23-805

No.

IN THE

Supreme Court of the United States

LARRY RICE,

Petitioner

v.

INTERFOOD, INC.

Respondents

On Petition for Writ Of Certiorari
To The United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Interfood, Inc. ("Interfood-DE" or "DE") filed a counterclaim defense claiming that a settlement agreement prevented Rice from suing for any harm suffered on or before December 2009.

This suit was filed in 2013 by Rice against Interfood-DE for their breaches in 2010 and 2011 of an exclusive territory agreement between Rice and the Interfood Group of which Interfood-DE is a member. Peripheral complaints brought against DE's directors below are not being pursued here.

Rice's complaint was dismissed [Doc.#38, App a30] for failure to state a claim because **a)** the *directors* were not parties to the agreement and **b)** the action complained about *allegedly* occurred before Interfood-DE existed. The court did not mention Rice's standing nor the 2010-2011 claims against Interfood-DE.

Defendants' Motion for summary judgment on their counterclaim was granted on the court's interpretation that the actions complained of occurred before 2009. [Doc.# 102, App. a2] The eighth circuit never ruled on "standing" for claims or counterclaims, never addressed Interfood-DE's 2010-2011 breaches, never said what element of a claim was missing, and did not allow for an amended complaint.

The court ruled instead on uncontroverted issues not brought before it, such as *old* breaches by *other* Group companies **not** parties here, mentioned only as background.

I. Whether a federal court can rule on the merits of a complaint or counterclaim without first ruling on standing.

II. Whether the court can decide to rule on allegations mentioned in the background section of

the complaint, against *other* companies **not** parties here, and ignore the complaint before it in COUNT II, ¶37 for example, against defendant Interfood-DE.

III. Whether the court can rule at a 12(b)(6) motion to dismiss level, that defendant is not obligated under the agreement allegedly breached, without having the issue briefed, and if so, must the court then dismiss the case *without prejudice* for lack of standing, rather than *with prejudice* for failure to state a claim.

IV. Whether a party to a contract under Missouri law has standing to sue for a breach that primarily injures a third-party beneficiary, or must the filing party claim additional specific personal harm?

PARTIES TO THE PROCEEDINGS

Larry Rice is the petitioner here, and plaintiff and counterclaim-defendant in the court below.

Interfood, Inc., ("Interfood-DE") and its directors: Jason Medcalf, Dirk Neerhoff, Nick Sharp, and F.C.G.M. (Frank) van Stipdonk, were the defendants and counterclaimants below.

Only Interfood-DE is the respondent here as the only count being discussed is Interfood-DE's breach of contract in 2010-2011 and their counterclaim defense.

RELATED CASES

- Rice v Interfood, Inc. and its Directors, No. 4:13-cv-01171-HEA, U.S. District Court for the Eastern District of Missouri – St. Louis. [App. a11] Judgment entered Mar. 7, 2023. [App. a10-11]

- Rice v Interfood, Inc. and its Directors, No. 23-1684, U.S. Court of Appeals for the Eighth Circuit. Judgment entered May 24, 2023. Rehearing Denied July 7, 2023. [Doc.#241, App. a1]

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PETITION FOR WRIT OF CERTIORARI

Larry Rice respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. a1) is unreported. The district court's order "dismissing all Rice's claims" (App. a1) is unreported.

The district court's order granting the counterclaim is App. a2. The appellate court's denial of a rehearing is reproduced at App.a10.

JURISDICTION

The court of appeals issued its opinion on May 24, 2023, App. 1a. Rehearing was denied on July 7, 2023. App. a10. This Court has jurisdiction under 28 U.S. Code § 1254(1).

CONSTITUTIONAL PROVISIONS

First Amendment: The Petition Clause is one source of an aggrieved party's right "to petition the Government for a redress of grievances."

Article III Section 2, Clause 1 of the United States Constitution states in relevant part that the judicial Power shall extend to "cases" and "controversies". Encompassing standing.

The Fifth Amendments provide that no one shall ... "be deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendments provide that:

".... No state shall... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner Larry Rice's complaint at issue here is his breach of contract claim in Case: 4:13-cv-01171-HEA, Doc.#1 ¶37 (App. a19) against Interfood, Inc., a Delaware co., "Interfood-DE". Interfood-DE as a Tepco subsidiary is part of the "Interfood Group" ***Id.*** ¶16.

