No. 24-434

IN THE

Supreme Court of the United States

THE ESTATE OF ISABELLA HERNDON, ET AL.

Petitioners,

v.

NETFLIX, INC.

Respondent.

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

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BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a defendant that removes a putative class action to federal court on diversity grounds under the Class Action Fairness Act must find and identify by name at the pleading stage of the case a putative class member whose citizenship is different than the defendant's citizenship, despite the fact that the plaintiffs' own complaint refers to specific diverse putative class members and the plaintiffs do not dispute that at least one putative class member is diverse from the defendant.

2. Whether subject-matter jurisdiction under the Class Action Fairness Act turns on whether there is personal jurisdiction over a diverse putative class member who has been identified by name.

3. Whether plaintiffs alleging wrongful-death or survivorship claims have alleged that they suffered an Article III injury-in-fact.

4. Whether this petition, which concerns removal on diversity grounds under the Class Action Fairness Act, should be held for this Court's decision in *Royal Canin U.S.A.* v. *Wullschleger*, No. 23-677, which involves distinct questions about removal under the distinct statutes governing federal-question and supplemental jurisdiction.

RULE 29.6 DISCLOSURE STATEMENT

Respondent Netflix, Inc., is a publicly traded company that has no parent corporation, and no publicly held company owns 10% or more of Netflix, Inc.'s stock.

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INTRODUCTION

The petition in this case raises questions relating to subject-matter jurisdiction, personal jurisdiction, and Article III standing, but none of those questions was addressed anywhere in the decision of the court of appeals below. That is not surprising, because petitioners did not present any argument on any of those questions to the court of appeals. Rather, petitioners raised on appeal in the Ninth Circuit only merits issues that are nowhere to be found in their petition—and they thus do not challenge the court of appeals' resolution of those issues, including a statute of limitations issue, in respondent's favor. In short, the questions that petitioners ask this Court to resolve were neither pressed nor passed upon below, and denial of the petition is warranted on that ground alone.

Denial is also warranted for numerous other reasons. Contrary to petitioners' argument, the petition should not be held for this Court's decision in *Royal Canin U.S.A.* v. *Wullschleger*, No. 23-677 (argued Oct. 7, 2024). *Royal Canin* concerns whether a federal court retains supplemental jurisdiction over state-law claims under 28 U.S.C. 1367 if a case was removed on the ground that there is federal-question jurisdiction under 28 U.S.C. 1331 and the complaint is subsequently amended to remove the federal question. By contrast, this case involves removal on diversity grounds under the distinct statutory scheme of the Class Action Fairness Act (CAFA)—a scheme that expressly addresses, in 28 U.S.C. 1332 and 1453, how and when to assess the existence of the requisite diversity. *Royal Canin* will not interpret that scheme, and nothing about the resolution of *Royal Canin* could affect this case in any way. Moreover, even indulging petitioners' apparent assumption that the outcome of *Royal Canin* could somehow require the courts below

to assess subject-matter jurisdiction by analyzing the amended complaint that petitioners filed after removal rather than the complaint that was operative at the time of removal, that analysis would not change the result in this case. The amended complaint contains allegations that are equivalent in all relevant respects to the allegations on which the district court relied in ruling that it had subject-matter jurisdiction over this case pursuant to CAFA.

There is also no basis for plenary review of any of the three questions related to jurisdiction and standing that the petition sets forth. First, petitioners assert that Netflix should have been required to identify with great specificity, including by name, a putative class member with citizenship diverse from Netflix's citizenship. But there is no conflict among the circuits on that issue—and certainly no conflict with the decision of the court of appeals below, which (as noted) did not address the issue in any way. And any level of specificity required would be plainly met here, as petitioners' *own complaint* identifies diverse class members and their state of citizenship with a high degree of specificity, and petitioners themselves *affirmatively agreed* in the district court that CAFA's requirement of minimal diversity is satisfied.

Second, petitioners ask this Court to resolve whether federal courts can exercise subject-matter jurisdiction under CAFA without establishing personal jurisdiction over a diverse putative class member. Petitioners have forfeited any personal-jurisdiction argument in this case. But even setting that forfeiture aside, their argument does not implicate any disagreement among the circuits. Rather, the circuits are in full agreement: where (as here) there has been no grant of class certification, there is no need for a per-

sonal-jurisdiction analysis as to putative class members because those class members have not actually been brought before the court. This Court's decision in *Phillips Petroleum* v. *Shutts*, 472 U.S. 797 (1985), which addresses jurisdiction in a case in which a class had already been certified, says nothing to the contrary.

Finally, petitioners argue that review is warranted on whether the injuries asserted as a basis for wrongful-death and survivorship claims suffice for Article III standing. But petitioners do not even try to identify a circuit split on that question, and once again there is no such split; instead, every court of appeals to have considered the issue has readily concluded that a concrete injury underlies claims based on the death of a family member. That conclusion is fully consistent with this Court's decisions defining the type of injury that suffices for standing under Article III.

In short, none of the questions presented warrants a hold or this Court's plenary review. Indeed, the petition represents just one more in a long series of attempts by petitioners to shift their position in search of *anything* that might keep their case afloat. The petition should be denied in its entirety.

STATEMENT OF CASE

1. In 2005, Congress enacted CAFA, Pub. L. No. 109-2, 119 Stat. 4, to address "abuses" of the class-action system. S. Rep. No. 109-14, at 4 (2005) (Senate Report); see *Dart Cherokee Basin Operating* v. *Owens*, 574 U.S. 81, 89 (2014) (explaining that CAFA is intended "to facilitate adjudication of certain class actions in federal court").[1] The Senate Report explains

[1] Relevant statutory provisions are included in an appendix to this brief in opposition.

that Congress was concerned that "most class actions" were being "adjudicated in state courts, where the governing rules are applied inconsistently" and "in a manner that contravenes basic fairness" and where "there is often inadequate supervision over litigation procedures and proposed settlements." Senate Report at 4. That Report also states that pre-CAFA "law enable[d] lawyers to 'game' the procedural rules and keep nationwide or multi-state class actions in state courts" with "reputations for readily certifying classes and approving settlements without regard to class member interests"—a practice that harms the public. *Ibid.*; see *id.* at 6 (stating "that the current diversity and removal standards as applied in interstate class actions have facilitated a parade of abuses").

