NO. 23-267

In the
Supreme Court of the United States

MARILYN WILLIAMS,

Petitioner,

v.

BOEHRINGER INGELHEIM PHARMACEUTICALS, INC., BOEHRINGER INGELHEIM USA CORPORATION, and WALGREENS BOOTS ALLIANCE, INC.,

Respondents.

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

RESPONDENTS' BRIEF IN OPPOSITION

Madison H. Kitchens
KING & SPALDING LLP
1180 Peachtree St. NE
Atlanta, GA 30309

Matthew V.H. Noller
KING & SPALDING LLP
50 California St.
San Francisco, CA 94111

Paul Alessio Mezzina
Counsel of Record
KING & SPALDING LLP
1700 Pennsylvania Ave. NW
Washington, DC 20006
(202) 737-0500
pmezzina@kslaw.com

Counsel for Boehringer Ingelheim Respondents
(Additional Counsel Listed on Inside Cover)

December 21, 2023

Sarah E. Johnston
BARNES & THORNBURG, LLP
2029 Century Park East
Suite 300
Los Angeles, CA 90067

Counsel for Respondent
Walgreens Boots Alliance, Inc.

QUESTION PRESENTED

In this complex multi-district litigation, the district court imposed a two-tier procedure for filing and litigating personal-injury claims. Lead counsel for plaintiffs filed a consolidated master complaint, while individual plaintiffs filed case-specific short-form complaints. Under the district court's procedural orders, the court would not dismiss any individual plaintiff's claims until it entered separate orders dismissing *both* the master complaint *and* the plaintiff's short-form complaint.

Here, the district court dismissed certain personal-injury claims in the master complaint, but it did not dismiss any claims in Petitioner's short-form complaint. Petitioner nonetheless believed that the district court's orders would require dismissal of her individual claims in the future. So, in an end-run around the procedures imposed by the district court, Petitioner voluntarily dismissed her own claims and appealed that voluntary dismissal. The court of appeals, based on its interpretation of the district court's procedural orders, dismissed the appeal for lack of jurisdiction.

The question presented is:

Whether the Eleventh Circuit correctly interpreted case-specific procedural orders to hold that Petitioner could not manufacture appellate jurisdiction over a claim the district court did not dismiss by voluntarily dismissing that claim under Rule 41(a)(1)(A)(i).

CORPORATE DISCLOSURE STATEMENT

Respondent Boehringer Ingelheim Pharmaceuticals, Inc., is a subsidiary of Respondent Boehringer Ingelheim USA Corporation, which in turn is wholly owned by Boehringer Ingelheim Auslandsbeteiligungs GmbH (BIA). BIA is an indirect wholly owned subsidiary of C.H. Boehringer Sohn AG & Co., KG, a privately held limited partnership headquartered in Ingelheim, Germany. No publicly held company owns more than 10% of the stock of any of those companies.

Respondent Walgreens Boots Alliance, Inc., is a publicly held corporation. It has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

BRIEF IN OPPOSITION

The petition for certiorari founders on one simple fact: Petitioner's "question presented" is not actually presented in this case. That question asks when a plaintiff can appeal an interlocutory ruling that dismissed *some* of her claims by voluntarily dismissing her *remaining* claims. At the time Petitioner appealed, however, the district court had not dismissed *a single one* of her claims. The court of appeals held as much, in a nonprecedential opinion, based on its interpretation of the district court's case-specific procedural orders. It thus did not consider or decide the question Petitioner asks this Court to review, and answering that question would not make one iota of difference to this case.

Petitioner is one plaintiff among thousands in a complex multi-district litigation. The MDL is governed by numerous procedural orders through which the district court sought to manage and streamline litigation of plaintiffs' claims. As relevant here, the district court instructed plaintiffs to file both (1) a consolidated master complaint that set forth general allegations on which plaintiffs could rely, and (2) plaintiff-specific short-form complaints in which individual plaintiffs would assert their own individual claims. Motions to dismiss would sequentially target the distinct sets of complaints, first challenging only the master complaint's allegations, and then separately seeking final judgments dismissing individual plaintiffs' claims.

As a result, it has always been clear that a decision by the district court dismissing a claim in the master complaint does *not* constitute a dismissal of

any plaintiff's individual claims. The district court has held that, to dismiss a plaintiff's individual claims, it must enter a distinct order applying its analysis of the master complaint to the plaintiff's short-form complaint.

That never happened with respect to Petitioner's claims. The order Petitioner treats as dismissing her individual design-defect claim in fact dismissed only certain legal theories underlying the design-defect claims in the *master* complaint. The district court never applied that order to dismiss any of Petitioner's individual claims. Petitioner simply thought the court *would* dismiss her design-defect claim in the future. Based on that belief, she could have asked the district court to certify an interlocutory appeal, enter a partial final judgment under Rule 54(b), or enter final judgment on her individual claims under the case-specific procedural orders governing the MDL. But she didn't do any of those things. She instead amended and then unilaterally dismissed her own claims, then sought to appeal her own voluntary dismissal.

The Eleventh Circuit properly rejected that bizarre attempt to manufacture appellate jurisdiction. The court acknowledged that when a district court dismisses some of a plaintiff's claims and the plaintiff voluntarily dismisses the rest, that may create an appealable final judgment with respect to the claims the district court dismissed. But here, the district court had never dismissed *any* of Petitioner's claims, including the design-defect claim she sought to appeal. The Eleventh Circuit thus dismissed the appeal for lack of an appealable final judgment.

That decision implicates no circuit split. No case from any circuit has ever authorized what Petitioner attempted here: voluntarily dismissing a claim the district court did not dismiss, then appealing the plaintiff's own voluntary dismissal of that claim. There is thus no disagreement over whether that tactic is permissible. The Court can stop there: The question presented is not, in fact, presented in this case, and every circuit would agree it lacked jurisdiction over Petitioner's appeal.

Moreover, there is little genuine disagreement even over the hypothetical question Petitioner asks this Court to decide. Although the circuits differ in how they describe their approaches to allowing appeals following Rule 41(a) voluntary dismissals, those approaches largely generate the same results in practice—which may explain why this Court has repeatedly denied petitions raising variations on Petitioner's question presented.