In exchange for Rice investing in Waltepco and developing the US and Canadian market for them, the Group gave Rice the exclusive right to buy and sell in the US and Canada. The resulting Waltepco shareholders agreement, Doc.#1-1, mentions the exclusivity agreement in ¶3 and makes Interfood-IN a third-party beneficiary of the exclusivity agreement with Rice. Interfood-IN is Waltepco's operating company. Waltepco is jointly owned by Rice and Tepco unlike Interfood-DE which is 100% owned by Tepco.

Frank van Stipdonk and Jack Engels signed the shareholder agreement for Tepco and the Group, indicating that they had the authority to do so and that they would execute any other documents necessary to see that its intent was carried out. (Agreement ¶¶16, 17, 24, 27). The agreement has a Missouri choice of law ¶19.

Frank and Jack asked Dirk Neerhoff to testify for them as to the intent and meaning of the shareholders agreement as he was intimately involved in its preparation. Frank and Dirk are Interfood-DE directors and defendants below.

Dirk testified (Transcript, Doc.#65-3) as to who the Interfood Group is, (Trans. at 25), and that it was the intent of the agreement *not* to allow other Group members to buy and sell in the US or Canada "Especially not without the knowledge of Interfood-IN" (Trans. at 47-48). Dirk also testified that both

Frank and Jack had to sign the agreement because "in the statutory books it says that two directors should sign to make an authorized document." (Trans. at 50).

Frank testified (Transcript, Doc.#65-4) that ¶3 of the shareholders agreement bound the entire Group, (Trans. at 65, Doc.#65-4 page 15), and that since that agreement "does not conflict with how we operate as a group.... This was absolutely acceptable to us." (Trans. at 65 lines 15-17 Doc.#65-4 page 18). He goes on to say that ¶3 in the shareholders agreement applies to the "agreement with Larry Rice and Mike Husmann", and that if any other company in the group buys and sells product in the US or Canada it is a violation of that agreement with Rice.

Given that Frank and Dirk are directors of Interfood-DE, Interfood-DE cannot now say that it is not bound by that agreement with Rice, and in fact they have not said that, although it is possible that the appellate court might have thought that the district court thought they had.

In a Verified suit filed by Interfood-DE in Massachusetts against Select Veal (***Interfood, Inc. v. Select Veal Feeds, Inc.***, Civil Action No. 12-10825-JLT (D. Mass. Jan. 15, 2014)) Interfood-DE stated that they sold dairy products to Select Veal in the US weekly during 2010 and 2011 (Their Verified Complaint ¶¶10 & 15, Doc.#12-1 at 6 below).

Rice filed this Breach of contract claim against Interfood-DE based on those weekly sales in 2010 and 2011, attached Interfood-DE's "civil action sheet" to his Complaint as Doc.#1-13 and stated in "COUNT II Breach of contract": ¶37: "Interfood has... effectively admitted to breaching the exclusivity agreement" by stating in its lawsuit that it sold to a US customer for

two years. Jason Medcalf, a defendant below, signed Interfood-DE's Verification of the Select Veal case as President of Interfood-DE, (Interfood-DE's Verified Complaint against Select Veal, Doc.# 12-1 at 10). [1]

Defendants filed a Rule 12(b)(6) motion to dismiss stating that the *Directors* were not parties to the agreements violated, but they did not address the claim against Interfood-DE, nor did they say that Interfood-DE was not obligated under the agreement they breached.

Interfood-DE filed a counterclaim, Doc.# 15, based on a settlement agreement from the ***Franklin County Case*** (07AB-CC00086) defendants had filed falsely claiming to represent Interfood-IN rather than Interfood-DE. The Eighth Circuit did not look at the record of that case to see if standing had been ruled on or if it is shown to exist there, as required by Missouri law, before deciding to enforce it.

When Rice said that these defendants and these lawyers filed the Franklin Case without standing, and failed to meet their burden of proof as to standing there, (Reply to Counterclaim: Doc.#21, ¶¶22, 25, 26) the Eighth Circuit knew, or should have known that it would take no effort at all for these defendants to simply produce here the proof they had submitted in state court, if any. Seeing that defendants produced no proof at all, the Eighth Circuit knew, or should have known that there was at least a high probability that the Franklin Case was filed without standing and that the document the Eighth Circuit was being asked to enforce is void, and that enforcing it would be

[1] Interfood-DE's Select Veal complaint is also attached to Rice's proposed "1st RESTATEMENT" of his complaint, Doc.#40 and 40-1 which was rejected in Docket Text Order #88.

contrary to law, and that it should therefore be rejected; but the court did not do that.

