

No. _____

In the Supreme Court of the United States

OPTA CORPORATION &
TCL MULTIMEDIA TECHNOLOGY HOLDING LIMITED,
Petitioners,

v.

DAEWOO ELECTRONICS AMERICA INC.,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Semtek International Inc. v. Lockheed Martin Corp. held that the “claim-preclusive effect of a dismissal by a federal court sitting in diversity” is “the law that would be applied by state courts in the State in which the federal diversity court sits”—except when “the state law is incompatible with federal interests.” 531 U.S. 497, 508-509 (2001). Influenced by values of federalism, including uniformity, *Semtek* adopted a federal common law rule akin to the Full Faith and Credit Act, which “directs all courts to treat a state court judgment with the same respect that it would receive in the courts of the rendering state.” *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 373 (1996). Full Faith and Credit permits a state “to determine the extraterritorial effect of its judgment [only] indirectly by prescribing the effect of its judgments within the State.” *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 270 (1980).

Here, the Ninth Circuit found New Jersey’s “entire controversy doctrine” to entail a different preclusive effect depending on the character of the applying court. A split appellate panel refused to apply the same preclusion rule that a New Jersey state court would, but instead applied “the New Jersey state court’s law as the Ninth Circuit.” App. 24. The question presented is:

Whether the judgment of a federal diversity court is presumptively treated with “the same respect that it would receive in the [state] courts” of the district where it is located.

PARTIES TO THE PROCEEDING

Petitioners, and Defendant-Appellees below, are Opta Corporation (“Opta”) and TCL Multimedia Technology Holding Limited (“TCLM”). All claims against Defendant-Appellees T.C.L. Industries Holdings (H.K.) Limited (“TCLI”) and TCL Corporation (“TCLC”) were dismissed by the district court. On appeal, these dismissals were uncontested and affirmed. Appendix to the Petition (“App.”) 5 n.1.

The Respondent is Daewoo Electronics America Inc. (“Daewoo”).

RULE 29.6 DISCLOSURE STATEMENT

Lotus International Holdings Ltd. and TCLI each own over 10% of the stock of Petitioner Opta. TCLI owns 10% of the stock of Petitioner TCLM. TCLI is a wholly-owned subsidiary of TCLC.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully request a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Ninth Circuit is reported at 875 F.3d 1241 and reprinted at App. 1–39. The August 28, 2014, opinion of the U.S. District Court for the Northern District of California, dismissing the claims (in relevant part) is unpublished but reported at 2014 U.S. Dist. LEXIS 121286 and is reprinted at App. 41–47; *see also* App. 40. A superseded July 25, 2013, opinion from the same district court (which applied federal claim preclusion principles) is unpublished but reported at 2013 U.S. Dist. LEXIS 104603 and is reprinted at App. 48-65.

JURISDICTION

The Ninth Circuit issued its decision on November 27, 2017. App. 1. It denied rehearing *en banc* on January 8, 2018. App. 66-67. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Article IV, Section 1 of the United States Constitution provides:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the

Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

28 U.S.C. § 1738 (June 25, 1948, ch. 646, 62 Stat. 947) provides, in relevant part:

The records and judicial proceedings of any court of any such State, Territory or Possession ... shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

In *Semtek*, this Court, with attention to the values of uniformity, equitable administration of the laws, and discouragement of forum shopping, unanimously ruled that the preclusive effect of a diversity judgment shall be governed by the law applied in the courts of the state where the diversity court sits. *Semtek*, however, did not plainly speak to whether a state could vary its claim preclusion law based on whether the court that applied it was a court of that state.

Below, a divided panel of the Ninth Circuit held that *Semtek* required it to apply the two-faced claim preclusion law of New Jersey—which provides one set of rules when applied in New Jersey State courts, and another set when applied in all other courts. It applied such claim preclusion law notwithstanding that Full Faith and Credit forbids a state from specifying extraterritorial effects of its judgments that are different from those applicable in its own courts.

Beyond the dispute in the Ninth Circuit panel below, U.S. Courts of Appeal have demonstrated confusion about *Semtek*'s federal common law rule: some appeals courts (*e.g.*, the First, Third, and Fourth Circuits) have considered the question presented and avoided it by ruling on other grounds; others (*e.g.*, the Fifth, Sixth, and Eleventh Circuits) have ignored state preclusion law altogether in determining the preclusive effect of diversity judgments.

