

No. 26-

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IN THE  
**Supreme Court of the United States**

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MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT,

*Petitioner,*

*v.*

JOHN HR DOE *et al.*,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
CALIFORNIA SUPREME COURT

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Federal common law governs the claim preclusive effect of federal court judgments. In *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497 (2001), this Court held that, in *diversity* cases, federal common law incorporates the claim preclusion rules of the state where the federal court sits—and thus Federal Rule of Civil Procedure 41(a)(1)(B)’s two-dismissal rule does not bar refiling in state court.

Here, the California Supreme Court extended *Semtek* to federal question cases. It held that plaintiffs who twice voluntarily dismissed a federal question action—asserting federal claims and supplemental state-law claims—could relitigate the state-law claims in state court. While the Tennessee Supreme Court has reached the same conclusion, the Second, Ninth, and Eleventh Circuits disagree. They hold that Rule 41(a)(1)(B) informs the federal common law of res judicata and that a second voluntary dismissal of a federal question action bars relitigation of all claims, including supplemental state-law claims.

The question presented is:

Whether a second voluntary dismissal of a federal question action—which Rule 41(a)(1)(B) declares “operates as an adjudication on the merits”—bars the plaintiff from relitigating supplemental state-law claims in state court under federal common law.

## **PARTIES TO THE PROCEEDING**

Marysville Joint Unified School District, petitioner on review, is a California public school district and was the defendant below. John HR Doe, John JH Doe, John RH Doe, John GL Doe, John JO Doe, Jane CJ Doe, and John RD Doe, respondents on review, were the plaintiffs below.

Other defendants—First Presbyterian Church and William W. Babcock—were named in these cases, but they are not parties to this appeal.

## RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the Superior Court of California, County of Yuba, Superior Court of California, County of Ventura, United States District Court, Eastern District of California, California Court of Appeal, and California Supreme Court:

*Doe v. Marysville Joint Unified School District*, No. CVP020-00213 (Cal. Super. Ct., Cnty. of Yuba), plaintiff's request for dismissal filed on November 12, 2020.

*Doe v. Marysville Joint Unified School District, et al.*, No. CVP020-00543 (Cal. Super. Ct., Cnty. of Yuba), plaintiffs' request for dismissal filed on November 12, 2020.

*Doe v. Marysville Joint Unified School District*, No. 2:20-cv-02290-KJM-DB (E.D. Cal.), plaintiffs' notice of dismissal filed on February 17, 2021.

*Doe v. Marysville Joint Unified School District*, No. 56-2021-00551827-CU-PO-VTA (Cal. Super. Ct., Cnty. of Ventura) order issued July 14, 2021 (transferring action to Cal. Super. Ct., Cnty. of Yuba).

*Doe v. Marysville Joint Unified School District*, No. CVPO21-00697 (Cal. Super. Ct., Cnty. of Yuba), judgment issued November 23, 2022 (dismissing action).

*Doe v. Marysville Joint Unified School District*, No. C095446 (Cal. Ct. App.), opinion issued December 21, 2023 (affirming judgment of dismissal).

*Doe v. Marysville Joint Unified School District*,  
No. S283639 (Cal.), opinion issued July 2, 2026 (reversing  
Court of Appeal judgment).

There are no other proceedings in state or federal trial  
or appellate courts directly related to this case within the  
meaning of Supreme Court Rule 14.1(b)(iii).

## TABLE OF CONTENTS

|                                                                                                                                                                | <i>Page</i> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| QUESTION PRESENTED .....                                                                                                                                       | i           |
| PARTIES TO THE PROCEEDING .....                                                                                                                                | ii          |
| RELATED PROCEEDINGS .....                                                                                                                                      | iii         |
| TABLE OF CONTENTS.....                                                                                                                                         | v           |
| TABLE OF APPENDICES .....                                                                                                                                      | viii        |
| TABLE OF CITED AUTHORITIES .....                                                                                                                               | ix          |
| PETITION FOR WRIT OF CERTIORARI.....                                                                                                                           | 1           |
| OPINIONS BELOW.....                                                                                                                                            | 1           |
| JURISDICTION.....                                                                                                                                              | 1           |
| STATUTORY PROVISIONS INVOLVED.....                                                                                                                             | 1           |
| INTRODUCTION.....                                                                                                                                              | 2           |
| STATEMENT OF THE CASE .....                                                                                                                                    | 5           |
| A. After a prior dismissal, plaintiffs voluntarily<br>dismiss their federal question action<br>including state-law claims .....                                | 5           |
| B. Plaintiffs file this action in state<br>court asserting only state-law claims.<br>The state court dismisses the action<br>under the two-dismissal rule..... | 6           |

*Table of Contents*

|                                                                                                                                                                                                     | <i>Page</i> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| C. The California Court of Appeal affirms the dismissal, but the California Supreme Court reverses.....                                                                                             | 6           |
| REASONS FOR GRANTING THE PETITION.....                                                                                                                                                              | 7           |
| I. <i>Semtek</i> left undecided the claim preclusive effect of a second voluntary dismissal under Rule 41(a)(1)(B) in federal question cases with supplemental state-law claims .....               | 7           |
| A. <i>Semtek</i> recognized that federal common law governs the claim preclusive effect of judgments and dismissals in federal question cases.....                                                  | 7           |
| B. Under Rule 41(a)(1)(B), a second dismissal of an action as of right in federal court constitutes an adjudication on the merits .....                                                             | 8           |
| C. <i>Semtek</i> holds that federal common law incorporates the state rule of claim preclusion in diversity cases and thus Rule 41(a)(1)(B) does not prevent refiling in state court .....          | 9           |
| II. After <i>Semtek</i> , courts have split on the claim preclusive effect of a second voluntary dismissal under Rule 41(a)(1)(B) in federal question cases with supplemental state-law claims..... | 10          |

*Table of Contents*

|                                                                                                                                               | <i>Page</i> |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| A. Federal circuit courts accord claim preclusive effect to a second voluntary dismissal under Rule 41(a)(1)(B) .....                         | 10          |
| B. Unlike federal circuit courts, the California and Tennessee Supreme Courts have denied claim preclusive effect by applying state law ..... | 13          |
| C. Other courts have struggled in trying to apply federal common law .....                                                                    | 15          |
| D. This case is a strong vehicle for resolving this recurring issue, which goes to the essence of the judicial function .....                 | 17          |
| CONCLUSION .....                                                                                                                              | 20          |

**TABLE OF APPENDICES**

|                                                                                                                                            | <i>Page</i> |
|--------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| APPENDIX A — OPINION OF THE SUPREME<br>COURT OF CALIFORNIA, FILED JULY 2,<br>2026.....                                                     | 1a          |
| APPENDIX B — OPINION OF THE COURT<br>OF APPEAL OF CALIFORNIA, THIRD<br>APPELLATE DISTRICT (YUBA), FILED<br>DECEMBER 21, 2023 .....         | 32a         |
| APPENDIX C — ORDER AFTER HEARING<br>OF THE SUPERIOR COURT OF<br>CALIFORNIA, COUNTY OF YUBA, FILED<br>NOVEMBER 5, 2021 .....                | 56a         |
| APPENDIX D — JUDGMENT OF DISMISSAL<br>OF THE SUPERIOR COURT OF THE STATE<br>OF CALIFORNIA, COUNTY OF YUBA,<br>FILED NOVEMBER 23, 2021..... | 60a         |
| APPENDIX E — RELEVANT STATUTORY<br>PROVISIONS .....                                                                                        | 62a         |

## TABLE OF CITED AUTHORITIES

|                                                                                                            | <i>Page</i> |
|------------------------------------------------------------------------------------------------------------|-------------|
| <b>Cases</b>                                                                                               |             |
| <i>ASX Inv. Corp. v. Newton</i> ,<br>183 F.3d 1265 (11th Cir. 1999).....                                   | 9           |
| <i>Blonder-Tongue Lab'ys, Inc. v.</i><br><i>Univ. of Ill. Found.</i> ,<br>402 U.S. 313 (1971).....         | 8, 10       |
| <i>Citibank, N.A. v. Data Lease Fin. Corp.</i> ,<br>904 F.2d 1498 (11th Cir. 1990).....                    | 11          |
| <i>Com. Space Mgmt. Co. v. Boeing Co.</i> ,<br>193 F.3d 1074 (9th Cir. 1999).....                          | 11, 12      |
| <i>Cooper v. Glasser</i> ,<br>419 S.W.3d 924 (Tenn. 2013) .....                                            | 4, 14, 15   |
| <i>Cooter &amp; Gell v. Hartmarx Corp.</i> ,<br>496 U.S. 384 (1990).....                                   | 4, 9, 18    |
| <i>Costantini v. Trans World Airlines</i> ,<br>681 F.2d 1199 (9th Cir. 1982).....                          | 13          |
| <i>Deposit Bank of Frankfort v.</i><br><i>Bd. of Councilmen of Frankfort</i> ,<br>191 U.S. 499 (1903)..... | 7           |
| <i>Engelhardt v. Bell &amp; Howell Co.</i> ,<br>299 F.2d 480 (8th Cir. 1962) .....                         | 9           |

*Cited Authorities*

|                                                                                                                            | <i>Page</i> |
|----------------------------------------------------------------------------------------------------------------------------|-------------|
| <i>Erie R. Co. v. Tompkins</i> ,<br>304 U.S. 64 (1938) . . . . .                                                           | 9, 10       |
| <i>Grable &amp; Sons Metal Prods., Inc. v.</i><br><i>Darue Eng'g &amp; Mfg.</i> ,<br>545 U.S. 308 (2005) . . . . .         | 10          |
| <i>Hanna v. Plumer</i> ,<br>380 U.S. 460 (1965) . . . . .                                                                  | 9           |
| <i>Heck v. Humphrey</i> ,<br>512 U.S. 477 (1994) . . . . .                                                                 | 1, 8        |
| <i>Hill v. AMMC, Inc.</i> ,<br>915 N.W.2d 29 (Neb. 2018) . . . . .                                                         | 16          |
| <i>In re Bridgestone/Firestone, Inc.</i> ,<br><i>Tires Prods. Liab. Litig.</i> ,<br>333 F.3d 763 (7th Cir. 2003) . . . . . | 18          |
| <i>In re Sonus Networks, Inc.</i> ,<br>499 F.3d 47 (1st Cir. 2007) . . . . .                                               | 13          |
| <i>Jian Yang Lin v. Shanghai CityCorp.</i> ,<br>950 F.3d 46 (2d Cir. 2020) . . . . .                                       | 3, 11       |
| <i>Lake at L.V. Invs. Grp., Inc. v.</i><br><i>Pac. Malibu Dev. Corp.</i> ,<br>933 F.2d 724 (9th Cir. 1991) . . . . .       | 12          |

