No. 24-999

IN THE

Supreme Court of the United States

PREMIER NUTRITION CORP.,

Petitioner,

v.

MARY BETH MONTERA, individually and on behalf of all others similarly situated,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether, in resolving the fifteen issues Petitioner raised in its post-jury-verdict appeal, the court of appeals abused its discretion by resolving three questions of state law based on existing state law authorities without first certifying those questions to the New York Court of Appeals.

SUPPLEMENTAL STATEMENT OF RELATED PROCEEDINGS

In addition to the proceedings identified in the Petition, at iv, the following appeals pending before the U.S. Court of Appeals for the Ninth Circuit are related to this case within the meaning of this Court's Rule 14(b)(iii):

Montera v. Premier Nutrition Co., No. 25-1743, appeal filed Mar. 17, 2025.

Montera v. Premier Nutrition Co., No. 25-2133, appeal filed Apr. 02, 2025.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

INTRODUCTION

Absent "exceptional circumstances," it is "the duty of the federal courts, if their jurisdiction is properly invoked, to decide questions of state law whenever necessary to the rendition of a judgment." *Meredith v. City of Winter Haven*, 320 U.S. 228, 234 (1943). Here, the court of appeals carried out this duty in resolving an appeal from a jury verdict that raised fifteen separate issues—only some of which implicated issues of state law. Although Petitioner Premier Nutrition Corporation (Premier) sought certification of a subset of issues to the New York Court of Appeals, the Ninth Circuit found additional guidance unnecessary, instead deciding those issues based on the traditional tools of statutory interpretation and existing New York authorities—including "unequivocal" decisions of the New York high court.

Recognizing that its disagreement with the Ninth Circuit's reading of New York law does not provide a basis for this Court's review, Premier attempts to manufacture an important federal question out of the Ninth Circuit's discretionary refusal to certify three state-law questions to the New York Court of Appeals. Nothing in the Ninth Circuit's decision in this case, however, or in the Ninth Circuit's general approach to certification, warrants this Court's review.

For one, Premier misstates the law of the Ninth Circuit. Contrary to Premier's assertion, the Ninth Circuit has identified particular considerations that guide its exercise of discretion over whether to certify questions to state courts. Indeed, Premier quoted the case law setting out those considerations when it moved for certification below. Of particular note, one of those considerations is federalism, the precise

factor on which Premier focuses—and which it asserts the Ninth Circuit does not consider. Further, Premier's suggestion that the Ninth Circuit is uniquely predisposed against certification is demonstrably wrong.

Moreover, the Ninth Circuit's approach to certification is consistent with that of all the other circuits. Every circuit treats the decision to certify questions to a state high court as a matter of discretion to be exercised on the facts of a specific case. Every circuit looks to similar considerations when deciding whether to certify questions. No circuit requires an analysis of all of those considerations in every case where certification is requested. And, most relevant to this case, every circuit recognizes that certification is appropriate only where the federal court lacks confidence in its ability to discern how the relevant state court would answer the question at issue.

That the Ninth Circuit did not provide a lengthy discussion justifying its decision to decline to certify questions to the New York Court of Appeals as part of its opinion resolving Premier's fifteen-issue appeal does not indicate an issue warranting review. This Court does not grant certiorari to review the ways in which lower court judges draft their opinions. And the decision not to certify the questions at issue was well-supported under the consensus factors—given the unanimous conclusion of the court below that extant sources of New York law provided clear answers to the questions at hand.

As this Court has repeatedly stated, the decision to take advantage of state-law certification procedures is never obligatory and is committed to the sound

discretion of lower court judges. Nothing about this case presents a need to revisit that rule.

STATEMENT OF THE CASE

District court proceedings

Respondent Mary Beth Montera purchased Joint Juice, a product made and marketed by Petitioner Premier, which Premier represented would relieve joint pain. Pet. App. 113a. She later discovered that Joint Juice is a "sham product"; neither of its key ingredients improves joint health, making it "valueless." *Id.* 18a, 117a.

In 2013, Joint Juice customers filed a putative nationwide class action in the District Court for the Northern District of California, where Premier is headquartered, alleging deceptive advertising. *Id.* 3a. After the district court declined to certify a nationwide class, customers filed nine separate class actions, each on behalf of customers in particular states. *Id.* Montera served as the named plaintiff in this case, asserting claims for deceptive acts and practices and false advertising under New York General Business Law (GBL) sections 349 and § 350. *Id.* 2a, 55a. The district court certified classes in each of the nine cases, including a class of New York purchasers of Joint Juice from December 6, 2013, through December 28, 2021, represented by Montera. *Id.* 3a–4a; *see* Judgment, *Montera v. Premier Nutrition Corp.*, No. 16-cv-06980-RS, ECF 294, at 2 (N.D. Cal. Aug. 12, 2022). The district court then chose to try this case first out of the nine. Pet. App. 3a–4a.