The relevant facts are not in dispute. There can be no doubt that resolution of the question presented would resolve this case. *See* App. 29 (J. Bybee, in dissent, noting the positions of the majority and respondent).

A. Legal Background

1. Claim Preclusive Effects in Federal Court

“As one of its first acts, Congress directed that all of United States courts afford the same full faith and credit to state court judgments that would apply in the State’s own courts.” *Kremer v. Chem. Constr. Co.*, 456 U.S. 461, 463 (1982). This directive is embodied in the Full Faith and Credit Act, 28 U.S.C. § 1738, which “requires a federal court to ‘give the same preclusive effect to a state-court judgment as another court of that State would give.’” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005) (quoting *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 523 (1986)); *see also Kremer*, 456 U.S. at 467. Accordingly, “a State is permitted to determine the extraterritorial effect of its judgment; but it may only do so indirectly by prescribing the effect of its judgments within the

State.” *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 270 (1980).¹

Although the question of what preclusive effect federal courts must give to state court judgments has long been answered by § 1738 (and its predecessor statutes), no statute or constitutional provision dictates the preclusive effect that courts must give to federal diversity court judgments. *Semtek*, 531 U.S. at 507. And until this Court issued its landmark *Semtek* opinion in 2001, the question remained unsettled.

In *Semtek*, this Court unanimously “adopt[ed], as the federally prescribed rule of decision, the law that would be applied by state courts in the State in which the federal diversity court sits,” effectively embracing the solution of the Full Faith and Credit Act. 531 U.S. at 508; accord *Taylor v. Sturgell*, 553 U.S. 880, 891 n.4 (2008). This federal common law determination of the applicable claim preclusion law came with the caveat that “federal reference to state law will not obtain, of course, in situations in which the state law is incompatible with federal interests.” 531 U.S. at 509.

Semtek also addressed the preclusive effect owed to statute-of-limitations-based dismissals. The Court indicated that judgments “that do *not* pass upon the substantive merits of a claim ... do not (in many jurisdictions) entail claim-preclusive effect.” 531 U.S.

¹ See also App. 31 n.2 (dissent indicating that although this holding was in a plurality opinion, the entire *Thomas* Court appeared to concur).

at 502 (emphasis in original).² It acknowledged that a statute-of-limitations-based dismissal might be given a different effect in a different jurisdiction with a longer statute of limitations. *Id.* at 504, 509. Nevertheless, the *Semtek* Court did not—and had no occasion to—opine on whether state preclusion laws are permitted to specify different effects depending on the character of the *applying* court is located.

2. New Jersey's Claim Preclusion Law

New Jersey's claim preclusion law comprises two related, but discrete, doctrines: conventional res judicata (similar to federal res judicata)³ and the entire controversy doctrine. *Wadeer v. New Jersey Mfrs. Ins. Co.*, 110 A.3d 19, 27-28 (N.J. 2015); *see also* App. 27-29, n.1. As recently articulated by the Supreme Court of New Jersey, the entire controversy doctrine

embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy.

² In the habeas corpus context, this Court has grouped “a denial for such reasons as failure to exhaust [or] procedural default” with a “statute-of-limitations bar” as “ruling[s] which preclude[] a merits determination.” *Gonzalez v. Crosby*, 545 U.S. 524, 532 n.4 (2005).

³ Petitioners do not seek certiorari as to the portion of the majority's opinion pertaining to the application of conventional res judicata principles. *See generally* App. 10-19.

Wadeer, 110 A.3d at 28 (internal citations and quotations omitted).