The Franklin County Settlement Agreement signed September 26, 2011 (Counterclaim Doc.# 15 ¶13) said that nobody would bring suit for anything that could be filed on or before December 11, 2009, ***Id.*** ¶12. The Eighth Circuit apparently decided that a complaint about sales that took place in 2010 and 2011 could have been brought in 2009, granted the counterclaim for legal fees, but offered no findings or conclusions as to how they reached that extraordinary conclusion.

On 6/23/2014, more than a year after the case was filed, Interfood-DE filed a "disclosure of corporate interests certificate" stating that Interfood-DE is owned 100% by Tepco, Doc.# 57, and then filed a Motion for Summary Judgment, Doc#61, on their counterclaim, Doc.# 15, which was granted in Doc.# 102, App. a2.

Rice filed a motion for leave to file an Amended Complaint, Doc# 73, which was denied in Docket Text Order # 77 "Denied".

Rice filed a motion, Doc.#129, for a ruling on this 2010-2011 claim. The motion was denied in Docket Text Order # 134 "Denied".

Rice filed an appeal, # 17-1880. The court of appeals asked for a final order which they did not get, so they ordered the district court, Doc.#138, to "enter a final order within 30 days", so the district court issued Doc.#139, App. a1: "It is hereby ordered, adjudged and decreed that Judgment is entered in favor of Defendants and against Plaintiff on all claims. Signed by District Judge Henry Edward

Autrey on 5/30/17. Amended in Order Doc.#146, App. a8, awarding defendants $78,496.74 in attorneys fees.

Rice filed a petition for writ of certiorari 17-1504 which was denied. Doc.# 153.

Rice filed a motion, Doc.#189, to determine standing for the counterclaim before addressing the merits, and the motion was denied in Docket Text Order # 193: "Denied", signed by District Judge Henry Edward Autrey on 7/25/19.

Rice's final motion to amend in the district court was denied on 3/07/23, Docket Text Order #233-234, App. a11, "Denied". Rice filed an appeal No. 23-1684 Doc.# 235 on 4/6/23 which was denied on 5/24/23 Doc.#241, App. a1: "the judgment of the district court is summarily affirmed". The petition for rehearing was denied on 7/7/23 Doc.#242, App. a10.

This Petition for a Writ of Certiorari was timely mailed in September 2023.

If Rice had standing to bring his complaint against Interfood-DE for their admitted 2010-2011 breaches of contract against him, then the district court had diversity jurisdiction over the case. They did not have jurisdiction over the issues they did rule on however because any action prior to September 2006 cannot be by any of the parties here because Interfood-DE did not exist before that. Also, Interfood-DE lacks standing to bring the counterclaim as a defense against the 2010-2011 breaches because the alleged settlement agreement does not give them a legally protectable interest in that it only covers activity "on or before December 11, 2009". Standing requires that a plaintiff's alleged injury be an invasion of a concrete and particularized legally protected interest, ***Lujan***

v. Defenders of Wildlife, 504 U. S. 555, 560. Some "putatively illegal conduct" ***Rosetti v. Shalala***, 12 F.3d 1216, 1224 (3d Cir. 1993), ***Planned Parenthood of South Carolina, Inc. v. Rose***, 361 F.3d 786, 789 (4th Cir.2004).

REASONS FOR GRANTING THE PETITION

Rice's complaint against Interfood-DE is that in 2010-2011 they breached an exclusive territory agreement they had with Rice through DE being part of the Interfood Group. The Eighth Circuit's rulings dwell on other breaches by other companies well before 2010 which were mentioned in the introduction/background section of the complaint and which Rice has no standing to bring against Interfood-DE which did not exist prior to September 2006.

Rather than dismissing the claims *without* prejudice for lack of standing, the court dismissed the case *with prejudice* for failure to state a claim, depriving Rice of the opportunity to restate or refile his claim, and the court allowed the counterclaim to *proceed without* standing. At this point the statute of limitations has run on Rice's legitimate claims for the 2010-2011 breaches which have not been addressed, and justice requires that Rice be given an opportunity to restate his claim and have the court issue findings and conclusions on them. [2]

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[2] The right to resort to the courts for the adjudication of grievances and the settlement of disputes is a fundamental and important one. An indispensable requisite to fulfilling that responsibility is the determination of questions of fact upon which there is disagreement. It is for this reason that our rules impose the duty of making findings on all material issues. ***MORTHLAND v. UTE LINER, INC.***, 28 Utah 2 (Utah 1972).