At trial, Montera presented evidence that Joint Juice's key ingredients provide no benefits for joint health, that Premier knew as much but nonetheless marketed Joint Juice as conferring joint health

benefits, and that consumers believed Premier's misleading advertisements and purchased Joint Juice based on its purported benefits. *Id.* 5a. In an attempt to rebut the peer-reviewed studies and expert testimony that Montera presented, Premier offered industry-funded studies that it contended support its claim that Joint Juice improves joint health. *Id.* 4a.

In ruling for Montera, the jury found that Premier "engaged in an act or practice that [was] deceptive or misleading in a material way" and that "Montera and the class suffered injury as a result." *Id.* 6a. The jury also found that class members had suffered $1,488,078.49 in actual damages, representing the full amount that they had paid for 166,249 units of Joint Juice. *Id.* 55a.

Under New York's General Business Law section 349, courts are required to award the greater of actual damages or statutory damages of $50. *See* N.Y. GBL § 349(h). And under section 350, courts are required to award the greater of actual damages or statutory damages of $500. *See id.* § 350-e. Because the jury found for Montera under both sections, she asked the district court to award $550 per unit sold to New York customers as statutory damages, totaling $91,436,950. *See* Pet. App. 6a. Premier argued that statutory damages should be assessed per purchaser, as opposed to per unit purchased, and that the requested statutory damages award would violate its due process right. Disagreeing with Premier's first argument and agreeing with its second, in part, the district court reduced damages to $8,312,450. *Id.* 55a–56a. The district court then awarded $4,583,004.90 in prejudgment interest and entered final judgment. *Id.* 56a.

Court of appeals proceedings

After its post-trial motions were denied, Premier appealed to the Ninth Circuit, where it raised fifteen separate arguments, of which five implicated questions of New York law. In a motion filed concurrently with its principal brief on appeal, Premier requested that the Ninth Circuit certify four questions to the New York Court of Appeals: (1) whether, as a matter of law, the plaintiffs' claims failed under GBL § 349 or § 350 because, in Premier's view, its claims regarding the efficacy of Joint Juice were "substantiated"; (2) whether plaintiffs must prove reliance on misleading statements to prevail under § 349 or § 350; (3) whether statutory damages under § 349 and § 350 should be calculated on a per-person or per-transaction basis; and (4) whether prejudgment interest was due on the award of statutory damages. Pet. App. 144a–146a.[1]

The Ninth Circuit did not certify questions to the New York Court of Appeals. On the fifteen issues raised by Premier, the court ruled in favor of Montera on fourteen. *Id.* 7a–37a, 39a–40a. As to the four issues that Premier asked be certified to the New York court,

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[1] Montera cross-appealed, challenging the district court's reduction of statutory damages. Pet. App. 3a. On that issue, the court of appeals vacated and remanded to the district court for application of intervening Ninth Circuit precedent. *Id.* 37a–38a. On remand, the district court again reduced the damages award to $8,312,450. *Montera v. Premier Nutrition Corp.*, No. 16-CV-06980-RS, 2025 WL 751542, at *7 (N.D. Cal. Mar. 10, 2025). Both parties appealed that decision, and those appeals remain pending before the Ninth Circuit. *See Montera v. Premier Nutrition Co.*, 9th Cir. No. 25-1743, appeal filed Mar. 17, 2025; *Montera v. Premier Nutrition Co.*, 9th Cir. No. 25-2133, appeal filed Apr. 2, 2025.

the Ninth Circuit ruled in favor of Montera on three and in favor of Premier on one.

First, the court rejected Premier's argument that, as a matter of New York law, its production of industry-backed studies precluded a finding of materially misleading conduct. *Id.* 9a–13a. Although Premier had asked that this question be certified to the New York Court of Appeals, the Ninth Circuit noted that Premier "cite[d] no authority that supports its contention that 'New York law provides that a claim is not misleading as a matter of law when it is substantiated.'" *Id.* 11a. To the contrary, the Ninth Circuit pointed to New York state and federal court decisions that confirmed that "[w]hether Premier's statements were misleading was a question of fact [to be] decided by the jury at trial." *Id.* 10a (citing *Sims v. First Consumers Nat'l Bank*, 303 A.D.2d 288 (N.Y. App. Div. 2003), and *Duran v. Henkel of Am., Inc.*, 450 F. Supp. 3d 337, 346 (S.D.N.Y. 2020)).