Under the entire controversy doctrine, a “party cannot withhold part of a controversy for separate later litigation even when the withheld component is a separate and independently cognizable cause of action.” *Paramount Aviation Corp. v. Augusta*, 178 F.3d 132, 137 (3d Cir. 1999). Currently applicable through New Jersey’s Rule of Court 4:30A,⁴ the doctrine is grounded in New Jersey’s Constitution and over a century of state court precedent. N.J. CONST. Art. VI, § III.4; *Kent Motor Cars, Inc. v. Reynolds & Reynolds, Co.*, 25 A.3d 1027, 1036 (N.J. 2011) (characterizing it as a “claim preclusion rule”); *Cogdell v. Hosp. Ctr. at Orange*, 560 A.2d 1169, 1172-74 (N.J. 1989) (quoting *Smith v. Red Top Taxicab Corp.*, 168 A. 796 (E. & A. 1933) for the proposition that “[n]o principle of law is more firmly established”).

B. Factual and Procedural Background

The case underlying this Petition was the latest in a series of litigations over an alleged debt incurred in routine business transactions in which GoVideo, a now-defunct non-party linked to Petitioners, ordered electronic equipment from Respondent Daewoo. App. 6, 27 (dissent). After securing a default judgment against GoVideo in 2007, Daewoo sought to satisfy it though Petitioners (and other Defendant-Appellants)⁵,

⁴ Rule 4:30A self-referentially relies upon the “entire controversy doctrine.” *Cf.* pp. 19-20 (suggesting that the doctrine is merely procedural because it is referred to in a court rule).

⁵ No claims against non-Petitioner Defendant-Appellants remain. *See* App. 5, n. 1

purposely splitting its claims into successive federal diversity cases.

In 2008, Daewoo filed a complaint in the U.S. District Court for the District of New Jersey based on diversity jurisdiction, seeking damages from Petitioner Opta and Defendant-Appellee TCLI under an expired guaranty contract. App. 6, 13, 27, 42, 49-50. Daewoo undisputedly lost on summary judgment based on the merits, namely the diversity court's dispositive interpretation the contract. *Id.*

Undeterred, Daewoo brought the instant litigation against Petitioners⁶ in the U.S. District Court for the Northern District of California in 2013, also based on diversity jurisdiction. This time, Daewoo attempted to recover the same debt from Defendant-Appellees under different legal theories. App. 13, 18, 41, 43-45; *see also* App. 27-28.

Consistent with *Semtek*, the California district court applied New Jersey's claim preclusion law in dismissing Daewoo's case.⁷ *See* App. 42, 44-45. It dismissed these new legal theories (in relevant part) because, in view of the claims in the New Jersey diversity case, "they both arise from a single controversy." App. 43. In doing so, the California district court emphasized that "Daewoo's counsel

⁶ Accepting Daewoo's allegations as true, all Defendant-Appellees in the second diversity action were "the same or in privity with" the parties in the first diversity action. *See* App. 42-43.

⁷ This dismissal superseded a prior decision by the same district court that relied on federal preclusion law in declining to dismiss. App. 48-65.

stated on the record that Daewoo could have brought the claims at issue in this [California] case during the New Jersey litigation, but chose not to do so because Daewoo thought it was going to win on the theory it did assert in the prior action....” App. 44.

Daewoo appealed to the Ninth Circuit, which reversed in a split decision.

C. The Split Decision Below

As understood by the Ninth Circuit, New Jersey’s entire controversy doctrine includes an exception—the extraterritorial bar—that precludes its application outside of New Jersey state courts.⁸ In view of this extraterritorial bar, the majority declined to apply the entire controversy doctrine. Instead, it applied New Jersey’s conventional *res judicata* doctrine⁹ and

⁸ Of note, all relevant authority relied upon by the Ninth Circuit majority or the extraterritorial bar pre-dated *Semtek*. App. 21-23 (citing *Paramount*, 178 F.3d at 142; *Mortgageling Corp. v. Commonwealth Land Title Ins.*, 662 A.2d 536, 537, 540-42 (1995)); *accord*. App. 34-35 n.3 (J. Bybee, dissenting); *cf.* App. 23 (citing *Archbrook Laguna, LLC v. Marsh*, 997 A.2d 1035, 1042 (N.J. Super. Ct. App. Div. 2010), where a New Jersey state court declined to apply the entire controversy doctrine to the judgment of a Georgia state court).