CAFA therefore expanded federal courts' subject-matter jurisdiction over class actions as well as defendants' ability to remove such actions to federal court. As for subject-matter jurisdiction, CAFA gives federal district courts "original jurisdiction" over a class action where at least one putative class member is diverse in citizenship from any defendant, there are at least 100 class members, and the amount in controversy exceeds $5 million exclusive of interests and costs. 28 U.S.C. 1332(d)(2). Section 1332(d) thus "broaden[s] federal diversity jurisdiction over class actions by, among other things, replacing the typical requirement of complete diversity" of citizenship—under which all plaintiffs must have citizenship different from the citizenship of any defendant—"with one of only minimal diversity." *Mondragon* v. *Capital One Auto Finance*, 736 F.3d 880, 882 (9th Cir. 2013).

As for removal, the relevant CAFA provision is codified at 28 U.S.C. 1453, which cross-references Section 1332(d). Section 1453 leaves undisturbed much of 28 U.S.C. 1441 and 1446, the general removal provisions

that pre-dated CAFA. For instance, Section 1453 does not displace Section 1441(a), which states that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction[] may be removed by the defendant or the defendants." 28 U.S.C. 1441(a). But Section 1453 departs from those general provisions in some respects so as to expand the range of removable state-court class actions. Thus, unlike the general removal provisions, Section 1453(b) authorizes removal even when one or more defendants is a citizen of the State in which the suit was filed. 28 U.S.C. 1453(b). In construing CAFA's application to removal proceedings, this Court has explained that "no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court." *Dart*, 574 U.S. at 89.

Finally, CAFA ensures that a plaintiff cannot manipulate federal jurisdiction by amending the pleadings after removal. See Senate Report at 71 (explaining that CAFA jurisdiction cannot later be divested if minimal diversity exists at the time of removal, even if allegations in the plaintiff's pleading change as "the result of [plaintiff's own] volition"). Section 1332(d) defines a "class action," over which federal district courts have original jurisdiction, as a civil action "filed" under Federal Rule of Civil Procedure 23 or a state class-action statute. 28 U.S.C. 1332(d)(1)(B). Section 1332(d) also states that "[c]itizenship of the members of the proposed plaintiff classes shall be determined * * * as of the date of filing of" a pleading by a plaintiff that "indicat[es] the existence of Federal jurisdiction." 28 U.S.C. 1332(d)(7).

2. a. In March 2017, Netflix released worldwide the show *13 Reasons Why*, which grapples with the topic of teen suicide. Bella Herndon, a teenager,

viewed the show. She later died by suicide. Pet.App.2a.

Just over four years after Bella Herndon's death, her father, her two brothers, and her estate (collectively, the Herndons) filed a putative class-action complaint against Netflix in California state court. Pet.App.2a-3a, 9a. The complaint alleged that the show caused suicides and self-harm in young people and asserted claims for failure to warn, wrongful death, and negligence. Pet.App.9a. The complaint stated that the Herndons were suing "on behalf of all others similarly situated," asserted that there were "thousands" of putative class members, and included *no* geographical limitation on members of the proposed class. Pet.App.19a; ECF No. 3-1 Ex. A ¶¶ 48, 50, 62-63, 69. And the complaint specifically alleged that the release of the show had caused a spike in "at-risk" youth behavior in Florida, including (as reported by teachers and others in that state) "over a dozen cases" of Florida children engaging in self-harm and "threats of suicide," as well as "devastating impacts" on young people "in Canada." Pet.App.14a, 23a; ECF No. 3-1 Ex. A ¶¶ 44, 48-49.

Pursuant to CAFA, Netflix removed the putative class action to the U.S. District Court for the Northern District of California. Pet.App.9a; see 28 U.S.C. 1453(b). Netflix's notice of removal explains why this case satisfies CAFA's minimal diversity requirement. See 28 U.S.C. 1446, 1453(b). The notice alleges that Netflix is a citizen of California (where its principal place of business is located) and Delaware (where it is incorporated). ECF No. 3, at 4. The notice also alleges that, because the Herndons did not geographically limit their proposed class and *13 Reasons Why* was distributed throughout the United States, including in

Florida where there were specific reports of alleged injury from the show, the putative class included at least one member diverse in citizenship from Netflix. *Ibid*.

After removal to federal court, the Herndons filed an amended complaint that differed from the original complaint by proposing two classes rather than one. The first proposed class in the amended complaint—the "California Negligence and Failure-to-Warn Class"—covered only California minors (or their successors in interests) who watched *13 Reasons Why* and allegedly "suffered as a result of Netflix's failure to adequately warn and/or as a result of being negligently targeted and manipulated by Netflix * * * to watch the Show." Pet.App.13a. The second proposed class—the "Global Wrongful-Death Class"—covered all "beneficiaries * * * of decedents" from across the world who watched *13 Reasons Why* and allegedly "died as a result of" the same alleged conduct. Pet.App.13a.

b. The Herndons then filed a motion to remand to state court, which the district court denied. Pet.App.9a.

Relying on *Broadway Grill* v. *Visa*, 856 F.3d 1274 (9th Cir. 2017), the district court first ruled that it would look to the Herndons' original complaint—and not the amended complaint—in evaluating whether remand was proper. Pet.App.12a-16a. In *Broadway Grill*, after the defendant removed the case to federal district court under CAFA, the plaintiff "sought leave to amend the complaint to change [the] Plaintiff class to include only 'California citizens,' in order to eliminate minimal diversity." 856 F.3d at 1276. The Ninth Circuit held that, under CAFA, "minimal diversity is to be determined *as of the time of removal*" and a post-removal amendment does not "divest the federal court of jurisdiction." *Id.* at 1275, 1277 (emphasis added) (citing 28 U.S.C. 1332(d)(7)). The court of appeals also

noted that other "circuits have unanimously and repeatedly held" exactly the same thing in CAFA cases. *Ibid.*; see *id.* at 1279.