Second, the court rejected Premier's argument that reliance was necessary to establish causation for either a GBL § 349 or § 350 claim, noting that "the [New York] Court of Appeals has *unequivocally* held that reliance is not required to show causation" under those statutes. Pet. App. 20a (emphasis added) (citing *Koch v. Acker, Merrall & Condit Co.*, 967 N.E.2d 675, 676 (N.Y. 2012); *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A.*, 647 N.E.2d 741, 745 (N.Y. 1995); *Fishon v. Peloton Interactive, Inc.*, 620 F. Supp. 3d 80, 100 (S.D.N.Y. 2022); *Stutman v. Chem. Bank*, 731 N.E.2d 608, 613 (N.Y. 2020); and *Tershakovec v. Ford Motor Co.*, 79 F.4th 1299, 1310–11 (11th Cir. 2023) (applying New York law)).

Third, the court held "that statutory damages under §§ 349 and 350 should be calculated on a per-violation basis." Pet. App. 37a. While recognizing that trial courts had addressed the issue inconsistently, *id.* 33a, the court looked to the principles of statutory interpretation endorsed by the New York Court of Appeals—including its holding that the "primary consideration is to discern and give effect to the Legislature's intention." *Id.* 34a (quoting *Avella v. City of N.Y.*, 80 N.E.3d 982, 987 (N.Y. 2017)). Consistent with these principles, the Ninth Circuit examined "[t]he history and purpose of §§ 349 and 350," including legislative history and various New York state court decisions examining that history in interpreting other aspects of those statutes. *Id.* 34a–35a (discussing, among other things, Mem. of Gov. Carey, On Approving L.1980, chs. 345 and 346, 1980 N.Y. Sess. Laws 1867 (June 19, 1980), and N.Y. State Senate Introducer's Mem. in Support for Bill No. S4589). The court also looked at the statutory text and changes to that text over time, *id.* 35a–36a, before concluding that "awarding statutory damages for each violation" was consistent with both "the plainest reading of the text" and "the Legislature's deterrent purpose," *id.* 37a.

On the fourth issue—the availability of pre-judgment interest—the court canvassed the relevant state-law authorities and ruled in favor of Premier. The court therefore directed the district court, on remand, not to award pre-judgment interest. *Id.* 39a–40a.

In concluding its opinion, the court denied Premier's motion for certification, citing this Court's decision in *Lehman Brothers v. Schein*, 416 U.S. 386 (1974), for the proposition "that the decision to certify

'rests in the sound discretion of the federal court.'" Pet. App. 41a n.15.

REASONS FOR DENYING THE WRIT

Inherent in "[o]ur system of 'cooperative judicial federalism'" is a presumption that "federal and state courts alike are competent to apply federal and state law." *McKesson v. Doe*, 592 U.S. 1, 5 (2020). Where a case pending in federal court poses an unsettled question of state law, federal courts may invoke state-court certification procedures to aid them in ascertaining the correct answer. Doing so is never "obligatory," however, but rather "rests in the sound discretion of the federal court." *Id.* (quoting *Lehman Bros.*, 416 U.S. at 391). And in deciding whether to exercise that discretion, the courts of appeals all take the same general factors into account. Considering those factors here shows that the Ninth Circuit did not abuse its discretion in declining to certify state-law questions to the New York Court of Appeals in this case. The petition should be denied.

I. There is no meaningful difference between the courts of appeals' approaches to certification.

A. The petition inaccurately describes Ninth Circuit law and practice.

Premier's contention that "[t]he Ninth Circuit takes a uniquely standardless approach to certification" and fails to account for federalism interests when considering certification, Pet. 31, is both wrong and inconsistent with the position it took below.