But even if the Court were inclined to decide that question in an appropriate case, this would be a terrible vehicle for doing so. The Eleventh Circuit's decision turned on its interpretation of complex, case-specific procedural orders. This Court would have to review and reject that interpretation to have even a chance of reaching Petitioner's question presented. And even if this Court were to reverse the Eleventh Circuit's jurisdictional ruling, it would be an empty victory for Petitioner: As the Eleventh Circuit made clear in a decision issued the same day in another appeal from the same MDL, the dismissal of Petitioner's claims would have been affirmed on the merits even if her appeal had been jurisdictionally

proper, because she forfeited any challenge to one of the district court's alternative bases for dismissing the master complaint. Moreover, the MDL has concluded and thousands of true final-judgment appeals are now pending in the Eleventh Circuit, confirming the folly of Petitioner's attempt to jump the line.

In sum, this case does not implicate the question presented, and even if it did, that question would not warrant review and this case would be an abysmal vehicle for deciding it. The Court should deny the petition for certiorari.

STATEMENT

1. This appeal is one offshoot from a sprawling MDL related to antacid medications—best known under the brand name Zantac—containing an active pharmaceutical compound called ranitidine. App. 3. As relevant here, the MDL consolidated thousands of personal-injury claims against companies allegedly involved in the manufacture, distribution, sale, and packaging of ranitidine products.

In order to streamline this complex MDL, the district court adopted a detailed, two-phase procedure for filing and litigating personal-injury claims. *See* App. 26–28.

The court instructed lead counsel for the personal-injury plaintiffs to file a consolidated complaint, called the Master Personal Injury Complaint ("MPIC"), that would "supersede and replace all claims pleaded" in any individual personal-injury complaint. App. 3–4, 27 (quotation marks omitted). Individual plaintiffs would then supplement the MPIC by filing "Short Form Complaints" that would provide details about

those individual plaintiffs and identify which claims each plaintiff was asserting against which defendants. App. 4, 27–28. The Short Form Complaints served as "the vehicle by which individual Plaintiffs choose the claims in the master complaint that they are pursuing." MDL Dkt. 6303 at 3. Individual Short Form Complaints could also include "additional allegations or causes of action not pleaded" in the MPIC. App. 27; MDL Dkt. 6303 at 7 (quotation marks omitted).

The district court's procedure provided for a sequential approach to motions to dismiss. Initially, defendants could move only against the MPIC. App. 29 & n.8; MDL Dkt. 1496 ¶ C.7. Defendants were not permitted to move to dismiss individual plaintiffs' Short Form Complaints. MDL Dkt. 1496 ¶ C.10; *see also* MDL Dkt. 1346 (limiting motions to plaintiffs' "Master Complaints"). Only later, after the district court resolved motions related to the MPIC, could defendants seek to dismiss individual Short Form Complaints. MDL Dkt. 3913 at 5; MDL Dkt. 6303 at 8–9.

2. Consistent with that procedure, the MDL defendants' first round of motions to dismiss did not seek to dismiss any plaintiff's individual claims. App. 29 n.8. Each motion sought only to dismiss the MPIC. The district court granted the defendants' motions in five separate orders. App. 6.

First, in an order specific to defendants who allegedly manufactured generic ranitidine products or repackaged other manufacturers' ranitidine products, the district court held that the MPIC's design-defect and failure-to-warn claims were preempted by federal law. MDL Dkt. 2512; *see Mut. Pharm. Co. v. Bartlett*,

570 U.S. 472 (2013); *PLIVA, Inc. v. Mensing*, 564 U.S. 604 (2011).

Second, in an order specific to retailer defendants who allegedly sold ranitidine products, the district court similarly dismissed the MPIC's design-defect and failure-to-warn claims as preempted. App. 125–26.

Third, in an order applicable to all defendants, the district court dismissed the MPIC with leave to amend under Eleventh Circuit precedent prohibiting "shotgun pleading[s]." App. 6, 110 n.8; *see* MDL Dkt. 2515. The court held that precedent required dismissal because "each of the MPIC's 15 counts adopt[ed] by reference or incorporate[d] by reference every prior allegation," and because the MPIC "lump[ed] the … Defendants together" in a way that led to "confusion," "inconsistencies," and "allegations that the Court … had difficulty understanding." MDL Dkt. 2515 at 18–19.

Fourth, in an order specific to defendants who allegedly manufactured brand-name Zantac, the district court held that no state other than Massachusetts or California would recognize a duty by brand-name manufacturers to consumers of generic ranitidine (a theory often called "innovator liability"). App. 6; *see* MDL Dkt. 2516. The court dismissed plaintiffs' innovator liability claims with "leave to amend to plead a prima facie case of personal jurisdiction in California [or] Massachusetts." MDL Dkt. 2516 at 8.

Fifth, in another order specific to brand-name manufacturers, the district court dismissed with prejudice the MPIC's claims to the extent they were

based on allegations that manufacturers failed to make changes to Zantac's FDA-approved design that they could not have independently made under federal law. App. 6, 88. The court granted "leave to replead design-defect claims that are based on labeling defects and to plead pre-approval design-defect claims." App. 88.

Crucially, as the Eleventh Circuit recognized, these orders "did not dismiss any individual [Short Form Complaints]." App. 6. The district court has explained that its "rulings on the master complaint[]" did not "appl[y] in each individual case" absent "case-specific adjudication of Short Form Complaints." MDL Dkt. 6303 at 8. "[B]ecause each case ha[d] *two* operative pleadings, the Court's ruling on a master complaint was not sufficient" to dismiss an individual plaintiff's claims. *Id.* (rejecting the suggestion "that the Court's rulings on the master complaints applied in each individual case without the need for any further action from the Court"). Instead, to dismiss any individual plaintiff's claims, "the Court had to adjudicate *both* a Short Form Complaint *and* the master complaint the Short Form Complaint utilized." *Id.* (emphasis added); *see, e.g.*, MDL Dkt. 7125 (entering final judgment in individual cases based on MPIC orders). Until that occurred, plaintiffs' "individual cases" would "remain pending." MDL Dkt. 3913 at 5–6.

3. Petitioner Marilyn Williams was a personal-injury plaintiff in the MDL. Before defendants filed their motions to dismiss the MPIC, Petitioner had filed a Short Form Complaint asserting five claims against Respondents here: (1) strict products liability (failure to warn); (2) strict products liability (design

defect); (3) negligence (failure to warn); (4) breach of implied warranties; and (5) breach of express warranties. App. 5–6.