Based on the Herndons' original complaint, which stated that the Herndons were suing "on behalf of all others similarly situated" with no geographical limitation, Pet.App.19a, the district court ruled that CAFA's minimal diversity requirement was satisfied (as were CAFA's other requirements for the court's exercise of subject-matter jurisdiction). Pet.App.20a-25a. The court explained that Netflix's notice of removal properly "provided a short and plain statement" with "jurisdictional allegations" about why CAFA's requirements were met. *Ehrman* v. *Cox Communications*, 932 F.3d 1223, 1227 (9th Cir. 2019); see 28 U.S.C. 1446. And the court emphasized that the Herndons did not challenge Netflix's allegation that the Herndons "are seeking a global class" and that minimal diversity exists here. Pet.App.11a, 22a; see, *e.g.*, ECF No. 26, at 11 n.4, 15 (Herndons stating in a filing that "[p]laintiffs do not dispute * * * that minimal diversity very likely exists" and that plaintiffs "have a good faith belief that there are class members outside of California"). Indeed, the court observed, the Herndons' "own allegations identif[ied] harms in Florida and Canada for a sprawling global class." Pet.App.23a.

c. The Herndons sought permission from the Ninth Circuit for an interlocutory appeal of the district court's denial of their motion to remand. See 28 U.S.C. 1453(c)(1). The Ninth Circuit denied permission in a one-sentence order. 9th Cir. ECF No. 1.

3. a. Subsequently, the district court dismissed the Herndons' amended complaint with prejudice under Rule 12(b)(6). Pet.App.3a. The court also struck the complaint under California's anti-SLAPP statute.

Pet.App.3a (citing Cal. Code Civ. Proc. § 425.16(b)).[2] The Herndons never argued to the district court that they lacked Article III standing to bring the claims in their suit or that the district court could not properly exercise personal jurisdiction over the parties in this case. The court thus ruled only on the merits, concluding (*inter alia*) that John Herndon's survival claims were time-barred and that the other Herndons lacked statutory standing under California law to assert wrongful-death claims. *Ibid.*

b. The Herndons appealed the final judgment. 9th Cir. ECF No. 30, at 1284. In their opening brief on appeal, the Herndons generically asserted in two sentences—placed in the section of their brief on jurisdiction and *not* in the argument section—that the district court lacked jurisdiction because "[n]o non-California citizen has ever been identified or joined into this action" and the court misread "the provisions of [CAFA]." 9th Cir. ECF No. 45, at 1. They did not raise any other jurisdictional argument anywhere in that brief, including in their "statement of issues," *id.* at 4-6—and thus they never contended that Netflix was required to identify with any particular level of specificity a class member who has diverse citizenship, never mentioned Article III standing, and never said a word about personal jurisdiction. Rather, they presented to the court of appeals only arguments about the merits of the district court's dismissal order. Their reply brief

[2] In addition, the district court repeatedly admonished the Herndons' counsel for "[f]louting Court orders and local rules," including by filing a series of "amended papers * * * past Court ordered deadlines without an explanation." 9th Cir. ECF No. 30, at 316; see *id.* at 17, 86, 129-130.

abandoned altogether any argument about jurisdiction or CAFA and covered solely the merits issues. 9th Cir. ECF No. 89.

The Ninth Circuit affirmed in an unpublished opinion. Pet.App.3a. The court of appeals did not address jurisdiction, other than to state in a single clause of one sentence that "[w]e have jurisdiction under 28 U.S.C. § 1291." Pet.App.3a. The court of appeals ruled that the "district court did not err by dismissing [John Herndon's] survival claims as time-barred" and "did not err by dismissing the claims brought by [her] siblings for lack of standing under the wrongful death statute." Pet.App.3a, 6a-7a; see *ibid.* (concluding that any amendment of the complaint would be futile). The court of appeals later denied rehearing and rehearing en banc without noted dissent. Pet.App.33a.

REASONS FOR DENYING THE PETITION

The petition does not raise any question warranting a hold or this Court's plenary review. Contrary to the Herndons' argument, there is no basis to hold this petition for the Court's decision in *Royal Canin*. This case presents entirely different issues than *Royal Canin*, and the outcome of that case in this Court cannot affect the outcome here. And none of the other questions presented warrants this Court's review. The Ninth Circuit did not address a single one of those questions in its opinion below; there is no split among the circuits on any of the questions; and the Herndons are wrong on the merits of each question. The petition should be denied.

A. There is no basis to hold this petition for this Court's decision in *Royal Canin*

Holding a petition for a pending decision of this Court is "potentially appropriate" only where there is a "reasonable probability that the decision below rests

upon a premise that the lower court would reject if given the opportunity for further consideration." *Lawrence on Behalf of Lawrence* v. *Chater*, 516 U.S. 163, 167-168 (1996). The petition says virtually nothing about why that standard might be met here (see Pet.34, 39, 49-50, 53)—and it is not, for at least two independently sufficient reasons. First, nothing about the resolution of *Royal Canin* could affect anything about this case. *Royal Canin* is about whether a federal court retains supplemental jurisdiction over state-law claims under 28 U.S.C. 1367 if a case was removed on the ground that there is federal-question jurisdiction under 28 U.S.C. 1331, and the complaint is later amended to remove the federal question. This case involves an entirely different issue: when removal is proper on minimal-diversity grounds under CAFA, a distinct statutory scheme that directly and expressly addresses which of multiple complaints a court should analyze in deciding whether such diversity exists. Second, even assuming that *Royal Canin* could somehow speak to that CAFA analysis, it would have no effect on the outcome here because the amended complaint in this case does not change the relevant allegations. Just like the original complaint, the amended complaint makes clear that the Herndons purport to bring their claims on behalf of a sprawling global class.

1. a. *Royal Canin* presents a question not at issue in this case: when a case is removed to federal court on the basis of federal-question subject-matter jurisdiction, and the complaint is subsequently amended to remove the federal question, does the federal court still have supplemental jurisdiction over the remaining state-law claims under 28 U.S.C. 1367? *Royal Canin* Pet.Br.16 (Pet.Br.).

The respondents in *Royal Canin* filed a lawsuit in Missouri state court asserting various state-law claims. Pet.Br.4. Central to those claims was a theory that the petitioners had violated a federal statute and regulations; the respondents also sought an injunction requiring compliance with federal law. Pet.Br.4-5. Even though there were no federal claims in the case, the petitioners removed the case to federal court based on federal-question jurisdiction. Pet.Br.5; see 28 U.S.C. 1331.[3] Two years after removal, the respondents amended their complaint to omit all references to federal law. Pet.Br.6.

Resolution of *Royal Canin* in this Court turns on whether there is supplemental jurisdiction over the remaining state-law claims in that case under Section 1367. See *Royal Canin* Oral Argument Tr. 56 ("both my friend and I agree" that text of Section 1367 "is dispositive"); *id.* at 5-6 (discussing Section 1367 as dispositive). Under Section 1367, "the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within" a district court's "original jurisdiction that they form part of the same case or controversy under Article III." 28 U.S.C. 1367(a); see *ibid.* (stating that "[s]uch supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties").

