No. 24-724

IN THE

Supreme Court of the United States

THE HAIN CELESTIAL GROUP, INC.,
WHOLE FOODS MARKET, INC.,
Petitioners,

v.

SARAH PALMQUIST, INDIVIDUALLY AND AS NEXT FRIEND OF E.P., A MINOR, GRANT PALMQUIST,
Respondents.

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

BRIEF OF PETITIONERS

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QUESTION PRESENTED

Whether a district court's final judgment as to completely diverse parties must be vacated when an appellate court later determines that the district court erred by dismissing a non-diverse party at the time of removal.

RULE 29.6 DISCLOSURE STATEMENT

The disclosure made in the petition for a writ of certiorari remains accurate.

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The decision of the District Court denying a motion to remand and dismissing Whole Foods is reported at 2021 WL 4137525 (S.D. Tex. June 15, 2021) and is reproduced at Pet.App. 24a–28a. The oral ruling of the District Court granting Hain Celestial Group's motion for judgment as a matter of law under Federal Rule of Civil Procedure 50 is unreported and is reproduced at Pet.App. 29a–32a. The District Court's subsequent judgment in favor of Hain is reproduced at Pet.App. 33a–34a.

The decision of the Court of Appeals is reported at 103 F.4th 294 (5th Cir. 2024) and is reproduced at Pet.App. 1a–23a. The Court of Appeals' order denying panel rehearing and rehearing en banc is unreported and is reproduced at Pet.App. 35a–36a.

JURISDICTION

The Fifth Circuit entered judgment on May 28, 2024, and denied Petitioners' timely rehearing petitions on September 9, 2024. Pet.App. 1a, 35a. On November 26, 2024, Justice Alito extended the time to file a petition to and including January 7, 2025. Petitioners filed a petition for a writ of certiorari on January 7, 2025; the Court granted the petition on April 28, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Article III, Section 2, Clause 1 of the United States Constitution provides in relevant part:

> The judicial Power shall extend to . . . Controversies between two or more States[.]

28 U.S.C. § 1332(a) provides in relevant part:

> 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 . . . citizens of different states.

INTRODUCTION

The decision below is out of step with this Court's precedent and does violence to common-sense principles of fairness and efficiency. After two years of proceedings and a jury trial, the district court entered judgment for Petitioner Hain Celestial because Respondents failed to establish that Hain's products caused their son's autism spectrum disorder, a critical element of all their claims. When the court entered final judgment, the parties before it were completely diverse; and Respondents do not allege any procedural flaws in the proceedings between them and Hain. Instead, Respondents argued—and the court of appeals agreed—that the district court erred in dismissing Petitioner Whole Foods, a *different* defendant that is not diverse from Respondents. But even accepting for purposes of these proceedings that the court of appeals was right about that, the court's conclusion provided no basis for vacating the judgment entered between Hain and Respondents. A long line of this Court's cases makes clear that courts should preserve final judgments in federal courts when a dispensable jurisdiction-spoiling party has been or can be dismissed. Because this is the paradigmatic case for such a remedy, the Fifth Circuit erred when it vacated the final judgment in Hain's favor.

STATEMENT

1. Petitioner The Hain Celestial Group, Inc., ("Hain") is a leading health and wellness company that produces and sells, among other things, Earth's Best™ organic baby food. *See* Pet.App. 2a–3a. Petitioner Whole Foods Market Rocky Mountain/ Southwest, L.P. ("Whole Foods") operates grocery stores and sells Hain products allegedly purchased by Respondents. Earth's Best is sold at grocery stores throughout the country, including those operated by Whole Foods. *See* Pet.App. 2a–3a.

Respondents, citizens of Texas, are Sarah and Grant Palmquist, and their son E.P., who has been diagnosed with severe autism spectrum disorder. Pet.App. 3a. After a March 2021 congressional staff report noted the existence of trace amounts of naturally occurring metals in baby foods, Respondents sued Hain in Texas state court, alleging that Earth's Best baby food contained heavy metals and that E.P.'s consumption of Earth's Best baby food led to his condition. Pet.App. 3a–4a; *see also* Orig. Petition ¶¶ 1–3, Doc. 1-1 at 5–6. Respondents also sued Whole Foods, one of five retailers from whom they allegedly purchased the baby food. Pet.App. 3a; *see* Doc. 69-6 at 13 (alleging Respondents purchased Earth's Best from Kroger, Target, Babies R Us, Randall's, and Whole Foods).

Against Hain, then a citizen of Delaware and New York, Respondents asserted Texas-law claims for negligence, manufacturing defect, design defect, and failure to warn. Am. Petition ¶¶ 43–59, Doc. 1-1 at 117–23; *see* Pet.App. 4a. Against Whole Foods, a citizen of Texas, Respondents asserted state-law claims for negligence and breach of warranty. Pet.App. 4a.

Respondents alleged that, by selling Hain's products, Whole Foods provided "implied warranties" to the public that the baby food was healthy. Am. Petition ¶ 66, Doc. 1-1 at 124; *see* Pet.App. 9a.

Hain timely removed the action to the United States District Court for the Southern District of Texas based on diversity jurisdiction. Notice of Removal, Doc. 1 at 2; *see* 28 U.S.C. §§ 1332(a), 1441, 1446. In its notice of removal, Hain argued that non-diverse defendant Whole Foods had been fraudulently joined and thus did not destroy the court's diversity jurisdiction. Pet.App. 24a; *see Chesapeake & O. R. Co. v. Cockrell*, 232 U.S. 146, 152 (1914) (observing that "right of removal cannot be defeated by a fraudulent joinder of a resident defendant"). Petitioners argued that Texas law does not make a "seller" like Whole Foods liable for harm caused by a product it did not manufacture except in narrow circumstances not alleged or apparent in Respondents' complaint. Tex. Civ. Prac. & Rem. Code Ann. § 82.003(a). Because Respondents could not "establish a cause of action against the non-diverse party in state court," *Travis v. Irby*, 326 F.3d 644, 647 (5th Cir. 2003), Hain urged, the suit should proceed in federal court.

