No. _______

In the

Supreme Court of the United States

Jennifer Rae Heglund; Jamie Lee Heglund,
Petitioners,

v.

City of Grand Rapids and Frank Scherf,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

Sonia Miller-Van Oort
Counsel of Record
Jonathan A. Strauss
Lorenz F. Fett
Robin M. Wolpert
120 South Sixth Street, Suite 100
Minneapolis, MN 55402
Tel: (612) 756-7100
Fax: (612) 756-7101
soniamv@sapientialaw.com
jons@sapientialaw.com
larryf@sapientialaw.com
robinw@sapientialaw.com

Attorneys for Petitioners

QUESTION PRESENTED

Federal Rule of Civil Procedure 15(c)(1)(C) permits an amended complaint to relate back, for statute-of-limitation purposes, when the amendment corrects a "mistake concerning the proper party's identity." In *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538 (2010), this Court defined mistake to include "inadequate knowledge" and held that relation back under Rule 15(c) depends on "what the prospective *defendant* knew or should have known during the Rule 4(m) period, not what the *plaintiff* knew or should have known at the time of filing her original complaint." Notwithstanding *Krupski*, the Eighth Circuit Court of Appeals construes the word "mistake" in Rule 15(c) to exclude a plaintiff's lack of knowledge of the name of the individual defendant, even when the defendant had notice of the claim. The Circuit Courts of Appeal are divided on the question of whether the naming of a John Doe defendant is a "mistake" within the meaning of the rule when the defendant had notice. The question presented is:

Is the Eighth Circuit's construction of Rule 15(c)(1)(C), which precludes relation back of a John Doe claim even when the defendant had prior notice, contrary to *Krupski* and does it undermine the purpose of the rule?

LIST OF PARTIES

PLAINTIFFS-APPELLANTS
Jennifer Rae Heglund and Jamie Lee Heglund

DEFENDANTS-RESPONDENTS
City of Grand Rapids and Frank Scherf

OTHER DEFENDANTS IN THE UNDERLYING PRECEEDING
Aitkin County; City of Aitkin; City of Babbit; City of Biwabik; City of Breitung; City of Chisholm; City of Cloquet; Cook County; City of Cook; Crow Wing County; City of Deer River; Douglas County; City of Duluth; City of Ely; City of Emily; City of Eveleth; City of Floodwood; City of Forest Lake; City of Gilbert, Hennepin County; City of Hermantown; City of Hibbing; City of Hill City; City of Hoyt Lakes; City of International Falls; Itasca County; City of Keewatin; Lake County; City of Leech Lake; City of Maple Grove; City of Minneapolis; City of Nashwauk; Norman County; City of Orono; Pine County; Ramsey County; City of Roseau; City of Sartell; Scott County; Sherburne County; City of St. James; St. Louis County; City of St. Paul; City of Two Harbors; City of Virginia; Washington County; Winona County; Michael Campion, in his individual capacity as the Commissioner of the Department of Public Safety; Ramona Dohman, in her individual capacity as the Commissioner of the Department of Public Safety; John and Jane Does (1-600), acting in their individual capacity as supervisors, officers, deputies, staff, investigators, employees or agents of the other governmental agencies; Department of Public Safety

Does (1-30); acting in their individual capacity as officers, supervisors, staff, employees, independent contractors or agents of the Minnesota Department of Public Safety; Entity Does (1-100), including cities, counties, municipalities and other entities sited in Minnesota, Kevin Friebe, acting in his individual capacity as a Sergeant of the St. Louis County Sheriff's Office; Eric Hanegmon, acting in his individual capacity as a Deputy of the St. Louis County Sheriff's Office; David Lovaas, acting in his individual capacity as a Deputy of the St. Louis County Sheriff's Office; Diane McComesky, acting in her individual capacity as an employee of St. Louis County; Linda Smith, acting in her individual capacity as an employee of St. Louis County Sheriff's Office; Wayne Toewe, acting in his individual capacity as a Deputy of the St. Louis County Sheriff's Office; Kenneth Weis, acting in his individual capacity as a Deputy of the St. Louis County Sheriff's Office; Roberta Nyland; William Evans, acting in his individual capacity as a Deputy of the St. Louis County Sheriff's Office.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners respectfully request that this Court grant their writ of certiorari and review the judgment of the United States Court of Appeals for the Eighth Circuit entered on September 7, 2017.