The parties in *Royal Canin* dispute the meaning of Section 1367. The petitioners in that case argue that there was a "civil action" over which the district court

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[3] The petitioners also initially removed based on an assertion of CAFA jurisdiction. Pet.Br.5. But the CAFA issue subsequently dropped out of the case, and the petition for a writ of certiorari in *Royal Canin* raises *only* issues pertaining to federal-question jurisdiction, not CAFA jurisdiction. *Royal Canin* Pet.i.

had "original jurisdiction" at the time of removal, due to the presence of a federal question in the initial complaint. Pet.Br.23 (quoting 28 U.S.C. 1367(a)). Once that requirement was met, the petitioners contend, the court had "supplemental jurisdiction over *all other claims*"—*i.e.*, the state-law claims—even after the federal question dropped out of the case. Pet.Br.23 (quoting 28 U.S.C. 1367(a) (emphasis added)).

By contrast, the respondents in *Royal Canin* contend that Section 1367 permits supplemental jurisdiction only if there are claims presently "*in the action* within [the court's] original jurisdiction." 28 U.S.C. 1367(a) (emphasis added); see *Royal Canin* Resp.Br.32 (Resp.Br.). Because there is no federal question presently in *Royal Canin* given the amendments to the complaint, the respondents urge, there is no basis for supplemental jurisdiction. Resp.Br.32. In support of that understanding of Section 1367, the respondents argue that the initial complaint should be entirely ignored for purposes of the jurisdictional analysis, as it would be if that case had originated in federal court under federal-question jurisdiction rather than later being removed to federal court on federal-question grounds. Resp.Br.36; see *Rockwell Int'l* v. *United States*, 549 U.S. 457, 473-474 (2007); *Royal Canin* Oral Argument Tr. 7.

b. This Court's resolution of *Royal Canin* has no reasonable probability—or, indeed, any probability—of undermining any premise supporting the assertion of subject-matter jurisdiction in this case pursuant to CAFA and its minimal diversity provisions.

As an initial matter, the Ninth Circuit did not address *any* jurisdictional issue here—no doubt because the Herndons did not properly raise any such issue in their appellate briefing. See pp.9-10, *supra*. That means that the Ninth Circuit's decision does not rest

on *any* identifiable premise about whether the Herndons' original complaint or post-removal amended complaint is the relevant pleading for purposes of assessing the existence of minimal diversity under CAFA. And were the Ninth Circuit to consider that issue further, it most likely would conclude that there is no need to even address the issue, as the amended complaint contains essentially the same allegations that led the district court to conclude that Netflix had adequately pled minimal diversity in its notice of removal. See pp.16-18, *infra*.

Even setting that problem aside, though, *Royal Canin* has no bearing here, for multiple reasons. First, Section 1367 is utterly irrelevant to the Herndons' case. The Herndons' amended complaint did not delete claims and thus did not raise any question about the district court's ability to exercise supplemental jurisdiction over any claims remaining after such a deletion. See pp.6-7, *supra*. To the contrary, the Herndons' amended complaint contains the same state-law claims that were in their original complaint. ECF No. 3-1, at 20-23; ECF No. 22, at 22-25. Nor has there been any "joinder or intervention of additional parties" raising claims as to which supplemental jurisdiction might conceivably apply. 28 U.S.C. 1367(a); see pp.6-7, *supra*. As a result, the meaning of Section 1367—which is the key issue in *Royal Canin*—is simply not implicated here.

Second, this case involves diversity jurisdiction under CAFA after removal, not—like *Royal Canin*—federal-question jurisdiction under 28 U.S.C. 1331 after removal. See ECF No. 3-1, at 20-23 (Herndons' original complaint, alleging only state-law claims); ECF No. 22, at 22-25 (Herndons' post-removal complaint, alleging only state-law claims). And that distinction makes all the difference. This Court's conclusions (if

any) in *Royal Canin* about which complaint is relevant for assessing federal-question jurisdiction will not control anything in this case, because a whole separate statutory and legal framework governs the assessment of citizenship for purposes of diversity jurisdiction—both under CAFA and more generally. See, *e.g.*, 13E *Fed. Prac. & Proc. Juris.* § 3608 (3d ed. June 2024 update) (addressing particular statutes and legal rules relating to diversity of citizenship); 4 *Cyc. of Federal Proc.* § 14:119 (3d ed. Oct. 2024 update) (same).

Most notably, CAFA contains statutory language that *specifically answers* the question of which complaint governs the assessment of minimal diversity of citizenship—as the courts of appeals have unanimously held. See Pet.App.12a-16a; *Broadway Grill*, 856 F.3d at 1277 (collecting cases). CAFA defines a "class action" over which federal district courts have jurisdiction as any civil action "*filed*" under Rule 23 or a state class-action statute. 28 U.S.C. 1332(d)(1)(B) (emphasis added). And in Section 1332(d)(7), CAFA provides that "[c]itizenship of the members of the proposed plaintiff classes shall be determined * * * *as of the date of filing of*" a pleading by plaintiff "indicating the existence of Federal jurisdiction." 28 U.S.C. 1332(d)(7) (emphasis added). That means that where, as here, a complaint filed prior to the notice of removal indicates the existence of federal jurisdiction, *that complaint governs*—whether or not there are subsequent amendments. See *Hargett* v. *RevClaims*, 854 F.3d 962, 967 (8th Cir. 2017); *Doyle* v. *OneWest Bank*, 764 F.3d 1097, 1098 (9th Cir. 2014); *Louisiana* v. *Am. Nat'l Prop. & Cas.*, 746 F.3d 633, 639 (5th Cir. 2014) ("Federal jurisdiction under the statutory provision of CAFA is explicitly concerned with the status of an action when filed—not how it subsequently evolves."). That conclusion is not only dictated by the statutory

text but also serves CAFA's purpose to prevent gamesmanship that keeps class actions in state court. See pp.3-5, *supra*.

In any event, regardless of whether this Court agrees with the consensus in the lower courts on that issue, it remains true that *Royal Canin* can have no bearing here. The critical CAFA language on which that consensus rests is not before this Court in *Royal Canin*, and there is thus no possibility that this Court will say anything in that case about what that language means.[4]

2. A hold for *Royal Canin* is also unwarranted on another independent basis: even if *Royal Canin* somehow dictated the conclusion that the Herndons' amended complaint must control for purposes of assessing CAFA jurisdiction, nothing about that fact would change the analysis in this case. *Royal Canin* therefore still could not "determine the ultimate outcome of th[is] litigation." *Lawrence*, 516 U.S. at 167-168.