The Eighth Circuit **a)** did not address standing when asked to, **b)** did not address the uncontroverted complaint against Interfood-DE as mentioned in the complaint at ¶37, **c)** interpreted Rice's complaint at a 12(b)(6) level in the light most favorable to the movant rather than in favor of Rice, the non-movant, and **d)** did not mentioning what element of a "claim" Rice failed to state, or grant Rice an opportunity to amend his complaint - all contrary to prior Eighth Circuit rulings, contrary to the equal application of law, and stare decisis, and furthering the Eighth Circuit split with other Circuits.

"The Fourteenth Amendment instructs that all who act for the government may not "deny to any person . . . the equal protection of the laws."" ***Schuette v. Coal. to Defend Affirmative Action*** 572 U.S. 291 (2014).

These issues are important and are clearly presented. This Court has taken pains to remind the lower courts that a "federal court cannot consider the merits of a legal claim unless the person seeking to invoke the jurisdiction of the court establishes the requisite standing to sue", ***Whitmore v. Arkansas***, 495 U.S. 149, 154, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990), and that a "federal court has no jurisdiction to resolve any claim for which a plaintiff lacks standing." ***Warth v. Seldin***, 422 U.S. 490, 498 (1975); ***Lujan v. Defenders of Wildlife***, 504 U.S. 555, 560 (1992). And that a "federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing. *See* ***Warth***, supra, at 508, 518.

See, e.g. ***Borough of Duryea, Pa. v. Guarnieri***, 131 S.Ct. 2488, 2494 (2011).

Because it is repugnant to have courts deprive parties of their constitutional rights, ignore this Court's mandates, and act without jurisdiction or authority, and because in this case there is no other remedy at law, this Court's review is sorely needed.

I. This Court should grant review to decide whether a court can rule on the merits before determining standing and dismissing a case *with prejudice* based on *some* defendants not being parties to the contract breached, or if this is a "standing" issue of not presenting an injury redressable by the court, that must be dismissed *without* prejudice, allowing the plaintiff to amend or refile the complaint.

Standing is an antecedent jurisdictional requirement that must be established before a court reaches the merits. ***Steel Co. v. Citizens for Better Environment***, 523 U.S. 83, 94-95 (1998).

A. With the Eighth Cir. on one side and the rest on the other, the Circuits are split over the need to determine standing before addressing the merits. [3]

[3] "The question of standing is whether a litigant is entitled to have a court determine the merits of the issues presented." ***Aarti Hospitality v. City of Grove***, 350 F. App'x 1 (6th Cir. 2009). See ***Salomon v. Kroenke Sports & Entm't, LLC.***, CIVIL ACTION NO. 3:15-CV-0666-M (N.D. Tex. Aug. 12, 2016). 5th Cir., ***Myers Investigative Sec. Servs., Inc. v. United States***, 275 F.3d 1366, 1369 (Fed. Cir. 2002). ***Nicklaw v. CitiMortgage, Inc***. 855 F.3d 1265 (11th Cir. 2017).

Article III "case or controversy" is not merely a traditional "rule of practice," but rather is imposed directly by the Constitution. The "matter at issue is the constitutional source of the federal judicial power itself." ***Whitmore v. Arkansas***, 495 U.S. 149 (1990). "A federal court has no jurisdiction to resolve any claim for which a plaintiff lacks standing." ***Warth v. Seldin***, 422 U.S. 490, 498 (1975); ***Lujan v. Defenders of Wildlife***, 504 U.S. 555, 560 (1992).

Article III ensures that federal courts exercise their authority only "as a necessity in the determination of real, earnest and vital controversy between individuals." ***Chicago & Grand Trunk R. Co. v. Wellman***, 143 U.S. 339, 345, 12 S.Ct. 400, 36 L.Ed. 176 (1892). ***Uzuegbunam v. Preczewski***, 141 S. Ct. 792 (2021). Article III permits a court only to provide "a remedy that redresses the plaintiffs' injury-in-fact." ***Collins v. Mnuchin***, 938 F.3d 553, 609 (CA5 2019).

Sometimes the 8th Cir agrees that standing must be decided first, but not here.

B. The Eighth Circuit erred in not determining standing before ruling on the merits.

"Because we have an obligation to make sure that we have jurisdiction to decide this claim, see ***DaimlerChrysler Corp. v. Cuno***, 547 U.S. 332, 340, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006), we begin by explaining why the shareholders have standing."

"No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies. *See* ***Flast v. Cohen***,

392 U.S. 83, 95 (1968). The concept of standing is part of this limitation." ***Simon v. E. Ky. Welfare Rights Org***. 426 U.S. 26 (1976). A federal court does not have subject matter jurisdiction over a suit by a plaintiff who lacks standing. *See* ***White v. Lee***, 227 F.3d 1214, 1242 (9th Cir. 2000).