OPINIONS AND ORDERS BELOW

The United States District Court for the District of Minnesota's Order granting Respondents' motion for summary judgment is reproduced at App. A17.

The judgment of the United States Court of Appeals for the Eighth Circuit is published at 871 F.3d 572 and is reproduced at App. A1.

JURISDICTION

The Eighth Circuit's judgment was entered on September 7, 2017. This Court has jurisdiction pursuant to 28 U.S.C. §1254.

FEDERAL RULES INVOLVED

This appeal turns on the interpretation and application of Fed. R. Civ. P. 15(c)(1), which states, in full:

Relation Back of Amendments.

(1) *When an Amendment Relates Back*. An amendment of a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits;

and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

STATEMENT OF THE CASE

The Driver's Privacy Protection Act ("DPPA") of 1994 provides that law-enforcement agencies and officers accessing state motor vehicle records can only do so in the performance of law-enforcement or government functions. 18 U.S.C §2721(b)(1). Minnesota's Department of Public Safety ("DPS") maintains the state's motor vehicle records (the "DPS Database"). The DPS Database contains personal identifying information, including demographic information, dates of birth, home addresses, vehicle information, and current and historical photographs of each licensed driver in Minnesota ("Private Data"). (App. A54, A87, A109, A199-200, A238, A260).

Petitioner Jennifer Heglund, a former law-enforcement officer, worked for various cities and one county in Minnesota. (App. A52, A197-98).

Unbeknownst to her, her Private Data was accessed 446 times between 2003 and 2013. (App. A43, A125-69, A-179). The private data of her spouse, Petitioner Jamie Heglund, was accessed 34 times between 2006 and 2013. (App. A43, A170-73, A179). Petitioners did not have a criminal history. (App. A56-86, A99, A201-37, A250). The accesses at issue did not relate to any criminal conduct, law-enforcement investigation, traffic stops or violations, or calls for service. (Id.). Petitioners did not consent to any of these accesses. (App. A109, A260). Respondents never informed Petitioners that they were accessing Petitioners' Private Data. (App. A96, A247).

Petitioners learned of the large number of accesses of their Private Data on May 23, 2013, when they obtained an audit from DPS. (App. A98, A249). The audits contained the date and time of each access and the government entity through which the accesses occurred, but they did not identify the names of the specific law-enforcement personnel conducting the accesses. (App. A100). DPS took the position that the privacy interests of the accessors were protected by the Minnesota Government Data Practice Act ("MGDPA"), Minn. Stat. Chap. 13, and it would not disclose the individual accessors' names without a court order. (Id.).

On September 9, 2013, Petitioners sent notice of claim letters to the government entities identified in their audits, including Respondent City of Grand Rapids. (See App. A283-94). The letters indicated the exact dates and times of the individual accesses at issue. The letters stated, in part, "[i]t is our understanding that the name of the individuals who accessed the private data would not be produced under the MGDPA [Minnesota Government Data Practices Act] before commencing litigation, so we do not know the individuals who accessed the data."

Unlike Petitioners, however, the government entities receiving the notice letters were able to request and learn the identities of the accessors from DPS. Consequently, with the notices of claim, the entities should have immediately begun to investigate this matter, which naturally would include learning the identities of the individual employees who accessed Petitioners' Private Data through the entities' access credentials.