The Ninth Circuit recognizes that, while certification is discretionary, the court has "an obligation to consider whether novel state-law

questions should be certified" and must give "careful consideration" to the certification decision. *Kremen v. Cohen*, 325 F.3d 1035, 1038 (9th Cir. 2003) (quotation marks and citation omitted). The court has acknowledged that its discretion is bounded on one end by the standards that each state sets for accepting certified questions. *See High Country Paving, Inc. v. United Fire & Cas. Co.*, 14 F.4th 976, 978 (9th Cir. 2021). And it has identified four factors relevant to its exercise of that bounded discretion: "(1) whether the question presents 'important public policy ramifications' yet unresolved by the state court; (2) whether the issue is new, substantial, and of broad application; (3) the state court's caseload; and (4) 'the spirit of comity and federalism.'" *Id.* (quoting *Kremen*, 325 F.3d at 1037–38). The Ninth Circuit has repeatedly noted and addressed these four factors. *E.g.*, *Glacier Bear Retreat, LLC v. Dusek*, 107 F.4th 1049, 1052 (9th Cir. 2024); *N. River Ins. Co. v. James River Ins. Co.*, 116 F.4th 855, 858 (9th Cir. 2024); *Cassirer v. Thyssen-Bornemisza Collection Found.*, 69 F.4th 554, 557 (9th Cir. 2023); *Murray v. BEJ Mins., LLC*, 924 F.3d 1070, 1072 (9th Cir. 2019) (en banc).

Indeed, although Premier now asserts the Ninth Circuit is "uniquely standardless," its motion for certification relied on and quoted the Ninth Circuit's precedent listing the specific factors—including federalism. *See* Pet. App. 147a (quoting *High Country Paving*, 14 F.4th at 978); *id.* 151a (same).

Further, to the extent that the Petition intimates that the Ninth Circuit is an outlier in declining to certify cases to state high courts, that is incorrect. An empirical analysis—one cited by Premier itself, *see* Pet. 6 n.1—found that, of three circuits studied, the Ninth Circuit was "the most likely to certify a

question[,] … suggest[ing] that its judges find lasting and substantial value in the use of the certification procedure." Jason Cantone & Carly Giffin, *Certified Questions of State Law: An Empirical Examination of Use in Three U.S. Courts of Appeals*, 53 U. Toledo L. Rev. 1, 44 (2021), https://heinonline.org/HOL/LandingPage?handle=hein.journals/utol53&div=5&id=&page=. Since that study, the court has continued to certify questions to state courts—including in at least fifteen cases since 2023. *See Montes v. Sparc Grp., LLC*, No. 23-35496, __ F.4th __, 2025 WL 1352258, at *6 (9th Cir. May 9, 2025); *Glacier Bear Retreat*, 107 F.4th at 1049; *N. River Ins. Co.*, 116 F.4th at 855; *Pitt v. Metro. Tower Life Ins. Co.*, 129 F.4th 583, 588 (9th Cir. 2025); *Johnson v. Torres*, 122 F.4th 1140, 1154 (9th Cir. 2024); *Drammeh v. Uber Techs., Inc.*, 105 F.4th 1138, 1143 (9th Cir. 2024); *Bearden v. City of Ocean Shores*, 103 F.4th 585, 590 (9th Cir. 2024); *Doe v. Uber Techs., Inc.*, 90 F.4th 946, 953 (9th Cir. 2024); *Cruz v. City of Spokane*, 66 F.4th 1193, 1198 (9th Cir. 2023); *New England Country Foods, LLC v. Vanlaw Food Prods., Inc.*, 87 F.4th 1016, 1021 (9th Cir. 2023); *Cassirer*, 69 F.4th at 554; *Nwauzor v. GEO Grp., Inc.*, 62 F.4th 509, 517 (9th Cir. 2023); *French Laundry Partners, LP v. Hartford Fire Ins. Co.*, 58 F.4th 1305, 1307 (9th Cir. 2023); *Or. Clinic, PC v. Fireman's Fund Ins. Co.*, 64 F.4th 1143, 1148 (9th Cir. 2023); *Estate of Wheeler v. Garrison Prop. & Cas. Ins. Co.*, 80 F.4th 1006, 1011 (9th Cir. 2023); *Ward v. Safeco Ins. Co. of Am.*, 58 F.4th 1301, 1304 (9th Cir. 2023). The cases in which it has denied requests for certification appear well within the bounds of discretion. *See, e.g.*, *In re Plum Baby Food Litig.*, No. 24-2766, 2025 WL 1200700, at *2 (9th Cir. Apr. 25, 2025) (declining to certify where California Supreme Court had

"repeatedly declined requests" to address the issue); *Theis v. Aflac, Inc.*, No. 24-3509, 2025 WL 914756, at *1 (9th Cir. Mar. 26, 2025) (declining to certify where Montana Supreme Court had already addressed the issue); *Social Life Network v. LGH Investments, LLC*, No. 22-55774, 2023 WL 3641791, at *2 n.1 (9th Cir. May 25, 2023) (declining to certify to California Supreme Court where statutory text was "sufficiently clear" to resolve issue presented).