In response to Hain's removal of the case to federal court, Respondents filed a second amended complaint, newly alleging that Whole Foods had made "express factual representations" about Hain baby food on which Respondents relied, Second Am. Compl. ¶ 62, Doc. 6 at 24–25, and adding a new claim against Whole Foods for negligent undertaking, *see id.* ¶¶ 66–67, Doc. 6 at 25–26. *See* Pet.App. 5a. The next day, Respondents filed a motion to remand, arguing that their newly filed second amended complaint

demonstrated that Whole Foods was properly joined. Although Respondents still did not allege that Whole Foods had any involvement in manufacturing the products they allege injured E.P., they argued that their new claims fell within the express-warranty exception to the state-law rule that sellers are not liable for harm caused by products they did not manufacture. Pet.App. 5a; *see also* Tex. Civ. Prac. & Rem. Code Ann. § 82.003(a)(5) (express warranty exception to retailer non-liability).

Siding with Hain, the district court held that Whole Foods was fraudulently joined and denied Respondents' motion to remand. Pet.App. 28a. The district court first held that it could not consider Respondents' post-removal amendments. Pet.App. 25a. In the alternative, it held that Respondents' amended complaint did not state an exception to Texas's bar on seller liability and dismissed Respondents' claims against Whole Foods with prejudice. Pet.App. 25a–28a. Respondents did not seek interlocutory review.

2. With Whole Foods out of the case, Respondents and Hain conducted more than a year of discovery, took nearly twenty fact and expert depositions, filed cross-motions for summary judgment, litigated extensive motions *in limine*, and, in February 2023—21 months after the district court dismissed Whole Foods—went to trial. *See* Pet.App. 33a.

After presenting seven days of witness testimony, Respondents rested. Hain then moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(a), arguing that Respondents failed to present sufficient evidence to prove causation. Pet.App. 6a; Doc. 165. After hearing argument, the

district court granted Hain's Rule 50(a) motion. Pet.App. 31a. Although Respondents had a full and fair opportunity to present their case—and have never argued otherwise—the district court concluded that they offered "no testimony from a qualified expert that the ingestion of heavy metals" could have "cause[d] the array of symptoms" suffered by E.P., "much less any evidence of at what level those metals would have to be ingested to bring about those symptoms." Pet.App. 30a. Respondents' theory of causation, the court explained, was "simply not supported by the science." Pet.App. 30a. The district court thus entered judgment in Hain's favor. Pet.App. 33a–34a.

3. Respondents appealed. Although Respondents challenged the district court's ruling for Hain on the merits, they primarily argued that, even if the merits decision was correct, the court of appeals should vacate the district court's judgment and remand the matter to state court to start from scratch. Respondents argued that a remand was appropriate because the district court erred in dismissing non-diverse Whole Foods as improperly joined and therefore lacked subject matter jurisdiction when it entered final judgment.

Expressing no view on the merits of the district court's Rule 50(a) judgment, a panel of the Fifth Circuit vacated that judgment and directed the district court to send the case back to state court to begin anew. Pet.App. 1a–23a.

The court of appeals first held that the district court erred in dismissing Whole Foods as fraudulently joined. Pet.App. 7a–21a. The court determined that, even though Respondents' original state-court complaint referred only to implied warranties, the

legal theories outlined in that document were "broad enough to encompass" an express-warranty claim and that, combined with factual allegations Respondents raised for the first time in their post-removal complaint, Respondents stated a colorable claim against Whole Foods, a non-manufacturing seller defendant, for breach of express warranties under Texas law. Pet.App. 8a–14a. The court thus concluded that Whole Foods was not fraudulently joined and that the district court erred in dismissing Whole Foods and denying Respondents' motion to remand. Pet.App. 14a–21a.

The court of appeals then considered whether its conclusion that the district court erred in dismissing Whole Foods "require[d]" the panel "to vacate the take-nothing judgment," even though the parties before the district court were completely diverse at the time of final judgment. Pet.App. 21a. The panel reasoned that the district court should never have dismissed Whole Foods, and that the initial lack of complete diversity "linger[ed]" through to final judgment, spoiling the district court's jurisdiction at the time of judgment. Pet.App. 22a. The court thus concluded, with scant reasoning, that it was *required* to vacate the district court's judgment. Pet.App. 22a. And, although Hain had argued that the court of appeals had "authority to dismiss Whole Foods under Federal Rule of Civil Procedure 21 on its own motion to preserve jurisdiction," CA5 Hain Br. 28, the court did not address that argument.[1]

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[1] Although Petitioners strongly disagree with the Fifth Circuit conclusions that Respondents' amended complaint states a viable claim under Texas law against Whole Foods and that the

The Fifth Circuit denied Petitioners' timely petitions for rehearing en banc. Pet.App. 36a.

SUMMARY OF ARGUMENT

The district court's final judgment between completely diverse parties Hain and Respondents should be preserved. The court of appeals erred in holding that it had no choice but to vacate that judgment and force the parties to relitigate the same claims when it concluded that Whole Foods should not have been dismissed.

I. The Fifth Circuit erred in holding that any jurisdictional flaw that existed at the time of removal lingered through to final judgment. This Court has long held that when facts on the ground are necessary to determine federal jurisdiction, those facts are fixed as they existed at the time of filing or removal. But when jurisdiction depends on the identity of the parties or the substance of the claims, changes to the parties or the claims after filing or removal can create or destroy jurisdiction. Applying those principles, this Court has thus held that, even if a court sitting in diversity lacked jurisdiction at the outset of a case, that jurisdictional flaw can be cured by dismissal of a nondiverse party prior to entry of final judgment.