No judgment of a court is due process of law if rendered without jurisdiction in the court. ***Scott v. McNeal*** 154 U.S. 36 (1894). ***American Fidelity Fire Ins. Co. v. Paste-Ups Unlimited, Inc***. 368 F. Supp. 219 (S.D.N.Y. 1973) 2nd Cir. ***Aurum Asset Managers, LLC v. Seguros*** No. 10-4281 (3d Cir. Aug. 15, 2011). ***U.S. v. Bailey*** No.: 3:06-CR-130 (E.D. Tenn. Jun. 18, 2007) 6th Cir.

This and every federal court has an independent obligation to consider standing, even when the parties do not call it into question. See, e.g., ***FW/PBS, Inc. v. Dallas***, 493 U.S. 215, 230–231, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990). To do anything else would risk an unlawful exercise of judicial authority. ***Ariz. Christian Sch. Tuition Org. v. Winn*** 563 U.S. 125 (2011).

Without determining standing the district court does not know that it has jurisdiction or authority to proceed on the merits, but it does know that it might well be acting as a trespasser, violating due process, depriving claimant of an opportunity to restate the claim, and possibly condemning a defendant without any right to do so. When the appellate court does not correct this error, it leaves the parties with no legal remedy but this one.

C. The issue is important.

If this Court fails to remand the case for hearings on standing and findings and conclusions on the claims properly brought, Rice' constitutional rights to a legal remedy are forever lost due to the statute of limitations. A cornerstone of our constitutional system is the right of all citizens to place their grievances before a court of law and be told whether or not their claims are legally cognizable and, if they are, to then obtain relief to the extent of their entitlement under the law. ***Hanson v. Goodwin***, 432 F. Supp. 853, 857 (W.D. Wash. 1977). ***Shutt v. Moore***, 26 Wn. App. 450 (Wash. Ct. App. 1980).

D. This case is a good vehicle.

Since this Court does not have the resources to fix every such abuse individually, this case is a good vehicle to impress on the courts the absolute importance of assuring themselves, and the People, that they are acting within the limits of the authority granted to them by the Constitution. To that end the Court recognizes that a judge might err in deciding standing, but ignoring it is unacceptable because a court may not proceed to the merits without first making a good faith finding that there is stating.

This Court, in ***Scheuer v. Rhodes***, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United

States." By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person).

"We presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record," ***Renne v. Geary***, 501 U.S. 312, 316 (1991). ***Wyoming v. Oklahoma***, 502 U.S. 437 (1992). So, if a judge rules on the merits of a claim brought without standing, without first ruling that there *is* standing, then the judge is presumed to knowingly be acting outside of his judicial capacity and he/she forfeits all immunity. This will at least give people an additional opportunity at law for redress.

II. This Court should grant review to decide whether the Eighth Circuit can ignore the complaint brought before it, i.e. that Interfood-DE breached a contract with Rice in 2010-2011, and rule instead on issues not brought before it to decide, but mentioned in the complaint's background section, such as that *other* Group companies had previously been called to task for similar violations *before* Interfood-DE came into existence.

Because neither the Eighth circuit nor the defendants addressed the breach of contract claim against Interfood-DE for their 2010-2011 sales to Select Veal, we do not know why it was blindly dismissed in Doc.#139, App. a1: "Judgment is entered in favor of Defendants and against Plaintiff on all claims." Signed by District Judge Henry Edward Autrey on 5/30/17. Interfood-DE's directors testified that as a member of the Group it was indeed obligated under the agreement with Rice, and that selling dairy

products in the US, particularly without Interfood-IN's knowledge, is a violation of that agreement, so that couldn't be it. The judge said that the statute of limitations is 5-years and this case was brought in 2013, so that isn't it.

The only explanation is that the court decided to take *other* breaches by *other* companies mentioned in the background/introduction section of the complaint, and substitute them for the breach of contract complaint against Interfood-DE in "COUNT II" ¶37. *See* App. a19. The problem with that is, that the acts mentioned in the background predate Interfood-DE, who did not exist at the time, so they are not valid complaints against Interfood-DE, and a judge has no standing to bring claims without recusing himself.

A. The Eighth Circuit erred in not addressing the 2010-2011 claims against Interfood-DE.

In the district courts' order granting Interfood-DE attorneys fees of $78,486.74, Doc.#146, App. a8, it states "In its Opinion, Memorandum and Order of January 23, 2015, [Doc.# 102, App. a2], the Court granted Defendants' motion for summary judgment on their [counterclaim] for damages resulting from Plaintiff's breach of a covenant not to sue."