⁹ As an alternative ground of affirmance, the majority held that, to the extent that application of the entire controversy doctrine—by virtue of its extraterritoriality bar—is “incompatible with federal interests,” federal preclusion law principles would govern. App. 24. Because such treatment “would reach the same result,” it would have the effect of permitting states to direct federal courts to apply federal preclusion law *de facto* and have their own courts employ a different preclusion rule. *Id.*

consequently found Daewoo's new claims not precluded. App. 4, 8-9, 18, 23-25.

The majority stated that its application of the extraterritorial bar “complies with the Supreme Court’s decision in *Semtek*, which recognized that a state may have preclusion rules that bar certain claims within that state while permitting the same claims elsewhere.” App. 25, 19. In support, the majority noted, “*Semtek* foresaw and acknowledged situations where *state law statute of limitations* would be preclusive in one state, but not another,” before concluding—without any explanation or authority—that the “entire controversy doctrine is no different.” App. 24 (citing 531 U.S. at 503–04; emphasis added).

The dissent, however, found that the majority’s application of the extraterritorial bar “flatly contradicts *Semtek*”:

Under *Semtek*, we must, as F2,¹⁰ apply “the law that would be applied by state courts in the State in which [F1 sits].” 531 U.S. at 508. Because F1 here sits in New Jersey, we must apply the law “that would be applied by [New Jersey] state courts,” *id.*—i.e., the entire controversy doctrine. The answer is that easy; our analysis should have begun and ended there.

App. 35 (brackets in original). Accordingly, the dissent would have affirmed the district court’s dismissal because “the majority and Daewoo appear to agree ...

¹⁰ F1 refers to the court that renders the judgment the preclusive effects of which are at issue in F2. *See* App. 8 n.3.

that this action would not survive under the entire controversy doctrine.” App. 29.

Ultimately, the Ninth Circuit panel was divided on a narrower articulation of the question presented here—*i.e.*, Does *Semtek* permit the preclusive effect of a merits-based federal diversity court judgment to be governed by a state preclusion rule that is *not the same* as the rule applied in the courts of that state?

In answering this question, “[t]he majority followed [New Jersey’s] two-system approach: apply one rule if F2 is a New Jersey state court; apply a different rule if F2 is a federal court.” App. 35 (dissent). It acknowledged that “the central holding in *Semtek*” requires it to “implement New Jersey preclusion law *just as a New Jersey state court would*” yet simultaneously held that it must “apply[] the New Jersey state court’s law *as the Ninth Circuit*.” App. 23-24 (emphasis added). It faulted the dissent for wanting to have “this court implement the doctrine *as if it were the New Jersey state court*.” *Id.* (emphasis in original); *see also* App. 35-36 (dissent).

By contrast, the dissent summarized its application of *Semtek*’s federal common law:

Our task is to put ourselves in the New Jersey state court’s shoes and to give the same preclusive effect to New Jersey’s judgments as New Jersey would. It is not for New Jersey to tell any other court, including our own, to apply the entire controversy doctrine differently than it itself would. *See Thomas*, 448 U.S. at 270 [] (“[A] State is permitted to determine the extraterritorial effect of its judgment; but it may

only do so indirectly by prescribing the effect of its judgments within the State.”).

App. 36.

REASONS FOR GRANTING THE WRIT

This case presents an ideal opportunity for this Court to clarify the “federal common law govern[ing] the claim-preclusive effect of a dismissal by a federal court sitting in diversity” that it unanimously adopted nearly two decades ago. *Semtek*, 531 U.S. at 508. The Ninth Circuit’s majority decision sanctioned New Jersey’s having one claim preclusion rule for use in its own state courts and another claim preclusion rule for use in other courts—federal and state. As articulated by Judge Bybee in dissent below, this “flatly contradicts *Semtek*.” App. 35. Further, it clashes with federal interests that this Court has strived to establish and maintain in this nation’s judiciary. At the same time, the Ninth Circuit panel’s sharp divide parallels the uncertainty that multiple regional circuit courts have expressed on the question presented. It is again time for “*this* Court [to offer] the last word on the claim-preclusive effect of *all* federal [diversity] judgments. 531 U.S. at 507 (emphasis in original).