*Cited Authorities*

|                                                                                                                | <i>Page</i>                  |
|----------------------------------------------------------------------------------------------------------------|------------------------------|
| <i>Manning v. S.C. Dep’t of Highway &amp; Pub. Transp.</i> ,<br>914 F.2d 44 (4th Cir. 1990) . . . . .          | 11, 12                       |
| <i>Melamed v. Blue Cross of Cal.</i> ,<br>557 Fed. App’x 659 (9th Cir. 2014) . . . . .                         | 3, 13                        |
| <i>Montana v. United States</i> ,<br>440 U.S. 147 (1979) . . . . .                                             | 18                           |
| <i>Paramount Pictures Corp. v.</i><br><i>Allianz Risk Transfer AG</i> ,<br>96 N.E.3d 737 (N.Y. 2018) . . . . . | 15, 16, 17                   |
| <i>Pedrina v. Chun</i> ,<br>987 F.2d 608 (9th Cir. 1993) . . . . .                                             | 8                            |
| <i>Randall v. Merrill Lynch</i> ,<br>820 F.2d 1317 (D.C. Cir. 1987) . . . . .                                  | 8                            |
| <i>Rose Ct., LLC v. Select Portfolio Servicing, Inc.</i> ,<br>119 F.4th 679 (9th Cir. 2024) . . . . .          | 3, 12, 13                    |
| <i>Sealey v. Branch Banking &amp; Tr. Co.</i> ,<br>693 Fed. App’x 830 (11th Cir. 2017) . . . . .               | 3, 11                        |
| <i>Semtek International Inc. v. Lockheed Martin Corp.</i> ,<br>531 U.S. 497 (2001) . . . . .                   | 1-4, 7-10, 12, 13, 15, 18-20 |
| <i>Smith v. Bayer Corp.</i> ,<br>564 U.S. 299 (2011) . . . . .                                                 | 18                           |

*Cited Authorities*

|                                                                                  | <i>Page</i>             |
|----------------------------------------------------------------------------------|-------------------------|
| <i>Stoll v. Gottlieb</i> ,<br>305 U.S. 165 (1938) . . . . .                      | 1, 8, 19                |
| <i>Sunshine Anthracite Coal Co. v. Adkins</i> ,<br>310 U.S. 381 (1940) . . . . . | 8                       |
| <i>Taylor v. Sturgell</i> ,<br>553 U.S. 880 (2008) . . . . .                     | 2, 7, 8, 10, 12, 15, 18 |

**Statutes and Other Authorities**

|                                    |          |
|------------------------------------|----------|
| 20 U.S.C. § 1681 . . . . .         | 2, 5     |
| 20 U.S.C. § 7926 . . . . .         | 2, 5     |
| 28 U.S.C. § 1257(a) . . . . .      | 1        |
| 28 U.S.C. § 1331 . . . . .         | 1, 8     |
| 28 U.S.C. § 1332 . . . . .         | 2, 8     |
| 28 U.S.C. § 1367 . . . . .         | 2, 16    |
| 28 U.S.C. § 1367(a) . . . . .      | 3, 8, 17 |
| 42 U.S.C. § 1983 . . . . .         | 2, 5     |
| Fed. R. Civ. P. 41(a) . . . . .    | 9        |
| Fed. R. Civ. P. 41(a)(1) . . . . . | 12       |

*Cited Authorities*

|                                                                      | <i>Page</i>          |
|----------------------------------------------------------------------|----------------------|
| Fed. R. Civ. P. 41(a)(1)(A)(i) .....                                 | 5, 8, 9              |
| Fed. R. Civ. P. 41(a)(1)(B) .....                                    | 3, 6-8, 10-14, 17-19 |
| Fed. R. Civ. P. 41(b) .....                                          | 9                    |
| Restatement (Second) of Judgments § 87 cmt. b<br>(A.L.I. 1982) ..... | 18                   |
| Sup. Ct. R. 13.1 .....                                               | 1                    |

## PETITION FOR WRIT OF CERTIORARI

Marysville Joint Unified School District petitions for a writ of certiorari to review the judgment of the California Supreme Court.

## OPINIONS BELOW

The California Supreme Court’s opinion is published at 591 P.3d 854 (Cal. 2026), and is reproduced in the appendix at App. 1–31. The California Court of Appeal’s opinion is published at 316 Cal. Rptr. 3d 382 (Ct. App. 2023), and is reproduced in the appendix at App. 32–55. The order and judgment of the Superior Court of California, County of Yuba, dismissing plaintiffs’ action are reproduced in the appendix at App. 56–59 and 60–61, respectively.

## JURISDICTION

The California Supreme Court issued its opinion on July 2, 2026, and this petition is therefore timely filed. *See* Sup. Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1257(a). The preclusive effect of a dismissal by a federal court is an issue of federal common law. *Semtek*, 531 U.S. at 507–08; *Heck v. Humphrey*, 512 U.S. 477, 488 n.9 (1994). And a contention that a state court disregarded the preclusive effect of a federal court dismissal creates a controversy within this Court’s jurisdiction. *Stoll v. Gottlieb*, 305 U.S. 165, 167 (1938).

## STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1331, addressing federal question jurisdiction, provides: “The district courts shall have

original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

28 U.S.C. § 1332, addressing diversity jurisdiction, is reproduced in the appendix at App. 62–70.

28 U.S.C. § 1367, addressing supplemental jurisdiction, is reproduced in the appendix at App. 71–72.

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, is reproduced in the appendix at App. 73–77.

Title VIII of the No Child Left Behind Act of 2001, 20 U.S.C. § 7926, is reproduced in the appendix at App. 78–80.

42 U.S.C. § 1983 is reproduced in the appendix at App. 81.

## INTRODUCTION

Federal common law governs the claim preclusive effect of all federal judgments. *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008); *Semtek*, 531 U.S. at 507–08. In federal question cases, “federal courts participate in developing ‘uniform federal rule[s]’ of res judicata, which this Court has ultimate authority to determine and declare.” *Taylor*, 553 U.S. at 891 (quoting *Semtek*, 531 U.S. at 508). States cannot give those judgments only the effect they would give their own judgments, but must accord them the effect that this Court requires. *Semtek*, 531 U.S. at 507.

This Court has never addressed what law governs the claim preclusive effect of a judgment disposing of both federal-law claims and supplemental state-law claims—a question that arises with increasing frequency as federal

question actions routinely include state-law claims under 28 U.S.C. § 1367(a). In the absence of guidance from this Court, lower federal courts and state appellate courts have reached irreconcilable results on the question whether a second voluntary dismissal in a federal question action, which Rule 41(a)(1)(B) provides “operates as an adjudication on the merits,” carries claim preclusive effect under federal common law—or is merely a procedural bar on refiling in the same federal court.

The Second, Ninth, and Eleventh Circuits have concluded, after *Semtek*, that Rule 41(a)(1)(B) informs the content of federal common law and that a second voluntary dismissal carries preclusive effect as a matter of res judicata. *Rose Ct., LLC v. Select Portfolio Servicing, Inc.*, 119 F.4th 679, 685–87 (9th Cir. 2024); *Jian Yang Lin v. Shanghai City Corp.*, 950 F.3d 46, 50 (2d Cir. 2020) (per curiam); *Sealey v. Branch Banking & Tr. Co.*, 693 Fed. App’x 830, 833–34 (11th Cir. 2017); *Melamed v. Blue Cross of Cal.*, 557 Fed. App’x 659, 662 (9th Cir. 2014). In *Rose Court*, the Ninth Circuit recognized—even in the diversity context—that Rule 41’s two-dismissal rule implicates federal interests because “it limits a plaintiff’s right to repeatedly dismiss the same claims to the detriment of the defendant and the court’s docket.” 119 F.4th at 687.

The California Supreme Court’s decision here squarely conflicts with these federal authorities. The court held that Rule 41(a)(1)(B) is a mere “procedural rule” that bars refiling only “in the same federal district court”—not the basis for a broader rule of claim preclusion—and that a second voluntary dismissal of a federal question action does not bar a subsequent state court action raising the same claims. App. 3, 9–10, 31. The court acknowledged the

contrary federal circuit court authorities but dismissed them as reflecting a “lack of attention” to the distinction between a procedural rule and a rule of claim preclusion. App. 19–20.

The California Supreme Court is not alone. The Tennessee Supreme Court similarly held that state preclusion law—not federal common law—governed the effect of a second dismissal in a federal question action with supplemental state-law claims. *Cooper v. Glasser*, 419 S.W.3d 924, 929–30 (Tenn. 2013).

The practical consequences of this conflict are severe. Under the California and Tennessee decisions, the federal common law of res judicata is fractured: a second voluntary dismissal bars refiling in federal court but not in state court, even when both sets of claims arose from the same federal question action. This asymmetry creates a perverse incentive for abusive litigation. A plaintiff can twice file and voluntarily dismiss a federal question action, then simply refile state-law claims in state court on a third try—circumventing both the two-dismissal rule and the finality of federal judgments. The result undermines the authority of federal courts to manage their dockets, permits serial harassment of defendants, and subverts the principle that federal common law governs the preclusive effect of federal judgments. *See Semtek*, 531 U.S. at 507–08; *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 394, 396 (1990).

This Court’s review is necessary to resolve the conflict among lower courts on this important and recurring question of federal law and to restore uniformity to the federal common law of claim preclusion.

## STATEMENT OF THE CASE

**A. After a prior dismissal, plaintiffs voluntarily dismiss their federal question action including state-law claims.**

John HR Doe filed a complaint in California state court against the School District, asserting only state-law claims. App. 4. He alleged that, while a student, he was sexually assaulted by a school counselor. App. 3–4. He voluntarily dismissed that complaint. App. 4.

The other Does likewise filed a separate state court complaint against the School District, asserting only state-law claims. App. 4. They alleged that, while students, they were sexually assaulted by the same school counselor. App. 3–4. And they too voluntarily dismissed the complaint. App. 4.