The district court below (which is the only court to have substantively addressed subject-matter jurisdiction in this case) found that CAFA's minimal diversity requirement was satisfied here on two grounds. The court explained that in the original complaint the Herndons alleged a class of great geographic breadth, encompassing (for instance) individuals in Florida and Canada. Pet. App.11a, 23a. The court also gave

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[4] Petitioners' brief in *Royal Canin* contends in a footnote (Petr.Br.35 n.5) that ruling for the respondents would "destabilize related precedent" such as CAFA cases—but that contention does not acknowledge the existence of Section 1332(d)(7) or other relevant CAFA language regarding minimal diversity and therefore cannot encompass this CAFA case.

weight to the fact that the Herndons effectively conceded the accuracy of the allegations in Netflix's notice of removal that there are class members whose citizenship is different than Netflix's citizenship. Pet.App.11a, 23a; see, *e.g.*, ECF No. 26, at 11 n.4, 15.

The amended complaint reproduces those very same features. See ECF No. 22. Indeed, it expressly alleges a "[g]lobal" class, which necessarily encompasses every country in the world. Pet.App.13a. And it once again specifically mentions particular individuals in Florida as putative class members. ECF No. 22, at 12. Moreover, nothing about the existence of the amended complaint drains any force from the brief containing the Herndons' jurisdictional admissions.

For those reasons, if this Court were to send this case back for further consideration of CAFA jurisdiction in light of the allegations in the Herndons' amended complaint, the result would be exactly the same as it is now. Given the similarities in the two complaints, a court that accepted jurisdiction based on the original complaint would equally accept jurisdiction based on the amended complaint.

It is no answer that there would be no diversity as between Netflix and the separate "California citizens" class alleged in the amended complaint. The plain text of CAFA provides that there is jurisdiction where "any member of *a* class of plaintiffs" is diverse from any defendant. 28 U.S.C. 1332(d)(2) (emphasis added); see *Wikimedia Foundation* v. *National Security Agency/Central Security Service*, 14 F.4th 276, 293 (4th Cir. 2021) ("a" means "any"). Thus, so long as *any member of any class* alleged in a complaint is diverse from the defendant, there is minimal diversity under CAFA. And here, the amended complaint alleges a "[g]lobal" class, including putative class members in

Florida, along with a California-only class. Pet.App.13a.

If the rule were otherwise, plaintiffs could easily manipulate class definitions to achieve a remand without narrowing the scope of the putative class action. Allowing for such manipulation would clearly undermine Congress's purpose in enacting CAFA: to prevent lawyers from "'gam[ing]' the procedural rules [to] keep" broadly framed "class actions in state courts." S. Rep. No. 109-14, p. 4 (2005); see, *e.g.*, *Shady Grove Orthopedics Associates* v. *Allstate Ins.*, 559 U.S. 393, 459 (2010) (Ginsburg, J., dissenting).[5]

B. None of the other questions presented warrants this Court's review

The petition raises three other questions, none of which comes close to warranting this Court's review.

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[5] In the district court, the Herndons argued that they could prove that remand to state court was required under CAFA exceptions that apply only where a certain percentage of *all* putative class members are citizens of the state where the class action was originally filed (here, California). ECF No. 26, at 18-21; see 28 U.S.C. 1332(d)(3), (d)(4)(B). The district court concluded that the exceptions are inapplicable here. Pet.App.27a. Nothing about that conclusion would change if the district court looked to the Herndons' amended complaint instead of their original complaint, given the similarities between the two. Indeed, the amended complaint's global class is as broad or broader than the class alleged in the original complaint—which makes it even less likely that the Herndons could show that the requisite percentage of all putative class members are citizens of California.

1. Review should be denied on the question whether Netflix had to identify a diverse class member with specificity

The petition asks this Court to decide whether establishing CAFA jurisdiction for removal purposes requires "specifically identif[ying]" a diverse class member, apparently by name, "based on facts and evidence." Pet.26. But that question is not properly presented in this case; no circuit split exists on the question; and this Court's review of the question is unwarranted for numerous other reasons.

a. The issue of whether Netflix was required to identify with granular specificity a class member with citizenship diverse from Netflix's own citizenship is not properly presented.

Barring exceptional circumstances that do not exist here, this Court does not grant certiorari to review "questions not pressed or passed upon below." *Duignan* v. *United States*, 274 U.S. 195, 200 (1927). Yet that is exactly the situation in this case. The Ninth Circuit did not pass on whether Netflix had to specifically identify a diverse class member. See Pet.App.3a; pp.10, 13-14, *supra*. In addition, the Herndons did not press before the Ninth Circuit the contention that Netflix had to identify with a high level of specificity a class member with citizenship diverse from the company's citizenship. Indeed, the Herndons devoted a sum total of two sentences of the "Jurisdictional Statement" in their opening appellate brief to a generalized statement that jurisdiction was improper but never raised the specificity contention in that statement. They also did not discuss that contention in the argument section of that brief or list it in their statement of issues. And they dropped the matter entirely in their appellate reply brief, which never mentioned jurisdiction at all. Moreover, in the district court, the

Herndons *agreed* that minimal diversity of citizenship exists in this case. See pp.8-9, *supra*.

The upshot is that review of the issue is not warranted. Although the argument that jurisdiction does not exist cannot be waived, the argument that an opposing party has not presented sufficient proof of jurisdiction *can* be waived. See *Dancel* v. *Groupon*, 940 F.3d 381, 385 (7th Cir. 2019). And, even apart from any such waiver, the prudential reasons for declining to review questions not pressed or passed upon below apply with full force to jurisdictional issues. A court of appeals opinion "assists [this Court's] deliberations by promoting the creation of an adequate factual and legal record," and full briefing in the court of appeals gives the parties "the opportunity to test and refine their positions before reaching this Court." *Adams* v. *Robertson*, 520 U.S. 83, 91 (1997). All of that is lacking here.

b. i. Given that the Ninth Circuit did not address the issue of specifically identifying a class member with diverse citizenship, the decision below cannot possibly conflict with the decision of any other court that *does* address that issue. That, too, is a sufficient reason to deny review. The Herndons argue that the Ninth Circuit's silence on the subject means that the court of appeals effectively adopted the district court's approach (Pet.35), but this Court has explained that such drive-by jurisdictional rulings are not precedent and have no future effect. See, *e.g.*, *Lewis* v. *Casey*, 518 U.S. 343, 352 n.2 (1996) ("[T]he existence of unaddressed jurisdictional defects has no precedential effect.").

ii. Even assuming that the Ninth Circuit *had* adopted the district court's approach and that doing so *sub silentio* could conceivably create a conflict, no conflict would exist here.