On January 31, 2014, Petitioners filed suit in the United States District Court for the District of Minnesota asserting claims under the DPPA, 42 U.S.C. §1983, and state common law. The federal DPPA allows civil suit against individuals, government entities, and other organizations subject to the statute requirements. Petitioners sued present and former Commissioners of DPS, numerous municipalities, and the unknown law-enforcement personnel, identified in the Complaint as John and Jane Does. In the Complaint, Petitioners alleged that the names of the individual Doe defendants were not known to them and could not be revealed to them under the MGDPA. (App. A100).

All Defendants moved to dismiss in March 2014. On July 22, 2014, the District Court granted the motion, in part, and denied the motion, in part. Among the parties remaining were Respondents Grand Rapids and its Doe employees.

After the briefing, argument and partial denial of the defendants' motions to dismiss, the parties proceeded with discovery. In their Rule 26(f)

Report to the District Court, the parties stipulated that, "[a]ll known defendants have been served. . . The parties anticipate the addition of named law-enforcement personnel, currently sued as John and Jane Does, as soon as practicable after individuals have been identified." Pursuant to the Pretrial Scheduling Order, Rule 26(a)(1) initial disclosures were to be served on October 31, 2014. Grand Rapids' Rule 26(a)(1) initial disclosures did not identify the individual accessor of Jennifer Heglund's Private Data.

On or about December 11, 2014, in response to written discovery, Respondent Grand Rapids finally disclosed the name of its officer, Frank Scherf, who accessed Petitioners' drivers' license information. This was the first time that Petitioners learned that Respondent Scherf was one of the John Does who had accessed Jennifer Heglund's information.

Although DPS took the position that, under the MGDPA, information identifying the John Does was non-public data and that such information could not be independently produced to corroborate the identities of the subject accessors without court order, DPS and Petitioners entered into a Stipulation on January 20, 2015 to seek such an order. An order so issued, and on January 23, 2015, in response to a subpoena from Petitioners, DPS produced audits identifying the individuals who obtained their drivers' license information and confirmed that Respondent Scherf was indeed the accessor from Respondent Grand Rapids.

Within two weeks of Scherf's identity being disclosed to Petitioners, on February 6, 2015, Defendants Cities of Virginia and Grand Rapids moved for summary judgment. They brought the motion on grounds of qualified immunity. This motion was ultimately denied as premature given the need for discovery.

On March 19, 2015, Petitioners moved to amend their Complaint to substitute the individuals then-identified for the original Doe defendants. On April 13, 2015, the Court granted in part and denied in part the motion to amend the Complaint, allowing Petitioners to substitute Respondent Scherf for the John Doe listed in the initial Complaint on his behalf. The District Court based its decision, in part, on the fact that Respondents never claimed they lacked notice of Petitioners' claims or were prejudiced in their defense of Petitioners' claims. Petitioners filed their First Amended Complaint on April 21, 2015.

Shortly thereafter, Respondents moved for summary judgment a second time. On June 1, 2016, the District Court granted the motion for summary judgment, deciding that Petitioners' claim against Scherf was barred by the statute of limitations. The court determined that Petitioners' Amended Complaint naming Respondent Scherf individually did not relate back to the timely original complaint because Petitioners did not make a "mistake" within the meaning of Federal Rule of Civil Procedure 15(c) by suing John Doe rather than Scherf in the original complaint. And because the DPPA's four-year statute of limitations related to Respondent Scherf's access of Jennifer Heglund's Private Data expired three months after the suit was filed (in 2014), the claim against Respondent Scherf was barred.

Petitioners appealed to the Eighth Circuit Court of Appeals on July 1, 2016. On September 7, 2017, the court affirmed, holding that the use of John Doe as a pleading device was not a mistake under Rule 15(c). The Court did not consider or discuss Respondents' notice of Petitioners' claims. *Heglund v. Aitkin Cnty.*, 871 F.3d 572, 579 (8th Cir. 2017) (citing *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 549 (2010)). Instead, it reasoned that under *Krupski*, "a mistake occurs if a plaintiff knows that two or more parties exist but chooses to sue the wrong one based on a misunderstanding about that party's status or role." *Id.* The court further reasoned that under *Krupski*, a plaintiff's deliberate choice not to name a party is "the antithesis of making a mistake." *Id.* The court then referred to this Court's definition of "mistake" in *Krupski* and held that Petitioners' naming a John Doe defendant was not a "mistake" because it was an intentional misidentification based on inadequate knowledge of Respondent Scherf's identity. The court concluded by observing that its decision was consistent with the rulings of the Second, Fifth, Sixth, Seventh, Tenth, and Eleventh Circuit Courts of Appeals and contrary only to that of the Third Circuit Court of Appeals.