The "covenant not to sue" however came from the Franklin County case [***Interfood-IN v Rice et al***] filed by defendants here against Interfood-IN's directors Rice and Husmann, and it is void under Missouri law along with the entire case for lack of standing because the people who filed it represent Interfood-DE, not Interfood-IN. *See* Doc.#27, Statement of Uncontroverted Material Facts.

In any case, the covenant states that the parties agree not to sue each other for anything that could have been brought "on or before December 11, 2009" and it therefore does not apply to the 2010-2011 breaches.

> "The specific breaches of the exclusivity agreement complained about here are those that Interfood-DE admitted to in (the Select Veal suit) which Plaintiff respectfully requests this court take judicial notice of.... Interfood-DE shipped weekly to a buyer in Pennsylvania starting in 2010 [Interfood-DE's Verified Complaint ¶¶10/16 enclosed herewith as Doc# 12-1]" [Doc# 12 at 3].

The order granting attorneys fees refers to Rice's "Reply in Opposition" which "is in effect a re-argument of Rice's opposition to the entry of summary judgment." In both of those documents Rice points to the Franklin County Record where the attorneys here acknowledge that they did not represent Interfood-IN when they filed that case as "attorneys for Interfood-IN". Rice's Reply in Opposition, Doc.#144, page 5, states that Interfood-DE's breaches are the weekly sales "during 2010 and 2011" and "for Rice to have breached the "covenant" there would have to be some claim that Interfood-DE breached the agreement with Rice prior to December 11, 2009... but there simply is no such claim here."

B. The issue is important.

The Eighth Circuit is not simply making errors. Since the judge is making up claims without standing, and ruling on their merits, these are non-judicial acts that violate the constitution and are designed to take

assets from Rice without due process. The Eighth Circuit is knowingly acting beyond its **Article III** jurisdiction and authority as it clearly knows that there is no basis in law for what it is doing.

This Court's intervention is sorely needed. The Eighth Circuit picks and chooses when it will follow the law and when it will not, depending on who it wishes to favor, and in this age of the internet, allowing this to continue indicates to the world that our "judges" are above the law, and that indeed a plaintiff with standing can have his constitutional rights thwarted by judges in the Eighth Circuit thumbing their noses at the rule of law. The decision below is not only wrong, but also of enormous consequence in the Internet age with the world watching our legal system collapse, and our credibility along with it.

C. This case is a good vehicle to clarify that each claim without standing is to be dismissed *without* prejudice and each claim determined to have standing is to be addressed on its merits, with each controverted material fact briefed, so that all parties have at least some idea as to the findings and conclusions, and can have them reviewed on appeal if they have reason to believe that they are in error. A petitioner with standing has a right to the equal application of the law under the Fourteenth Amendment and a right to a full and fair hearing on each claim properly brought, unmodified by the court.

III. This Court should grant review to decide whether the court can rule at a 12(b)(6) motion to dismiss level, that Interfood-DE is not obligated

under the agreement allegedly breached, without having the issue briefed, and if so, must the court then dismiss the case *without prejudice* for lack of standing.

A. The Circuits are split over the court's authority to decide issues not in controversy.

Rice's complaint, COUNT II, is a two-part complaint: ¶37 is a breach of contract complaint against Interfood-DE and ¶38 is against two directors. Defendants' rule 12(b)(6) motion to dismiss addresses COUNT II ¶38 *only*, not ¶37 against Interfood-DE which is the complaint being discussed here.

The district court's "Opinion, Memorandum and Order" **Doc.**#38, **App**. 11, granting the motion to dismiss, states that Rice became aware of business being diverted from Interfood-IN to Interfood-DE in 2004 [acknowledging that Interfood-DE did not exist until *September* 2006, two years later] and that Interfood-IN filed suit "in *March* 2006 to stop alleged violations of the Shareholders Agreement." ***Id*** at 6.

Based on the conclusion that the claims against Interfood-DE and its directors are for actions Interfood-DE allegedly took before it came into existence in September 2006, i.e. that Interfood-DE did something between 2004 and March 2006 although it did not exist until September 2006, the Eighth circuit dismissed the claims under a five-year statute of limitations which would have run out sometime between 2009 and March 2011, with this suit being filed in 2013. ***Id.*** at 7.

The Order also states that neither Defendant Neerhoff nor van Stipdonk were parties to the

Shareholders Agreement. It says nothing about Interfood-DE. ***Id.*** at 8. That is probably because Nreerhoff's testimony, that it was the intent of the shareholders agreement that the entire Group be bound by the exclusivity agreement, was already in the record as **Doc.#32-4** [see pages 11-12, Transcript page 47, line23, through page 48 line 4].