As an initial matter, most of the decisions that the Herndons say create a conflict have no relevance to minimal diversity under CAFA. Some are decisions about the jurisdictional exceptions in CAFA that require remand to state court in certain circumstances where jurisdiction would otherwise attach. Pet.36 (citing *Smith* v. *Marcus & Millichap*, 991 F.3d 1145, 1159 (11th Cir. 2021), and *In re Sprint Nextel*, 593 F.3d 669, 674 (7th Cir. 2010)); see note 5, *supra*. Those decisions address how *a plaintiff* can show the citizenship of a large percentage of class members *in the aggregate*, which is an entirely different issue than the one the Herndons raise here about whether a defendant has identified a single diverse class member by name. See 28 U.S.C. 1332(d)(4)(A)-(B) (CAFA exceptions that apply only on a showing that more than two-thirds of the plaintiff class are citizens of the state where the action was originally filed); *Smith*, 991 F.3d at 1151 (burden of showing that a CAFA exception applies is on the plaintiff making class allegations, not on the defendant); *Sprint*, 593 F.3d at 675-676 (discussing what is sufficient to show diverse citizenship in the aggregate, including possible use of "affidavits or survey responses" from putative class members that could then be extrapolated through the use of "statistical principles"). And, in any event, the decisions *undercut* the Herndons' assertion that diversity can be shown only through "facts and evidence," Pet.26, by recognizing that it is not feasible to demonstrate each class member's citizenship in that way and by adopting instead an approach "based on practicality and reasonableness" that includes making "reasonable assumption[s]" about citizenship. *Preston* v. *Tenet Healthsystem Memorial Medical Center*, 485 F.3d 804, 816-818 (5th Cir. 2007); see *Smith*, 991 F.3d at 1160; *Sprint*, 593 F.3d at 675.

Other decisions the Herndons cite as purportedly creating a split in authority are about the standard for alleging diverse citizenship in diversity-jurisdiction cases outside the CAFA context. See Pet.36 (citing *D.B. Zwirn* v. *Mehrotra*, 661 F.3d 124 (1st Cir. 2011)); Pet.37-38 (citing *Cameron* v. *Hodges*, 127 U.S. 322 (1888), *Bingham* v. *Cabot*, 3 U.S. (3 Dall.) 382 (1798), and *Brown* v. *Keene*, 33 U.S. (8 Pet.) 112 (1834)). But those decisions do not govern here. And, in any event, there is nothing about those decisions that conflicts with any aspect of the decision below or with Ninth Circuit precedent on the requirements for alleging diverse citizenship in non-CAFA diversity-jurisdiction cases. See *Kanter* v. *Warner-Lambert*, 265 F.3d 853, 857 (9th Cir. 2001) (citing *Whitmire* v. *Victus Ltd.*, 212 F.3d 885, 887 (5th Cir. 2000)).

In the end, the Herndons cite only a single Seventh Circuit decision that addresses identifying a minimally diverse class member in the CAFA context—but that decision is completely consistent with everything that happened in this case as well as with the Ninth Circuit's own precedent on that issue. In *Dancel* v. *Groupon*, 940 F.3d 381 (7th Cir. 2019), the plaintiff alleged a class consisting of people whose photographs Groupon had allegedly used after taking them from the Internet, and Groupon removed the case under CAFA. The Seventh Circuit ruled that pure "speculation" about the putative class members' citizenship was not sufficient for federal jurisdiction, at least where the plaintiff had not affirmatively agreed that minimal diversity of citizenship existed but had instead simply forfeited that issue by remaining silent about it at a critical moment. See *id.* at 385. The court of appeals observed that Groupon could have adequately alleged minimal diversity had it simply al-

leged, "'on information and belief,' that a specific member of the putative class had 'a particular state of citizenship,'" *ibid*. (citation omitted), and remanded to give Groupon the chance to conduct jurisdictional discovery, *id.* at 386.

Nothing about that decision suggests that Netflix has not adequately alleged minimal diversity in this case. The Seventh Circuit did not hold that a diverse class member must be specifically identified *by name* in every case. Nor could it have done so. For one thing, such a rule would be in considerable tension with this Court's decision in *Dart*, which relied on general language in 28 U.S.C. 1446(a) to hold, in a case involving CAFA's amount-in-controversy requirement, that "a defendant's notice of removal need include only a *plausible allegation*" that the jurisdictional requirement is satisfied. 574 U.S. at 89 (emphasis added). For another thing, such a rule could well remove whole categories of class actions from the scope of CAFA, which is far from what Congress intended. See pp.3-5, *supra*. A defendant facing a class action in which the putative class consists of the defendant's own employees or identifiable customers is probably able to supply specific names of putative class members. But that will be much more difficult where—for example—the putative class consists of an amorphous group of people who claim that they were mentally or emotionally injured by a product distributed to the public at large.

Here, Netflix did not supply names, but it did *specifically* identify diverse members of the putative class and their state of citizenship in the notice of removal—because the Herndons' complaint included that identification on its face. As the notice states, see ECF No. 3, at 4, the complaint alleged that "[a] school superintendent in Florida[] reported that counselors, teachers, and principals" in Florida "reported over a dozen

cases of very concerning behavior by children" in that state after the show's release, "includ[ing] self-mutilation[]" and "threats of suicide." ECF No. 3-1 ¶ 44 (emphasis omitted). That is the very conduct that the complaint alleges qualifies someone to be part of the putative class. Pet.App.9a. The complaint also included a reference to an assertion in a news article that the Florida children had "cit[ed]" the show when trying to explain their behavior to school employees. ECF No. 3-1 ¶ 44. Thus, the complaint—and, in turn, the notice—alleged clearly and specifically that there are at least a dozen putative class members in Florida, which makes those class members' citizenship diverse from that of Netflix and satisfies the requirement of minimal diversity.

On top of that, the Herndons *agreed* in briefing in the district court that minimal diversity exists here, and certainly did not contest what Netflix said on that subject in the notice of removal. See Pet.App.11a, 22a-23a. That goes far beyond the mere silent forfeiture by a plaintiff that *Dancel* said was not enough to establish diversity.

