No. 23-677

IN THE

Supreme Court of the United States

ROYAL CANIN U.S.A. INC. and NESTLÉ PURINA PETCARE COMPANY,

Petitioners,

v.

ANASTASIA WULLSCHLEGER and GERALDINE BREWER,

Respondents.

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

REPLY BRIEF FOR PETITIONERS

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Plaintiffs' opposition serves only to reinforce that a writ of certiorari is warranted here. First, the opposition's sole challenge to the suitability of this case as a vehicle — based on an argument *rejected* in a prior appeal to the Eighth Circuit — is wholly meritless; in fact, this case is an ideal and opportune vehicle for addressing the Questions Presented. Second, the opposition is forced to acknowledge that the Eighth Circuit's decision here constitutes an express and purposeful departure from an otherwise uniform body of law, creating a circuit split. While Plaintiffs misleadingly understate the extent and significance of the circuit split, they concede that the Eighth Circuit's decision creates one.

I. This Case Is an Ideal Vehicle for Addressing the Questions Presented

While Plaintiffs prominently assert that the Petition "assume[s]" that the original complaint was properly removed (Opp'n 10), Plaintiffs elsewhere are forced to acknowledge that their challenge to Defendants' removal of the original complaint was *fully litigated and rejected* by the Eighth Circuit on a prior appeal, and that this Court denied Plaintiffs' petition for a writ of certiorari. Opp'n 1, 6, 10-13. Plaintiffs now seek to revive and relitigate their stale and rejected arguments against the removal as a basis to insulate the post-amended-complaint remand from this Court's review. That effort must fail for at least two reasons.

First, a fully litigated and rejected jurisdictional challenge from earlier stages in a case does not

constitute a serious obstacle to this Court's review. Otherwise, multitudes of respondents seeking to avoid certiorari could seek to revive and relitigate such rejected jurisdictional challenges. The Questions Presented here are discrete issues squarely addressed in a subsequent appeal, and resolution of those Questions Presented does not require endorsement or even consideration of the propriety of Defendants' underlying removal of Plaintiffs' original complaint. *See, e.g.*, *Christianson v. Colt*, 486 U.S. 800, 816 n.5 (1988) (applying law of the case doctrine: "Perpetual litigation of any issue — jurisdictional or nonjurisdictional — delays, and therefore threatens to deny, justice.").

Indeed, any case raising the Questions Presented will likely involve a plaintiff who disputes the propriety of removal that preceded its amendment of the complaint. After all, any such case is likely to involve a plaintiff seeking to avoid federal court. Here, we have the benefit of the Eighth Circuit's decisive ruling, on a prior appeal, that the removal was proper. Notably, the Eighth Circuit decision at issue in the Petition did not question that ruling from the prior appeal, but accepted it as a fait accompli. Pet. App. 4a-5a.

Second, Defendants' removal of Plaintiffs' original complaint was plainly proper, as the Eighth Circuit correctly held in the prior appeal. Pet. App. 28a-33a. As the Eighth Circuit observed then: "[P]laintiffs rel[ied] explicitly on federal law throughout their pleadings"; "Plaintiffs elected to premise [their Missouri antitrust and unjust enrichment] claims on

violations and interpretations of federal law"; and "Plaintiffs' dependence on federal law permeates the allegations such that the antitrust and unjust enrichment claims cannot be adjudicated without reliance on and explication of federal law." Pet. App. 30a-32a. What's more, Plaintiffs' prayer for relief expressly requested judgment finding that Defendants violated federal law and enjoining them from doing so any longer. Pet. App. 32a.

While Plaintiffs now tell this Court that their express and extensive invocations of federal law in their original complaint were not substantial but mere "oblique" or "passing" references, the record establishes otherwise. And, contrary to Plaintiffs' assertions (Opp'n 11), the Eighth Circuit's prior decision reflects a full and faithful application of the "substantial federal question" doctrine under *Grable*, 545 U.S. 308, and *Gunn*, 568 U.S. 251. Pet. App. 30a-33a. This Court declined to review that decision. Pet. App. 59a.

The Questions Presented, in short, come before this Court squarely and cleanly packaged, in isolation and without any threshold or subsidiary issues. Furthermore, the case is free from any mootness concerns, as the state court that received the case back on remand has "ORDERED that all aspects of this case before this Court are stayed until a final decision of the United States Supreme Court in case number 23-677." *Wullschleger v. Royal Canin*, No. 1916-CV-03690, Order (Mo. Cir. Ct. February 29, 2024).