REASONS FOR GRANTING THE PETITION

The Eighth Circuit's decision conflicts with this Court's decision in *Krupski* and contributes to a split in the Circuits over whether a Doe pleading qualifies as a "mistake" within the meaning of Rule 15(c) when there is no claim by a defendant that it lacked notice.

The Court should grant review to reverse the decision of the Eighth Circuit, resolve the divide in the circuits, and hold that Doe pleadings based on inadequate knowledge of a defendant's identity constitutes a "mistake" under Rule 15(c) when the defendant did not lack notice of the claim.

I. THE EIGHTH CIRCUIT'S DECISION CONTRIBUTES TO A DIVIDE IN THE CIRCUITS AS TO WHETHER INADEQUATE KNOWLEDGE CONSTITUTES A MISTAKE UNDER RULE 15(C).

The Circuit Courts of Appeal are divided about whether the word "mistake" in Rule 15(c) includes lack of knowledge of the name of the individual defendant (such as a John Doe). The Third Circuit, prior to this Court's *Krupski v. Costa Crociere* decision, concluded that the word "mistake" includes inadequate knowledge of the defendant's identity where a Doe pleading is used. The First, Fourth, and Ninth Circuits have not addressed the issue. The Second, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits have reached the opposite conclusion, with the Sixth and Eighth Circuits making this determination post-*Krupski* and the others making this determination pre-*Krupski*. In the aftermath of *Krupski*, district courts have reached different conclusions regarding the viability of the relation-back doctrine involving Doe pleadings under *Krupski*.

Alone among the Circuits to have addressed the issue (though not the District Courts), the Third Circuit has permitted relation back in John Doe complaints where the plaintiff simply does not know the name of the defendant, based on the rationale that to deny relation back of Doe substitution cases would mean that plaintiffs who avail themselves of the common practice of naming *unknown* or Doe defendants in an original complaint would be subjected to shorter statutes of limitation than plaintiffs who list the *wrong* defendant in an original complaint. *Singletary v. Pennsylvania Dep't of Corrections*, 266 F.3d 186, 190 (3d Cir. 2001). The court in *Singletary* found this particularly unfair where a plaintiff can only determine the identities of Doe defendants through discovery *after* the complaint has been served. *Id*., at 201, n.5 (also noting that "[a]ll of the commentators who address this issue (at least those we have found in our research) call for Rule 15(c)(3) to allow relation back in cases in which a 'John Doe' complaint is amended to substitute real defendants' names") (citations omitted).

Under the Third Circuit's broader interpretation of the "but for mistake" prong in Rule 15(c)(1)(C)(ii), the term "mistake" not only applies to situations in which the plaintiff listed the wrong name for the defendant or the wrong defendant in the original complaint, but also applies to situations in which the plaintiff, by no fault of her own, did not know the defendant's name at the time of the original complaint. *Arthur v. Maersk, Inc*, 434 F.3d 196, 208-09 (3d Cir. 2006) ("A 'mistake' is no less a 'mistake' when it flows from lack of knowledge as opposed to inaccurate description."). *See also Varlack v. SWC Caribbean, Inc.*, 550 F.2d 171, 175 (3d Cir. 1977) (holding that the amendment of a "John Doe" complaint, after the statute of limitations had run, met all of the conditions for Rule 15(c) relation back, including the "but for mistake" requirement).