In particular, this Court has long held that a district court not only *can* preserve its diversity jurisdiction by dismissing a jurisdictional spoiler but that it *should* do so. When, as here, the only parties before a district court at the time of final judgment are completely diverse, the district court has subject

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district court erred in dismissing Whole Foods as fraudulently joined, those holdings are not before this Court.

matter jurisdiction to enter that judgment even if the case was earlier plagued by a jurisdictional defect. That approach has the virtue of promoting finality, as well as preserving judicial and party resources.

In this case, nearly all the district court proceedings involved completely diverse parties. After Whole Foods was dismissed in the earliest days of the case, the remaining (diverse) parties spent two years litigating the case to trial and final judgment. Whole Foods had no involvement in those proceedings and was not a party to the judgment. The court of appeals erred in concluding that any error in dismissing Whole Foods at the time of removal deprived the district court of jurisdiction over all the subsequent proceedings by imagining what the case *would have* looked like absent such an error. What matters is not that hypothetical scenario, but the actual parties and claims before the district court at the time of final judgment.

II. If this Court harbors any doubt that the district court had jurisdiction when it entered final judgment, it should still preserve that judgment by ordering Whole Foods dismissed now under Federal Rule of Civil Procedure 21.

This Court's precedent makes clear that, even when a jurisdictional spoiler lingers as a party through to final judgment and beyond, this Court or the court of appeals should rely on the authority in Rule 21 to dismiss the spoiler in order to preserve a final judgment as to completely diverse parties. Although that approach to curing jurisdictional problems in the name of preserving final judgments has a long pedigree, the court of appeals failed to even consider it, despite Petitioners' request that it do so.

Even Respondents conceded in opposing certiorari that that the court of appeals had the authority to cure any jurisdictional defect in that way.

By invoking Rule 21 to order Whole Foods dismissed from the case, the Court would effectively affirm the severance of Respondents' claims against Hain from its claims against Whole Foods. That is an unremarkable result: Respondents have no inalienable right to pursue their claims against Hain and Whole Foods in a single proceeding and any loss of convenience they would sustain cannot justify forcing Hain to relitigate the exact same claims it has already defeated.

Every relevant consideration supports exercising Rule 21 authority to dismiss Whole Foods and preserve the judgment for Hain. Whole Foods was not an indispensable party to the claims against Hain, separation of the claims against Hain from those against Whole Foods would not give any party a tactical advantage, and no party would suffer prejudice from preservation of the judgment below. Respondents' understandable desire to try their luck with a different judge does not establish prejudice and cannot justify the inefficiency, waste of resources, and violence to principles of finality that this Court has condemned. The Court should vacate the court of appeals' decision.

ARGUMENT

When the district court entered final judgment for Hain, the only two parties before it were completely diverse. The court of appeals erred in vacating that final judgment and ordering the parties back to the starting line in state court.

Even if the court of appeals were correct that the district court erred in dismissing non-diverse Whole Foods at the time of removal, that error did not destroy the district court's jurisdiction over the remaining diverse parties. Because the district court had jurisdiction to enter final judgment, the court of appeals erred in holding that it was required to vacate that judgment after concluding that Whole Foods should have remained in the case. And because seller Whole Foods, one of multiple retailers from whom Respondents purchased Hain's products, was necessarily a dispensable party to the product-liability claims against Hain, its absence from the district court proceedings did not undermine the jurisdictional or merits-based validity of the judgment between Hain and Respondents. If there is any doubt about whether any error created a lingering jurisdictional problem, this Court's cases make clear that the proper remedy was to dismiss Whole Foods to preserve the final judgment between the diverse parties.

Because the court of appeals erred in holding that it had no choice but to vacate the district court's final judgment, this Court should vacate the court of appeals' decision and order Whole Foods dismissed from this case.

I. The District Court Had Jurisdiction To Enter Final Judgment Between Hain And Respondents.

Article III of the U.S. Constitution provides that the jurisdiction of federal courts extends to "Controversies . . . between Citizens of different States." U.S. Const. art. III, § 2. Since the earliest days of the Nation, Congress has authorized federal

courts to exercise jurisdiction over diverse parties but has generally limited that authority to matters in which the parties are completely diverse, meaning that every plaintiff is diverse from every defendant. *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68 (1996); *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). For purposes of proceedings before this Court, we take as a given that at the time of removal, the parties were diverse for Article III purposes, but that the complete diversity required by what is now 28 U.S.C. § 1332(a) was lacking due to the presence of Whole Foods as a defendant. The court of appeals held that, because Whole Foods should not have been dismissed at the time of removal, the district court lacked statutory subject matter jurisdiction not only at that point but also throughout the years of subsequent pre-trial and trial proceedings and the entry of final judgment—even though Whole Foods had been dismissed and was not involved in any of those proceedings. That view cannot be reconciled with this Court's cases and should be vacated.

A. No Jurisdictional Flaw Lingers When a District Court Enters Final Judgment as to Completely Diverse Parties.

1. In a series of cases spanning nearly 200 years, this Court has grappled with how to assess whether a federal court has subject matter jurisdiction at various points in litigation when the parties or legal claims change. *See*, *e.g.*, *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 25 (2025); *Conolly v. Taylor*, 27 U.S. (2 Pet.) 556, 565 (1829). Two strands of doctrine have emerged.

First, as a general matter, "[w]here there is *no* change of party, a jurisdiction depending on the

condition of the party is governed by that condition, as it was at the commencement of the suit." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 574 (2004) (quoting *Conolly*, 27 U.S. at 565). "That so-called time-of-filing rule," this Court recently explained, "concerns only the actual state of things relevant to jurisdiction—meaning, the facts on the ground," *Royal Canin*, 604 U.S. at 36 n.5 (internal quotation marks omitted), rather than the claims or parties involved in a suit at any particular moment. In a case governed by diversity jurisdiction, the parties' citizenship and the amount in controversy are thus determined at the time of filing or removal—and any subsequent changes to a party's citizenship or to the amount a plaintiff seeks to recover on the claims alleged cannot destroy (or create) jurisdiction. *Grupo Dataflux*, 541 U.S. at 574; *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289–90 (1938); *Anderson v. Watt*, 138 U.S. 694, 706–07 (1891).