The Does then jointly filed a complaint against the School District in federal court. App. 5. The complaint asserted three federal claims—under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681; Title VIII of the No Child Left Behind Act of 2001, 20 U.S.C. § 7926; and 42 U.S.C. § 1983—as well as the same state-law claims from the prior lawsuits. App. 5.

The Does alleged the district court had original jurisdiction on the basis of the federal-law claims and supplemental jurisdiction over the state-law claims. App. 5. They then voluntarily dismissed their federal complaint under Rule 41(a)(1)(A)(i). App. 5.

**B. Plaintiffs file this action in state court asserting only state-law claims. The state court dismisses the action under the two-dismissal rule.**

After dismissing their federal complaint, the Does filed a new action in California state court against the School District, asserting only state-law claims based on the same operative facts as the prior actions. App. 5–6.

The School District demurred, arguing that the Does’ second voluntary dismissal of their federal complaint triggered Rule 41(a)(1)(B)’s two-dismissal rule and barred further litigation. App. 6.

The Superior Court agreed. It held that the second dismissal under Rule 41(a)(1)(B) constituted an adjudication on the merits that barred further proceedings. App. 56–59. The court sustained the demurrer without leave to amend and entered judgment. App. 56, 61.

**C. The California Court of Appeal affirms the dismissal, but the California Supreme Court reverses.**

The Does appealed from the judgment of dismissal. App. 6. The Court of Appeal affirmed, holding that claim preclusion barred the action “because the federal action was based on federal question jurisdiction, and federal law, which we are bound to follow in this context, deems the second dismissal claim preclusive.” App. 51. One justice dissented. App. 53–55.

The California Supreme Court reversed. App. 31. It held that claim preclusion did not bar the Does’ lawsuit

because Rule 41(a)(1)(B) “is a rule of federal procedure that, when triggered, bars the plaintiff from filing the same claims *in federal court*. It is not a broader rule of claim preclusion and thus does not bar a subsequent action *in state court*.” App. 3 The court acknowledged that state courts must give federal judgments the same effect as would a federal court and that federal courts applying Rule 41(a)(1)(B) bar refiling after a second voluntary dismissal. App. 8. Yet it held that state courts may entertain the same claims despite two prior voluntary dismissals. App. 31.

## REASONS FOR GRANTING THE PETITION

### **I. *Semtek* left undecided the claim preclusive effect of a second voluntary dismissal under Rule 41(a)(1)(B) in federal question cases with supplemental state-law claims.**

#### **A. *Semtek* recognized that federal common law governs the claim preclusive effect of judgments and dismissals in federal question cases.**

Federal common law governs the claim preclusive effect of a district court’s judgment or dismissal. *Taylor*, 553 U.S. at 891; *Semtek*, 531 U.S. at 507–08; *Deposit Bank of Frankfort v. Bd. of Councilmen of Frankfort*, 191 U.S. 499, 515 (1903) (holding that “whether a Federal judgment has been given due force and effect in the state court is a Federal question reviewable by this court”).

This Court has the final say on the effect of federal court judgments. *Semtek*, 531 U.S. at 509. This Court also has the greatest interest in that issue, which implicates

the “power of the Federal courts to protect those who come before them.” *Stoll*, 305 U.S. at 171. Federal law thus controls regardless whether jurisdiction rests on a federal question, diversity of citizenship, or supplemental jurisdiction. *See* 28 U.S.C. §§ 1331, 1332, 1367(a); *Taylor*, 553 U.S. at 891; *Semtek*, 531 U.S. at 507.

In federal question cases, federal courts apply their own rule of res judicata. *Heck*, 512 U.S. at 488 n.9; *Blonder-Tongue Lab’ys, Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 324 n.12 (1971); *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 401–03 (1940). Federal courts develop these rules with an aim of uniformity, participating in the creation of “uniform federal rule[s]” of res judicata that this Court has ultimate authority to define. *Taylor*, 553 U.S. at 891 (quoting *Semtek*, 531 U.S. at 508).

**B. Under Rule 41(a)(1)(B), a second dismissal of an action as of right in federal court constitutes an adjudication on the merits.**

Rule 41(a)(1)(A)(i) permits a plaintiff to dismiss a federal court action without a court order by filing a notice before the defendant files an answer or summary judgment motion. That rule embodies an “absolute right.” *Pedrina v. Chun*, 987 F.2d 608, 610 (9th Cir. 1993). The dismissal is “self-executing” and “takes effect automatically.” *Randall v. Merrill Lynch*, 820 F.2d 1317, 1320 (D.C. Cir. 1987).

But a second dismissal has consequences. If the plaintiff has previously dismissed any federal or state action that is based on or includes the same claim, a second notice “operates as an adjudication on the merits.” Fed. R. Civ. P. 41(a)(1)(B). When the plaintiff invokes Rule

41(a)(1)(A)(i) to dismiss a lawsuit a second time and the lawsuit is based on or includes the same claim as the prior dismissal, “the action must be dismissed with prejudice.” *Cooter & Gell*, 496 U.S. at 394. Known as the “two-dismissal rule,” *ASX Inv. Corp. v. Newton*, 183 F.3d 1265, 1265 (11th Cir. 1999), this limitation protects defendants and courts from repeated unilateral dismissals, *id.* at 1268; *Engelhardt v. Bell & Howell Co.*, 299 F.2d 480, 482 (8th Cir. 1962).

**C. *Semtek* holds that federal common law incorporates the state rule of claim preclusion in diversity cases and thus Rule 41(a)(1)(B) does not prevent refiling in state court.**

For federal court judgments and dismissals in diversity cases, federal common law incorporates the state rule of preclusion, and a second voluntary dismissal does not necessarily have claim preclusive effect. *Semtek*, 531 U.S. at 506, 508.<sup>1</sup> *Semtek* adopted that approach because applying the same state rule whether the dismissal occurred in a state or federal court best serves nationwide uniformity in cases involving state substantive law, consistent with the *Erie* doctrine’s concern with forum-shopping and inequitable outcomes. *Id.* at 508–09 (citing *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)); *Hanna v. Plumer*, 380 U.S. 460, 467–68 (1965).

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1. *Semtek* addressed the claim preclusive effect of an involuntary, rather than a voluntary, dismissal. *Semtek*, 531 U.S. at 501. But the decision applies in both contexts. Both Rule 41(a), addressing voluntary dismissals, and Rule 41(b), addressing involuntary dismissals, use the phrase “adjudication on the merits.” The phrase is read consistently in both subdivisions. *Id.* at 505.

But *Semtek* expressly limited its holding to diversity cases. In such cases, only state substantive law is at issue, so there is “no need for a uniform federal rule.” *Semtek*, 531 U.S. at 508. By contrast, when federal question jurisdiction is involved, the federal court system benefits from the “experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.” *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 312 (2005). These same federal interests explain why federal common law applies a uniform rule to determine the preclusive effect of federal judgments in federal question cases. *Taylor*, 553 U.S. at 891; *Semtek*, 531 U.S. at 507; *Blonder-Tongue*, 402 U.S. at 324 n.12. Indeed, even in diversity cases, federal common law should not incorporate the state rule of decision if state law is “incompatible with federal interests.” *Semtek*, 531 U.S. at 509.

It would be curious indeed if the *Erie* doctrine—designed to prevent forum-shopping and inequitable outcomes—somehow required state courts to *encourage* forum-shopping by making the preclusive effect of federal judgments in federal question cases depend on the law of whatever state the plaintiff selects as the next forum.

**II. After *Semtek*, courts have split on the claim preclusive effect of a second voluntary dismissal under Rule 41(a)(1)(B) in federal question cases with supplemental state-law claims.**

**A. Federal circuit courts accord claim preclusive effect to a second voluntary dismissal under Rule 41(a)(1)(B).**

Multiple federal circuits have recognized that Rule 41(a)(1)(B) informs the federal common law of *res judicata*

and that a second voluntary dismissal carries claim preclusive effect.

In *Jian Yang Lin.*, 950 F.3d at 50, the Second Circuit held that Rule 41(a)(1)(B) barred the plaintiffs from pursuing an action filed after the second voluntary dismissal of their federal question action, in which they had also asserted state-law claims. Plaintiffs sought to avoid the two-dismissal rule by arguing that their different actions had asserted different claims. In rejecting that argument, the court borrowed principles of federal res judicata, observing that courts have “analogized the two-dismissal rule to the doctrine of res judicata.” *Id.* (citing *Com. Space Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1080 (9th Cir. 1999); *Manning v. S.C. Dep’t of Highway & Pub. Transp.*, 914 F.2d 44, 47 (4th Cir. 1990)). Applying those principles, the court held that a “second action is ‘based on or includ[es] the same claim’ for purposes of Rule 41(a)(1)(B) whenever it arises from the same transaction or occurrence as the first action.” *Id.*

The Eleventh Circuit similarly accorded preclusive effect to a Rule 41(a)(1)(B) second voluntary dismissal in a federal question action in which the plaintiff also asserted state-law claims. *Sealey*, 693 Fed. App’x at 833–34. The court explained: “Because this case involves the preclusive effect of a Rule 41(a) dismissal, we apply federal preclusion principles.” *Id.* at 833 (citing *Citibank, N.A. v. Data Lease Fin. Corp.*, 904 F.2d 1498, 1501 (11th Cir. 1990)). The court ruled that applying such preclusive effect was “consistent with the goal of preventing unreasonable abuse of the plaintiff’s unilateral right to dismiss an action.” *Id.* at 834.

The Ninth Circuit’s decision in *Rose Court*, 119 F.4th 679, powerfully illustrates the conflict. There, the court considered the preclusive effect of a second voluntary dismissal under Rule 41(a)(1)(B) in a diversity action. The majority cited prior Ninth Circuit authority recognizing that “the two-dismissal rule is analogous to the res judicata inquiry,” *id.* at 686 (citing *Com. Space Mgmt.*, 193 F.3d at 1080), and quoted the court’s prior reference to “‘Rule 41(a)(1) res judicata,’” *id.* (quoting *Lake at L.V. Invs. Grp., Inc. v. Pac. Malibu Dev. Corp.*, 933 F.2d 724, 728 (9th Cir. 1991)). The majority relied on a Fourth Circuit case for the rule that “[b]ecause a notice of a second dismissal by the plaintiff serves as an ‘adjudication upon the merits,’ the doctrine of res judicata applies.” *Id.* (quoting *Manning*, 914 F.2d at 47).