Other federal district courts outside the Third Circuit have ruled similarly in John Doe situations. In *Byrd v. Abate*, 964 F. Supp. 140, 145, 147 (S.D.N.Y. 1997), the court stated that "[t]o hold that Rule 15(c) does not permit relation back in such circumstances would permit defense counsel to eliminate claims against any John Doe defendant merely by resisting discovery requests until the statute of limitations has ended." *Id.* It explained:

> The *Barrow* Court had ruled that "the failure to identify individual defendants when the plaintiff knows that such defendants must be named cannot be characterized as a mistake." *Barrow,* 66 F.3d at 470, *as modified* 74 F.3d at 1367. In Byrd's case, it was the defense, rather than the plaintiff, who failed to identify the individual defendant despite Byrd's requests for that information. . . . To hold that Rule 15(c) does not permit relation back in such circumstances would permit defense counsel to eliminate claims against any John Doe defendant merely by resisting discovery requests until the statute of

limitations has ended.

Id. at 145-46. *See also Alston v. Bellerose*, 2016 WL 554770, *3 (Feb. 11, 2016) (stating that since *Barrow,* courts have fashioned an exception where information as to the "John Doe" identities is particularly within the defendant's knowledge, the plaintiff has diligently attempted to ascertain those identities through discovery, and the plaintiff seeks to amend shortly after learning of those identities); *Archibald v. City of Hartford*, 274 F.R.D. 371 (D. Conn. 2011) (amended complaint related back to date of initial complaint where defendant violated discovery obligations and withheld the names of officers).

Rather than viewing the language in *Krupski* as creating an **exception** for relation back in John Doe cases, other district courts have viewed *Krupski* as implicitly **overruling** contrary decisions in their own Circuits. In *Smith v. City of New York*, 1 F.Supp.3d 114, 120-21 (S.D.N.Y. 2013) the District Court stated that *Krupski* implicitly overrules all prior decisions holding that lack of knowledge does not equal mistake: "This Court agrees with the latter view—as Judge Sand articulated in *Bishop* [*v. Best Buy Co.*, No. 08 Civ. 8427, 2010 WL 4159566, at *3 (S.D.N.Y. Oct. 13, 2010)]—that *Krupski* overrules *Barrow* in the context of amended pleadings that add previously unidentified defendants….' After *Krupski,* it is clear that a mistake concerning the proper party's identity under Rule 15(c) **includes** lack of knowledge regarding the conduct or liability of that party" (quoting *Abdell v. City of New York*, 759 F.Supp.2d 450, 457 (S.D.N.Y. 2010)).

While some district courts in other Circuits have ruled similarly, others, including some Circuit Courts of Appeals steadfastly maintain that *Krupski* does nothing to broaden the relation back doctrine for unknown "John Doe" defendants. For example, the Sixth Circuit held that "[e]ven after *Krupski*, Rule 15(c) offers no remedy for this problem. The Rule allows relation back for the mistaken identification of defendants, not for defendants to be named later through 'John Doe,' 'Unknown Defendants' or other missing appellations." *Smith v. Akron*, 476 Fed. Appx. 67, 69 (6th Cir. 2012).

But the district court in *In re Refrigerant Compressors Litigation* nonetheless held that the Sixth Circuit does allow relation back if the newly identified party is "related" to the original party: "[F]ollowing *Krupski*, the Sixth Circuit no longer categorically bars the addition of new parties under Rule 15(c)—at least where the newly-named defendant is related to the original defendant." No. 2:09-md-0242, 2013 WL 1499499, at *6 (E.D. Mich. Apr. 11, 2013).

