F.3d 189, 196 n.6 (4th Cir. 2017) (explaining that "[i]n CAFA-exception cases, the court has necessarily determined that jurisdiction exists and is only considering whether the exceptions impose a limit"); *Watson v. City of Allen, Tx.*, 821 F.3d 639-640 (5th Cir. 2016) (stating that §1332(d)(4) "require[s] abstention from the *exercise* of jurisdiction and [is] not truly jurisdictional in nature"); *Morrison v. YTB Int'l., Inc.*, 649 F.3d 533, 536-37 (7th Cir. 2011) (distinguishing between dismissals for want of subject-matter jurisdiction and situations where, pursuant to §1332(d)(4)'s "abstention" provision, the court addresses "[o]ther deficiencies … concern[ing] the merits"); *Graphic Commc'ns Local 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 636 F.3d 971, 973-74 (8th Cir. 2011) (emphasizing that mandatory CAFA abstention does not divest a district court of jurisdiction, and that a "'district court's dismissal of [a] matter for lack of subject matter jurisdiction is antithetical to a decision to abstain, which implicitly acknowledges the existence of jurisdiction'"); *Dutcher v. Matheson*, 840 F.3d 1183, 1190 (10th Cir. 2016) (confirming that §1332(d)(4) operates as an abstention doctrine that does not divest a court of jurisdiction); *Hunter v. City of Montgomery, Ala.*, 859 F.3d 1329, 1334 (11th Cir. 2017) (finding that §1332(d)(4) "recognizes that the court has jurisdiction but prevents the court from exercising it if either exception applies," and, therefore, that those

exceptions "do not affect the *existence* of subject matter jurisdiction").

The Seventh Circuit's decision in *Morrison v. YTB Int'l, Inc.*, is particularly revealing. In that case, reversing a district court's partial dismissal with prejudice of certain state law claims pursuant to §1332(d)(4)'s "intra-state controversy" requirement, Judge Easterbrook explained that a decision to abstain necessarily required the district court to reach the merits. 649 F.3d at 536-38. Plaintiffs brought a putative nationwide class action against the defendant, an Illinois business, based on Illinois' Consumer Fraud Act, 815 ILCS 505/2A2 ("ICFA"). *Id.* at 534. The defendant moved to dismiss claims brought by out-of-state plaintiffs, arguing that the ICFA applied only to Illinois citizens, and the district court agreed. *Id.* The district court subsequently granted the defendant's motion to dismiss the remaining Illinois class's claims pursuant to §1332(d)(4). *Id.* at 535-36.

On appeal, distinguishing between subject-matter jurisdiction and arguments on the merits, Judge Easterbrook emphasized that jurisdictional challenges address only "adjudicatory competence," and that "[o]ther deficiencies in a plaintiff's claim concern the merits rather than subject matter-jurisdiction," including the applicability of the ICFA to an out-of-state plaintiff. *Id.* at 536. Pointing to §1332(d)(4)'s statutory text, however, Judge Easterbrook rejected the district court's decision to abstain based on a narrowed class definition, instead concluding that "[i]f the suit as a whole is predominantly interstate, the district court must

resolve the whole." *Id.* Further, disagreeing with the district court's conclusion that Illinois law would bar members of the purported class from suing under the ICFA, Judge Easterbrook explained that the plaintiffs' complaint stated a plausible claim for relief on the merits. *Id.* at 538.

Presented with an analogous claim—that applicable law prevented Albright from prevailing on his claim—the Ninth Circuit reached a different conclusion based on different reasoning. That divergence among the circuits, regarding interpretation and application of a federal statute like CAFA, confirms the need for this Court's intervention.

## II. The Question Presented Is Exceptionally Important And Warrants The Court's Review In This Case.

The need for this Court's intervention is critical. The question of whether the jurisdiction conferred by CAFA offers an opportunity to obtain final, binding relief on the merits of state law claims in a federal court sits at the core of Congress's statutory scheme. Until the Ninth Circuit's decision in this case, the answer was unwaveringly yes. The decision below undermines the certainty and finality that class action defendants need and that CAFA provides by essentially rewriting the clear statutory text to include a novel ground upon which a federal court may shirk its jurisdiction. If the limits on the bases for declining CAFA jurisdiction that Congress and this Court have established are not respected, class action defendants will be deprived of the protections Congress sought to provide in CAFA.

The Ninth Circuit's decision will encourage class action plaintiffs to engage in forum shopping and claims-splitting between federal and state courts. If class actions, properly filed in district courts pursuant to CAFA (as this case was) or removed to federal court per CAFA, raise legal and equitable state law claims, then federal courts will have discretion to abstain from or remand part of the case to state court. And yet the federal court will need to retain jurisdiction over the legal claim, guaranteeing duplicative federal and state proceedings. Meanwhile, filing the same class action in any other circuit would lead to a single result: a final decision on the merits.