I. The Ninth Circuit’s Majority Decision Directly Conflicts with this Court’s Unanimous *Semtek* Decision

Semtek holds, as a matter of federal common law, that the claim-preclusive effect of a diversity judgment is governed by “the law that would be applied by state courts in the State in which the federal diversity court sits.” 531 U.S. at 508. A straight-forward reading of this black letter law indicates that the claim-preclusive

effect of a diversity court judgment is *the same* as the claim-preclusive effect of a corresponding state court judgment. In the context of the facts here, the preclusion law that would be applied by the New Jersey state courts in determining the preclusive effect of a prior merits-based judgment of a New Jersey state court is the entire controversy doctrine. *See* App. 23.

The majority purported to square its application of the extraterritorial bar of the entire controversy doctrine with *Semtek*'s holding by "applying the New Jersey state court's law as the Ninth Circuit" and not "*as if it were the New Jersey state court.*" App. 23-24 (emphasis in original). To quote the dissent, "[t]his simply makes no sense." App. 36. Parsing the majority's reasoning with *Semtek*'s black letter holding is revealing: In determining the preclusive effect of the prior New Jersey state court's merits-based judgment, a New Jersey state court would *never* act as if it were the Ninth Circuit, a California district court, or any other extraterritorial court. In other words, the majority's attempt at judicial forum metaphysics¹¹ fails.

The majority also misapplied *Semtek*'s secondary teaching that "some judgments ... that do *not* pass upon the substantive merits of a claim ... do *not* (in many jurisdictions) entail claim-preclusive effect." 531 U.S. at 502 (emphasis in original). Here, there is no dispute that the first federal diversity dismissal in New Jersey district court "pass[ed] upon the substantive merits" of the claims. App. 42 (dissent), 6. Although the

¹¹ *See also Chavez v. Dole Food Co.*, 836 F.3d 205, 231-232 (3d Cir. 2016) (*en banc*) (rejecting similar reasoning as "the jurisprudential equivalent of holding up two mirrors up to one another").

majority correctly observed that “*Semtek* foresaw and acknowledged situations where state law statutes of limitation would be preclusive in one state, but not another,” it erred in assuming that “[t]he entire controversy doctrine [and its attendant extraterritoriality bar] is no different.” App. 24 (citing 531 U.S. at 503-04). They *are* different—and dramatically so: statute-of-limitations-based dismissals traditionally lack “claim preclusive effect in other jurisdictions with longer, unexpired limitations periods.” 531 U.S. at 504.¹² By contrast, the entire controversy doctrine is a “claim-preclusive rule (the state rule)” and it applies only *after* a first court “pass[es] upon the substantive merits of a claim.” *Id.* at 508, 502.¹³

Ultimately, the Ninth Circuit interpreted New Jersey’s entire controversy doctrine to be a two-faced claim preclusion law for decisions made on the merits—with a first face for New Jersey state courts, and second face for all other courts. Such a “state law is incompatible with federal interests.” 531 U.S. at 509;

¹² *E.g.*, *Joseph v. Athanasopoulos*, 648 F.3d 58, 66-67 (2d Cir. 2011) (finding that New York follows the “traditional rule” that dismissals on timeliness grounds are not entitled to preclusive effect); *Havens v. Mabus*, 759 F.3d 91, 98-99 (D.C. Cir. 2014) (considering the effect of a time-based dismissal); *see also Chavez*, 836 F.3d at 227 n.119.

¹³ *See also Smith v. Woosley*, 399 F.3d 428, 434-35 (2d Cir. 2005) (*Semtek* “makes clear that a district court’s dismissal of claims as time-barred is not necessarily the type of merits decision that has preclusive effect in subsequent litigation.”); *Gonzalez*, 545 U.S. at 532 n.4 (reciting types of dismissals that do not pass on the merits).

Thomas, 448 U.S. at 270. Thus, the majority’s application of the doctrine’s extraterritoriality bar “flatly contradicts *Semtek*.” App. 35 (dissent).