Critically, the *Rose Court* majority recognized that Rule 41’s two-dismissal rule implicates federal interests because “it limits a plaintiff’s right to repeatedly dismiss the same claims to the detriment of the defendant and the court’s docket.” 119 F.4th at 687. Even in the diversity context—where *Semtek* holds federal common law incorporates state preclusion rules absent a contrary federal interest—the Ninth Circuit held that Rule 41 embodies interests that inform the content of federal common law. *Id.* at 686–87. It follows a fortiori that those federal interests are even more compelling in a federal question action, where uniform federal rules of res judicata apply. *Taylor*, 553 U.S. at 891.

Judge Collins took a different approach in his partial concurrence but still agreed with the majority on the points relevant here. *Rose Court*, 119 F.4th at 689 (Collins, J., concurring in part). He agreed that in applying the two-

dismissal rule the court “should evaluate the relationship between those two previously dismissed actions by reference to the relevant preclusion principles.” *Id.* at 690. However, he would have applied California preclusion principles. *Id.* at 691. Applying those principles, he concurred with the majority that the dismissal constituted an adjudication on the merits with preclusive effect. *Id.* at 693. Judge Collins also agreed with the majority that *Semtek* does not apply when “state law is incompatible with federal interests.” *Id.* at 691 n.2 (quoting *Semetek*, 531 U.S. at 509).

The Ninth Circuit has also borrowed from the res judicata standard in applying the two-dismissal rule in an action in which removal was based on ERISA preemption. *See Melamed*, 557 Fed. App’x at 662 (citing *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201–02 (9th Cir. 1982) (addressing federal res judicata)). And the First Circuit, too, has observed that “Rule 41 and claim preclusion doctrine are often applied interchangeably.” *In re Sonus Networks, Inc.*, 499 F.3d 47, 60 n.6 (1st Cir. 2007).

**B. Unlike federal circuit courts, the California and Tennessee Supreme Courts have denied claim preclusive effect by applying state law.**

The California Supreme Court’s decision in this case squarely conflicts with these federal authorities. The court held that Rule 41(a)(1)(B) is a “procedural rule” that bars refiling only “in the same federal court,” App. 10, and “is not a broader rule of claim preclusion,” App. 3. The court acknowledged “authorities from lower federal courts” treating Rule 41(a)(1)(B) as informing the law of claim preclusion. App. 18–20. But it distinguished those

authorities on the ground that “they all arise in federal court and thus, unlike in the instant state court action, rule 41(a)(1)(B) is operative.” App. 19.

The court went further, dismissing the federal courts’ reasoning as careless: “Of course, where successive actions are filed in the same federal district court, the question of whether rule 41(a)(1)(B) is a procedural rule or a rule of claim preclusion is without much import; either way, a third action will be barred. Thus, to the extent such authorities characterize rule 41(a)(1)(B) as a rule of claim preclusion, their *lack of attention to this detail is unsurprising*.” App. 19–20 (emphasis added).

There is no reason to presume that federal courts are careless when addressing the preclusive effect of federal judgments. These courts do not merely apply Rule 41(a)(1)(B) as an internal procedural bar; they rely on the rule to inform the content of federal common law governing res judicata. The California Supreme Court’s departure from these federal authorities creates a direct conflict on an issue fundamental to federal court authority—the preclusive effect of a federal court judgment in a federal question action.

The California Supreme Court is not alone. The Tennessee Supreme Court similarly held that state claim preclusion law—not federal common law—determined the effect of a second voluntary dismissal of a federal question action. *Cooper*, 419 S.W.3d at 929–30.

Both decisions invite guidance from this Court. The California Supreme Court noted that this Court “has not addressed the question of what law governs the effect of a

judgment disposing of both federal law and supplemental state claims.” App. 9. And the Tennessee Supreme Court acknowledged that “*Semtek* does not, however, definitively state whether federal or state claim-preclusion law governs supplemental state-law claims filed in federal courts.” *Cooper*, 419 S.W.3d at 929. The uncertainty on this question has produced conflicting results across jurisdictions. Only this Court can provide the definitive answer.

**C. Other courts have struggled in trying to apply federal common law.**

The New York Court of Appeals’ fractured decision in *Paramount Pictures Corp. v. Allianz Risk Transfer AG*, 96 N.E.3d 737 (N.Y. 2018), illustrates the difficulty courts face in resolving these issues without guidance from this Court. A plurality held that, under federal common law, a prior federal court judgment barred an unasserted state counterclaim. *Id.* at 748–49 (plurality opinion). The plurality properly refused to extend *Semtek* to a federal question case, *id.* at 741–42, and concluded that the preclusive effect of that judgment was “determined by federal common law,” *id.* at 740 (quoting *Taylor*, 553 U.S. at 891). The plurality reasoned that no other rule would protect the federal courts’ interest in the integrity of their own processes. *Id.* at 742.

Two judges concurred in the result but declined to decide whether or how *Semtek* applied. *Paramount Pictures*, 96 N.E.3d at 749 (Rivera, J., concurring). The concurrence noted this Court has “not conclusively determined which *res judicata* law” applies in “mixed” subject matter jurisdiction cases, *id.* at 749 n.2, such as

those in which the federal court exercises federal question along with supplemental jurisdiction, *id.* at 749 n.1. The concurrence concluded the court “should leave to the United States Supreme Court the problem of determining the state res judicata effect of a federal judgment predicated on ‘mixed’ subject matter jurisdiction.” *Id.* at 749.

The *Paramount Pictures* dissent recognized that federal common law applies differently to a claim based on supplemental jurisdiction than to one based on diversity jurisdiction: “Supplemental jurisdiction requires that the state-law claims be ‘so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution’ (28 U.S.C. § 1367),” whereas a diversity claim “need not have any relationship to the federal claim” and may therefore have a very different claim-preclusive sweep. *Id.* at 755 n.3 (Wilson, J., dissenting).

Other courts have similarly noted the difficulty of resolving these issues absent guidance from this Court. *See, e.g., Hill v. AMMC, Inc.*, 915 N.W.2d 29, 34 (Neb. 2018) (where the court was exercising federal question jurisdiction and supplemental jurisdiction over a state-law claim, noting that the “U.S. Supreme Court has not squarely addressed whether federal preclusion rules or the federal common law (incorporating state preclusion rules) apply in a case such as this”).

These decisions confirm that, absent this Court’s guidance, courts will continue to struggle to identify the governing rule and to reconcile the distinct preclusion principles applicable to federal question, supplemental

jurisdiction, and diversity cases. The fractured decision in *Paramount Pictures* reinforces that the preclusive effect of a second dismissal under Rule 41(a)(1)(B) should be governed by uniform federal common law—not by the varying and inconsistent rules of the fifty states.

**D. This case is a strong vehicle for resolving this recurring issue, which goes to the essence of the judicial function.**

The question presented is not academic. It affects every federal question case in which a plaintiff asserts supplemental state-law claims under 28 U.S.C. § 1367(a) and voluntarily dismisses twice—a common scenario in federal litigation. The California Supreme Court’s decision fractures the federal common law of res judicata by creating an untenable asymmetry: a second voluntary dismissal bars refiling in federal court but not in state court, even though both sets of claims arose from the same federal question action.

This asymmetry creates perverse incentives. Under the rule adopted by the California and Tennessee Supreme Courts, a plaintiff in a federal question action can file suit, voluntarily dismiss, refile, voluntarily dismiss again, and then simply walk into state court to relitigate under state law the same claims—or claims that could have been brought—in the federal action. The two-dismissal rule, which exists precisely to prevent the harassment of defendants through serial litigation, is rendered a dead letter as to any claims that can be repackaged as state-law claims.

This result is inconsistent with the principles of finality that animate both *res judicata* and Rule 41(a)(1)(B). *See Taylor*, 553 U.S. at 892 (explaining that claim preclusion conserves judicial resources and protects against “the expense and vexation attending multiple lawsuits” (quoting *Montana v. United States*, 440 U.S. 147, 153 (1979)); *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 333 F.3d 763, 767 (7th Cir. 2003) (recognizing that *Semtek* does not extend to “state rules that undermine the finality of federal judgments”), *abrogated on other grounds by Smith v. Bayer Corp.*, 564 U.S. 299 (2011).

This Court in *Cooter & Gell*, 496 U.S. at 397, recognized that Rule 41(a)(1)(B) “was intended to eliminate ‘the annoying of a defendant by being summoned into court in successive actions and then, if no settlement is arrived at, requiring him to permit the action to be dismissed and another one commenced at leisure.’” The Court contrasted a first voluntary dismissal—which does not operate “as an adjudication upon the merits” and “thus does *not have a res judicata effect*”—with a second voluntary dismissal, which results in dismissal “*with prejudice*.” *Id.* at 394, 396 (emphases added). The California Supreme Court dismissed *Cooter & Gell* as dicta that “predates *Semtek*, which now demands a contrary conclusion.” App. 17–18. The assumption that this Court has silently overruled its own prior decisions only adds to the confusion and underscores the need for this Court’s clarification.

The claim preclusion rules “define finality and hence go to the essence of the judicial function.” Restatement (Second) of Judgments § 87 cmt. b (A.L.I. 1982). Those rules implicate the ability of federal courts to provide

effective relief to litigants. *Stoll*, 305 U.S. at 171. States thus “cannot give [federal] judgments merely whatever effect they would give their own judgments, but must accord them the effect that this Court prescribes.” *Semtek*, 531 U.S. at 507.

The California Supreme Court’s decision undermines these principles. It permits a state court to disregard the preclusive effect that federal common law assigns to a federal court judgment, simply because the case happens to land in state court on the third attempt. The result is that the authority of federal courts to manage their dockets and to protect defendants from serial litigation is subordinated to the preclusion rules of whatever state the plaintiff selects as the next forum. This Court should grant certiorari to reaffirm that federal common law governs the preclusive effect of federal court judgments and to resolve the uncertainty that the California Supreme Court’s decision has compounded.

This case is an ideal vehicle. The California Supreme Court’s holding rests entirely on its interpretation of Rule 41(a)(1)(B) and the reach of *Semtek*—pure questions of federal law that this Court is uniquely positioned to resolve. The issues do not turn on contested factual disputes. The California Supreme Court itself acknowledged that the “underlying facts are not relevant to the issues on appeal.” App. 3.