The "Interfood Group" is a group of companies with common ownership and control, that operate under a set of rules, including exclusive sales territories, that their management is required to follow. There are all sorts of organizations that bind individuals who are not explicitly named in their agreements, ranging from law firms to charitable organizations to unions.

> "Complaint ¶¶ 17-27, **App**. a14, makes it clear that the shareholders agreement was signed by van Stipdonk and Interfood Holding B.V. (which owns a controlling interest in all of the other companies in the Group except Waltepco and Interfood-IN) and that it was ratified by the entire Interfood Group including specifically by Defendant Medcalf." [bottom of Doc#17 at 2]

If the court was going to question Interfood-DE's obligation to perform under the agreement, which the court did not do, it should have asked for briefing on the issue. In any case, once the testimony of Interfood-DE's directors stating that Interfood-DE was obligated under the exclusivity agreement was filed here with Doc.#65, Rice's Reply in Opposition to Motion for Summary Judgment, any doubts would have disappeared, and the court's rulings corrected.

B. The Eighth Circuit erred in deciding an issue not brought before it to decide in a motion to dismiss for failure to state a claim.

Opinion, Memorandum and Order Doc.#38, App. a11:

"Defendants move to dismiss this action on the grounds that Count I of Plaintiff's Complaint is barred by the applicable statute of limitations; neither Defendant Neerhoff nor van Stipdonk were parties to the contract allegedly breached in Count II; and Count III, based on an alleged conspiracy fails because there can be no conspiracy if there is no underlying viable cause of action." ***Id***. at 3.

"Plaintiff brought this action against Defendants Interfood, Inc., [Interfood-DE] 'and its directors'.... Interfood, Inc. was incorporated in Delaware in September 2006." ***Id*** at 4.

"After forming Interfood-DE, Neerhoff and van Stipdonk... diverted Interfood-IN's opportunities to Interfood-DE in breach of their fiduciary duties.... Plaintiff alleges that he became aware of this alleged breach in early 2004" ***Id*** at 5. Interfood-IN "filed suit in Franklin County, Missouri in March 2006 to stop alleged violations of the Shareholders Agreement." ***Id***. at 6.

This led to sham conclusions re the statute of limitations. To the extent that anyone believes that the above has anything to do with Rice's complaint against Interfood-DE, incorporated in September 2006, those beliefs are **BOGUS NONSENSE**.

C. The issue is important.

The Court's assessment of the pleadings is "context-specific," requiring "the reviewing court to draw on its judicial experience and common sense." ***Maldonado v. Fontanes***, 568 F.3d 263, 269 (1st Cir.2009) (quoting ***Iqbal***, 556 U.S. at 663-64)"

Due process requires a fair hearing before a fair tribunal. ***In re Murchison***, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955). ***Vasquez v. Van Lindt***, 724 F.2d 321 (2d Cir. 1983). The constitution professes to give everyone a full and fair hearing in an impartial court, and for that the world looked up to our legal system with respect. Here we have the Eighth circuit quashing a complaint by hanging on to it without giving it any hearing at all, and using the judicial apparatus to rule on substitute complaints fashioned by the judge, without standing obviously, and then enforcing them, all without jurisdiction or authority. This is the antithesis of our professed legal system, and it has the potential to destroy our credibility as a world leader. Here defendant agrees on the record that it breached plaintiff's agreement and that the complaint was brought to the right court within the statute of limitations, yet the court ruled against the complaint with no indication as to why. That cannot be allowed in a legal system that is to be respected.

D. This case is a good vehicle for this Court to impress upon all federal courts that they are there to decide real controversies brought before them by a party with standing and against the offending party. And that if all parties agree to the meaning and intent of an agreement, it is not the court's prerogative to tell them that they are wrong, and that if a court finds

some element of standing to be absent, it is to state what that is and dismiss the case *without* prejudice because it is not a ruling on the merits, and preferably, give the party a reasonable period of time to amend the complaint if he feels that he can overcome the stated deficiency.

IV. This Court should grant review to decide whether a party to a contract under Missouri law has standing to sue for a breach that primarily injures a third-party-beneficiary, or must the filing party claim additional specific personal harm.