II. The First Question Presented Warrants Review

While they begrudgingly acknowledge that the Eighth Circuit created a circuit split on the *second* Question Presented (relating to supplemental jurisdiction) (Opp'n 17), Plaintiffs appear to deny that the Eighth Circuit created a circuit split on the *first* Question Presented (relating to federal-question jurisdiction) (Opp'n 13-17). This denial is most curious, because the Eighth Circuit itself expressly acknowledged that it was splitting from other circuits on the issue of federal-question jurisdiction. Pet. 10a (citing — after "*See, e.g.*," — *16 Front Street* and *In Touch Concepts*).

Conspicuously, Plaintiffs give short shrift to both *16 Front Street* and *In Touch Concepts*, the two illustrative cases the Eighth Circuit acknowledged as setting forth a contrary rule. Plaintiffs inexplicably do not address or even cite to *16 Front Street*, even though that case — featured prominently in the Petition — contains an extensive discussion of Fifth Circuit jurisprudence establishing that "[t]he time-of-filing rule is most frequently employed in the removal context, to prevent a plaintiff from re-pleading after removal to deprive the federal court of jurisdiction." 886 F.3d at 558. Among the other Fifth Circuit cases discussed in *16 Front Street* are not only *Boelens*, which stated that post-removal amendments to the complaint cannot defeat federal-question jurisdiction (*see* Opp'n 16 n.4), but also *Spear Mktg., Inc. v. BancorpSouth Bank*, 791 F.3d 586, 591-92 (5th Cir. 2015), which *held* as much.

Plaintiffs do not entirely ignore *In Touch Concepts*, but fail to persuasively distinguish it. Opp'n 16 (addressing *In Touch Concepts* briefly but ignoring that it was cited as contrary authority by the Eighth Circuit). Plaintiffs observe that the basis for removal there was the Class Action Fairness Act rather than federal-question jurisdiction, but they ignore that the Second Circuit considered that distinction irrelevant, applying a broader rule under which *any* basis for removal, whether diversity or federal-question, survives any post-removal amendment to the complaint. 788 F.3d at 101 (following *In re Burlington N. Santa Fe Ry. Co.*, 606 F.3d 379, 380 (7th Cir. 2010)). As with the Fifth Circuit in *16 Front Street* (886 F.3d at 558), the Second Circuit emphasized concerns over forum manipulation and the subversion of a defendant's statutory right to remove as animating the time-of-filing rule. *In Touch Concepts*, 788 F.3d at 101 (discussing "forum-manipulation concerns" addressed in *Rockwell*).

Plaintiffs also misread *Collura* (Opp'n 14), in which the Third Circuit held that the district court "retained" federal-question jurisdiction notwithstanding the plaintiff's attempt to defeat such jurisdiction through a post-removal amendment to the complaint. While Plaintiffs attempt to portray *Collura* as applying supplemental jurisdiction in retaining the case, the Third Circuit did not even refer to supplemental jurisdiction in addressing the futility of the post-removal amendment to the complaint. 590 Fed. Appx. at 184 (referring to supplemental jurisdiction in addressing the district court's original jurisdiction permitting removal).

Plaintiffs similarly misread *Smith* (Opp'n 14), in which the Eleventh Circuit broadly held that "a district court's removal jurisdiction is determined at the time of removal," and that post-removal amendment to a complaint does not "oust" the district court of that jurisdiction. The sole reference to supplemental jurisdiction (Opp'n 14) was in discussing the basis for subject-matter jurisdiction over state-law claims in the original complaint that was removed to federal court. 238 Fed. Appx. at 455.

Plaintiffs are also mistaken that *Collura* and *Smith* are distinguishable for falling under the Eighth Circuit's *Atlas Van Lines* exception for "involuntary" amendments. Opp'n 14. That exception applies when a plaintiff *adds* federal claims involuntarily (e.g., on court order) and provides that such involuntary *addition* of federal claims will not undermine a plaintiff's challenge to a denial of remand. 209 F.3d at 1066. That exception had no application in *Collura* or *Smith* (or here) because in those cases the plaintiffs deleted, rather than added, federal claims after removal. Thus, contrary to Plaintiffs' assertion (Opp'n 14), *Collura* and *Smith* would have been decided differently in the Eighth Circuit, as the Eighth Circuit would have remanded, because the amended complaints in those cases were stripped of federal claims.

Plaintiffs' attempted distinction of *Sparta* fares no better, as there the Ninth Circuit was unequivocal in holding that the state of the pleadings at the time of removal is controlling: "plaintiff may not compel remand by amending a complaint to eliminate the federal question upon which removal was based." 159 F.3d at 1213. Plaintiffs' suggestion that even the

amended complaint may have supported federal-question jurisdiction (Opp'n 15) is empty speculation, as the Ninth Circuit found no such thing.