The California Supreme Court’s own premises refute its conclusion. The court accepts that federal common law “governs the preclusive effect of all federal judgments,” App. 8, that in federal question cases “the high court will apply a uniform federal rule,” App. 23, and that federal

courts bar refiling after a second voluntary dismissal, App. 8. Yet it holds that state courts may entertain the same claims despite two voluntary dismissals. App. 31. A federal court judgment cannot have one preclusive effect in federal court and a different—lesser—effect in state court. That is precisely the disuniformity that *Semtek* sought to prevent and that only this Court can correct.

### CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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September 29, 2026

## **APPENDIX**

**TABLE OF APPENDICES**

|                                                                                                                                   | <i>Page</i> |
|-----------------------------------------------------------------------------------------------------------------------------------|-------------|
| APPENDIX A — OPINION OF THE SUPREME COURT OF CALIFORNIA, FILED JULY 2, 2026.....                                                  | 1a          |
| APPENDIX B — OPINION OF THE COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT (YUBA), FILED DECEMBER 21, 2023 .....         | 32a         |
| APPENDIX C — ORDER AFTER HEARING OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA, FILED NOVEMBER 5, 2021 .....                | 56a         |
| APPENDIX D — JUDGMENT OF DISMISSAL OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF YUBA, FILED NOVEMBER 23, 2021..... | 60a         |
| APPENDIX E — RELEVANT STATUTORY PROVISIONS .....                                                                                  | 62a         |

1a

**APPENDIX A — OPINION OF THE  
SUPREME COURT OF CALIFORNIA,  
FILED JULY 2, 2026**

IN THE SUPREME COURT OF CALIFORNIA

S283639

JOHN HR DOE *et al.*,

*Plaintiffs and Appellants,*

v.

MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT,

*Defendant and Respondent.*

Third Appellate District  
C095446

Yuba County Superior Court  
CVPO2100697

July 2, 2026

Justice Evans authored the opinion of the Court,  
in which Chief Justice Guerrero and Justices  
Corrigan, Liu, Kruger, Groban, and Baker\* concurred.

Opinion of the Court by Evans, J.

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\* Associate Justice of the Court of Appeal, Second Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

*Appendix A*

Before filing the instant action in state court, John HR Doe, John JH Doe, John RH Doe, John GL Doe, John JO Doe, Jane CJ Doe, and John RD Doe (Does) twice filed and then voluntarily dismissed nearly identical actions against William Babcock and Marysville Joint Unified School District (School District). Does filed and dismissed actions first in state superior court and then in a federal district court. The dismissals were designated without prejudice.

The dismissal in the federal district court was pursuant to rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure (28 U.S.C.).<sup>1</sup> The rule provides a plaintiff may voluntarily dismiss an action without a court order by filing a notice of dismissal. (Rule 41(a)(1)(A)(i).) “Unless the notice ... states otherwise, the dismissal is without prejudice.” (Rule 41(a)(1)(B).) “But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” (*Ibid.*)

After Does again filed nearly identical claims in state superior court, the School District demurred, arguing, among other things, that claim preclusion bars Does’ claims by operation of the so-called two-dismissal rule of rule 41(a)(1)(B). The trial court agreed that claim preclusion bars Does’ claims and sustained the demurrer on this basis without leave to amend. In a split decision, the Court of Appeal affirmed. (*Doe v. Marysville Joint Unified*

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1. Further undesignated rule references are to the Federal Rules of Civil Procedure,

*Appendix A*

*School Dist.* (2023) 98 Cal.App.5th 95, 110 (*Doe*.) The majority reasoned that it was bound to follow rule 41(a)(1)(B) and that this rule rendered the federal dismissal claim preclusive.

We reverse. The School District’s argument—and the holding of the majority of the Court of Appeal—is that rule 41(a)(1)(B) bars Does from bringing the instant action. It does not. Rule 41(a)(1)(B) is a rule of federal procedure that, when triggered, bars the plaintiff from filing the same claims *in federal court*. It is not a broader rule of claim preclusion and thus does not bar a subsequent action *in state court*.

## I. BACKGROUND

The underlying facts are not relevant to the issues on appeal. In brief, Does are former students of Kynoch Elementary School, which operated within the School District. It is alleged that William Babcock, a counselor at the school, sexually assaulted Does. The assaults occurred between 1993 and 2001 at school locations, including in Babcock’s office during counseling sessions. As set forth below, prior to filing the action giving rise to this appeal, Does commenced and then dismissed other actions in state and federal court related to Babcock’s abuse.<sup>2</sup> We

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2. Babcock also served as a counselor at First Presbyterian Church, where he is alleged to have committed further acts of sexual assault against John HR Doe. John HR Doe named First Presbyterian Church as a defendant in these various actions, but the church is not a party to the instant appeal. We limit our subsequent discussion of the prior actions to Babcock and the School District.

*Appendix A*

are called upon to determine the preclusive effect of these prior dismissals.

**A. The Yuba County Actions**

John HR Doe commenced the first action against the School District and Babcock in Yuba County Superior Court in February 2020. The complaint alleged causes of action for various forms of negligence, intentional infliction of emotional distress, assault, sexual battery, sexual harassment, gender violence, breach of fiduciary duty, constructive fraud, and public entity liability for failure to perform a mandatory duty. The School District demurred to the complaint. The court sustained the demurrer with leave to amend as to certain causes of action and without leave to amend as to others. John HR Doe filed a first amended complaint.

Meanwhile, in July 2020, John JH Doe, John RH Doe, John GL Doe, John JO Doe, Jane CJ Doe, and John RD Doe commenced a separate action in Yuba County Superior Court alleging identical causes of action against the School District and Babcock. The School District filed a demurrer. The court sustained the demurrer with leave to amend as to certain causes of action and without leave to amend as to others.

On November 12, 2020, Does filed requests to voluntarily dismiss their respective actions without prejudice. The court entered notices of entry of dismissal on November 24.

*Appendix A***B. The Eastern District of California Action**

On the same day that Does filed requests to voluntarily dismiss their state court actions, they filed a complaint against the School District and Babcock in the United States District Court for the Eastern District of California. The complaint realleged Does' state law causes of action. It also alleged causes of action for violations of title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.); title 42 United States Code section 1983; and title VIII of the No Child Left Behind Act of 2001 (20 U.S.C. § 7926 et seq.). Does invoked the district court's original jurisdiction over their federal law claims (28 U.S.C. § 1331) (i.e., federal question jurisdiction) and supplemental jurisdiction (28 U.S.C. § 1367(a)) over their state law claims.

On January 13, 2021, the School District moved to dismiss the federal action under rule 12(b)(6). The School District argued for dismissal on various grounds, including that the Eleventh Amendment to the United States Constitution barred all but one of Does' claims because the School District is an "arm of the state" entitled to sovereign immunity. The motion to dismiss was noticed for hearing on March 5, 2021. On February 18, 2021, Does filed a notice of voluntary dismissal, thereby dismissing the action pursuant to rule 41(a)(1)(A)(i). The notice dismissed the action "without prejudice."

**C. The Instant Action**

On March 11, 2021, in Ventura County Superior Court, Does commenced the instant action against the School

*Appendix A*

District and Babcock. The complaint alleges state law causes of action for negligence, negligent supervision, negligent hiring and/or retention, assault, sexual battery, and gender violence. By stipulation of the parties, the court subsequently transferred the action to Yuba County.

On September 9, 2021, the School District filed a demurrer to the complaint. The School District argued, among other things, that claim preclusion bars Does' claims because the voluntary dismissal of Does' federal action triggered the two-dismissal rule of rule 41(a)(1)(B). Does countered that the federal dismissal could not be a claim-preclusive judgment because the School District's invocation of sovereign immunity divested the district court of subject matter jurisdiction. The trial court agreed with the School District that claim preclusion bars Does' claims and sustained the demurrer on that basis without leave to amend. The court entered a judgment of dismissal on November 23.

Does appealed, again pressing the argument that dismissal of the federal action could not be a claim-preclusive judgment because the district court lacked subject matter jurisdiction. After initial briefing was completed, Does filed a notice of additional authorities, pointing to a recent decision in *Gray v. La Salle Bank, N.A.* (2023) 95 Cal.App.5th 932 (*Gray*). *Gray* held that, as a rule of federal procedure, rule 41(a)(1)(B) does not operate to bar a subsequent action in state court. (*Gray*, at pp. 955–960.) *Gray* went on to hold that, under circumstances similar to those presented here, the claim-

*Appendix A*

preclusive effect of a second voluntary dismissal in federal court would be governed by the law of the forum state in which a third action had been filed, and, under California law, the voluntary dismissal of the federal action had no claim-preclusive effect upon the subsequent state court action. (*Id.* at pp. 961–966.) At the direction of the Court of Appeal, the parties in this case submitted supplemental letter briefs regarding *Gray*.

In a split decision, the Court of Appeal affirmed. (*Doe, supra*, 98 Cal.App.5th at p. 110.) The majority rejected Does’ argument that the district court lacked subject matter jurisdiction. (*Id.* at pp. 102–103.) As to the issue of claim preclusion, the majority concluded: “Res judicata bars the Doe plaintiffs’ claims in this action because the federal action was based on federal question jurisdiction, and federal law [specifically, rule 41(a)(1)(B)], which we are bound to follow in this context, deems the second dismissal claim preclusive.” (*Id.* at p. 110; see *id.* at p. 109 [state courts “apply the Federal Rules of Civil Procedure” to determine the claim-preclusive effect of a federal voluntary dismissal].) Adopting the reasoning of *Gray*, the dissent would have allowed Does to proceed on their state law claims in this action. The dissent reasoned that, where a federal court exercises supplemental jurisdiction over state law claims, state claim preclusion law governs the preclusive effect of a federal dismissal on a subsequent state court action raising state law claims. (*Id.* at pp. 111–112 (dis. opn. of Mesiwala, J.).)

We granted review.

*Appendix A***II. DISCUSSION**

The judgment presently at issue was entered in federal district court pursuant to rule 41(a)(1)(A)(i). Rule 41 governs the dismissal of federal court actions, including voluntary notices of dismissal without a court order. As occurred here, a plaintiff may voluntarily dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or motion for summary judgment. (Rule 41(a)(1)(A)(i).) “Unless the notice ... states otherwise, the dismissal is without prejudice.” (Rule 41(a)(1)(B).) “But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” (*Ibid.*) This is known as the “two dismissal rule.” (*Commercial Space Management Co., Inc. v. Boeing Co., Inc.* (9th Cir. 1999) 193 F.3d 1074, 1076 (*Commercial Space Management*).) There is no state analog of the two-dismissal rule in California.