Second, a different rule, of equally lengthy pedigree and relevant to this case, applies when parties (or legal claims, in the case of federal-question jurisdiction) are added or subtracted during the litigation. In those circumstances, whether a federal court has jurisdiction is not fixed at the time of filing or removal but is dynamic and depends on the state of the claims and the parties at any particular time.

In *Caterpillar, Inc. v. Lewis*, this Court considered a case that lacked complete diversity when removed to federal court but obtained complete diversity before final judgment when the non-diverse defendant settled the claims against it. 519 U.S. 61, 64 (1996). There, as here, after the defendant prevailed on the merits, the plaintiff convinced the court of appeals

that the district court lacked jurisdiction to enter final judgment because the parties were not fully diverse at the time of removal. *Id.* at 67. A unanimous Court reversed, holding that, although the district court erred in declining to remand the matter to state court upon removal, the court had jurisdiction when it entered final judgment "if the requirements of federal subject-matter jurisdiction [we]re met at the time the judgment [wa]s entered." *Id.* at 73, 77–78. In other words, although the district court lacked statutory subject matter jurisdiction at the time of removal, the dismissal of the non-diverse party after settlement cured the jurisdictional flaw prior to entry of final judgment.

The Court's approach in *Caterpillar* to assessing whether and how a change in parties affects a district court's diversity jurisdiction was not novel. This Court later described *Caterpillar* as "break[ing] no new ground" in its "unremarkable application" of the rule that when a court lacks diversity jurisdiction at the time of filing or removal, it can "cure[] the jurisdictional defect" by "dismiss[ing] the jurisdiction-destroying party." *Grupo Dataflux*, 541 U.S. at 573. The logic of *Caterpillar*'s jurisdictional holding has deep roots, stretching as far back as *Horn v. Lockhart*, 84 U.S. (17 Wall.) 570, 579 (1873), and *Conolly v. Taylor*, 27 U.S. (2 Pet.) 556, 565 (1829), both cases in which federal courts that initially lacked jurisdiction due to incomplete diversity cured the jurisdictional flaw by dismissing the nonessential, non-diverse party. *Horn*, 84 U.S. at 579 ("The objection to the jurisdiction of the court, that two of the defendants were residents of Texas, the same State with the complainants, was met and obviated by the dismissal of the suit

as to them."); *Conolly*, 27 U.S. at 565 (explaining that a court may cure a jurisdictional defect in a case founded on diversity jurisdiction by "strik[ing] out" the non-diverse party). And earlier this year, the Court reaffirmed that the addition or subtraction of a party "can either destroy or create jurisdiction," *Royal Canin*, 604 U.S. at 37, underscoring that a district court's jurisdiction is not forever determined by the identity of the parties at the time a case is filed or removed, but instead can change over time as parties are added to or dismissed from a suit.

2. Critically, the reasoning and result in *Caterpillar* reflects not just the long-established rule that a federal court sitting in diversity *can* cure a jurisdictional flaw by dismissing a lurking non-diverse party, but also the principle that federal courts *should* ordinarily do so when necessary to preserve a court's jurisdiction to enter final judgment between or among diverse parties.

As the Court explained in *Caterpillar*, "[o]nce a diversity case has been tried in federal court, with rules of decision supplied by state law . . . , considerations of finality, efficiency, and economy become overwhelming." 519 U.S. at 75. Where (as here) "no jurisdictional defect lingered through judgment in the district court" because "the requirements of federal subject-matter jurisdiction [we]re met at the time of judgment," the Court held that "wip[ing] out" a final judgment and returning a case to state court "would impose an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice." *Id.* at 73, 77. *Caterpillar* instructs that courts should avoid imposing such costs on the judicial system and litigants when a district

court entered an otherwise unobjectionable judgment between completely diverse parties.

The principles that undergird the *Caterpillar* line of cases also comport with the statutory scheme Congress designed to govern removal. *See Caterpillar*, 519 U.S. at 76. At the heart of that scheme are district courts, serving as gatekeepers of federal subject-matter jurisdiction. Congress barred appellate review of most remand orders, *see* 28 U.S.C. § 1447(d), and if the district court had immediately remanded this suit, a state trial court would have adjudicated the claims against Hain. Congress has further provided that "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded," 28 U.S.C. § 1447(c)—and Hain would have been without recourse to appeal a remand order issued at any point before final judgment. But the scheme shifts after entry of judgment. Because Congress allows appellate review of refusals to remand, courts of appeals can police the limits Congress placed on diversity jurisdiction by vacating a final judgment premised on an uncured (and uncurable) jurisdictional defect. But when "all federal jurisdictional requirements" are "satisf[ied]" at the time of final judgment, vacating such a judgment "would impose unnecessary and wasteful burdens on the parties, judges, and other litigants waiting for judicial attention." *Caterpillar*, 519 U.S. at 76 (quoting *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 836 (1989)).

In sum, because the district court in this case had diversity jurisdiction over the completely diverse parties before it when it entered final judgment, that judgment should stand even if the district court erred

earlier by dismissing non-diverse (and dispensable) Whole Foods.