If all that were not enough, Ninth Circuit precedent is consistent with the Seventh Circuit's decision in *Dancel*—thus underscoring that no conflict between the circuits exists. The Ninth Circuit's decisions, like *Dancel*, make clear that the defendant must have some specific basis for alleging minimal diversity. See, *e.g.*, *Ehrman*, 932 F.3d at 1227 (defendant specifically alleged that plaintiff was a citizen of his state of residence, which was a different state than defendant's states of citizenship); *Sanchez* v. *Ameriflight*, 724 F. App'x 524, 526 (9th Cir. 2018) (unpub.) (explaining that defendant in action removed under CAFA needed to "identify [a] specific putative class member that was diverse from [the defendant] as of the date the suit was

commenced"). There is no reason to believe that the Ninth Circuit in this case walked away from any of those decisions.

2. Review should be denied on the question whether CAFA jurisdiction exists when personal jurisdiction over a specific diverse putative class member has not been established

The petition also presents the question whether federal courts can exercise CAFA jurisdiction without establishing personal jurisdiction over a diverse putative class member. Pet.31. But that question plainly does not warrant this Court's review. The Herndons do not claim that a circuit split exists on the question (Pet.38), and none does. The question is also forfeited and irrelevant given this case's procedural posture.

a. The personal-jurisdiction question is predicated on another question presented in the Herndons' petition—whether Netflix needed to "specifically identif[y]" a diverse putative class member by name to establish CAFA jurisdiction. Pet.26. The Herndons' theory is that Netflix had to specifically identify a particular diverse putative class member *and* that the district court needed to have personal jurisdiction over that particular class member in order for CAFA jurisdiction to exist. Pet.31-32. Because the question presented addressing the first (and predicate) part of that theory does not warrant review, see pp.19-25, *supra*, review is also not warranted on the question presented addressing the second part of the Herndons' theory.

b. In any event, the personal-jurisdiction question does not warrant review for several independently sufficient reasons.

First, the personal-jurisdiction issue has not been preserved here. Again, this Court does not grant certiorari to review questions not pressed or passed upon below. See, *e.g.*, *Duignan*, 274 U.S. at 200. The Herndons never made their personal-jurisdiction argument to the district court or the Ninth Circuit, and neither court ever weighed in on the issue. 9th Cir. ECF No. 45; 9th Cir. ECF No. 89; ECF No. 26; ECF No. 40; Pet.App.2a-31a. In those circumstances, the issue is forfeited and a grant of certiorari is not warranted. See *Mallory* v. *Norfolk S. Ry.*, 600 U.S. 122, 144 (2023) (personal jurisdiction may "be waived or forfeited"); *United States* v. *Jones*, 565 U.S. 400, 413 (2012) (refusing to consider argument that a party forfeited through failure to raise it below) (citing *Sprietsma* v. *Mercury Marine,* 537 U.S. 51, 56 n.4 (2002)).

Second, the personal-jurisdiction question that the Herndons ask this Court to resolve is nonsensical. CAFA jurisdiction is a form of *subject-matter jurisdiction* that exists if any "member of the proposed class is a citizen of" a foreign country or of a "state different from any defendant." *Lee-Bolton* v. *Koppers*, 848 F. Supp. 2d 1342, 1346 (N.D. Fla. 2011); see 8 U.S.C. 1332(d)(2). That requirement is satisfied here given that Netflix is a citizen of California and Delaware and that at least one member of the Herndons' broadly-described class is a citizen of neither state. See pp.6-7, *supra*. By contrast, personal jurisdiction is about the court's jurisdiction over the *persons in the action*. See *Ruhrgas AG* v. *Marathon Oil*, 526 U.S. 574, 583 (1999). Throughout this case's time in federal court, the only actual parties have been the Herndons and Netflix, and the Herndons do not dispute personal jurisdiction over any of those parties.

As the lower courts agree, no further inquiry as to personal jurisdiction is necessary in a putative class

action prior to class certification—an event that never happened in this case. "It is class *certification*" that first "brings unnamed class members into the action and triggers due process limitations on a court's exercise of personal jurisdiction over their claims." *Molock* v. *Whole Foods Market Group*, 952 F.3d 293, 298 (D.C. Cir. 2020) (emphasis added); see, *e.g.*, 1 *McLaughlin on Class Actions* § 2:41 (21st ed. Oct. 2024 update). Because there has been no such certification here, there is simply no call to consider whether personal jurisdiction exists as to putative class members.

The Herndons repeatedly cite (*e.g.*, Pet.38) *Phillips Petroleum* v. *Shutts*, 472 U.S. 797 (1985), but that case is irrelevant. *Shutts* addresses when courts may exercise personal jurisdiction over "absent" members of a *fully certified class* consistent with due process, *id.* at 811-812, and holds that courts may do so if such a member is afforded the minimum procedural safeguards of notice and an opportunity to opt out and does not opt out. *Ibid*. But again, there is no need for a personal-jurisdiction analysis as to putative class members unless there has been a grant of class certification that actually brings those class members before the court—and no such grant has occurred here. *Shutts* could have come into play and required procedural safeguards if the Herndons' case had proceeded to class certification, but the district court dismissed the case and struck the amended complaint before any class-certification proceedings took place. See pp.8-9, *supra*.

3. Review should be denied on the question whether there is Article III standing to assert wrongful-death and survivorship claims

Finally, the Herndons argue that review is warranted on whether their injuries related to Bella Herndon's death suffice for Article III standing. The Herndons have alleged injuries under "wrongful-death" and "survivorship" statutes. Pet.1.[6] Their theory seems to be that those injuries are not injuries-in-fact as required for Article III standing in federal court and that their case must be remanded to state court on that basis. Pet.33-34; see *Polo* v. *Innoventions Int'l*, 833 F.3d 1193, 1196 (9th Cir. 2016). But that issue was never pressed or passed on below—which means that this case would be a particularly unsuitable vehicle for addressing it. In any event, the Herndons do not even attempt to identify a circuit split on the Article III question, Pet.38-39, and once again there is no such split; there is also no conflict between the conclusion that Article III standing exists here and any of this Court's decisions.

a. The Herndons never argued below that they lacked Article III standing to assert their claims. 9th Cir. ECF No. 45; ECF No. 26; ECF No. 40. Consequently, neither the district court nor the Ninth Circuit ever opined on whether the Herndons had such standing. Pet.App.2a-31a. Again, this Court does not grant certiorari to review questions not pressed or

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[6] In a wrongful-death action, "survivors seek compensation for losses they suffered as the result of the wrongful killing." Steven H. Steinglass, *Wrongful Death Actions and Section 1983*, 60 Ind. L.J. 559, 564 (1985). A survivorship action is "one the decedent would have had but for his death, and the damages are measured in terms of the injuries to the decedent." *Ibid.*

passed upon below. See, *e.g.*, *Duignan*, 274 U.S. at 200. Regardless of whether the Article III issue can be waived, it makes no sense for this Court to exercise its discretion to take up this case so that it can be the very first court to ever address the Herndons' new standing argument.

b. Even setting aside that problem, no basis exists here for plenary review.