The district court never dismissed any claim in Petitioner's initial Short Form Complaint. Although the court dismissed with prejudice certain theories underlying the *MPIC's* design-defect claims, those dismissals—as explained above—were "not sufficient" to dismiss Petitioner's claims or any other "individual case." MDL Dkt. 6303 at 8. All of Petitioner's claims thus "remain[ed] pending." MDL Dkt. 3913 at 5–6.

Petitioner, however, believed the district court's MPIC orders would require dismissal of her individual design-defect claim in the future. App. 15. So, instead of requesting a final order in her case, moving to certify an interlocutory appeal under 28 U.S.C. § 1292(b), or seeking a partial final judgment under Rule 54(b), Petitioner took the dismissal of her claims into her own hands. She first filed an amended Short Form Complaint asserting a single design-defect claim against Respondents. App. 8, 193–99. Her amended Short Form Complaint purported to "incorporate[] the allegations in the then-dismissed MPIC," App. 8—which was itself contrary to the district court's pretrial orders, *see* MDL Dkt. 6303 at 6—and also included an additional paragraph describing her "theory of liability," App. 8. She then voluntarily dismissed her amended Short Form Complaint without prejudice under Rule 41(a)(1)(A)(i) and appealed her own voluntary dismissal. App. 8–9, 200–03. She did this "without any further action or acknowledgement from the district court." App. 14.

Petitioner appealed only the district court's preemption orders. App. 9. She did not appeal the district court's dismissal of the MPIC as a shotgun pleading. App. 202–03; *see generally* CA11 Opening Br. (ECF 44).

4. The Eleventh Circuit dismissed Petitioner's appeal for lack of jurisdiction in an unpublished decision, holding that her "voluntary dismissal of her own amended [Short Form Complaint] did not have the effect of creating a final judgment" under 28 U.S.C. § 1291. App. 13.

The Eleventh Circuit distinguished this case from one in which a plaintiff seeks to appeal an order dismissing *some* of her claims by voluntarily dismissing her *remaining* claims. App. 14. In contrast to that situation, here "there [was] no final order from the district court on [Petitioner's] design defect claim." *Id.* Petitioner, therefore, did not seek to appeal a claim the *district court* dismissed; instead, *she* dismissed her *own* claim and sought to "appeal matters related to the very claim she voluntarily dismissed." *Id.* That maneuver, the Eleventh Circuit held, could not "manufacture finality." App. 16. The court explained: "Because [Petitioner's] amended [Short Form Complaint] was pending when she voluntarily dismissed it and because there was no operative MPIC in place to combine with the amended [Short Form Complaint], there was necessarily no final judgment against [Petitioner]. [Petitioner's] subjective belief that the district court would dismiss her amended [Short Form Complaint] … does not make a final judgment." App. 14–15.

The district court later made clear that the Eleventh Circuit had correctly interpreted its orders. *See, e.g.*, MDL Dkt. 6303 at 8–9. The district court confirmed the Eleventh Circuit's "understanding" that no individual plaintiff's claim would be dismissed until the district court issued a "case-specific adjudication" of that plaintiff's Short Form Complaint. *Id.* at 8 & n.5; *see id.* at 9 (reiterating that "if an individual case is to be dismissed or to receive final judgment" based on the court's rulings on the master pleadings, a party had to specifically move for that relief).

5. While Petitioner's appeal was pending, proceedings in the MDL continued according to the district court's procedural orders. Plaintiffs filed an amended MPIC. MDL Dkt. 2759. The district court held that the amended MPIC corrected the prior MPIC's shotgun pleading deficiencies. MDL Dkt. 3717 at 6. It nonetheless dismissed several claims in the amended MPIC, some with prejudice and others with leave to amend. MDL Dkts. 3715, 3716, 3719. Plaintiffs then filed a second amended MPIC. MDL Dkt. 3887.

Plaintiffs then "consult[ed] with scientific experts" regarding "the capability of ranitidine to cause cancer." MDL Dkt. 6766 at 1. As a result of those consultations, plaintiffs' lead counsel (including Petitioner's counsel of record in this Court) elected to pursue only claims related to certain "Designated Cancers" (bladder, esophageal, gastric, liver, and pancreatic cancer). *Id.* at 2. As for "Non-Designated Cancers" (everything else), plaintiffs' own expert concluded that there was not sufficient evidence that ranitidine was capable of causing those types of

cancer. *Id.* at 1–2. Plaintiffs' lead counsel thus elected to produce expert reports on causation for designated cancers, but not for non-designated cancers. *Id.* at 2. Following that decision, "almost every" non–designated-cancer plaintiff "dismissed his or her case without prejudice." *Id.* Petitioner allegedly has ovarian and abdominal cancer, both of which are non-designated cancers. App. 195–96.

After further briefing, the district court excluded plaintiffs' experts and held that plaintiffs had no admissible evidence that ranitidine could have caused even the designated cancers. *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 644 F. Supp. 3d 1075 (S.D. Fla. 2022), MDL Dkt. 6120. The court then issued multiple orders regarding the procedure for entering final judgment in individual designated-cancer plaintiffs' cases. *See* MDL Dkts. 6230, 6303, 6622, 6787, 6875, 6930, 6937. Throughout that process, the court stressed that its goal was to "create one clean appellate record for one consolidated appeal before one appellate panel" and "to avoid piecemeal appellate records in individual cases resulting in piecemeal appeals." MDL Dkt. 6787 at 9. The court also dismissed the few remaining non–designated-cancer cases with prejudice because those plaintiffs "elected not to prosecute their cases." MDL Dkt. 6766 at 6–7. The court ultimately entered final judgment in thousands of individual cases, *see* MDL Dkt. 6974, and those judgments are currently on appeal to the Eleventh Circuit.

REASONS FOR DENYING THE PETITION

I. This case does not raise Petitioner's question presented or implicate any circuit split.

Petitioner asks this Court to grant certiorari to resolve a supposed circuit split over when a plaintiff may create appellate jurisdiction over a non-final decision dismissing *some* of her claims by voluntarily dismissing her *remaining* claims. Pet. i, 10–27. But that question is not presented here because, as the Eleventh Circuit correctly held, the district court never dismissed *any* of Petitioner's claims. At the time Petitioner voluntarily dismissed her Short Form Complaint, the district court had dismissed only certain theories *in the MPIC*. Those "rulings on the master complaint[]" did not dismiss any of Petitioner's individual claims, MDL Dkt. 6303 at 8–9, including the design-defect claim she sought to defend on appeal.