B. The Court of Appeals Erred in Holding that the District Court Lacked Jurisdiction to Enter Final Judgment.

The Fifth Circuit's decision cannot be squared with *Caterpillar* and the long line of cases on which it relies. After concluding that the district court erred when it dismissed Whole Foods and declined to remand, Pet.App. 21a, the court of appeals held that, because "the jurisdictional defect" that existed at the time of removal "was never cured," "the case *must* be remanded because the federal court lacked jurisdiction" to enter final judgment. Pet.App. 22a–23a (emphasis added). Every step of that conclusion is incorrect. The jurisdictional defect *was* cured by the dismissal of dispensable defendant Whole Foods; the district court *did* have jurisdiction to enter final judgment between completely diverse parties Hain and Respondents; and vacatur and remand would not have been required even if a jurisdictional flaw had remained through final judgment. This Court should vacate the Fifth Circuit's decision and reinstate the district court's final judgment.

The district court entered final judgment for Hain after conducting two years of pretrial litigation, followed by a two-week jury trial—all between completely diverse parties Hain (then headquartered in New York and citizen of Delaware) and Respondents (citizens of Texas). Because "the requirements of federal subject-matter jurisdiction [we]re met at the time the judgment [wa]s entered," this Court has made clear that the "erroneous removal need not cause the destruction of [the] final judgment."

Caterpillar, 519 U.S. at 73. But the court of appeals held the opposite.

As an initial matter, even Respondents agree that the court of appeals erred in holding that its determination that the district court lacked jurisdiction at final judgment *required* the court of appeals to vacate that judgment. Pet.App. 22a-23a. Respondents conceded in opposing certiorari that "the Fifth Circuit might have cured" any lingering jurisdictional problem by dismissing Whole Foods as a dispensable party and that the panel "was invited" to do just that. BIO 23-24. As discussed more fully *infra* at 22–32, the court of appeals' disposition of this case was therefore error even if it was correct that a jurisdictional problem lingered through final judgment.

More fundamentally, the court of appeals was *not* correct that any error in dismissing Whole Foods at the time of removal deprived the district court of subject-matter jurisdiction to enter final judgment between the remaining diverse parties. The district court indisputably maintained Article III jurisdiction over the case from the time it was removed. And throughout the pretrial and trial proceedings, including entry of final judgment, the district court had statutory jurisdiction because the parties before it at that time were completely diverse, as required by 28 U.S.C. § 1332(a)(1). The court of appeals' later conclusion that the district court should not have dismissed Whole Foods does not retroactively erase the district court's jurisdiction over the completely diverse parties as to whom it entered final judgment. As this Court explained in *Caterpillar*, "the District Court's initial misjudgment," as understood by the court of appeals,

does not "burden and run with the case." 519 U.S. at 70.

To be sure, the court of appeals determined that Whole Foods *should have* remained a party to the case; and if it had, the district court would not have had jurisdiction. But Whole Foods did not remain a party. And the district court's dismissal of Whole Foods had no effect on the district court's jurisdiction over the dispute between Hain and Respondents. In holding to the contrary, the court of appeals embraced an unduly restrictive view of *Caterpillar*. Although the non-diverse defendant in *Caterpillar* was dismissed after settling the claims against it, that factual detail was not essential to the Court's "unremarkable" application of a principle dating back 200 years in cases that involved dismissal of non-diverse parties who did not settle. *Grupo Dataflux*, 541 U.S. at 573.

The court of appeals cited no authority whatsoever to support its approach of reimagining what form the case would have taken had the district court not dismissed Whole Foods, and then deciding that because the district court would have lacked jurisdiction over that hypothetical version of the case, it must have lacked jurisdiction when it entered final judgment as to completely diverse parties. The absence of support for such an approach is hardly surprising in light of the long history of cases holding that what matters for determining whether a court has diversity jurisdiction to enter judgment is the identity and citizenship of the parties before the court at that time.

There is, moreover, no practical or doctrinal benefit to the Fifth Circuit's approach, which is guaranteed to waste judicial and party resources. The take-

nothing judgment in Hain's favor followed a two-week jury trial, significant pretrial expert discovery and briefing, extensive motions *in limine*, and cross-motions for summary judgment—none of which involved non-diverse Whole Foods. The court of appeals should not have vacated the district court's judgment, which was correct on the merits, simply because it determined Respondents could not pursue their claims against Whole Foods at the same time.

The court of appeals' conclusion that Respondents did in fact assert a state-law claim against Whole Foods means that Respondents will now have an opportunity to assert that claim in state court. To be sure, Respondents' claims against Whole Foods should be resolved quickly in Whole Foods' favor if the judgment for Hain is reinstated. Because Respondents' claims against Whole Foods depend entirely on their allegations about harm from Hain's products, they would not be able to prevail on those claims because they have failed to prove that Hain's products caused the injuries they allege. But the fact that Respondents can now assert their claims against Whole Foods in state court should have no effect on whether the district court had jurisdiction to enter judgment in favor of Hain.

As discussed more fully *infra* at 26–28, retailer Whole Foods was not an indispensable party to Respondents' claims against Hain. It is true that what the court of appeals viewed as the erroneous dismissal of Whole Foods deprived Respondents of the convenience of suing Hain and Whole Foods together in a single proceeding. But that is water under the bridge at this point. The two matters have effectively been severed and there are no practical or doctrinal

benefits to forcing the parties to start from scratch when no court has identified any substantive flaw in the district court proceedings between Hain and Respondents. The district court's judgment in Hain's favor should stand.

This Court should not embrace the mischief evident in the court of appeals' approach, which requires a defendant in a diversity case to bear the risk that it may expend enormous resources to defend itself at trial and obtain a substantively flawless judgment in its favor only to be forced to start all over again in state court because of an error in dismissing a separate defendant. That approach turns principles of finality, fairness, and judicial economy on their heads, opening the door to wasteful and duplicative proceedings. And the scheme the court of appeals endorsed creates a perverse incentive *against* attempting to seek immediate review of a district court's refusal to remand where that decision presents a close or controlling question—instead favoring a wait-and-see approach that allows a do-over in state court. Such an approach would "thwart[]" the "policy goal of minimizing litigation over jurisdiction." *Grupo Dataflux*, 541 U.S. at 518.