District courts in the Fifth Circuit differ as to how to apply *Krupski*: "The *Krupski* holding has thrown the district courts into confusion as to relation back under Rule 15." *Evans v. Edwards*, Civil Action No. 14-41, 2015 WL 3454737, at *4 (E.D. La. May 29, 2015). After noting the divergent theories in the district courts, the court in *Evans* applied an equitable tolling principle to permit relation back and avoided the controversy as to the relation back of naming an unknown defendant after discovery had revealed its identity. *Id.*

The Seventh Circuit Court of Appeals views

Krupski as dramatically changing the law of relation back from primarily focusing on the knowledge of the plaintiff to that of the defendant; but it has not addressed the "inadequate knowledge" clause in *Krupski* in the context of unknown or John Doe defendants. *See Joseph v. Elan Motorsports Techs. Racing Corp.*, 638 F.3d 555, 559-60 (7th Cir. 2011). As a consequence, some district courts in the Seventh Circuit have held that the pre-*Krupski* rule applies to John Does, while more recent decisions interpret *Krupski* as **requiring** relation back in cases involving unknown defendants named initially as John Does: "By including 'inadequate knowledge' in its definition of 'mistake,' the Supreme Court indicated that *Krupski's* analysis also applies when Plaintiffs seek to substitute real defendants for John Does." *Haroon v. Talbott*, No. 16-cv-04720, 2017 WL 4280980, *6 (N. D. Ill. Sep. 27, 2017).

The district court in *Haroon* expressly disagreed with the Eighth Circuit's reasoning in *Heglund* as ignoring the "fundamental shift in relation-back analysis from a plaintiff-focused inquiry to a defendant-focused one….Yet not once did the Eighth Circuit question what the prospective defendant in *Heglund* 'knew or should have known' about the plaintiff's claim against him. Instead, the court dismissed that party's knowledge as inconsequential…." *Id.* at *7 (discussing *Heglund,* 2017 WL 3910116, at *5); *see also Ryan v. City of Chicago,* No. 15 C 9762, 2017 WL 3970605, at *2 (N.D. Ill. Sep. 8, 2017) (same). As reasoned by *Haroon* court, the Eighth Circuit in *Heglund* did not consider the question of relation back from the perspective of the defendants' knowledge, which is the touchstone of the justness of repose; and if it had, the result should have been different.

Given the clear split and incongruity in Circuit Courts' interpretation of Rule 15(c) in the context of John Doe litigation, review of this case is appropriate and necessary.

II. THOSE CIRCUITS HOLDING THAT USE OF "DOE DEFENDANTS" AT THE COMMENCEMENT OF SUIT PRECLUDES RELATION BACK BECAUSE THERE IS NO MISTAKE UNDER RULE 15(C) ARE IN TENSION WITH THIS COURT'S DECISION IN *KRUPSKI.*

Not only is review of this case appropriate given the split among Circuit Courts of Appeal interpreting Rule 15(c), but it is also appropriate because the Eighth Circuit and others have ignored and contradicted this Court's 2010 *Krupski* analysis and application of Rule 15(c) in the context of John Doe claims.

In *Krupski,* a woman was injured on a cruise ship but named an incorrect corporate entity in her original complaint. *See Krupski*, 560 U.S. 538 (2010). In its decision, this Court changed the focus of the Rule 15 analysis and confirmed that the reference to "mistake" in Rule 15(c)(1)(C) does not bar relation back for a plaintiff who failed to properly name a defendant because the plaintiff lacked knowledge of that defendant's name. *Instead of starting the analysis with what the plaintiff knew or* *did not know, this Court looked at what the newly-named defendant knew about the lawsuit*:

> We hold that relation back under Rule 15(c)(1)(C) depends on what ***the party to be added*** **knew** or should have known, not on the amending party's knowledge **or** its timeliness in seeking to amend the pleading.

Id. at 541 (emphasis added).

Krupski is the Supreme Court's last word on the meaning of Rule 15(C)(1)(c), and this Court held that the relation back analysis depends on what the party to be added knew or should have known, not what the amending party knew or its timeliness in seeking to amend the pleading. This Court explained that the touchstone of the relation back doctrine is notice, and where there is notice, there is no interest in repose. Moreover, this Court contemplated this exact dilemma arising in Doe litigation and it explained the meaning of the word *"mistake"* included *"inadequate knowledge*." *Id*. at 548.