That fact, which Petitioner studiously ignores, is what drove the decision below. The Eleventh Circuit held that because "[t]he district court did not dismiss any individual [Short Form Complaints]," App. 6, "there [wa]s no final order from the district court on [Petitioner's] design defect claim," App. 14. It voiced no opinion on the hypothetical question whether, if the district court *had* dismissed Petitioner's design-defect claim with prejudice, Petitioner could have readied the case for appeal by voluntarily dismissing her remaining claims.

That distinguishes every case Petitioner cites in support of her claimed circuit split, all of which involved plaintiffs who sought to appeal with respect to a claim the district court had actually dismissed.

See Pet. 10 (asserting split over appellate jurisdiction "[w]hen a district court dismisses some (but not all) of a plaintiff's claims with prejudice" and the plaintiff voluntarily dismisses her remaining claims). Petitioner, in contrast, unilaterally dismissed her design-defect claim without any "action or acknowledgement from the district court" and then sought to "appeal matters related to the very claim she voluntarily dismissed." App. 14.

It is not true, as Petitioner claims, that this is the case any time a plaintiff seeks to appeal after a voluntary dismissal. Pet. 24–25. If a plaintiff asserts two claims and the district court dismisses Claim 1, the plaintiff may in some circumstances be able to appeal the district court's dismissal of Claim 1 under § 1291 after voluntarily dismissing Claim 2. But in no circumstances may the plaintiff appeal her own voluntary dismissal of Claim 2. That is what Petitioner sought to do here: appeal with respect to a claim that only *she*, not the district court, dismissed. App. 14–15. Her "subjective belief that the district court would [have] dismiss[ed]" that claim "does not make a final judgment." *Id.*

Petitioner cites no case from any circuit exercising appellate jurisdiction in such circumstances, and for good reason. When a district court does not dismiss a plaintiff's individual claims, allowing the plaintiff to manufacture a final judgment through voluntary dismissal would "subvert[] the final-judgment rule." *Microsoft Corp. v. Baker*, 582 U.S. 23, 37 (2017). It would place "the decision whether an immediate appeal will lie … exclusively with the plaintiff," thus removing from district courts and courts of appeals the

judicial power to determine when a judgment is final. *Id.* It would "invite[] protracted litigation and piecemeal appeals," offering plaintiffs an at-will "option" to "stop[] and start[] the district court proceedings with repeated interlocutory appeals." *Id.* at 37–38. It would be entirely "one-sided[]," allowing "plaintiffs only, never defendants, to force an immediate appeal" of an interlocutory decision. *Id.* at 41. And it would produce appeals that lack the "adverse[ness]" necessary to create a "case" or "controversy" under Article III. *Id.* at 44–45 (Thomas, J., concurring in the judgment); *see Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1233 (11th Cir. 2020) ("As a general rule, a plaintiff is not adverse to a voluntary dismissal that he requested.").

Likely for all these reasons, Petitioner never openly argues that a plaintiff can manufacture appellate jurisdiction over a claim the district court did not dismiss by voluntarily dismissing that claim. Throughout her petition, she asserts that the district court's MPIC orders *did* dismiss her design-defect claim. *E.g.*, Pet. 25. But the district court and the Eleventh Circuit both held otherwise, based on their interpretations of case-specific procedural orders. *E.g.*, App. 6, 14; MDL Dkt. 3913 at 5–6; MDL Dkt. 6303 at 8–9; MDL Dkt. 6622 at 12–13. Petitioner's real disagreement with the decision below, then, turns not on any question about the meaning of Rule 41(a) or § 1291, but solely on the district court's and the Eleventh Circuit's interpretation of the unique procedural orders governing this complex MDL.

This is confirmed by the petition itself, which ultimately must resort to criticizing the Eleventh Circuit's interpretation of the district court's orders—

even though the district court itself endorsed that interpretation. Pet. 24–27. But a court's interpretation of its own orders is entitled to considerable deference. *E.g.*, *McLaurin v. Terminix Int'l Co.*, 13 F.4th 1232, 1241 (11th Cir. 2021). And even if Petitioner's criticisms were valid, they would present case-specific issues that do not justify this Court's review. Deciding whether the Eleventh Circuit and the district court correctly interpreted the district court's own orders would be an exercise in pure error-correction that would neither implicate nor resolve any circuit split.

II. Any circuit split over Petitioner's question presented is unworthy of certiorari.

For the reasons explained above, any exploration of the courts of appeals' views on Petitioner's question presented is an academic exercise. This case does not present that question, the Eleventh Circuit did not opine on it, and answering it could not possibly change the outcome here. But in the spirit of thoroughness, we now undertake that exercise.

Even if it were presented in this case, Petitioner's question would not warrant review. In recent years, this Court has denied multiple petitions raising variations on that question.[1] And for good reason: The claimed split on which Petitioner relies is superficial, unimportant, and rarely dispositive.

---

[1] *E.g.*, *Swisher Int'l, Inc. v. Trendsettah USA, Inc.*, 143 S. Ct. 486 (2022) (mem.); *Starline Tours of Hollywood, Inc. v. EHM Prods., Inc.*, 141 S. Ct. 2630 (2021) (mem.); *CBX Res., L.L.C. v. ACE Am. Ins. Co.*, 141 S. Ct. 1372 (2021) (mem.); *Y.W. v. Aufiero*, 141 S. Ct. 1057 (2021) (mem.); *see also Perez v. City of Miami Beach*, 553 U.S. 1018 (2008) (mem.).

A. The claimed circuit split is mostly illusory.

Petitioner claims there are "intractable divisions in the courts of appeals" over when a plaintiff can appeal a partial-dismissal order by voluntarily dismissing her remaining claims. Pet. 12. But the cases she cites reveal that most circuits broadly agree on the circumstances in which a voluntary dismissal creates an appealable final judgment. As the D.C. Circuit has summarized, "[e]very circuit … treat[s] voluntary dismissals of all remaining claims as sufficient to finalize a district court order for review when those dismissals are made *with prejudice*." *Blue v. D.C. Pub. Schs.*, 764 F.3d 11, 17 (D.C. Cir. 2014) (emphasis added). And while some circuits "allow dismissals *without prejudice* to finalize trial court proceedings for appellate review at least some of the time," "[e]very circuit … appears to acknowledge a presumption against that practice." *Id.* (emphasis added). The slight differences between how the circuits characterize their approaches rarely lead to meaningfully different outcomes.