In contrast to the court of appeals' wasteful approach, a clear and practical rule emerges from this Court's precedent: If the parties before the court at resolution of the merits are diverse, the judgment should stand. In this case, after the court of appeals held that the district court erred in dismissing Whole Foods, it should have considered any challenges Respondents presented on appeal to the merits of the

final judgment, including (had they been raised)[2] any claims of prejudice resulting from the absence of indispensable parties. *See*, 7 Wright & Miller, *Federal Practice & Procedure* § 1609 (3d ed. 2025) (explaining that "[o]nce the trial on the merits has been concluded," the factors in Rule 19 "weigh heavily in favor of preserving the judgment of the trial court . . . unless there has been real prejudice to those not before the court"). As for Whole Foods, once the court of appeals determined that it should not have been dismissed, at most the panel should have separated Respondents' claims against Whole Foods to allow the state court to apply the preclusive effect of the judgment for Hain.

II. If There Is Any Doubt About Whether The District Court Had Jurisdiction To Enter Final Judgment, That Doubt Can Be Cured By Dismissing Whole Foods Under Rule 21.

If this Court harbors doubts or disagrees that the district court had jurisdiction to enter final judgment in Hain's favor, it should still vacate the court of appeals' decision because the proper remedy for such a jurisdictional problem is dismissal of Whole Foods now under Federal Rule of Civil Procedure 21. This Court's decision in *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826 (1989), leaves no doubt that that dismissal of a non-diverse party under Rule 21 is a permissible means of curing a jurisdictional defect to preserve a final judgment as to the remaining completely diverse parties. In opposing certiorari, Respondents conceded that the court of appeals could

[2] Respondents did not argue to the court of appeals that Whole Foods was an indispensable party. *See, e.g.*, CA5 Reply Br. 18; CA5 Combined Resp. to Pets. for Rh'g En Banc 13.

have cured any jurisdictional problem in that way and acknowledged that Hain had invited the court to do so. BIO 23. Thus, if this Court is uncertain about whether the district court had jurisdiction to enter final judgment, it should eliminate any doubt by either vacating the court of appeals' decision and dismissing Whole Foods as a dispensable party or vacating the decision below and remanding with instructions that the court of appeals dismiss Whole Foods. However the Court chooses to proceed, *Caterpillar*, *Newman-Green*, and the many cases on which they are built all point in the same direction: the final judgment in Hain's favor should be preserved.

A. The Decision in *Newman-Green* Supports Dismissing Whole Foods Under Rule 21.

In *Newman-Green*, the Court held that a court of appeals may preserve a district court's judgment by dismissing a dispensable, non-diverse party under Rule 21—even when that party remained in the case at judgment and on appeal. 490 U.S. at 827-28; *accord Grupo Dataflux*, 541 U.S. at 572–73 (observing that this authority is "well-settled").[3] That holding has a long pedigree, stretching at least back to the Court's observation in *Horn v. Lockhart* that "the question always is, or should be, when objection is taken to the jurisdiction of the court by reason of the citizenship of some of the parties, whether . . . they are indispensable parties, for if their interests are severable and a decree without prejudice to their rights can be made, the jurisdiction of the court should be retained and the

[3] The text of Rule 21 has been modified somewhat since this Court's decision in *Newman-Green*. That amendment was "part of the general restyling of the Civil Rules" and "stylistic only." Fed. R. Civ. P. 21 advisory committee's note to 2007 amendment.

suit dismissed as to them." 84 U.S. at 579. In other words, when a non-diverse party threatens to jurisdictionally spoil a final judgment, a court may cure the jurisdictional flaw by dismissing the non-diverse party, as long as that party is dispensable and its dismissal would not prejudice the other parties. *Newman-Green*, 490 U.S. at 835; *Horn*, 84 U.S. at 579.

The Court in *Newman-Green* explained that "[i]t is well settled that Rule 21 invests district courts with authority to allow a dispensable nondiverse party to be dropped at any time, even after judgment has been rendered." 490 U.S. at 832. After reviewing a long line of examples where courts of appeals (and even this Court) had also engaged in such judgment-preserving dismissals, the Court "decline[d] to disturb that deeply rooted understanding of appellate power, particularly when requiring dismissal after years of litigation would impose unnecessary and wasteful burdens." *Id.* at 836. Although this Court advised that courts of appeals should undertake such dismissals "sparingly," *id.* 837, that caution addressed only *which* court should ordinarily effectuate dismissal of a non-diverse jurisdictional spoiler, not *whether* courts should undertake such judgment-preserving dismissals at all. Where, as here, there are no disputed facts relevant to whether Whole Foods should be dismissed, this Court or the court of appeals is well positioned to effectuate or order the dismissal itself. *See id.* at 838.

Taking a step back, litigants do not possess an inalienable right to pursue separable claims against different defendants in a single action. In other procedural postures, federal courts routinely separate claims or parties as necessary to preserve jurisdiction

or a final judgment. Imagine, for example, a matter with a parallel structure arising under federal question jurisdiction: plaintiff P asserts federal-law claims against defendants D1 and D2. The district court dismisses D1 early in the case, and the case proceeds against D2. After losing on the merits with respect to claims against D2, P appeals both the dismissal of D1 and the merits judgment in favor of D2. If the court of appeals agrees with P that the district court erred in dismissing D1 but holds that D2 correctly prevailed on the merits, the court would remand for further proceedings between P and D1. But the court would not also vacate the merits judgment in favor of D2, absent a conclusion that the claims against D1 and D2 were so intertwined that they must proceed together. The fact that the plaintiff in that scenario would be deprived of the opportunity to join D1 and D2 in a single trial could not justify vacating the merits judgment in favor of D2 as a remedy for reversing the dismissal of D1.