B. The courts of appeals agree on the factors relevant to their exercise of discretion.

The factors on which the Ninth Circuit relies to guide its exercise of discretion are substantially the same as those considered by the other courts of appeals. While the courts use different language to describe the relevant considerations, each court generally considers: (1) whether the federal court can identify a clear answer based on existing state law authorities; (2) federalism or comity interests; (3) whether the benefits of certification are worth the additional cost and delay they impose on the parties; and (4) the state court's standard for accepting certified questions.

First, consistent with this Court's recognition that "[n]ovel, unsettled questions of state law … are necessary before federal courts may avail themselves of state certification procedures," *Arizonans for Official Eng. v. Arizona*, 520 U.S. 43, 79 (1997), every circuit looks to whether there is a clear answer to the question under extant sources of state law. *E.g.*, *In re Engage, Inc.*, 544 F.3d 50, 53 (1st Cir. 2008); *Gutierrez v. Smith*, 702 F.3d 103, 116 (2d Cir. 2012); *United States v. Defreitas*, 29 F.4th 135, 141 (3d Cir. 2022);

Neidig v. Valley Health System, 90 F.4th 300, 302 (4th Cir. 2024); *Swindol v. Aurora Flight Scis. Corp.*, 805 F.3d 516, 522 (5th Cir. 2015); *Devereux v. Knox Cnty.*, 15 F.4th 388, 397 (6th Cir. 2021); *State Farm Mutual Auto. Ins. Co. v. Pate*, 275 F.3d 666, 672 (7th Cir. 2001) ; *Johnson v. John Deere Co.*, 935 F.2d 151, 153 (8th Cir. 1991); *High Country Paving*, 14 F.4th at 978; *Pino v. United States*, 507 F.3d 1233, 1236 (10th Cir. 2007); *In re Cassell*, 688 F.3d 1291, 1300 (11th Cir. 2012); *Tidler v. Eli Lilly & Co.*, 851 F.2d 418, 426 (D.C. Cir. 1988); *Toews v. United States*, 376 F.3d 1371, 1380 (Fed. Cir. 2004). Several courts have stated that this factor is the "most important." *See Pate*, 275 F.3d at 672; *Williamson v. Elf Aquitaine, Inc.*, 138 F.3d 546, 549 (5th Cir. 1998); *Johnson*, 935 F.2d at 153; *Tidler*, 851 F.2d at 426.

Second, the circuits all agree that federalism concerns may be relevant in particular cases. *E.g.*, *Real Estate Bar Ass'n for Mass., Inc. v. Nat'l Real Estate Info. Servs.*, 608 F.3d 110, 119 (1st Cir. 2010); *Penguin Grp. (USA) Inc. v. Am. Buddha*, 609 F.3d 30, 42 (2d Cir. 2010); *Zanetich v. Wal-Mart Stores E., Inc.*, 123 F.4th 128, 150 (3d Cir. 2024); *Nat'l Cap. Naturists, Inc. v. Bd. of Sup'rs of Accomack Cnty.*, 878 F.2d 128, 133 (4th Cir. 1989); *Swindol*, 805 F.3d at 522; *Planned Parenthood of Cincinnati Region v. Strickland*, 531 F.3d 406, 408 (6th Cir. 2008); *Pate*, 275 F.3d at 672; *Hatfield v. Bishop Clarkson Mem'l Hosp.*, 701 F.2d 1266, 1267 (8th Cir. 1983); *Yamashita v. LG Chem, Ltd.*, 48 F.4th 993, 1003 (9th Cir. 2022); *Pino*, 507 F.3d at 1236; *NBIS Constr. & Transp. Ins. Servs., Inc. v. Liebherr-Am., Inc.*, 93 F.4th 1304, 1314 (11th Cir. 2024); *K&D LLC v. Trump Old Post Off. LLC*, 951 F.3d 503, 510 (D.C. Cir. 2020). Although some circuits use the term "federalism," *e.g.*, *Pino*, 507

F.3d at 1236, and others discuss the "public importance" of the certified question, *e.g.*, *K&D LLC*, 951 F.3d at 510, both phrases are used to get at the federalism interest in "giving a State's high court the opportunity to answer important questions of state law." *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 777 (2005) (Souter, J., concurring). The difference is entirely semantic.