The Ninth Circuit's approach to CAFA cases threatens to unleash a volley of endless litigation bouncing between federal and state trial courts. As one obvious example, under CAFA, a defendant has the right to remove to federal court if the conditions of CAFA are otherwise satisfied, including that the federal court would have subject-matter jurisdiction over the case. But under the decision below, even if there is subject-matter jurisdiction under CAFA, a state-law equitable claim is not subject to judgment on the merits but must be dismissed without prejudice to re-filing in state court—where, of course, the defendant can once again invoke CAFA to remove to federal court, and the federal court must dismiss without prejudice to re-filing in state court, and so on.

This scenario is already playing out in the Ninth Circuit, with district courts manufacturing ever-more-exotic theories to resolve the conundrum created by the decision below. For instance, in *Clevenger v. Welch Foods, Inc.*, pursuant to the decision below, the district

court dismissed without prejudice a class-action UCL claim for want of equitable jurisdiction. Plaintiffs refiled the claim in state court and defendants, invoking CAFA, subsequently removed the case back to federal court. 2023 WL 2390630, at *1-2 (C.D. Cal. Mar. 7, 2023). Defendants then moved to dismiss, and, in short order, Plaintiffs moved to remand the case. *Id.* at *1.

Granting plaintiffs' motion to remand, the district court found that "[t]he purposes of CAFA, concerns of federalism, and the interests of justice would best be served by remanding this case due to a lack of equitable jurisdiction." *Id.* at *3. Citing to *Quackenbush* and *Guzman*, the district court emphasized that its authority to remand derived from the same abstention principles that the Ninth Circuit misinterpreted. *Id.* at *3-4. But, as explained above, this Court has never recognized that the risk of extinguishing a state law claim provides a basis for abstention. To the contrary, this Court has accepted that, as a consequence of diversity jurisdiction, a "federal court may … be obliged to deny an equitable remedy which the plaintiff might have secured in a state court." *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497-98 (1923).

Subsequent developments in *Clevenger* further underscore the importance of this Court's review. After the district court's second remand order, the *Clevenger* plaintiffs filed another motion in federal court. Citing to *Colorado River*, plaintiffs sought a stay of all federal proceedings pending the resolution of their equitable state law claims. Denying that motion, the district court concluded that their failure

to establish that resolution of their UCL claim in state court would resolve all issues in their pending CLRA claim before the district court rendered *Colorado River* abstention improper. *Clevenger v. Welch Foods, Inc.*, No. 8:20-cv-01859, Dkt. No. 132, at *4-6 (C.D. Cal. Mar. 9, 2023).

But unlike *Clevenger*, other litigation may involve state case claims that *would* have resolved the claims pending before the federal court as well. This logic holds true for any remanded equitable claim raising similar issues to the legal claim over which a district court retains jurisdiction. Simply put, CAFA cases remanded pursuant to the Ninth Circuit's novel abstention doctrine will, in turn, often warrant the district court's *Colorado River* abstention. Far from reflecting the strong presumption against federal abstention and federal courts' virtually unflagging obligation to exercise jurisdiction conferred upon them, the Ninth Circuit's opinion encourages abstention all the way down.

The decision below will also incentivize the filing of ever-more-dubious class actions and correspondingly lead to a greater "risk of '*in terrorem*' settlements that class actions entail." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011). Until the decision below, defendants could rest assured that they could fight a sweeping class action in a single federal court. Now, however, defendants face either a single proceeding in state court or a two-front war in two separate fora over different claims arising out of the same nucleus of facts. Neither of those outcomes is consistent with the fairness and certainty Congress provided in CAFA. The additional burdens will

unquestionably result in greater litigation expenses to the detriment of defendants and the benefit of creative plaintiffs' lawyers capitalizing on the Ninth Circuit's decision.

Where CAFA provides exhaustive grounds for declining federal jurisdiction, the Ninth Circuit may rely only on those grounds or this Court's recognized abstention doctrines in instructing the district court to withhold jurisdiction. To the extent that Albright and the Ninth Circuit disagree with Congress's decision to value access to a federal forum above the preservation of all state law causes of action, those grievances are properly addressed to Congress, and not for the Ninth Circuit to take into its own hands through judicial innovation.

Finally, this case is an excellent vehicle to resolve the issue here. The question whether the district court could decline to exercise its CAFA jurisdiction over the merits on Albright's UCL claim is the only issue left in his case. That question is cleanly presented, and the relevant facts are undisputed. Moreover, a decision will resolve this case and provide guidance to lower courts facing tit-for-tat motions to remove, remand, and abstain from class action claims. Given the overwhelming forum-shopping incentives that a CAFA exception creates, there is no reason for the Court to delay review. The Court should grant certiorari to confirm that only Congress and this Court, not the Ninth Circuit, have a say over district courts' jurisdiction.

## CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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