This change in focus is exactly what the Eighth Circuit neglected to analyze in *Heglund*. Not only did the Eighth Circuit Court of Appeals ignore the shift in focus this Court developed in *Krupski,* it actually took a step backwards. The Eighth Circuit reasoned that naming a Doe defendant was a deliberate choice not to name a party and therefore was not a "mistake" under Rule 15(c). But to the contrary, using a Doe placeholder indicates that a plaintiff, in fact, wishes to name an as-yet unknown or unidentifiable party. And when the name of that defendant is not reasonably known, a Doe placeholder is the only way to accomplish that objective.

The Eighth Circuit's analysis is contrary to *Krupski* and failed to consider that Respondents did not contend they lacked notice or were prejudiced in their defense of the action. In the absence of any claim of lack of notice, Respondents had no interest in repose. The Eighth Circuit also wholly ignored this Court's definition as to what "mistake" should entail, specifically "inadequate knowledge" by the plaintiff. And the Eighth Circuit did not address the resulting disparity in the relation back doctrine for unknown Doe defendants at the time of suit who are later identified, as compared to defendants who were incorrectly identified initially and added later to replace improper defendants in the Complaint. Under the Eighth Circuit's rationale (and other Circuits' in direct contrast to the Third Circuit's), the former group of defendants are effectively subjected to a shorter statute of limitations than the latter categories of defendants—even in the scenario where all such defendants were aware of the claims being pursued by a plaintiff.

As described above, interpretation of Rule 15(c) is all over the board. *Krupski* has not been applied consistently in light of conflicting prior Circuit Court precedent, particularly in the context of John Doe pleadings where the defendant does not claim lack of notice.

For all of these reasons, the Eighth Circuit has interpreted and misapplied relation-back concepts in direct contravention of this Court's important

Krupski decision. The impact of this deviation in John Doe litigation nationally is significant. To avoid further variance and adoption of the *Heglund*-type application of Rule 15(c), it is critical that this Court accept review of this case.

III. THIS CASE IS THE IDEAL VEHICLE FOR REVIEWING THE QUESTION PRESENTED.

This case is the ideal vehicle for reviewing whether plaintiff's inadequate knowledge regarding the identity of a defendant, resulting in a "John Doe" designation, prevents later amendment adding the true identity under Rule 15(c) where the defendant at issue does not contend it lacked notice. The Eighth Circuit considered the question presented. The parties briefed and argued the question presented. The procedural posture of the case does not impact the question presented. And because Respondents did not claim lack of notice, the Court may answer the question presented solely in light of the interplay between the "mistake" and "notice" requirements of Rule 15(c).

Granting this petition for writ of certiorari will allow this Court to address the split in Circuit Courts' interpretation of Rule 15(c) in the context of John Doe litigation. It will allow correction of some Circuit Courts' disregard of this Court's *Krupski* decision. It will provide clear guidance to the numerous district courts who have been analyzing this relation-back issue post-*Krupski* in the same fashion urged by Petitioners here. Accordingly, Petitioners respectfully ask this Court to grant certiorari on this important federal issue.

CONCLUSION

Review of this case will remedy the current inconsistent application of the relation-back rule across the country, which is detrimental to the interests of justice. Petitioners urge the Court to take this opportunity to decide the question presented, to clarify the appropriate legal standard to reduce the uneven application of Rule 15(c) across the Circuit Courts of Appeal, and to ensure *Krupski* is upheld and followed. For all the reasons stated herein, Petitioners respectfully ask this Court to grant certiorari on this important federal issue.

DATED this 4th day of December, 2017.

Respectfully submitted,

SAPIENTIA LAW GROUP, PLLC

Sonia Miller-Van Oort
Jonathan A. Strauss
Lorenz F. Fett
Robin M. Wolpert
120 South Sixth Street
Suite 100
Minneapolis, Minnesota 55402
Phone: (612) 756-7100
Fax: (612) 756-7101
Email: soniamv@sapientialaw.com
jons@sapientialaw.com
larryf@sapientialaw.com
robinw@sapientialaw.com

Attorneys for Petitioners