Third, consistent with this Court's recognition in *McKesson* that "state certification procedures … can prolong the dispute and increase the expenses incurred by the parties," 592 U.S. at 5, the courts of appeals also consider equitable considerations, including the potential costs and delays associated with certification. *E.g.*, *Nat'l Pharmacies, Inc. v. Feliciano-de-Melecio*, 221 F.3d 235, 241 (1st Cir. 2000); *Lehman v. Dow Jones & Co.*, 783 F.2d 285, 294 n.9 (2d Cir. 1986); *Zanetich*, 123 F.4th at 150; *Thompson v. Ciox Health, LLC*, 52 F.4th 171, 173 (4th Cir. 2022); *Swindol*, 805 F.3d at 522; *Warf v. Bd. of Elections of Green Cnty.*, 619 F.3d 553, 558 (6th Cir. 2010); *Pate*, 275 F.3d at 671; *Saunders v. Thies*, 38 F.4th 701, 717 (8th Cir. 2022); *Yamashita*, 48 F.4th at 1004; *Boyd Rosene & Assocs., Inc. v. Kan. Mun. Gas Agency*, 178 F.3d 1363, 1365 (10th Cir. 1999); *Roe v. State of Ala. ex rel. Evans*, 43 F.3d 574, 582 (11th Cir. 1995); *United States v. Old Dominion Boat Club*, 630 F.3d 1039, 1047 (D.C. Cir. 2011); *Toews*, 376 F.3d at 1381.

Finally, the courts of appeals each recognize that their exercise of discretion is bounded by the state's standards for accepting certified questions. A federal court's decision to certify a question does not require any state court to answer that question, and standards for when a state court will answer—or even

consider answering—a certified question vary from state to state. *See* Jason Cantone & Carly Giffin, Fed. Judicial Ctr., *Certified Questions of State Law: An Examination of State and Territorial Authorizing Statutes*, 1 (June 2020), https://www.fjc.gov/sites/default/files/materials/04/Certified%20Questions%20of%20State%20Law-Statutes.pdf. Federal courts therefore consider the particular standards of the relevant state court and the likelihood that the court will accept a question for certification, before certifying a question that the state court is unlikely to answer. *E.g.*, *Real Estate Bar Ass'n for Mass.*, 608 F.3d at 118; *Gutierrez*, 702 F.3d at 116; *Defreitas*, 29 F.4th at 141; *Neidig*, 90 F.4th at 302; *Swindol*, 805 F.3d at 522; *Devereux*, 15 F.4th at 397; *Pate*, 275 F.3d at 672; *Cutchin v. Robertson*, 986 F.3d 1012, 1028 (7th Cir. 2021); *Budler v. Gen. Motors Corp.*, 400 F.3d 618, 621 (8th Cir. 2005); *High Country Paving*, 14 F.4th at 978; *Pino*, 507 F.3d at 1236; *Liebherr-Am., Inc.*, 93 F.4th at 1314 n.12; *Old Dominion Boat Club*, 630 F.3d at 1047; *Toews*, 376 F.3d at 1381.

Notwithstanding the striking consistency among the courts of appeals, Premier suggests there is a "division" in the courts of appeals that it derives from looking at decisions denying certification that address one factor but not others. Pet. 23. Premier misunderstands the case law, however. The opinions do not reflect that courts are considering different factors. Rather, to the extent that the courts of appeals provide an explanation of decisions whether to certify, they typically focus on the "factor [that] most strongly influences [their] decision." *Article 13 LLC v. Ponce De Leon Federal Bank*, 132 F.4th 586, 592 (2d Cir. 2025); *see, e.g.*, *Hosp. San Antonio, Inc. v. Oquendo-Lorenzo*, 47 F.4th 1, 12 (1st Cir. 2022); *Defreitas*, 29 F.4th at

141; *Roe v. Doe*, 28 F.3d 404, 408 (4th Cir. 1994); *Troice v. Greenberg Traurig, LLP*, 921 F.3d 501, 504 (5th Cir. 2019); *United States v. Cervenak*, No. 23-3466, __ F.4th __, 2025 WL 984495, at *9 (6th Cir. Apr. 2, 2025); *Vill. of Bedford Park v. Expedia, Inc.*, 876 F.3d 296, 302 (7th Cir. 2017); *Saunders*, 38 F.4th at 717; *Syngenta Seeds, Inc. v. Cnty. of Kauai*, 842 F.3d 669, 681 (9th Cir. 2016); *Oliveros v. Mitchell*, 449 F.3d 1091, 1093 (10th Cir. 2006); *Redding v. Coloplast Corp*, 104 F.4th 1302, 1313 (11th Cir. 2024); *In re Vitamins Antitrust Litig.*, 183 F. App'x 1, 2 (D.C. Cir. 2006); *ATS Ford Drive Inv., LLC v. United States*, No. 2023-1760, __ F.4th __, 2025 WL 1287371, at *6 (Fed. Cir. May 5, 2025). For this reason, many opinions will not tick through every consideration potentially relevant to a given exercise of discretion to certify or not. *Lindenberg v. Jackson Nat'l Life Ins. Co.*, 919 F.3d 992, 993 (6th Cir. 2019) (Clay, J., concurring in denial of rehear'g en banc) (explaining that courts do not mandate a "mechanical" process of discussing every possible consideration in every case).