The same is true here. As explained *infra*, Whole Foods is not an indispensable party to Respondents' claims against Hain. There is therefore no more reason to vacate the judgment in Hain's favor than there would be in the hypothetical scenario to vacate the judgment for D2. If the district court had jurisdiction to enter judgment between diverse parties Hain and Respondents, then nothing would support vacating that judgment as a remedy for any error in dismissing Whole Foods. And if there is doubt about whether the district court had jurisdiction to enter final judgment, Respondents' claim against Whole Foods should be separated from the already-concluded controversy between Respondents and Hain. In either scenario,

neither precedent nor logic supports the court of appeals' decision to vacate the judgment in favor of Hain.

B. Every Relevant Consideration Supports Dismissing Whole Foods.

The Court advised in *Newman-Green* that, in determining whether a non-diverse party should be dismissed pursuant to Rule 21 to preserve a final judgment, a court should consider whether the dismissal "will prejudice any of the parties in the litigation," including by considering whether "the presence of the nondiverse party produced a tactical advantage for one party or another." 490 U.S. at 838. Because no party will be prejudiced by dismissing Whole Foods and preserving the judgment in favor of Hain, that is what this Court should do or direct the court of appeals to do.

1. At the threshold, like the non-diverse party in *Newman-Green*, Whole Foods was not a required party under Federal Rule of Civil Procedure 19. "Under generally accepted principles of tort law," joint tortfeasors need not be joined in a single action. 7 Wright & Miller, *Federal Practice & Procedure* § 1623 (3d ed. 2025); *Temple v. Synthes Corp.*, 498 U.S. 5, 7 (1990) (per curiam) (discussing longstanding "rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit"). In particular, "[i]n products-liability actions against manufacturers," courts do not require "the joinder of other entities or persons that dealt with the product or whose acts may have caused plaintiff's injuries." Wright & Miller, *supra*, § 1623. Texas law, which governs liability in this diversity case, is not to the contrary. Texas courts hold that "defendants are jointly and severally liable when their tortious acts"

are alleged to "cause an indivisible injury," as they are here. *Lakes of Rosehill Homeowners Ass'n, Inc. v. Jones*, 552 S.W.3d 414, 418 (Tex. App. 2018) (citing *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644 (Tex. 1996)). As this Court noted in *Newman-Green*, where defendants "are jointly and severally liable, it cannot be argued that [one of them] was indispensable to the suit." 490 U.S. at 838. The fact that Whole Foods is the only retailer Respondents sued, despite admitting that they purchased Hain's products from multiple retailers, *see* Doc. 69-6 at 13, illustrates that even under Respondents' theory of their case, retailers are not indispensable parties to their products-liability claims against Hain.

If anything, the non-diverse party in *Newman-Green* was more central to the action there than Whole Foods was here. "Virtually all of" the discovery in *Newman-Green* was "directed against" the non-diverse party. *Newman-Green, Inc. v. Alfonzo-Larrain*, 854 F.2d 916, 918 (7th Cir. 1988) (en banc), *rev'd*, 490 U.S. 838 (1989). And the district court had determined that the non-diverse party was liable to plaintiffs at summary judgment. *Newman Green, Inc. v. Alfonzo-Larrain*, No. 82-C-7933, 1987 WL 5232, at *1 (N.D. Ill. Jan. 7, 1987). This Court nevertheless concluded that "[n]othing but a waste of time and resources would be engendered by . . . forcing the[] parties to begin anew" based on the jurisdictional defect, and instead allowed the non-diverse party to be dismissed and the final judgment as to the remaining parties preserved. 490 U.S. at 838. Here, non-diverse Whole Foods was totally absent from all but the earliest district court proceedings. The district court dismissed Whole Foods at the pleading

stage, Whole Foods played no part in the ensuing litigation, Respondents sought no third-party discovery from Whole Foods, Whole Foods was not even mentioned at the trial except in references to several retailers that sold Earth's Best products, and the district court did not name Whole Foods in the judgment. Pet.App. 33a–34a. Because Whole Foods in no way "affected the course of the litigation," *Mullaney v. Anderson*, 342 U.S. 415, 417 (1952), the argument for dismissal here is even stronger than it was in *Newman-Green*.

2. Nothing in the record even suggests, moreover, that Respondents would suffer prejudice if Whole Foods were dismissed pursuant to Rule 21. The presence of Whole Foods in the trial proceedings would not have yielded any "tactical advantage" to Respondents; and Whole Foods' absence from those proceedings did not give Hain a tactical leg up. *Newman-Green*, 490 U.S. at 838. Respondents could have sought liberal third-party discovery against Whole Foods in the district court but chose not to. *See id.*; *see also*, *e.g.*, Fed. R. Civ. P. 30(a)(1) (authorizing depositions of "any person); Fed. R. Civ. P. 34(c) ("nonparty may be compelled to produce documents"). The only relief Respondents sought—money damages—was available equally against Hain. Second Am. Compl. ¶¶ 69–71, Doc. 6 at 26–28. And Whole Foods' alleged conduct was plainly irrelevant to the question of whether Respondents presented the minimum scientific proof required under Texas law to allow a jury to conclude that Hain's products could have caused E.P.'s injuries.

Nor are Respondents prejudiced by the fact that they lost on the merits. Respondents allege no procedural error in the district court proceedings between

them and Hain. And no court has identified any substantive error in the judgment in favor of Hain. Respondents understandably want to take another shot with a different judge; but a losing party's desire for a mulligan does not constitute prejudice. Quite the opposite—requiring Hain to redo entirely the trial-court proceedings would prejudice Hain, to say nothing of wasting judicial resources. This Court acknowledged as much in *Newman-Green*, explaining that "none of the parties w[ould] be harmed by [the spoiler's] dismissal" and the court's preservation of the final judgment, even though obviously one side was the losing party to that judgment. *Newman-Green*, 490 U.S. at 838; *see also Newman-Green, Inc. v. Alfonzo-Larrain*, 832 F.2d 417, 420 (7th Cir. 1987) (noting that lost judgment is not "the sense of prejudice that matters" under Rule 21); *cf. Provident Tradesmens Bank & Tr. Co. v. Patterson*, 390 U.S. 102, 112 (1968) (losing party's desire "to obtain a windfall escape from its defeat at trial" by raising Rule 19 issue was insufficient to overcome the winning party's "interest in preserving a fully litigated judgment").