II. The Question Presented Is Fundamental to the Uniform Functioning of the Federal Judiciary, Consistent with the Principles of Federalism and Full Faith and Credit

Full Faith and Credit has long “require[d] federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged.” *Kremer v. Chemical Constr. Co.*, 456 U.S. 461, 466 (1982); *see also* App. 30 (dissent citing U.S. Const. art. IV, § 1 and 28 U.S.C. § 1738.). Accordingly, “[a]ll [a state] can do ‘to determine the extraterritorial effect of its judgment’ is prescribe ‘the effect of its judgments within the State.’” App. 31 (dissent quoting *Thomas*, 448 U.S. at 270). The rationale for this limitation is straightforward:

To vest the power of determining the extraterritorial effect of a State’s own laws and judgments in the State itself risks the very kind of parochial entrenchment on the interests of other States that it was the purpose of the Full Faith and Credit Clause and other provisions of Art. IV of the Constitution to prevent.

Thomas, 448 U.S. at 272.

Pursuant to Full Faith and Credit—and notwithstanding the extraterritoriality bar—the Third Circuit has repeatedly and expressly applied the entire controversy doctrine in affirming diversity court dismissals that followed an initial merits-based ruling

in New Jersey state court. *E.g.*, *Chrystal v. NJ Dept. of Law and Public Safety*, 535 App'x 120, 122-123 (3d Cir. 2013) ("The sole issue before us is whether New Jersey's entire controversy doctrine precludes Appellant from bringing his claim in the Federal Action"); *Reid v. Transp. Ins. Co.*, 502 Fed. App'x 157, 159-60 (3d Cir. 2012) ("Under the Full Faith and Credit Act, 28 U.S.C. § 1738, 'a federal court must give the same preclusive effect to a state-court judgment as another court of that State would give.' *Parsons* ..., 474 U.S. [at] 523"); *Studio 45 Discotheque, Inc. v. City of Union City*, 292 Fed. App'x 197, 198 (3d Cir. 2008) ("The entire controversy doctrine remains the law of the state of New Jersey, applicable in state court actions as well as cases requiring the application of New Jersey state law in this [federal] Court."); *Zahl v. Warhfig*, 655 Fed. App'x 66, 75-77 (3d Cir. 2016).

Similarly, governed by Full Faith and Credit—and, again, notwithstanding the extraterritorial bar—state courts *outside* New Jersey have applied the entire controversy doctrine in view of prior New Jersey state court judgments. *E.g.*, *Samuelson v. McMurtry*, 962 S.W.2d 473 (Tenn. 1998) (affirming dismissal under the doctrine); *Perini v. Leo*, 147 A.D.3d 877 (N.Y. App. Div. 2017) (granting summary judgment under both the entire controversy doctrine and *res judicata*); *cf.* *Gorelik v. Gorelik*, 35 Misc.3d 1213 (N.Y. Sup. Ct. 2012) (applying doctrine, but declining to preclude on fairness grounds); *Rong Chen v. Yeung*, 33 Misc. 3d 886, 891-92 (N.Y. Sup. Ct. 2011) (applying doctrine, but declining to preclude because the New Jersey case was still pending).

Hence, Full Faith and Credit trumps the extraterritoriality bar when the first judgment emerges from a New Jersey state court. The Ninth Circuit panel, however, was unable agree as to whether *Semtek's* federal common law rule trumps the extraterritoriality bar in the same fashion.

In *Semtek*, this Court definitively adopted its “federally prescribed rule of decision” to, in large part, further the values of federalism. It reasoned that “nationwide uniformity in the substance of the matter is better served by having the same claim-preclusive rule (the state rule) apply whether the dismissal has been ordered by a state or a federal court.” 531 U.S. at 508. The Court further explained that

any other rule would produce the sort of forum-shopping and inequitable administration of the laws ... since filing in, or removing to, federal court would be encouraged by the divergent effects that the litigants would anticipate from likely grounds of dismissal.

531 U.S. at 508-09 (internal citations, quotation marks, and ellipses omitted). In other words, *Semtek* held that the value of uniformity counsels giving federal diversity judgments the *same* full faith and credit that *all* courts already owe to state court judgments.

The opinion below unreasonably expands *Semtek's* recognition of the traditional exception to Full Faith and Credit for statute-of-limitations-based dismissals to the point that it threatens to swallow *Semtek's* clear rule governing the preclusive effect of diversity judgments. The majority leaves the door wide open for states to create two-faced preclusion laws for their

merits-based judgments. This is irreconcilable with both *Semtek*'s holding and its express rationale.