Likewise, as in this case, it is common for the court of appeals very briefly to dispose of requests to certify where, as here, the court finds extant law sufficiently clear to provide an answer without certification. *E.g.*, *Bourgeois v. TJX Companies, Inc.*, 129 F.4th 28, 38 n.8 (1st Cir. 2025); *Souza v. Exotic Island Enters., Inc.*, 68 F.4th 99, 122 (2d Cir. 2023); *Jacobs v. Fed. Hous. Fin. Agency*, 908 F.3d 884, 892 (3d Cir. 2018); *Morris v. Police Civ. Serv. Comm'n for the City of Charleston*, 37 F.3d 1494 (Table), 1994 WL 558243, at *1 (4th Cir. 1994); *Yates v. Ortho-McNeil-Janssen Pharms., Inc.*, 808 F.3d 281, 293 n.1 (6th Cir. 2015); *Green v. Leibowitz*, 108 F.4th 530, 536 n.6 (7th Cir. 2024); *Wirtz v. Specialized Loan Servicing, LLC*, 987 F.3d

1156, 1159 n.2 (8th Cir. 2021); *Burgess v. Johnson*, 835 F. App'x 330, 331 (10th Cir. 2020); *KSSR Props., LLC v. Crown Castle Fiber LLC*, No. 22-10146, 2022 WL 2761752, at *2 n.2 (11th Cir. July 15, 2022); *Simon v. Bickell*, No. 10-5313, 2011 WL 1770138, at *1 (D.C. Cir. Apr. 22, 2011).

II. Premier's new test is unneeded and unwise.

The consistency among the courts of appeals reveals that this Court's review is not needed. This is particularly true because, as this Court has repeatedly held, determining whether certification is appropriate in a given case is a classic matter of judicial discretion. *See Lehman Bros.*, 416 U.S. at 391; *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 22 n.7 (2018). "[C]ertification is by no means 'obligatory,'" even in cases where "state law is unsettled." *McKesson,* 592 U.S. at 5 (quoting *Lehman Bros.*, 416 U.S. at 391). And the courts' exercise of discretion is ill-suited to a "rigid mechanical solution." *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183 (1952); *see also Lehman Bros.*, 416 U.S. at 393 (Rehnquist, J., concurring) ("[A] sensible respect for the experience and competence of the various integral parts of the federal judicial system suggests that we go slowly in telling the courts of appeals or the district courts how to go about deciding cases where federal jurisdiction is based on diversity of citizenship, cases which they see and decide far more often than we do.").

The Petition, though, asks this Court to "direct" that lower courts address four factors—factors that differ from those currently applied across the courts of appeals. Pet. 23. Not only do the factors proposed by Premier differ from those used by the circuits, but

they appear to be chosen by Premier to direct the outcome of this specific case. They also exclude consideration of all interests other than the states'. But certification is not a tool for states to police the federal courts' exercise of their Article III authority, consistent with *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938) and the Rules of Decision Act, 28 U.S.C. § 1652. And as the federal courts of appeals have all recognized, as has this Court, *see supra* I.B., the proper exercise of discretion takes into consideration additional factors. For example, the circuits agree that the most important factor is whether federal judges believe that state law is so unclear so as to make certification worthwhile. *See supra* p. 12. Premier, however, would omit this consideration entirely, prompting wholly unnecessary certification by the federal courts in cases in which the law was clear. Premier would also omit equitable factors that may weigh for or against certification in a particular case—including the costs and delay of certification and the prior positions taken by the parties in the litigation. *See Mansky*, 585 U.S. at 22 n.7 (declining to exercise discretion and certify where request came late in proceedings).