Federal common law governs the preclusive effect of all federal judgments. (*Taylor v. Sturgell* (2008) 553 U.S. 880, 891 (*Taylor*); *Semtek Int’l Inc. v. Lockheed Martin Corp.* (2001) 531 U.S. 497, 507–508 (*Semtek*); see *id.* at p. 507 [the United States Supreme Court “has the last word on the claim-preclusive effect of *all* federal judgments”].) In federal-question cases, “federal courts participate in developing ‘uniform federal rule[s]’ of res judicata, which [the high court] has ultimate authority to determine and declare.” (*Taylor*, at p. 891, quoting *Semtek*, at p. 508.) In diversity cases, “federal law incorporates the rules of

*Appendix A*

preclusion applied by the State in which the rendering court sits.” (*Taylor*, at p. 891, fn. 4, citing *Semtek*, at p. 508.) “Since state, rather than federal, substantive law is at issue there is no need for a uniform federal rule.” (*Semtek*, at p. 508.) Indeed, in such cases, “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.” (*Ibid.*; see *id.* at p. 509 [articulating the limitation that federal common law adopts state law so long as state law is not “incompatible with federal interests”].)

The United States Supreme Court has not addressed the question of what law governs the claim-preclusive effect of a judgment disposing of both federal law and supplemental state law claims. That inquiry was the focus of the Court of Appeal. On that issue, the School District agrees with the majority that we should treat the judgment no differently than we would treat a judgment entered in an action arising solely under federal question jurisdiction. Does, on the other hand, argue that, as to state law claims arising under a federal court’s supplemental jurisdiction, we should treat the judgment no differently than we would treat a judgment entered in an action arising under diversity jurisdiction.

As stated above, the majority below held that rule 41(a)(1)(B) bars Does from bringing the instant action. That understanding of rule 41(a)(1)(B) is unsound. We begin our analysis where the Court of Appeal halted its own, i.e., what is the effect of rule 41(a)(1)(B)? On that issue, we agree with Does that *Semtek* succinctly resolves this

*Appendix A*

case. Rule 41(a)(1)(B) is a procedural rule, not a rule of claim preclusion. A dismissal that triggers the procedural bar of rule 41(a)(1)(B) is not, by virtue of the rule itself or the ordinary rules of res judicata, a claim preclusive judgment. Such a dismissal bars a plaintiff from filing the same claims in the same federal court; it does not bar a plaintiff from filing a subsequent action in state court. Accordingly, whether we apply a federal or state claim preclusion rule, dismissal of Does' federal action does not bar the instant action. To understand why that is so, we dissect the high court's decision in *Semtek*, before turning to assess the nature of rule 41(a)(1)(A)(i) dismissals.

***A. Semtek Int'l Inc. v. Lockheed Martin Corp.***

In *Semtek*, the United States Supreme Court considered the claim-preclusive effect of a federal judgment in a diversity action that dismissed state law claims based on the statute of limitations. The dismissal in that case fell within the ambit of rule 41(b), which governs involuntary dismissals, rather than rule 41(a), which governs voluntary dismissals like the one at issue here. Although rules 41(a) and 41(b) concern different types of dismissals, rule 41(b), like rule 41(a), provides that a dismissal under that subdivision “operates as an adjudication on the merits.”<sup>3</sup> The respondent in *Semtek*

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3. Rule 41(b) provides: “If the plaintiff fails to prosecute or to comply with [the Federal Rules of Civil Procedure] or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under

*Appendix A*

had argued that the dismissal in that case was entitled to claim-preclusive effect by virtue of rule 41(b). (*Semtek, supra*, 531 U.S. at p. 501.) The high court observed that “[i]mplicit in this reasoning is the unstated minor premise that all judgments denominated ‘on the merits’ are entitled to claim-preclusive effect.” (*Ibid.*) The court rejected that premise. (*Id.* at pp. 501–506.)

The high court noted that the “original connotation of an ‘on the merits’ adjudication is one that actually ‘pass[es] directly on the substance of [a particular] claim’ before the court.” (*Semtek, supra*, 531 U.S. at pp. 501–502, quoting Rest.2d Judgments (1980) § 19, com. a, p. 161.) That is the “meaning intended” when articulating the basic principle that “a judgment ‘on the merits’ triggers the doctrine of res judicata or claim preclusion.” (*Semtek*, at p. 502, citing *Parklane Hosiery Co. v. Shore* (1979) 439 U.S. 322, 326, fn. 5 [“Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action”]; *Goddard v. Security Title Ins. & Guar. Co.* (1939) 14 Cal.2d 47, 51 [stating similar rule under California law].) Over time, however, the phrase “judgment on the merits” has taken on a different meaning and “come to be applied to some judgments ... that do *not* pass upon the

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Rule 19—operates as an adjudication *on the merits*.” (Rule 41(b), as amended Apr. 30, 2007, eff. Dec. 1, 2007, italics added.) At the time *Semtek* was decided, rule 41 used the language “adjudication *upon the merits*.” (Rule 41(a) & (b), as amended Apr. 30, 1991, eff. Dec. 1, 1991, italics added.) The subsequent amendment was stylistic only. (Rule 41, Advisory Com. Notes, 2007 amendment.) Unless appearing in quoted material, we cite to the current language of the statute.

*Appendix A*

substantive merits of a claim and hence do *not* (in many jurisdictions) entail claim-preclusive effect.” (*Semtek*, at p. 502.)

Having rejected the premise that any judgment denominated “‘on the merits’ is necessarily a judgment entitled to claim-preclusive effect,” the United States Supreme Court turned to consider the proper interpretation of rule 41(b). (*Semtek*, *supra*, 531 U.S. at p. 503.) The high court opined that “the phrase ‘adjudication upon the merits’ does not bear that meaning in Rule 41(b).” (*Ibid.*) The court identified four reasons supporting this conclusion.

First, the high court observed that rule 41(b) “sets forth nothing more than a default rule for determining the import of a dismissal.” (*Semtek*, *supra*, 531 U.S. at p. 503.) That is, “a dismissal is ‘upon the merits,’ with three stated exceptions, unless the court ‘otherwise specifies.’” (*Ibid.*, quoting rule 41(b).) In the court’s view, “[t]his would be a highly peculiar context in which to announce a federally prescribed rule on the complex question of claim preclusion, saying in effect, ‘All federal dismissals (with three specified exceptions) preclude suit elsewhere, unless the court otherwise specifies.’” (*Semtek*, at p. 503.)

Second, apart from the “purely default character of Rule 41(b),” the high court observed that it would be “peculiar to find a rule governing the effect that must be accorded federal judgments by other courts ensconced in rules governing the internal procedures of the rendering court itself.” (*Semtek*, *supra*, 531 U.S. at p. 503.) The

*Appendix A*

court noted that “such a rule would arguably violate the jurisdictional limitation of the Rules Enabling Act [(28 U.S.C. § 2071 et al.)]: that the Rules ‘shall not abridge, enlarge or modify any substantive right,’ 28 U.S.C. § 2072(b).” (*Ibid.*) In *Semtek*, for example, if California law allowed the petitioner to sue on the claim in Maryland even after the California statute of limitations had expired, “the federal court’s extinguishment of that right (through Rule 41(b)’s mandated claim-preclusive effect of its judgment) would seem to violate this limitation.” (*Id.* at pp. 503–504.)

Third, if interpreted as a rule of claim preclusion, rule 41(b) “would in many cases violate the federalism principle of *Erie Railroad Co. v. Tompkins* (1938) 304 U.S. 64, 78–80, by engendering “‘substantial’ variations [in outcomes] between state and federal litigation’ which would ‘[l]ikely ... influence the choice of a forum.’” (*Semtek, supra*, 531 U.S. at p. 504.) In *Semtek*, for instance, the traditional claim-preclusion rule “is that expiration of the applicable statute of limitations merely bars the remedy and does not extinguish the substantive right, so that dismissal on that ground does not have claim-preclusive effect in other jurisdictions with longer, unexpired limitation periods.” (*Ibid.*) Although the dismissal of stale claims in California would not normally bar suit in another state, the fact that state law claims had been removed to and then dismissed by a federal court would, under rule 41(b), transform a statute-of-limitations dismissal into one barring suit everywhere. (*Semtek*, at p. 504.)

Fourth, if rule 41(b) had the meaning suggested by the respondent in *Semtek*, the high court observed that it

*Appendix A*

“would surely have relied upon it in [its] cases recognizing the claim-preclusive effect of federal judgments in federal-question cases.” (*Semtek, supra*, 531 U.S. at p. 504.) “Yet for over half a century since the promulgation of Rule 41(b),” the high court had “not once done so.” (*Id.* at pp. 504–505 [citing cases].) In other words, the court had not understood rule 41(b) to govern the claim-preclusive effect of federal judgments even in federal-question cases. Rather than simply point to rule 41(b) to establish the claim-preclusive effect of such judgments, the court conducts a more complex claim-preclusion analysis applying federal common law.

Upon rejecting the respondent’s interpretation of rule 41(b), the high court identified rule 41(a)—the subdivision at issue in the instant case—as “the key to a more reasonable interpretation of the meaning of ‘operates as an adjudication upon the merits’” for purposes of this rule. (*Semtek, supra*, 531 U.S. at p. 505.) The court observed that, in discussing the effect of a voluntary dismissal, rule 41(a) “makes clear that an ‘adjudication upon the merits’ is the opposite of a ‘dismissal without prejudice.’” (*Semtek*, at p. 505, quoting rule 41(a).) The “primary meaning of ‘dismissal without prejudice’” is a dismissal that does not bar the plaintiff from “returning later, to the same court, with the same underlying claim.” (*Semtek*, at p. 505 [explaining that, while this ordinarily also has the effect of not barring the claim in other courts, the primary meaning “relates to the dismissing court itself”].) Accordingly, as used in rule 41, “‘adjudication on the merits’” means a dismissal *with prejudice*, which has the

*Appendix A*

effect of barring the plaintiff from refiling the same claim *in the same court*. (*Semtek*, at p. 506 [by operation of rule 41(b), the federal dismissal “barred refiling of the same claim in the United States District Court for the Central District of California”].) The high court opined: “That is undoubtedly a necessary condition, but it is not a sufficient one, for claim-preclusive effect in other courts.” (*Ibid.*)

Finally, having concluded that the claim-preclusive effect of the judgment was *not* dictated by rule 41(b), the high court turned to consider what would determine the issue. (*Semtek*, *supra*, 531 U.S. at p. 506.) It is at this point the court held that federal common law governs the claim-preclusive effect of all federal judgments, and then, in turn, that the federal common law may adopt the claim-preclusion rule of the forum state in diversity jurisdiction cases. (*Id.* at p. 508.) Crucially, the court’s ultimate holding—i.e., that the dismissal of the federal action on California statute-of-limitations grounds did not preclude a subsequent action in the Maryland courts—turned on the underlying substantive basis for the dismissal. (*Id.* at p. 509.) In other words, the preclusive effect of the federal judgment was determined, not by operation of rule 41(b), but by applying ordinary rules of claim preclusion to a judgment effectuating the dismissal of time-barred claims. Given that the dismissal was decreed “only because the California statute of limitations so required,” there was “no conceivable federal interest in giving that time bar more effect in other courts than the California courts themselves would impose.” (*Semtek*, at p. 509.)