1. A large majority of circuits—at least the Second, Third, Fourth, Fifth, Sixth, Seventh, Tenth, and D.C. Circuits—hold that a plaintiff generally may not create a final, appealable judgment by voluntarily dismissing her remaining claims without prejudice. Each of these circuits allows appeals following a non-prejudicial order of voluntary dismissal under Rule 41(a)(2) only when the plaintiff would be unable to revive the voluntarily dismissed claims after remand.

Petitioner correctly recognizes that the Second, Third, Sixth, and Seventh Circuits will exercise

appellate jurisdiction following a non-prejudicial voluntary dismissal only when "the plaintiff cannot revive the abandoned claims" because "(1) [t]he statute of limitations on the abandoned claims has expired; (2) [t]he appealing litigant makes a legally binding renunciation of any intent to further pursue the abandoned claims; or (3) [s]ome other factor makes further litigation on the abandoned claims impossible." Pet. 15; *see, e.g.*, *Alix v. McKinsey & Co.*, 23 F.4th 196, 202–03 (2d Cir. 2022); *Fed. Home Loan Mortg. Corp. v. Scottsdale Ins. Co.*, 316 F.3d 431, 438–40 & n.6, 442 (3d Cir. 2003); *Page Plus of Atlanta, Inc. v. Owl Wireless, LLC*, 733 F.3d 658, 660–62 (6th Cir. 2013); *Arrow Gear Co. v. Downers Grove Sanitary Dist.*, 629 F.3d 633, 636–37 (7th Cir. 2010).

Contrary to Petitioner's argument (Pet. 12–13), the Fourth Circuit appears to follow the same rule: It agrees with its "sister circuits" that "litigants may not use voluntary dismissals as a subterfuge to manufacture jurisdiction for reviewing otherwise non-appealable, interlocutory orders." *Waugh Chapel S., LLC v. United Food & Com. Workers Union Loc. 27*, 728 F.3d 354, 359 (4th Cir. 2013). In *Waugh Chapel*, the district court dismissed most of the plaintiff's claims with prejudice, then entered a Rule 41(a)(2) order dismissing the remaining claims without prejudice. *Id.* The Fourth Circuit held that "[t]his kind of split judgment ordinarily would not be considered 'final' and therefore appealable," so it exercised jurisdiction only after "deem[ing]" the voluntary

dismissal "to be with prejudice." *Id.* (quotation marks omitted).[2]

The D.C. Circuit "keep[s] with th[e] broad consensus" in other circuits by "treat[ing] voluntary but non-prejudicial dismissals of remaining claims as generally insufficient to render final and appealable a prior order disposing of only part of the case." *Blue*, 764 F.3d at 17. It applies that rule when the voluntary dismissal "would allow revival of th[e] claims after the appeal." *Shatsky v. Palestine Liberation Org.*, 955 F.3d 1016, 1026 (D.C. Cir. 2020). But it has stated that the rule might not apply if the plaintiff cannot "refile" her dismissed claims "due to a lapsed statute of limitations or any other analogous constraint." *Robinson-Reeder v. Am. Council on Educ.*, 571 F.3d 1333, 1339 n.7 (D.C. Cir. 2009) (quotation marks omitted).

The Fifth Circuit's approach is similar. It holds that a voluntary dismissal without prejudice does not create finality because "the plaintiff is entitled to bring a later suit on the same cause of action." *Williams v. Seidenbach*, 958 F.3d 341, 343 (5th Cir. 2020) (en banc) (quotation marks omitted). This rule

---

[2] As *Waugh Chapel* makes clear, the Fourth Circuit's earlier decision in *GO Computer, Inc. v. Microsoft Corp.*, 508 F.3d 170 (4th Cir. 2007), does not support appellate jurisdiction over all Rule 41(a) dismissals. In *GO Computer*, the district court *rescinded* its grant of the plaintiff's voluntary dismissal, then entered a Rule 58 final judgment that dismissed most of the plaintiff's claims with prejudice and the remaining claims without prejudice. *Id.* at 175–76. That some claims were dismissed without prejudice did not preclude jurisdiction only because the plaintiff "promis[ed] never to raise [those] claims in federal court again." *Id.* at 176.

applies when the plaintiff retains "the ability to refile the claims voluntarily dismissed." *Marshall v. Kansas City S. Ry. Co.*, 378 F.3d 495, 500 (5th Cir. 2004) (per curiam). But the Fifth Circuit "treat[s] [a] dismissal without prejudice as a dismissal with prejudice" when "the applicable statute of limitations bars further litigation," *Lewis v. Sheriff's Dep't Bossier Parish*, 478 F. App'x 809, 815–17 (5th Cir. 2012) (per curiam), and it has not ruled out allowing plaintiffs to create appealable judgments "[b]y bindingly disclaiming their right to reassert any dismissed-without-prejudice claims," *Williams*, 958 F.3d at 355 (Willett, J., concurring) (arguing for that approach).

The Tenth Circuit appears to follow the same approach. *See Tri Cnty. Tel. Ass'n v. Campbell*, 2021 WL 4447909, at *7–8 & n.10 (10th Cir. June 16, 2021). In its unpublished decision in *Tri County*, the Tenth Circuit surveyed its precedent and found it consistent with the "broad consensus" among the circuits holding that a plaintiff cannot "manufacture finality by obtaining a voluntary dismissal without prejudice of some claims so that others may be appealed," but that an appeal may be permitted if the plaintiff is "effectively excluded from litigating" the voluntarily dismissed claims—for example, because those claims "would clearly be time-barred" or "the litigant renounces any intention to take further action on the claim[s]." *Id.* (cleaned up).