This Court should grant the Petition to clarify whether *Semtek* intended to bring the claim-preclusive effect of federal diversity judgments in line with the well-established claim-preclusive effect of state judgments. Only through such a grant can this Court ensure uniformity in how state court and federal diversity court judgments are treated.

III. Circuit Court Opinions Evince Conflict and Confusion on the Preclusive Effect of Diversity Judgments

The need for clarity as to the extent that a state may prescribe different preclusion rules for different courts is squarely presented by the Ninth Circuit's split below. The issue, however, is not unique to this case: the First, Third, and Fourth Circuits have all recognized it, but they were able to sidestep it by ruling on alternative grounds. Beyond this, clarification of the federal common law rule governing the preclusive effect of diversity judgments is sorely needed because the Fifth, Sixth, and Eleventh Circuits appear to have missed *Semtek*'s rule altogether, and have repeatedly applied substantive federal preclusion principles in lieu of state preclusion law.

A. The First, Third, and Fourth Circuits Have Recognized the Question Presented and Relied Upon Alternative Grounds to Avoid Addressing It

The Third Circuit is the only other appellate court to have considered the question presented in the context of the entire controversy doctrine. In *Hoffman*

v. Nordic Naturals, Inc., a diversity case in the District of New Jersey was dismissed with prejudice and a second litigation in the same federal court was dismissed as barred by the first. 837 F.3d 272, 275 (3d Cir. 2016). In the second action, the district court held:

Contrary to Plaintiff's contention that the entire controversy doctrine does not apply to a federal court's interpretation of a prior federal decision, the Third Circuit has consistently held that the entire controversy doctrine is applicable in state court actions *as well as cases requiring the application of New Jersey state law in this [federal] Court*.

Hoffman v. Nordic Naturals, Inc., No. 14-3291, 2015 U.S. Dist. LEXIS 4439, at *9-10 (D.N.J. 2015) (internal quotations omitted; emphasis added).¹⁴

On appeal, the Third Circuit discussed the conflict at the heart of this Petition, namely whether its pre-*Semtek* precedent holding “that the entire controversy doctrine ‘is not the right preclusion doctrine for a federal court to apply when prior judgments were not entered by the courts of New Jersey’” is still good law. *Hoffman*, 837 F.3d at 278-79 (quoting *Paramount*, 178 F.3d at 138). It found that *Semtek* “seems to suggest that we should apply New Jersey’s entire controversy doctrine to judgments rendered by federal diversity courts in New Jersey,” but raised questions regarding

¹⁴ See also *Wiggins v. String*, No. 12-3176, 2013 U.S. Dist. LEXIS 40955, at *18 (D.N.J. Mar. 25, 2013). (indicating that the entire controversy doctrine would apply under *Semtek* if jurisdiction of the earlier federal action in New Jersey was based on diversity jurisdiction.)

the potentially procedural nature of New Jersey’s long-standing claim preclusion doctrine. 837 F.3d at 278-79 (internal citations omitted). Ultimately, the Third Circuit avoided ruling on this “interesting doctrinal question” and affirmed the dismissal of the district court, holding that it “need not resolve this conflict ... because under either New Jersey or federal claim preclusion principles we come to the same result.” *Id.*

Months prior, in *Chavez v. Dole Food Co.*, which involved the preclusive effect of a timeliness dismissal by a Louisiana diversity court, an *en banc* panel of the Third Circuit gave the question presented here substantial deliberation. 836 F.3d at 228 n.130-31. The *en banc* court waded deep into the tension between its 1999 *Paramount* decision and *Semtek*; the degree to which *Erie* principles might affect whether application of state preclusion law is appropriate; this Court’s ruling in *Thomas* that “states lack the power to determine the extraterritorial effects of their own judgments”; and even scholarly literature on the subject. *Id.* (citing *Thomas*, 448 U.S. 261 and Stephen B. Burbank, *Semtek, Forum Shopping, and Federal Common Law*, 77 Notre Dame L. Rev. 1027, 1052 (2002)). Ultimately, however, the *en banc* court concluded that “such an analysis raises certain deep questions about the structure of our federal system that are perhaps better left for another day” and ruled on other grounds. *Id.* at 228.¹⁵

¹⁵ See also *McHale v. Kelly*, 527 Fed. App’x 149 (3d Cir. 2013) (noting the tension and ruling along the same lines).