*Appendix A***B. Rule 41(a)(1)(B) Is a Federal Procedural Rule,  
Not a Rule of Claim Preclusion**

The holding and reasoning in *Semtek* conclusively answers the threshold question posed in this case: Is rule 41(a)(1)(B) a rule of claim preclusion? It is not. Rule 41(a)(1)(B) provides that a second dismissal “operates as an adjudication on the merits.” An “adjudication on the merits,” as used in rule 41(a)(1)(B), is the equivalent of a dismissal with prejudice, meaning it bars the plaintiff from refiling the same claims in the same court. (*Semtek, supra*, 531 U.S. at pp. 505–506.) “That is undoubtedly a necessary condition, but it is not a sufficient one, for claim-preclusive effect in other courts.” (*Id.* at p. 506.) The high court’s reasoning in reaching this conclusion as to rule 41(b) applies as well to rule 41(a)(1)(B).

First, like the high court’s observation regarding rule 41(b) (see *Semtek, supra*, 531 U.S. at p. 503), it would be peculiar indeed to announce a federally prescribed rule on the complex question of claim preclusion within rule 41(a), particularly since a dismissal under this rule may be entered without a court order. Second, the high court’s concern about violating the Rules Enabling Act extends equally to rule 41(a). (See *Semtek*, at p. 503.) Although California law allows Does to sue on their state law claims after twice dismissing similar suits elsewhere without prejudice, allowing the extinguishment of that right through rule 41(a) arguably would exceed the jurisdictional limitation of the Rules Enabling Act. Third, interpreting rule 41(a) as a rule of claim preclusion also would trigger the high court’s concern regarding violation

*Appendix A*

of *Erie*'s federalism principle. (See *Semtek*, at p. 504.) Although a voluntary dismissal without prejudice in state court would not normally bar Does from later refileing their claims *anywhere*, the fact that state law claims were filed in or removed to and then voluntarily dismissed in federal court would, by virtue of rule 41(a)(1)(B), transform that dismissal into one barring suit *everywhere*. Fourth and finally, paralleling the high court's observation that it had not relied on rule 41(b) to determine the preclusive effect of federal judgments in federal-question cases (see *Semtek*, at pp. 504–505), the high court likewise has not invoked rule 41(a) to determine the preclusive effect of federal judgments, even in federal-question cases. The School District points to *Cooter & Gell v. Hartmarx Corp.* (1990) 496 U.S. 384, 396 (*Cooter & Gell*), but the high court in that case did not intimate, let alone hold, that rule 41(a) dictates the claim-preclusive effect of a federal judgment.<sup>4</sup> Moreover, even if *Cooter & Gell* had suggested as much in dicta, it predates *Semtek*, which now demands a contrary

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4. *Cooter & Gell* did not concern the claim-preclusive effect of a judgment, but rather, whether the filing of a notice of voluntary dismissal pursuant to rule 41(a)(1) deprived the court of jurisdiction over the action such that it could not thereafter impose sanctions. (*Cooter & Gell*, *supra*, 496 U.S. at p. 394.) The decision states: “[D]ismissal ... without prejudice’ is a dismissal that does not ‘operat[e] as an adjudication upon the merits,’ Rule 41(a)(1), and thus does not have a res judicata effect.” (*Cooter & Gell*, at p. 396.) The assertion that a dismissal without prejudice *does not have* a res judicata effect cannot itself support the conclusion that a dismissal with prejudice *does have* that effect. A dismissal without prejudice does not even bar refileing of the same claims in the same court, and thus, fails to satisfy a more fundamental prerequisite for claim preclusion. (*Semtek*, *supra*, 531 U.S. at p. 506.)

*Appendix A*

conclusion. As stated above, the high court in *Semtek* held that rule 41(b) is not a rule of claim preclusion and did so, in substantial part, by looking to the meaning of the identical text—i.e., “an adjudication on the merits”—in rule 41(a)(1)(B). *Semtek* thus dictates that neither rule 41(b) nor rule 41(a)(1)(B) is a rule of claim preclusion. We cannot give the language of rule 41(a) a different meaning here than the high court gave it in *Semtek*. (See, e.g., *Project Drilling, LLC v. Ledyia Oil & Gas Exploration & Production, SA* (N.D.Okla., Feb. 11, 2022, No. 21-CV-0427-CVE-CDL) 2022 WL 428172, p. \*6 [reasoning there is “no reason to give the term ‘adjudication on the merits’ different meanings in Rule 41(a) and Rule 41(b)” and *Semtek* clearly holds a voluntary dismissal under rule 41(b) does not automatically have preclusive effect in another federal district court].)<sup>5</sup>

The School District asserts *Cooter & Gell* is not alone in recognizing that a second dismissal subject to rule 41(a)(1)(B) “triggers claim preclusion,” citing authorities from lower federal courts. (See, e.g., *Jian Yang Lin v. Shanghai City Corp* (2d Cir. 2020) 950 F.3d 46, 50 (*Jian Yang Lin*); *Sealey v. Branch Banking & Trust Co.* (11th Cir. 2017) 693 Fed. Appx. 830, 833.) The majority below also cited such authorities. (*Doe, supra*, 98 Cal.App.5th at pp. 104, 106,

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5. *Project Drilling* held a second voluntary dismissal in one district court did not have res judicata effect so as to preclude a subsequent suit in another district court. The parties do not cite additional authorities addressing this question. We express no view on whether a dismissal triggering the two-dismissal rule of rule 41(a)(1)(B) precludes a subsequent suit in a different federal district court by virtue of the procedural rule itself.

*Appendix A*

citing *Engelhardt v. Bell & Howell Co.* (8th Cir. 1962) 299 F.2d 480, 484 (*Engelhardt*); *Jian Ying Lin v. Shanghai City Corp* (S.D.N.Y. 2018) 329 F.R.D. 36; *McGhee v. High Mountain Health LLC* (D.Ariz., Apr. 21, 2020, No. CV-19-08145-PCT-DWL) 2020 U.S.Dist. Lexis 69721; *Melamed v. Blue Cross of California* (9th Cir. 2014) 557 Fed. Appx. 659, 661–662 (*Melamed*.) The cited authorities do not support the School District’s position.

As a threshold matter, they all arise in federal court and thus, unlike in the instant state court action, rule 41(a)(1)(B) is operative. (Cf. *Rose Court, LLC v. Select Portfolio Servicing, Inc.* (9th Cir. 2024) 119 F.4th 679, 685 (*Rose Court*) [two-dismissal rule comes into operation only when a third action is filed in federal court].) The only published circuit court authority post-*Semtek* did not hold that rule 41(a)(1)(B) is a rule of claim preclusion; rather, it “analogized the two-dismissal rule to the doctrine of res judicata” to decide whether a subsequent federal action involved the same claims. (*Jian Yang Lin, supra*, 950 F.3d at p. 50; see also *Melamed, supra*, 557 Fed. Appx. at p. 662 [borrowing element from res judicata standard to determine whether a subsequent action involved the same claims for purposes of the procedural bar of rule 41(a)(1)(B)].) Moreover, none of the above authorities cite *Semtek*, and none present the question of whether rule 41(a)(1)(B) has preclusive effect *in a different court*, let alone a state court. The only case to involve suit in a different district court presented the question of whether the two actions raised the same claims. (*Jian Yang Lin, supra*, 950 F.3d at p. 50.) Of course, where successive actions are filed in the same federal district court, the question of whether rule

*Appendix A*

41(a)(1)(B) is a procedural rule or a rule of claim preclusion is without much import; either way, a third action will be barred. Thus, to the extent such authorities characterize rule 41(a)(1)(B) as a rule of claim preclusion, their lack of attention to this detail is unsurprising. Finally, decisions predating *Semtek* (see *Engelhardt, supra*, 299 F.2d at p. 484 [reasoning that, by the express terms of rule 41(a)(1), a second voluntary dismissal operates as an adjudication on the merits and thus “the doctrine of res judicata is applicable”]), are no longer good law. (See *Semtek, supra*, 531 U.S. at p. 506.)

The majority below acknowledged that, in *Semtek*, the high court “held that “ad judication upon the merits” in rule 41(b) means that refiling is barred only in the same federal district court.” (*Doe, supra*, 98 Cal.App.5th at p. 108, citing *Semtek, supra*, 531 U.S. at p. 506.) The majority posited, however, that this holding was “dependent” on the high court’s conclusion that, “in a diversity jurisdiction case, state law controls whether the prior dismissal in federal court is claim preclusive.” (*Doe*, at p. 108, citing *Semtek*, at pp. 506–507.) The School District makes a similar argument. We read *Semtek* differently.

As discussed above, before holding that federal common law governs the claim-preclusive effect of all federal judgments, the high court in *Semtek* held, categorically, that rule 41(b) does not govern the claim-preclusive effect of a federal judgment of dismissal. (*Semtek, supra*, 531 U.S. at p. 506.) That holding—and its underlying interpretation of rule 41(b)—does not depend on the source of the federal court’s subject

*Appendix A*

matter jurisdiction. Indeed, it would be highly unusual for the interpretation of a federal rule to depend on such a thing. The high court arrived at its holding regarding rule 41(b) without reference to the existence of diversity jurisdiction. It also expressly rejected the respondent's interpretation of rule 41(b) by noting that it is not the interpretation given in *federal-question* cases. (*Semtek*, at pp. 504–505; see also *id.* at p. 507 [noting that “no federal textual provision addresses the claim-preclusive effect of a federal-court judgment in a federal-question case”].) The other rationales the high court identified to support its interpretation likewise apply to both diversity and federal-question cases. (See *id.* at pp. 503–504.)