Plaintiffs are dismissive of *Prince* and *Salzer*, asserting that they, too, are inapplicable because they involved plaintiffs who made involuntary post-dismissal amendments to their complaints. Opp'n 15-16. Again, Plaintiffs misunderstand the *Atlas Van Lines* exception, which applies when federal claims are involuntarily *added*. Furthermore, Plaintiffs simply misstate the facts in *Salzer*. The plaintiff there voluntarily amended the complaint after the court denied plaintiff's motion to remand, not after a motion to dismiss as Plaintiffs state (Opp'n 15-16). 762 F.3d at 1133. In *Prince*, where the plaintiff's post-removal amendment *did* follow a dismissal of his original complaint, the Seventh Circuit purposefully applied the broad rule that a court looks to the original complaint to determine federal subject-matter jurisdiction, because "the same concerns of judicial economy and tactical manipulation are present" in cases where a plaintiff "voluntarily" amends the complaint after removal, and in cases where the plaintiff abandons the federal claims after dismissal and "elect[s] to proceed with the state claim." 940 F.2d at 1105 n.2 (citing *Boelens*).

Finally, Plaintiffs assert that the Fourth Circuit's decision in *Brown* is inapposite because it applied a prior version 28 U.S.C. § 1447(c). Opp'n 16. But Section 1447(c) has never permitted a district court to retain an action in the absence of subject-matter jurisdiction. *See Spear*, 791 F.3d at 592 ("When § 1447(c) is read in its entirety, it is clear that this rule does nothing more than specify the time in which

remands for jurisdictional or procedural defects may be instituted; it contains no substantive provisions whatsoever.").

In sum, Plaintiffs' opposition cannot seriously dispute that the Eighth Circuit's decision here departed from a well-established and uniform body of law. This uniform body of law does not posit that federal-question jurisdiction can materialize without federal claims or that supplemental jurisdiction "somehow converts" into federal-question jurisdiction, as Plaintiffs cynically characterize. Opp'n 13-14. Instead, the law — everywhere except the Eighth Circuit now — is that the federal-question jurisdiction that supported the removal is retained, notwithstanding a plaintiff's post-removal amendment to the complaint.

Plaintiffs seek to conflate this circuit split with the related one pertaining to supplemental jurisdiction, but there are plainly two distinct (albeit related) splits present here. The Eighth Circuit recognized the two distinct issues in its opinion. Pet. App. 10a, 12a. And case law in other circuits establishes that they apply the "time of removal" rule without regard to a district court's discretion or any factors that may apply to a determination of supplemental jurisdiction. *See, e.g.*, *Sparta*, 159 F.3d at 1213.

III. The Second Question Presented Warrants Review

Plaintiffs do not dispute that the Eighth Circuit's decision created a circuit split on the availability of supplemental jurisdiction. Opp'n 2-3, 17-23. Indeed, Plaintiffs concede that the Eighth Circuit's

categorical denial of supplemental jurisdiction — it "vanishe[s]," Pet. App. 12a — contrasts with the discretionary approach taken by every other circuit to consider the issue. Opp'n 17 (conceding "different approaches").

In an effort to downplay the effect of the Eighth Circuit's categorical approach, Plaintiffs first invoke *Cohill* (Opp'n 17-18), but there this Court emphasized that supplemental jurisdiction is a "doctrine of flexibility." 484 U.S. at 350. Indeed, in *Cohill* this Court specifically stated that, in deciding whether to remand, a district court could consider whether a plaintiff has "attempted to manipulate the forum" such as "by deleting all federal-law claims from the complaint and requesting that the district court remand the case." *Id.* at 357.

Plaintiffs then cite a selection of cases in which courts held that supplemental jurisdiction should not be exercised based on particular circumstances (Opp'n 18-19), but those outcomes cannot justify a blanket rule against exercising supplemental jurisdiction *whenever* a plaintiff abandons federal claims after removal. *Cohill* forecloses such a blanket approach.

Not surprisingly, the cases Plaintiffs cite all turn on their specific circumstances. For example, in *Packard*, Plaintiffs' lead case on this point (Opp'n 18), the Sixth Circuit first held that the district court had subject-matter jurisdiction, notwithstanding plaintiffs' abandonment of all federal claims after removal: "The existence of subject matter jurisdiction is determined by examining the complaint as it existed at the time of removal." 423 Fed. Appx. at

583 (internal quotations omitted) (citing *Rockwell*). Then, in finding that the district court had not abused its discretion in remanding, the Sixth Circuit emphasized that — in sharp contrast to the circumstances here (Pet. 8-9) — "the parties had not exerted substantial time or effort in briefing the merits of the state law causes of action." *Id.* at 585.