Similarly, in *Hatch v. Trail King Industries, Inc.*, the First Circuit discussed the tension between *Semtek* and Massachusetts law that allegedly would have required the application of federal preclusion principles to a prior diversity judgment rather than Massachusetts' own claim preclusion principles. 699 F.3d 38, 44-45 (1st Cir. 2012). That court declined to resolve whether the Massachusetts law "is incompatible with federal interests under *Semtek* because under either federal or Massachusetts law, the outcome is the same." *Id.*

The First Circuit addressed the issue in the same manner several years earlier in *Herman v. Meiselman*, 541 F.3d 59 (1st Cir. 2008). There, a First Circuit panel noted that "[l]urking in this case is an interesting question about whether the claim preclusion law of the forum state plays a role in deciding the federal common law question of whether the new complaint by appellants is barred," but found that deciding it was unnecessary to affirm the dismissal below. *Id.* at 62 n.6.

Finally, the Fourth Circuit gave a nod to the question presented in determining that Virginia claim preclusion principles rather than federal preclusion principles were to be applied to a federal diversity judgment. *Q Intern Courier v. Smoak*, 441 F.3d 214 (4th Cir. 2006). That circuit expressly noted that "neither party has argued that Virginia also has a specific res judicata rule for cases — like the instant one — in which the first action was litigated in federal district court." *Id.* at 219; *see also id.* at 218 n.1.

B. The Fifth, Sixth, and Eleventh Circuits Apply Federal Preclusion Principles to Diversity Judgments

The circuit split underlying the question presented is unusual. It exists not between circuits that sanction states' two-faced preclusion laws under *Semtek* and those that don't, but rather between circuits that apply *Semtek*'s federal common law rule (despite ongoing debates over its finer points) and those that apply federal preclusion principles to diversity judgments as a matter of course.

The Fifth Circuit has steadfastly adhered to its pre-*Semtek* precedent that requires the application of federal principles in “considering the collateral estoppel effect of a prior federal [diversity] judgment.” *Rabo Agrifinance, Inc. v. Terra Xxi, Ltd.*, 583 F.3d 348, 353 (5th Cir. 2009) (quoting *Reimer v. Smith*, 663 F.2d 1316, 1325 n.9 (5th Cir.1981)).

Likewise, the Sixth Circuit follows its pre-*Semtek* precedent that in “case[s] involve[ing] successive diversity actions, federal res judicata principles apply.” *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 528 (6th Cir. 2006) (citing *J.Z.G. Res., Inc. v. Shelby Ins. Co.*, 84 F.3d 211, 214 (6th Cir. 1996)); *Allied Erecting Dismantling Co. v. Genesis Equip. & Mfg., Inc.*, 805 F.3d 701, 708-09 (6th Cir. 2015). *But see Leonard v. RDLG, LLC*, 644 Fed. App'x 612, 616 (6th Cir. 2016) (applying federal principles because the state preclusion rule was “incompatible with federal interests”).

Finally, the Eleventh Circuit has—more often than not—applied federal preclusion principles as a matter of course in lieu of *Semtek*'s federal common law.

Compare CSX Transp., Inc. v. Bhd. of Maint. of Way Emps., 327 F.3d 1309, 1316 (11th Cir. 2003) (“We now hold that federal preclusion principles apply to prior federal decisions, whether previously decided in diversity or federal question jurisdiction.”) *and Tampa Bay Water v. HDR Eng’g, Inc.*, 731 F.3d 1171, 1179 (11th Cir. 2013) (quoting *CSX*) *with Palmer & Kay, Inc. v. Marsh & McLennan Cos.*, 404 F.3d 1297, 1310 n.19 (11th Cir. 2005) (applying Georgia law in view of *Semtek*).

Beyond the need to clarify the level of uniformity between its *Semtek* and Full Faith and Credit doctrines, this Court should grant the Petition to underscore to the federal judiciary that the claim preclusion law that governs federal diversity judgments is presumptively *not* federal preclusion principles.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

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