

In the Supreme Court of the United States

The Hain Celestial Group, Inc., Whole Foods Market, Inc.
Applicants,

v.

Sarah Palmquist, Individually and as Next Friend of E.P., a Minor,
Grant Palmquist,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME TO PETITION FOR A WRIT
OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

To the Honorable Samuel A. Alito, Jr.,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Fifth Circuit

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CORPORATE DISCLOSURE STATEMENT

Applicant The Hain Celestial Group, Inc. has no parent corporation and no other publicly held corporation owns 10% or more of its stock.

Applicant Whole Foods Market, Inc. is a wholly owned indirect subsidiary of Amazon.com, Inc. which is a publicly traded company (AMZN). Amazon.com, Inc. has no parent corporation and no publicly held company owns ten percent or more of its stock.

To the Honorable Samuel A. Alito, Jr., Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Pursuant to Supreme Court Rules 13.5 and 30, counsel for applicants The Hain Celestial Group, Inc. (“Hain”) and Whole Foods Market, Inc. (“Whole Foods”) respectfully request that the time to petition for writ of certiorari in this matter be extended for 30 days to, and including, January 8, 2025.

The Fifth Circuit entered its judgment on May 28, 2024. App.1a. On June 6, 2024 the Court of Appeals extended the time to file a petition for rehearing en banc until June 25, 2024. App.21a. On June 25, 2024, Hain and Whole Foods timely filed petitions for rehearing en banc. On September 9, 2024, the Court of Appeals denied both petitions. App.23a. Without an extension, the time for petitioning for certiorari will expire on December 9, 2024. *See* S. Ct. R. 30.1 (last day of a period excludes Sundays). This Application is filed more than ten days prior to that date.

The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

BACKGROUND

1. This is one of dozens of suits brought by plaintiffs against baby-food manufacturers alleging that their products contained unsafe levels of heavy metals. *See, e.g., In re Baby Food Marketing, Sales Practices & Prods. Liab. Litig.*, — F. Supp. 3d —, MDL No. 3101, 2024 WL 1597351, at *3 (J.P.M.L. Apr. 11, 2024) (centralizing ten such cases). The Palmquists allege that they purchased Applicant Hain’s baby food from Applicant Whole Foods’ stores and that the baby food caused their son’s unusually profound case of Autism Spectrum Disorder. Initially, the Palmquists sued

both Hain and Whole Foods in Texas state court. But Hain removed based on diversity and the district court dismissed Whole Foods as fraudulently joined because Texas law shields retailers from products liability. *See* Tex. Civ. Prac. & Rem. Code Ann. § 82.003(a).

For more than two years, Applicant Hain, a citizen of Delaware and New York, and the Palmquists, citizens of Texas, litigated this suit in federal court. After a two-week jury trial, the district court granted judgment to Hain because the Palmquists presented no evidence that Hain’s products caused any harm. The Fifth Circuit vacated that judgment. App. 19a. It held—by relying on allegations the Palmquists raised in an amended, post-removal complaint—that the district court erred when, over a year before trial, it dismissed non-diverse Whole Foods as fraudulently joined. App. 9a–18a. Notwithstanding that “[o]nce a diversity case has been tried in federal court . . . considerations of finality, efficiency, and economy become overwhelming,” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 75 (1996), the Fifth Circuit concluded that complete diversity did not exist at the time judgment was entered and vacated the judgment. App. 18a–19a. It remanded for Hain to start from scratch in state court. App. 19a.

2. Hain and Whole Foods petitioned for rehearing en banc in the Fifth Circuit—pointing out that the panel’s ruling conflicted with decisions of this Court and of the other circuits. In particular, Hain and Whole Foods argued that the Fifth Circuit erred by considering post-removal allegations in determining whether diversity jurisdiction occurred and erred by vacating the judgment even though the

only parties at the time of trial were completely diverse. The Court of Appeals initially held the mandate and called for a response to the petitions. App.22a. But it ultimately denied both petitions. App.23a.