Finally, although the First Circuit has not decided the question, the available evidence suggests it would follow the majority rule. The First Circuit agrees with every other circuit that voluntary dismissals with prejudice can create appealable final judgments. *See*

Cashmere & Camel Hair Mfrs. Inst. v. Saks Fifth Ave., 284 F.3d 302, 308 (1st Cir. 2002). It has "expressed concern," however, about "attempts to manufacture finality" through "the voluntary dismissal of [claims] without prejudice." *Shea v. Millett*, 36 F.4th 1, 5 n.5 (1st Cir. 2022). To date, it has avoided deciding whether non-prejudicial dismissals can create final judgments by "assum[ing] statutory appellate jurisdiction and proceed[ing] to the merits" when the question arises. *Id.* (quoting *Donahue v. Fed. Nat'l Mortg. Ass'n*, 980 F.3d 204, 207 (1st Cir. 2020)) (cleaned up). But it has suggested that, like other circuits, it might require "representations" by a plaintiff or other circumstances that would prevent the plaintiff from "reassert[ing]" her voluntarily dismissed claims. *Donahue*, 980 F.3d at 207 & n.3.

2. The Ninth and Federal Circuits follow what Petitioner calls a "contextualized approach" to appeals following non-prejudicial voluntary dismissals (Pet. 18–19), rejecting jurisdiction whenever the plaintiff has "attempted to manipulate [the court's] appellate jurisdiction by artificially 'manufacturing' finality." *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1066 (9th Cir. 2002); *see Doe v. United States*, 513 F.3d 1348, 1353–54 (Fed Cir. 2008) (adopting *James*). In practice, this approach appears little different from the majority rule. That is so because the factors these courts consider to decide whether a plaintiff is improperly "'manufacturing' finality" are the same factors that inform outcomes in other circuits: whether the plaintiff could "reinstate the dismissed claims" on remand; whether the dismissed claims "will be barred by the statute of limitations or laches"; and whether the dismissal "was accomplished

without the district court's approval, under Rule 41(a)(1)" or "pursuant to court order under Rule 41(a)(2)." *James*, 283 F.3d at 1066–67. Indeed, the Ninth Circuit has observed that its "approach is consistent with that of other circuits." *Id.* at 1069; *see also In re Mun. Stormwater Pond Coordinated Litig.*, 73 F.4th 975, 979 (8th Cir. 2023) (citing *James* to reject appellate jurisdiction over "conditional dismissal").

3. The Eighth Circuit likewise "strongly disapprove[s] of th[e] use of a dismissal without prejudice to create what is in substance an impermissible interlocutory appeal." *Great Rivers Coop. v. Farmland Indus., Inc.*, 198 F.3d 685, 690 (8th Cir. 1999); *see In re Mun. Stormwater*, 73 F.4th at 979 ("This court repeatedly has expressed concern about attempts to circumvent the final judgment rule."). Unlike other circuits, the Eighth Circuit appears to treat an improper attempt to appeal following a non-prejudicial voluntary dismissal as a *merits* problem rather than a "jurisdictional issue." *Great Rivers*, 198 F.3d at 689. But the upshot is generally the same: A district court in the Eighth Circuit typically "abuse[s] its discretion when it frustrates the limitations on federal appellate jurisdiction by entering a Rule 41(a)(2) order dismissing remaining claims without prejudice for the purpose of facilitating the immediate appeal of an earlier interlocutory order." *Id.* at 689–90. "In most [such] cases, the proper remedy will be to reverse the Rule 41(a)(2) order and remand for

completion of the case, without considering the merits of the earlier interlocutory order(s)." *Id.* at 690.[3]

The cases Petitioner cites merely reflect that the Eighth Circuit has occasionally chosen in its "discretion" to exercise appellate jurisdiction over district court *orders* granting voluntary dismissals when there was "some clear and unequivocal manifestation by the trial court of its belief that the decision … [was] the end of the case." *Id.* at 689–90 (quotation marks omitted). Each of those cases involved a dismissal order under Rule 41(a)(2), not (as here) a mere notice of dismissal under Rule 41(a)(1)(A)(i).[4] In the context of Rule 41(a)(1) dismissals, the Eighth Circuit has held that a "conditional dismissal" without prejudice cannot

---

[3] *See also Core & Main, LP v. McCabe*, 62 F.4th 414, 417 n.1 (8th Cir. 2023) (deeming voluntary dismissal order "to be with prejudice" because dismissal without prejudice would "'frustrate[] the limitations on federal appellate jurisdiction'" (quoting *Great Rivers*, 198 F. 3d at 689)); *W. Am. Ins. Co. v. RLI Ins. Co.*, 698 F.3d 1069, 1071 n.1 (8th Cir. 2012) (deeming voluntary dismissal order "to be *with* prejudice" because dismissal without prejudice would "manufacture appellate jurisdiction in circumvention of the final decision rule"); *Madsen v. Audrain Health Care, Inc.*, 297 F.3d 694, 698 (8th Cir. 2002) (deeming dismissal under Rule 41(a)(2) "to be with prejudice" because a plaintiff "may not evade the final judgment requirement … by seeking a non-prejudicial dismissal").

[4] *See Great Rivers*, 198 F.3d at 689–90 (exercising jurisdiction because the district court entered "a final judgment … dismissing the class's complaint 'in its entirety'"); *Hope v. Klabal*, 457 F.3d 784, 789–90 (8th Cir. 2006) (exercising jurisdiction because, as in *Chrysler Motors Corp. v. Thomas Auto Co.*, 939 F.2d 538, 540 (8th Cir. 1991), the district court "entered an order of dismissal").

create appellate jurisdiction. *In re Mun. Stormwater*, 73 F.4th at 979–81.

4. Ironically, the Eleventh Circuit, whose decision Petitioner challenges, appears to have the most plaintiff-friendly approach of any circuit. In *Corley*, the court held that appellate jurisdiction is proper when a district court dismisses some of a plaintiff's claims and the plaintiff "voluntarily dismiss[es] his remaining claims without prejudice to challenge the earlier decision on appeal," at least when the plaintiff obtains an order of dismissal under Rule 41(a)(2). 965 F.3d at 1231.[5] That plaintiff-friendly approach was no help to Petitioner, however, because as the Eleventh Circuit explained, the district court never dismissed her design-defect claim. App. 14. Rather than voluntarily dismissing her "remaining claims" to appeal an order that "completely resolved" her design-defect claim, *Corley*, 965 F.3d at 1231, 1234, she sought "to appeal matters related to the very [design-defect] claim she voluntarily dismissed," App. 14.