In the Fifth Circuit, the only argument Respondents mustered against applying *Newman-Green* was the perceived unfairness of denying them their preferred state-court forum. CA5 Reply Br. 18. That argument proves too much. If litigating a claim in federal court rather than state court alone qualified as prejudice, *Newman-Green* would never apply in removal cases because the plaintiff would always argue prejudice from litigating in federal court. But courts of appeals have not hesitated to apply *Newman-Green* in removed cases. *See, e.g.*, *Weber v. GE Grp. Life*

Assur. Co., 541 F.3d 1002, 1008 n.8 (10th Cir. 2008); *Highland Cap. Mgmt. L.P. v. Schneider*, 198 F. App'x 41, 45 (2d Cir. 2006); *Gorfinkle v. U.S. Airways, Inc.*, 431 F.3d 19, 23 (1st Cir. 2005); *Ingram v. CSX Transp., Inc.*, 146 F.3d 858, 861–63 (11th Cir. 1998).

Although Respondents disagree with the outcome of their claims against Hain, they have never argued that the proceedings were unfair. As this Court requires, the district court applied Texas law, just as a state court would have. *See Erie R. Co. v. Tompkins*, 304 U.S. 64, 76 (1938). And Respondents have not argued that they were disadvantaged by proceeding in federal court because of an "outcome-determinative" federal procedural rule. *Hanna v. Plumer*, 380 U.S. 460, 468 (1965). In the end, Respondents lost because they failed to introduce sufficient evidence of causation, as required by state law, and the evidence they did introduce was so flimsy on the science that the district court granted a Rule 50(a) judgment after Respondents rested. Pet.App. 30a–31a. That outcome did not depend on the forum in which Respondents litigated their claims; it depended on the weakness of Respondents' claims. Relitigating those claims in state court against Hain or Whole Foods would not remedy any harm or prejudice to Respondents.

In contrast, Hain would suffer serious prejudice if it were required to undergo a state-court do-over of Respondents' failed claims. At significant cost over several years, Hain has already successfully defended this action. And the district court's judgment telegraphs that an equally costly re-litigation of the same claims would be pointless. Under Texas law, in a toxic-tort case like this one, "the minimal facts

necessary" to show causation are "scientific knowledge of the harmful level of exposure to a chemical, plus knowledge that the plaintiff was exposed to such quantities." *Helena Chem. Co. v. Cox*, 664 S.W.3d 66, 76 (Tex. 2023). In the court of appeals, Respondents conceded the factual basis for the final judgment by admitting that science has not "established the exact level of heavy metal exposure that is sufficient to cause harm." Respondents' Br. at 39. That concession was unsurprising given their own expert's testimony that "the threshold . . . is unknown. . . . I don't think anyone knows it." Feb. 13, 2023 AM Trial Tr. 64:21–65:6, Doc. 184, at 64–65. That is why the district court observed that Respondents' "failure to present any expert evidence on general causation was [not] a failure of lawyering." Pet.App. 31a. Instead, the court explained, Respondents' theory of causation was "simply not supported by the science." *Ibid.*

3. Although the Fifth Circuit ignored Hain's request that the court apply *Newman-Green* and Rule 21 to dismiss Whole Foods and preserve the final judgment, other courts of appeals routinely invoke Rule 21 in that way. *See*, *e.g.*, *Gorfinkle*, 431 F.3d at 22; *Martinez v. Duke Energy Corp.*, 130 F. App'x 629, 636–41 (4th Cir. 2005); *Grice v. CVR Energy, Inc.*, 921 F.3d 966, 968–70 (10th Cir. 2019); *Ingram*, 146 F.3d at 861–63. Those cases and others like them acknowledge that the Rule 21 analysis embraces "preserving jurisdiction where possible." *Martinez*, 130 F. App'x at 637. They also recognize that the equities weigh more heavily in favor of dismissing a non-diverse party when judgment was entered after trial—because "[a]fter trial, considerations of efficiency of

course include the fact that the time and expense of a trial have already been spent." *Curley v. Brignoli, Curley & Roberts Assocs.*, 915 F.2d 81, 91 (2d Cir. 1990) (quoting *Provident Tradesmens*, 390 U.S. at 111); *accord Caterpillar*, 519 U.S. at 75 (noting that after trial, "considerations of finality, efficiency, and economy become overwhelming"). If ever there were a case that warranted a *Newman-Green*-style dismissal of a non-diverse party, it is this one.

* * * * *

The district court entered final judgment between completely diverse parties. Any flaw in the district court's earlier dismissal of a different non-diverse party does not justify vacating that final judgment. Far from providing any support for the Fifth Circuit's approach, this Court's decisions do the opposite, making clear that the court of appeals should have left in place the judgment for Hain. Whether the Court concludes that any error in dismissing Whole Foods did not affect the district court's jurisdiction over the remaining parties, or concludes that even if it did, the court of appeals should have dismissed Whole Foods under Rule 21, the result is the same. The Fifth Circuit's contrary approach guarantees an enormous waste of resources, tramples principles of fairness and finality, and finds no support in precedent or common sense.

CONCLUSION

For the reasons set forth above, the judgment of the Court of Appeals should be vacated and the case remanded to the court of appeals with instructions to dismiss Whole Foods and to consider the other arguments Respondents raised on appeal.

Respectfully submitted,

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June 27, 2025