REASONS FOR GRANTING AN EXTENSION OF TIME

A 30-day extension of time is necessary and appropriate for Hain and Whole Foods to prepare and file any petition for writ of certiorari.

1. This case presents two important and recurring questions of federal law that divide the circuits. Whether, as the panel below held, a plaintiff may amend a complaint post-removal by adding substantive allegations that destroy diversity; and whether, as the panel below held, when a district court erroneously dismisses a non-diverse party and thus denies a motion to remand, all its later actions must be vacated—even a final judgment following a trial on the merits in which the non-diverse party did not participate.

2. Counsel for Hain Mr. Schmidt, Mr. Imbroscio, and Ms. Jones are and have been deeply engaged in preparing for and defending a number of depositions in several other products liability litigations, including *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, MDL No. 3047, and *In re Abbott Laboratories, Preterm Infant Nutrition Products Liability Litigation*, MDL No. 3026, with depositions currently set for November 26, December 12–13, December 17–18, and December 23, 2024. In *In re Roundup Products Liability Litigation*, MDL No. 2741, Mr. Imbroscio also has three appellate briefs currently due in the next 60 days, including *Durnell v. Monsanto Co.*, No. ED112410 (Mo. Ct. App.) (due Nov. 22);

Caranci v. Monsanto Co., No 993 EDA 2024 (Pa. Super. Ct.) (due Dec. 9); and *Martel v. Monsanto Co.*, No. 1259 EDA 2024 (Pa. Super. Ct.) (due Jan. 9).

3. Counsel for Whole Foods Mr. Chambers has been preparing for and defending several depositions in *In re February 11, 2021 Incident on IH 35W*, MDL No. 153-000000-22, in the 153rd Judicial District Court, Tarrant County, Texas, and he has a trial scheduled for December 13, 2024, in *Gerred v. FedEx Ground Package System, Inc.*, No. 352-327055-21, one of cases in the *In re February 11, 2021 Incident* MDL. In addition, Mr. Chambers is preparing for trials in:

- *Muscle Cars of Texas, Inc. v. Brian Lamb*, No. 114495-CV, scheduled for December 19, 2024 in the 239th Judicial District Court of Brazoria County, Texas;
- *Sun Coast Resources Inc. v. Knight Industrial Services Inc.*, No. 2022-48118, scheduled for January 6, 2025 in the 190th Judicial District Court of Harris County, Texas;
- *Quanta Services, Inc. d/b/a Specialty Tank Services, Ltd. v. Knight Industrial Services Inc.*, No. 2023-74545, scheduled for January 27, 2025 in the 215th Judicial District Court of Harris County, Texas.

Mr. Chambers is also preparing for mediation in *J Miles v. Don Bybee Construction, Inc.*, No., 22-10740-431, scheduled for January 22, 2025 in the 431st Judicial District Court, Denton County, Texas. Counsel for Whole Foods Ms. Roberts has been deeply involved in multiple private arbitration matters before the Financial Industry Regulatory Authority and the American Arbitration Association, including

a FINRA mediation scheduled for December 6, 2024, and a two-week FINRA arbitration scheduled for January 27, 2025. Ms. Roberts also has a motion to dismiss hearing scheduled for December 3, 2024 in a putative class action, *Argest Hylar v. Ritter Cable Co., LLC*, No. 24O-CV-24-84 (Ark. Cir. Ct.); and she is engaged in depositions and other discovery in *Nosirrah Management, LLC v. AutoZone, Inc.*, No. 2:24-cv-02167 (W.D. Tenn.). Counsel for Whole Foods Ms. Rychlak has been preparing for a three-week jury trial scheduled for January 6, 2025 in Cause No. 2019-4985, *Choice Foundation v. Law Industries, LLC et. al.* in the Civil District Court, of Orleans Parish, Louisiana.

Given these numerous competing obligations, an extension will permit counsel to thoroughly present these important questions for this Court's consideration.

CONCLUSION

For the foregoing reasons, Hain and Whole Foods' application for a 30-day extension of time in which to petition for certiorari in this matter should be GRANTED to and including January 8, 2025.

November 22, 2024

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Respectfully submitted,



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