Under Missouri law any party to a contract has standing to sue for a breach of that contract, and at least the 3rd and 5th Circuits agree. ***Trident Group v. Miss. Valley Roofing*** 279 S.W.3d 192 (Mo. Ct. App. 2009). Where "there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." ***Marbury v. Madison***, 5 U.S. 137, 163, 1 Cranch 137, 2 L.Ed. 60 (1803). In ***Uzuegbunam, v. Preczewski***, 141 S. Ct. 792, 209 L. Ed. 2d 94 (2021) the Court reemphasized that "every violation [of a right] imports damage." at 802 (quoting ***Webb v. Portland Mfg. Co.***, 29 F. Cas. 506, 509 (C.C.D. Me. 1838)). ***Denning v. Bond Pharm.***, 50 F.4th 445, 451 (5th Cir. 2022). Plaintiff has the right to bring claims into court and expect to be heard. ***Lujan v. G G Fire Sprinklers, Inc***. 532 U.S. 189 (2001). ***Talbert v. Giorla***, (E.D. Pa. Aug. 23, 2013).

Although the Eighth Circuit never mentioned it, defendants did say that all the harm they caused was done to Interfood-IN and not to Rice, and that Rice

should have brought a derivative action, and that he is no longer a shareholder today, which is a point of disagreement but not relevant, as it is undisputed that Rice was a shareholder at the time the breaches occurred in 2010-2011.

Because under Missouri law any party to a breached contract meets the "personal harm" prong of both state and federal standing, Rice did not mention additional damages he suffered, such as to his business reputation by Interfood-DE buying and selling in the US after Rice and Husmann represented themselves as having exclusivity in the market. Nor did he specifically state that the harm to Interfood-IN accrues only to Rice as a Waltepco shareholder, as the other owner, Tepco, *benefits* from business being diverted from IN to DE as it owns 100% of Interfood-DE v 50% of Waltepco.

Ensley v. Cody Res., Inc.,171 F.3d 315, 319–20 (5th Cir.1999) concluded that the "significant diminution in the value of [plaintiffs'] shares" constituted a sufficient "injury in fact to establish Article III standing". ***BCC Merchant Solutions, Inc. v. Jet Pay, LLC***, 129 F. Supp. 3d 440, 449 (N.D. Tex. 2015).

Since Rice and Husmann were the directors of Interfood-IN and Waltepco at all relevant times here, and decided that those companies could not bring suit because defendants and their lawyers here had filed false claims in a fraudulent suit in Franklin County Missouri, (***Interfood, Inc. v. Rice, et al***, 07AB-CC00086) and tied up all the bank accounts, Rice had no other remedy but to file this suit himself.

The Eighth Circuit did not say that Rice needed to file derivatively, or claim additional personal harm,

but had it ruled that the breach itself was insufficient, and given Rice an opportunity to restate his claim, Rice could also add loss of compensation as a director, officer, manager, employee, resulting from reduced sales.

"[I]t is the usual practice . . . to allow leave to replead" when a complaint is dismissed for failure to state a claim upon which relief can be granted. ***Cruz v. TD Bank, N.A.***, 742 F.3d 520, 523 (2d Cir. 2013) (per curiam).

A. The Circuits are split over the issue of a claim of breach of contract being sufficient allegation of harm for standing with the 7th & 8th on one side and the majority on the other.

> "Monetary harm is a classic form of injury-in-fact." ***Danvers Motor Co. v. Ford Motor Co.***, 432 F.3d 286, 293 (3d Cir. 2005). Thus, a plaintiff seeking to recover money she lost due to the breach of a contract to which she was a party has standing because monetary injuries ordinarily constitute an injury in fact and there is a common law basis for recovery for an injury arising from a breach of contract. ***Sylvester v. Depositors Ins. Co***. 481 F. Supp. 3d 412 (E.D. Pa. 2020).

> The 5th Cir holds that "[A] breach of contract is a sufficient injury for standing purposes".... "that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." ***Marbury v. Madison***, 5 U.S. 137, 163, 1 Cranch 137, 2 L.Ed. 60 (1803) (quoting 3 ***WILLIAM BLACKSTONE, COMMENTARIES***

ON THE LAWS OF ENGLAND 23 (1765)). More recently, the Court reemphasized in ***Uzuegbunam***, that "every violation [of a right] imports damage." 141 S. Ct. at 802 (alteration in original) (quoting ***Webb v. Portland Mfg. Co.***, 29 F. Cas. 506, 509 (C.C.D. Me. 1838)). ***Denning v. Bond Pharm.***, 50 F.4th 445, 451 (5th Cir. 2022).

CONCLUSION

The court should grant the petition for a writ of certiorari and remand for rulings on standing, and for dismissal *without* prejudice should standing be found lacking.

Respectfully submitted.

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