First, as the Herndons tacitly concede, there is no circuit split on whether a plaintiff has Article III standing to assert wrongful-death and survivorship claims in federal court. In fact, the circuits that have weighed in on the question have all easily concluded that Article III standing exists as to such claims, thereby rejecting the very same argument that the Herndons advance here. See, *e.g.*, *Jones* v. *Prince George's Cnty., Maryland*, 348 F.3d 1014, 1018 (D.C. Cir. 2003) ("Nina has a concrete and cognizable interest in this litigation that * * * satisfies Article III's demands. * * * Nina clearly suffers from an injury that the Prince George's County defendants allegedly caused and that the requested relief would redress: the shooting deprived Nina of her father's financial and emotional support, the shooting indisputably caused her loss, and a favorable decision would remedy this injury. Nina thus has standing to participate in this suit."); *Abraugh* v. *Altimus*, 26 F.4th 298, 304 (5th Cir. 2022) ("Karen does indeed have Article III standing to bring this suit. She seeks money damages to address the death of her son, which was allegedly caused by Defendants' conduct. So she has sufficiently alleged all three elements required to establish Article III standing at this stage.").

Second, the Herndons' assertion that this Court's precedent bars the lower courts from recognizing Article III standing for wrongful death and survivorship

claims is incorrect. Pet.46-49. The Court has explained that to satisfy the requirements of Article III a plaintiff's injury-in-fact must be "'concrete'—that is, 'real, and not abstract.'" *TransUnion* v. *Ramirez*, 594 U.S. 413, 424 (2021) (quoting *Spokeo* v. *Robins*, 578 U.S. 330, 340 (2016)). The death of a family member is undoubtedly a real injury and—as the courts of appeals have concluded—that is alone enough for standing under Article III. See, *e.g.*, *Whitmore* v. *Arkansas*, 495 U.S. 149, 155 (1990) (injury must be "concrete in both a qualitative and temporal sense," and must be "distinct and palpable" (citation omitted)).

The error in the Herndons' Article III standing argument is also underscored by the fact that the "alleged injury to the plaintiff" in wrongful-death and survivorship cases "has a 'close relationship' to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts." *TransUnion*, 594 U.S. at 424 (quoting *Spokeo*, 578 U.S. at 341). Wrongful-death and survivorship claims have historically been allowed in state courts. See Steven H. Steinglass, *Wrongful Death Actions and Section 1983*, 60 Ind. L.J. 559, 571-73 (1985) (explaining that "[i]n the late 18th and early 19th centuries, a number of state courts recognized common law actions for wrongful death," and ultimately, "most states * * * enacted general wrongful death statutes * * * at the time of the introduction of the Civil Rights Act of 1871"); *id.* at 574 (describing state legislatures "in the mid-19th century" that allowed "personal actions to survive the death of the victim and the wrongdoer"). Because wrongful-death and survivorship claims are "cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process," plaintiffs have Article III standing to bring such claims in federal court. *Vermont Agency of Natural Resources* v. *U.S. ex. rel. Stevens*, 529 U.S.

765, 777 (2000) (citation omitted); see *ibid.* (holding based on historical analysis of *qui tam* cause of action that a *qui tam* relator has Article III standing).

CONCLUSION

The petition should be denied.

Respectfully submitted,

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ADDENDUM

Statutory Addendum

1. 28 U.S.C. § 1331 provides:

Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

2. 28 U.S.C. § 1332 provides:

Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between--

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed

without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title--

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of--

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d)(1) In this subsection--

(A) the term "class" means all of the class members in a class action;

(B) the term "class action" means any civil action filed under rule 23 of the Federal Rules of Civil

Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

(C) the term "class certification order" means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term "class members" means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which--

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of--

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)--

(A)(i) over a class action in which--

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant--

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which--

(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an

amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim--

(A) concerning a covered security as defined under 16(f)(3)[1] of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)[2]) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class ac-

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[1] So in original. Reference to "16(f)(3)" probably should be preceded by "section".

[2] So in original. Probably should be "77p(f)(3)".

tion removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)(i) As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which--

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

(ii) This subparagraph will not apply--

(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.

(e) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

3. 28 U.S.C. § 1367 provides:

Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil

Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

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

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

4. 28 U.S.C. § 1441 provides, in relevant part:

Removal of civil actions

(a) Generally.--Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Removal based on diversity of citizenship.--
(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

* * *

5. 28 U.S.C. § 1446 provides:

Procedure for removal of civil actions

(a) Generally.--A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; generally.--(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) Requirements; removal based on diversity of citizenship.--(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commence-

ment of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that--

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks--

(i) nonmonetary relief; or

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

(d) Notice to adverse parties and State court.--Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) Counterclaim in 337 proceeding.--With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

[**(f) Redesignated (e)]**

(g) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

6. 28 U.S.C. § 1453 provides:

Removal of class actions

(a) Definitions.--In this section, the terms "class", "class action", "class certification order", and "class member" shall have the meanings given such terms under section 1332(d)(1).

(b) In general.--A class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(c)(1) shall not apply), without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

(c) Review of remand orders.--

(1) In general.--Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order.

(2) Time period for judgment.--If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3).

(3) Extension of time period.--The court of appeals may grant an extension of the 60-day period described in paragraph (2) if--

(A) all parties to the proceeding agree to such extension, for any period of time; or

(B) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(4) Denial of appeal.--If a final judgment on the appeal under paragraph (1) is not issued before the end of the period described in paragraph (2), including any extension under paragraph (3), the appeal shall be denied.

(d) Exception.--This section shall not apply to any class action that solely involves--

(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)[1]) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

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[1] So in original. Probably should be "77p(f)(3)".