5. In short, while different circuits frame their approaches to this question somewhat differently, nearly all follow a consensus approach that will generate similar results in the vast majority of cases: A plaintiff may not manufacture appellate jurisdiction by unilaterally dismissing her own claims without prejudice, unless she will be unable to revive those claims on remand. The circuits' different articulations

[5] Whether the Eleventh Circuit would apply the same approach to a voluntary dismissal without a court order under Rule 41(a)(1) is less clear, but *Corley* suggests it would in at least some circumstances. *See* 965 F.3d at 1230.

of that principle do not constitute the type of meaningful circuit split that demands this Court's review.

B. Any split is neither important nor relevant to this case.

Even if the minor differences between the circuits' approaches to reviewing voluntary dismissals could be characterized as a meaningful circuit split, those distinctions would not support certiorari because they will rarely make a difference to any plaintiff. They certainly make no difference here.

1. To whatever extent the circuits may disagree about when a plaintiff can create appellate jurisdiction over an interlocutory dismissal order by voluntarily dismissing her remaining claims without prejudice, resolving that disagreement is unimportant because "[e]very circuit permits a plaintiff, in at least some circumstances, voluntarily to dismiss remaining claims or remaining parties from an action as a way to conclude the whole case in the district court and ready it for appeal." *Blue*, 764 F.3d at 16. It is hardly unreasonable to expect a plaintiff to learn and follow the procedural rules of the circuit in which her suit is pending. *Cf. Ortega-Rodriguez v. United States*, 507 U.S. 234, 251 n.24 (1993) (recognizing that different circuits' procedural rules need not be perfectly uniform). And in any circuit, a plaintiff can secure appellate jurisdiction by dismissing her remaining claims with prejudice. *Blue*, 764 F.3d at 17.

Moreover, even when a circuit's rules would not support appellate jurisdiction, "established rules of civil procedure provide many tools to avoid th[e]

alleged '[finality] trap.'" *Williams*, 958 F.3d at 344. For example, a plaintiff may ask the district court to certify its interlocutory order under 28 U.S.C. § 1292(b) or to enter partial final judgment under Rule 54(b). *Id.*; *see also Baker*, 582 U.S. at 34, 39; *Blue*, 764 F.3d at 18. Other statutes and rules authorize interlocutory appeals in specified circumstances. *E.g.*, 28 U.S.C. § 1292(a); Fed. R. Civ. P. 23(f). And then there are writs of mandamus, Fed. R. Civ. P. 21, and the collateral order doctrine, *see Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 11–12 (1983), which likewise recognize certain circumstances where interlocutory appeals are appropriate.

It is neither necessary nor desirable to let plaintiffs circumvent these established routes for interlocutory appeal through unilateral, without-prejudice voluntary dismissals. "Congress authorized this Court to determine when a decision is final for purposes of § 1291, and to provide for appellate review of interlocutory orders not covered by statute. These changes are to come from rulemaking, however, not judicial decisions in particular controversies or inventive litigation ploys." *Baker*, 582 U.S. at 39 (citation omitted). And under the statutes enacted by Congress and the rules approved by this Court,"[t]he judge, not the parties, is meant to be the dispatcher who controls the circumstances and timing of the entry of final judgment." *Blue*, 764 F.3d at 18. But "[i]f a party's non-prejudicial dismissal of any still-pending claims could, without more, render final and appealable any earlier order disposing of other claims, litigants, not district judges, would control the timing of appeal." *Id.* Such a result would "subvert[] the final-

judgment rule and the process Congress has established for refining that rule and for determining when nonfinal orders may be immediately appealed." *Baker*, 582 U.S. at 37.

This case proves the point. If Petitioner believed the district court's MPIC orders doomed her individual claims, she could have asked the district court to enter final judgment on her individual claims under the procedural orders governing the MDL. She also could have sought either a § 1292(b) certification or a Rule 54(b) judgment. She chose not to pursue any of those clear options. Instead, she claimed for herself the unilateral power to "deci[de] whether an immediate appeal will lie." *Baker*, 582 U.S. at 37. And what's more, she did so based on her own subjective interpretation of the district court's orders—an interpretation the district court itself rejected. MDL Dkt. 3913 at 5–6; MDL Dkt. 6303 at 8–9. It is hard to imagine a more severe interference with the district court's power "to control the circumstances and timing of the entry of final judgment." *Blue*, 764 F.3d at 18.

2. Any split over the appealability of voluntary dismissals is also unlikely to make a difference in any given case because, as explained above, nearly all circuits follow the same general rule. Even if the circuits' approaches differ on the margins, those distinctions will make a difference only in the rarest case, and only when a plaintiff chooses not to avail herself of the many available mechanisms for obtaining a reviewable final judgment.

More important, there is *no* circuit that would have exercised jurisdiction over Petitioner's appeal. First, the district court never dismissed any of

Petitioner's claims, and no case from any circuit allows a plaintiff to manufacture finality with respect to a claim the district court *did not dismiss* by voluntarily dismissing that claim. *See* Part I, *supra*. Second, the vast majority of the cases Petitioner cites reviewed dismissal *orders* under Rule 41(a)(2), while Petitioner unilaterally dismissed her claim under Rule 41(a)(1) without any "action or acknowledgement from the district court." App. 14. Third, as the Eleventh Circuit found, Petitioner voluntarily dismissed her claims without prejudice in "an attempt to 'manufacture jurisdiction,'" and she remained free to revive her design-defect claim in the district court. App. 14–15. Because the district court never dismissed that claim, Petitioner could—and in fact *did*—amend her Short Form Complaint to reassert the claim. *Id.* These facts would have required dismissal of Petitioner's appeal in every circuit.

In sum, the supposed split on which Petitioner relies is not important enough to require this Court's review. But even if it were, resolving that split would make no difference to this case. The Court should deny certiorari for that reason as well.

III. Even if this case raised Petitioner's question presented, it would be a terrible vehicle.

All else aside, this case is a remarkably bad vehicle for resolving any disagreement over appellate jurisdiction based on voluntary dismissals. If the question presented "arises" as "frequently" as Petitioner claims (Pet. 27), then this Court will have many cleaner vehicles to review that question than the nonprecedential decision below. It should wait for one.