Premier's assertion that this Court's intervention is necessary to keep federal courts from "block[ing] states from answering important questions about their own laws" lacks merit. Pet. 23. For one, federal courts, including the Ninth Circuit, *do* certify questions frequently, applying substantially similar factors to guide their discretion. *See supra* pp. 8–16. Moreover, of course, a federal court's interpretation of state law is not binding on state courts. *See Union Pac. R. Co. v. Bd. of Comm'rs of Weld Cnty.*, 247 U.S. 282, 287 (1918); *Moshoures v. City of North*

Myrtle Beach, 131 F.4th 158, 162 (4th Cir. 2025); *Mieco, L.L.C. v. Pioneer Nat. Res. USA, Inc.*, 109 F.4th 710, 720 n.13 (5th Cir. 2024); *Mount Vernon Fire Ins. Co. v. VisionAid, Inc.*, 875 F.3d 716, 728 (1st Cir. 2017).

III. The Ninth Circuit did not abuse its discretion by declining to certify in this case.

Finally, the Ninth Circuit's decision not to certify the state-law questions raised by Premier was not an abuse of discretion. Premier's cursory contrary argument does not establish otherwise.

Premier argues that the Ninth Circuit "erred as a matter of law" by failing to address factors that no rule, statute, or decision of this Court has mandated courts consider. Pet. 35. And while Premier suggests that the court of appeals abused its discretion by not explaining its decision not to certify in detail, this Court has recognized that "the courts of appeals … have wide latitude in their decisions of whether or how to write opinions." *Taylor v. McKeithen*, 407 U.S. 191, 194 n.3 (1972). This Court does not grant review to address the particular way courts of appeals have crafted their opinions. *See Jennings v. Stephens*, 574 U.S. 271, 277 (2015) ("This Court… does not review lower courts' opinions, but their judgments.").

Moreover, the footnote by which the Ninth Circuit resolved Premier's request to certify must be read in context of the opinion as a whole. Read as a whole, the opinion demonstrates the reasonableness of the denial of certification, as measured by the factors previously articulated by the Ninth Circuit and other courts of appeals. For instance, the court plainly found existing New York sources sufficient to answer the questions before it. To start, the Ninth Circuit noted that

Premier had identified "no authority" in support of its theory that the evidence it presented at trial established as a matter of law that its representations were not misleading, and the court cited several New York decisions indicating that the issue was properly left to the jury. Pet. App. 10a–11a. In addition, as to the question of whether reliance was an element of the claims, the court explained that the New York Court of Appeals had "unequivocally" answered that question in prior cases. *Id.* 20a. Last, as to whether statutory damages under New York's GBL § 349 and § 350 are calculated on a per-violation or per-plaintiff basis, the court determined that the statutory text, relevant New York case law, and statutory history left the Ninth Circuit no doubt about the right outcome. Pet. App. 32a–37a. As Justice Gorsuch explained while on the Tenth Circuit, a federal court need not certify a question when it "see[s] a reasonably clear and principled course" and can "follow it." *Pino*, 507 F.3d at 1236.

Premier cannot reasonably contend that not certifying here stymies the development of New York law. That contention rests primarily on its disagreement about the content of New York state law—a matter outside the scope of this Court's concern. *See* Sup. Ct. R. 10(a); *Leavitt v. Jane L.,* 518 U.S. 137, 144 (1996) ("[W]e do not normally grant petitions for certiorari solely to review what purports to be an application of state law."). Moreover, as reflected in the cases cited by the Ninth Circuit, *see* Pet. App. 8a–10a, 13a, 15a–16a, 18a, 20a, 32a, 34a–35a, the state statutes at issue here are regularly interpreted by New York state courts. *E.g.*, *Hobish v. AXA Equitable Life Ins. Co.*, No. 124, __ N.E.3d __, 2025 WL 83783 (N.Y. Jan. 14, 2025); *Singh v. City of*

New York, 217 N.E.3d 1 (N.Y. 2023); *Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Co., Inc.*, 171 N.E.3d 1192 (N.Y. 2021); *Collazo v. Netherland Prop. Assets LLC*, 149 N.E.3d 30 (N.Y. 2020); *Katsorhis v. 718 W. Beech St, LLC*, 234 A.D.3d 744 (N.Y. App. Div. 2025); *Turan v. Union Modular Homes, LLC*, 234 A.D.3d 1063 (N.Y. App. Div. 2025); *Barbetta v. NBCUniversal Media, LLC*, 227 A.D.3d 763 (N.Y. App. Div. 2024). If the New York courts disagree with the decision in this case, they are not bound by it, nor are other federal courts of appeals. And if a New York appellate court reaches a different conclusion, the Ninth Circuit will follow that state-court ruling. *See, e.g.*, *AGK Sierra de Montserrate L.P. v. Comerica Bank*, 109 F.4th 1132, 1136–42 (9th Cir. 2024) (finding Ninth Circuit precedent as to state law was not binding in light of subsequent state-court authority).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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