Furthermore, Plaintiffs cannot avoid the many cases in which courts *do* exercise supplemental jurisdiction after a plaintiff abandons federal claims after removal. *See, e.g.*, Pet. 4, 20-23 (citing *Grispino*, *Harper*, *Savage*, and *Coefield*, among other cases). While Plaintiffs observe that these cases turned on particular circumstances, that's the point: the Eighth Circuit's categorical foreclosure of supplemental jurisdiction cannot be squared with these cases.

Nor are Plaintiffs correct in suggesting that this case would be remanded even under the discretionary approach applied everywhere outside the Eighth Circuit. Opp'n 19-20. First, this action does not involve a novel or complex issue of state law; the MMPA and civil-conspiracy claims involve well-understood and settled principles of Missouri law. 28 U.S.C. § 1367(c)(1). Second, Plaintiffs' state-law claims can hardly be said to "substantially predominate" over any federal-law claims given that Plaintiffs abandoned the latter, but those state-law claims are largely the same as the abandoned federal claims that gave the district court original jurisdiction. *Id.* § 1367(c)(2). Third, the court did not dismiss *any* — let alone all — claims over which it had original jurisdiction; Plaintiffs voluntarily abandoned those claims. *Id.* § 1367(c)(3). Fourth, this action does not present an exceptional

circumstance or compelling reason for declining jurisdiction; on the contrary, principles of judicial economy and fairness point to keeping this case in federal court considering Plaintiffs' original complaint raised federal questions, thereby giving the district court original subject-matter jurisdiction. *Id.* § 1367(c)(4); *see, e.g.*, *Savage*, 523 Fed. Appx. at 249 (affirming district court's discretion to exercise supplemental jurisdiction and deny remand where plaintiff abandoned federal claims "shortly" after removal).

As to common-law factors (Opp'n 20), Plaintiffs invoked federal law so may fairly be required to litigate in federal court; litigating in a federal court in Kansas City is just as convenient as litigating in a state court there; and comity supports retaining the action after protracted proceedings, rather than remanding to state court for a new start.

For nearly three-and-a-half years, federal courts and the parties have invested substantial time and resources in litigating not just the jurisdictional implications of Plaintiffs' allegations, but also the legal sufficiency of Plaintiffs' claims (including Plaintiffs' state-law claims, which the district court already found wanting). Indeed, Defendants removed this case to federal court on March 26, 2019, and 18 months later — after the district court granted Plaintiffs' first motion to remand, and the Eighth Circuit reversed that decision — Plaintiffs filed an amended complaint abandoning their federal claims. The district court then denied a second motion to remand before Defendants filed their motion to dismiss. And only then, after full briefing and argument, did the district court dismiss Plaintiffs'

amended complaint for failure to state a claim under Rule 12(b)(6) of the Federal Rules. Pet. 7-8. Whereas the district court lived with the case for years before the Eighth Circuit ordered remand, the state court has no familiarity with this action. The Eighth Circuit's decision therefore renders the district court's expenditure of time and effort a wasted investment, which the state court would be required to duplicate. Even putting aside Plaintiffs' admitted forum manipulation (Pet. 18), the district court would have been well within its discretion to exercise supplemental jurisdiction.

IV. The Eighth Circuit's Decision Is Incorrect

The Eighth Circuit decision rewrites longstanding law governing cases removed from state court based on federal-question law. By categorically precluding a district court from retaining a case when a plaintiff abandons federal claims, the decision departs from all other circuits. The decision also defies this Court's decisions in *Rockwell*, which stated that federal-question jurisdiction survives a plaintiff's abandonment of federal claims after removal, and *Cohill*, which leaves the exercise of supplemental jurisdiction after removal to the discretion of district courts.

Throughout the opposition, Plaintiffs strain to defend the Eighth Circuit's decision. But as Defendants demonstrated in the Petition (Pet. 15-19, 23-26), the Eighth Circuit's outlier decision is incorrect.

The core failing of the Eighth Circuit's decision, and one repeated by Plaintiffs (Opp'n 25), is that the decision disregards the difference between cases

originally filed in federal court and those *removed to federal court*. As Defendants explained, a case removed to federal court implicates a defendant's statutory right to remove, whereas a case originally filed in federal court does not. And a plaintiff's post-removal abandonment of federal claims raises important issues of federalism, comity, and forum manipulation that the Eighth Circuit disregarded.

While Plaintiffs tout the Eighth Circuit's decision as consistent with the notion that jurisdictional rules should be applied "as simpl[y] as possible" (Opp'n 26), jurisdictional rules also must apply consistently nationwide. *Grubbs v. General Electric Credit Corp.*, 405 U.S. 699, 705 (1972) ("the removal statutes and decisions of this Court are intended to have uniform nationwide application").

CONCLUSION

For the foregoing reasons and those stated in the Petition, the Court should grant certiorari and the decision should be reversed.

Respectfully submitted,

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