First, even if the question presented were somehow relevant here, the complex structure of this MDL presents procedural complications that would impede this Court's review of that question. As the Eleventh Circuit correctly recognized, whether there was a final order dismissing *any* of Petitioner's claims depends on the meaning of procedural orders the district court entered to govern this MDL. App. 6, 14; MDL Dkt. 6303 at 8–9. This Court too would have to interpret those orders, an exercise that would likely require the Court to slog through reams of complex procedural filings before even beginning to think about the question presented. And if the Court agreed with the Eleventh Circuit's and district court's interpretations of the relevant orders, it would have no chance of reaching the question presented.[6]

Second, a victory in this Court could not help Petitioner, as the Eleventh Circuit has already made clear that she would inevitably lose on remand. The district court dismissed the MPIC both as preempted *and* because the MPIC was an impermissible "shotgun pleading." *See* App. 110 n.8; MDL Dkt. 2515. Petitioner, however, did not appeal the shotgun-pleading order. App. 202–03; *see generally* CA11

[6] What's more, even if this Court were to disagree with the district court and the Eleventh Circuit and conclude that the district court's orders with respect to the MPIC applied to individual plaintiffs' Short Form Complaints without the need for any further action by the district court, it would still have to grapple with the fact that Petitioner substantively amended her Short Form Complaint *after* the relevant rulings on the MPIC—including by adding a new paragraph describing her "theory of liability," App. 8 (quotation marks omitted)—and the district court never had an opportunity to review those amendments.

Opening Br. (ECF 44). She thus forfeited her ability to challenge that order, which independently requires dismissal of her claim. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) ("When an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed.").

This is not speculation, but a foregone conclusion. The same day the Eleventh Circuit dismissed Petitioner's appeal, it affirmed the dismissal of a different complaint in this MDL for the same reason. *See In re Zantac (Ranitidine) Prods. Liab. Litig.*, 2022 WL 16729170, at *7 (11th Cir. Nov. 7, 2022) (per curiam). The plaintiffs in that case were three welfare benefit plans that claimed they suffered economic injuries when they reimbursed their members for Zantac prescriptions. *Id.* at *1. Unlike personal-injury plaintiffs such as Petitioner, the plans were not required to file short-form complaints; their claims were consolidated into a single operative complaint. *See id.* The district court dismissed that complaint on several distinct grounds, including that it was a shotgun pleading. *Id.* at *1–2. One plan challenged some of those grounds on appeal, but it did *not* challenge the district court's shotgun-pleading decision. *Id.* at *7. It thus "abandoned any challenge of that ground," which gave the Eleventh Circuit "no choice but to affirm." *Id.* (quotation marks omitted).

The same is true here. Because Petitioner's failure to challenge the district court's shotgun-pleading order would "requir[e] an affirmance on the

merits" even if the Eleventh Circuit had jurisdiction over her appeal, *id.*, her petition is quixotic. For this reason too, Petitioner's abstract jurisdictional question cannot make any difference to the outcome of this case. Moreover, while the Eleventh Circuit held that failure to appeal the district court's shotgun-pleading ruling required affirmance on the merits, it recognized that other circuits "have couched the failure to appeal all alternative grounds in mootness terms." *Id.* If this Court were to agree with those other circuits, it could affirm on mootness grounds without reaching Petitioner's question presented.

Third, in the time since Petitioner appealed, every claim in the MDL has been finally resolved in ways that confirm the pointlessness of Petitioner's appeal. The district court granted Respondents (and the other defendants) summary judgment on all claims brought by designated-cancer plaintiffs because they had no admissible evidence of causation. *In re Zantac*, 644 F. Supp. 3d at 1286; MDL Dkt. 6974. And non–designated-cancer plaintiffs like Petitioner all abandoned their claims without even trying to prove causation. MDL Dkt. 6766 at 2–4.

Petitioner's claims would face the same fate on remand. Lead plaintiffs' counsel (including Petitioner's counsel of record) chose not even to attempt to prove that ranitidine could cause the types of cancer alleged in Petitioner's Short Form Complaint. If Petitioner had not appealed prematurely, her claims would have been dismissed along with the other non–designated-cancer plaintiffs' claims, either voluntarily without prejudice or with prejudice for failure to produce evidence of causation.

And if her claims were remanded now, there is no reason to think that she could or would produce the sort of causation evidence that none of the other non–designated-cancer plaintiffs were able or willing to produce. Her zombie case will end in dismissal no matter what this Court does.

The district court's proceedings during Petitioner's appeal also refute her suggestion that the Eleventh Circuit's decision in this case was somehow unjust or inefficient. Pet. 28–30. Because every indication is that Petitioner eventually would have abandoned her suit, the Eleventh Circuit's decision did not deprive her of any meritorious claim. And even if she intended to pursue her claims, she had no cause to sidestep the procedures the district court imposed for entering final judgments in individual cases. After she appealed, those procedures worked exactly as designed: They produced final judgments in every case through an efficient and orderly process. Every plaintiff who still wants to pursue their dismissed claims has been able to appeal the dismissal at the same time, just as the final-judgment rule requires. And, as the district court intended, there is "one clean appellate record" permitting the court of appeals "to hear all issues simultaneously before a single appellate panel." MDL Dkt. 6974 at 10 & n.10.

Petitioner's improper attempt to jump the line, in contrast, resulted in nothing but "unnecessary[] appellate court work" that wasted judicial time and resources. *Johnson v. Jones*, 515 U.S. 304, 309 (1995). If other plaintiffs had adopted Petitioner's approach, or if plaintiffs in other MDLs were to do so in the future, the result would be a circus of "piecemeal

appeals"—exactly what the district court sought to prevent by adopting orderly procedures for entering final judgment in individual cases. MDL Dkt. 6974 at 10. The Eleventh Circuit properly rejected Petitioner's tactical abuse of Rule 41(a)(1), and there is no good reason for this Court to review that decision.

CONCLUSION

This Court should deny the petition for certiorari.

Respectfully submitted,

Sarah E. Johnston
BARNES &
THORNBURG, LLP
2029 Century Park East
Suite 300
Los Angeles, CA 90067

Counsel for Respondent Walgreens Boots Alliance, Inc.

Paul Alessio Mezzina
Counsel of Record
KING & SPALDING LLP
1700 Pennsylvania Ave. NW
Washington, DC 20006
(202) 737-0500
pmezzina@kslaw.com

Madison H. Kitchens
KING & SPALDING LLP
1180 Peachtree St. NE
Atlanta, GA 30309

Matthew V.H. Noller
KING & SPALDING LLP
50 California St.
San Francisco, CA 94111

Counsel for Respondents Boehringer Ingelheim Pharmaceuticals, Inc. and Boehringer Ingelheim USA Corporation

December 21, 2023