Ultimately, the high court presented its holding regarding rule 41(b) in clear terms. The court explained, “it is no longer true that a judgment ‘on the merits’ is necessarily a judgment entitled to claim-preclusive effect,” and then declared that “the phrase ‘adjudication upon the merits’ *does not bear that meaning in Rule 41(b).*” (*Semtek*, *supra*, 531 U.S. at p. 503, italics added.) The court observed the peculiarity that would result from reading rule 41(b) as “a federally prescribed rule on the complex question of claim preclusion” (*Semtek*, at p. 503), before stating explicitly that it was *not* interpreting rule 41(b) as such a rule (*Semtek*, at p. 506, fn. 2; see also *id.* at p. 504, fn. 1.) The import of this is unmistakable: Rules 41(b) and 41(a)(1)(B) are not rules of claim preclusion. (See *Hardy v. America's Best Home Loans* (2014) 232 Cal.App.4th 795, 804 [“rule 41(b) is not a claim-preclusion rule; it applies only to the district court's internal procedures”]; accord, *Gray*, *supra*, 95 Cal.App.5th at p. 958 [same as to rule 41(a)

*Appendix A*

(1)(B)]; see also *Rose Court*, *supra*, 119 F.4th at pp. 687, 685 [rule 41(a)(1)(B) is a “*federal* procedural rule” that is analogous to, but distinct from, a rule of res judicata; the two-dismissal rule comes into operation only when “the plaintiff seeks to raise the twice-dismissed claim again in federal court”].) Indeed, the language of rule 41(a)(1)(B) seems to acknowledge its limited reach. The rule does not provide that a second dismissal *is* an adjudication on the merits; it provides that a second dismissal “*operates as an adjudication on the merits.*” (Rule 41(a)(1)(B), italics added.) A dismissal may only operate as such, however, where rule 41(a)(1)(B) has effect, i.e., in the federal courts.

The majority’s misreading of *Semtek* permeates the remainder of its reasoning below. It held that “*Semtek* expressly differentiated between diversity cases and federal question cases, explaining that the United States Supreme Court has ‘long held that States cannot give [federal question] judgments merely whatever effect they would give their own judgments, but must accord them the effect that [the high court] prescribes.’” (*Doe, supra*, 98 Cal.App.5th at p. 108, quoting *Semtek, supra*, 531 U.S. at p. 507.) The majority is correct that *Semtek* differentiates between diversity and federal-question cases, but as explained above, it does so only in the portion of its opinion deciding whether the federal common law would apply a uniform federal rule (notably, *not* rule 41(b), which is *not* a rule of claim preclusion) or adopt a state rule. (See *Semtek*, at p. 508.) The high court did *not* differentiate between diversity and federal-question cases regarding the proper interpretation of rule 41(b).

*Appendix A*

Nor, as the majority below implies (*Doe, supra*, 98 Cal. App.5th at p. 108), did the high court differentiate between diversity and federal question cases regarding the effect that state courts must accord federal judgments. In all cases, state courts must accord federal judgments the effect that the United States Supreme Court prescribes. (*Semtek, supra*, 531 U.S. at pp. 507–508.) The sole distinction between federal question and diversity cases is that, as to the former, the high court will apply a uniform federal rule, and as to the latter, the high court may elect to adopt variable state rules. (*Id.* at p. 508.) Accordingly, contrary to the majority’s conclusion below, *Semtek* did not hold that rule 41(b) applies to prevent refiling in the same court *in diversity cases only*; nor did it hold, expressly or impliedly, that the same “does not apply to cases involving jurisdiction based on a federal question.” (*Doe*, at p. 108.)

The School District attempts a further refinement of the reasoning advanced by the majority below. The School District first asserts that, “[i]n nondiversity, federal question cases, “the federal courts will apply their own rule of res judicata.”“ That may be so; however, rule 41(a)(1)(B) is not such a rule. This crucial detail undermines the School District’s subsequent assertion that, under federal law, a second voluntary dismissal in federal court constitutes an adjudication on the merits, a proposition for which they cite rule 41(a)(1)(B). A voluntary dismissal under rule 41(a)(1)(A)(i) is not “on the merits” *for purposes of the res judicata inquiry*. (*Semtek*, at p. 503.) The fact that rule 41(a)(1)(B) refers to such a dismissal as an “adjudication on the merits” is thus not determinative for our purposes. As the high court explained, the import

*Appendix A*

of rule 41(a)(1)(B) is that a second dismissal bars the plaintiff from filing the same claims in the same court. (*Semtek*, at p. 506.) That does not preclude the plaintiff from filing their claims in a different court. (*Ibid.*)

Accordingly, the majority’s holding below that the applicable rule of claim preclusion here is rule 41(a)(1)(B) itself was in error. Having determined that the federal dismissal does not have claim-preclusive effect by virtue of rule 41(a)(1)(B), we turn to consider whether it has that effect for some other reason.

**C. Does’ Federal Dismissal Does Not Have Claim-preclusive Effect**

As stated above, Does voluntarily dismissed their federal action “without prejudice” pursuant to rule 41(a)(1)(A)(i). Because *Semtek* involved a dismissal implicating rule 41(b), it did not speak at length as to the nature of a rule 41(a)(1) dismissal. For that, we turn to other federal authorities.

As stated above, the federal rules provide that, before the opposing party serves either an answer or a motion for summary judgment, a plaintiff may voluntarily dismiss an action without a court order by filing a notice of dismissal. (Rule 41(a)(1)(A)(i).) Federal courts have recognized that a plaintiff has an “absolute right” to voluntarily dismiss their action in accordance with Rule 41(a)(1). (*Commercial Space Management, supra*, 193 F.3d at pp. 1077–1078, quoting *Wilson v. City of San Jose* (9th Cir. 1997) 111 F.3d 688, 692.) “Voluntary dismissals do not

*Appendix A*

have ‘grounds’ decided by a court.” (*Spencer v. Barajas* (9th Cir. 2025) 140 F.4th 1061, 1067 (*Spencer*)[holding voluntary dismissals under rule 41(a)(1) do not constitute “strikes” under the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915(g), because there are no grounds upon which such dismissals are based].) They occur, “by definition, ‘Without a Court Order.’” (*Spencer*, at p. 1067, quoting rule 41(a)(1)(A).) Indeed, such dismissals leave “no role for the court to play.” (*American Soccer Co., Inc. v. Score First Enterprises* (9th Cir. 1999) 187 F.3d 1108, 1110.) Voluntary dismissals are “effective without any court action.” (*Waetzig v. Halliburton Energy Services, Inc.* (2025) 604 U.S. 305, 308; see also *American Soccer*, at p. 1110 [a voluntary dismissal “is effective on filing and no court order is required”].) The filing of the notice of dismissal automatically terminates the case. (*Spencer*, at p. 1067, citing *Wilson*, at p. 692.)

Considering the nature of the voluntary dismissal under rule 41(a)(1)(A)(i) in this case, we conclude it was not claim preclusive as a matter of res judicata. Such a dismissal may “operate” as an adjudication on the merits in the federal courts where rule 41(a)(1)(B) applies, but it does not preclude the refiling of state law claims in state court, under settled principles of res judicata, because it does not pass “‘directly on the substance of [a particular] claim’ before the court.” (*Semtek, supra*, 531 U.S. at pp. 501–502.) Accordingly, while the voluntary dismissal of Does’ federal action may bar the refiling of their claims in federal court by operation of rule 41(a)(1)(B), it does not bar the filing of the instant action raising state law claims in state court.

*Appendix A*

Both the California and federal rules of claim preclusion point to this conclusion. Although the standards differ in certain respects, they both require a final judgment on the merits. (*Taylor, supra*, 553 U.S. at p. 892; *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) In California, a voluntary dismissal without prejudice is not a judgment on the merits, and therefore, has no claim-preclusive effect upon a later suit. (*Gray, supra*, 95 Cal.App.5th at p. 950, citing *Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 784.) “This follows the Restatement, which explains that a judgment in favor of the defendant will not bar a later action by the plaintiff on the same claim, when the prior judgment is based upon the plaintiff’s agreement or election to ‘a nonsuit (or voluntary dismissal) without prejudice ... .’” (*Gray*, at p. 950, quoting Rest.2d Judgments (1980) § 20, subd. (1)(b).) The same is true in the federal courts. “Neither res judicata nor collateral estoppel is traditionally applicable to a voluntary dismissal.” (*In re Piper Aircraft Distribution System Antitrust Litigation* (8th Cir. 1977) 551 F.2d 213, 219; see also *Harvey Specialty & Supply, Inc. v. Anson Flowline Equipment Inc.* (5th Cir. 2005) 434 F.3d 320, 324 [“a Rule 41(a)(1) dismissal is not a ‘final judgment’”]; *Kamal v. Eden Creamery, LLC* (9th Cir. 2023) 88 F.4th 1268, 1285 [noting this is the “nature” of a voluntary dismissal].) Indeed, the high court in *Semtek* observed that a voluntary dismissal ordinarily does not bar the plaintiff from returning even to the same court with the same underlying claim. (*Semtek, supra*, 531 U.S. at p. 505.)

The School District’s remaining attempts to argue around the conclusion that Does’ federal dismissal does

*Appendix A*

not have claim-preclusive effect are to no avail. Whereas the majority below reasoned simply that rule 41(a)(1)(B) has a different meaning in federal question cases—reasoning we reject—the School District contends that it is not rule 41(a)(1)(B) “alone” that gives preclusive effect to Does’ dismissal of the federal action. The School District cannot prevail on this argument, however, because it fails to identify any other basis for giving Does’ voluntary dismissal claim-preclusive effect. The School District asserts that some dismissals that do constitute adjudications on the merits by virtue of rule 41 nonetheless *can* constitute adjudications on the merits for purposes of the res judicata inquiry under federal common law. True enough. But the fact that some adjudications implicating rule 41 *can* constitute a claim-preclusive judgment under the federal common law is insufficient to demonstrate that the voluntary dismissal here under rule 41(a)(1)(A)(i) *does* constitute such a claim-preclusive judgment.

As an extension of this argument, the School District suggests that rule 41, though not alone sufficient, still “informs” the federal common law claim preclusion analysis. We do not necessarily quarrel with this notion but find it inapplicable here. The School District points to *Plaut v. Spendthrift Farm, Inc.* (1995) 514 U.S. 211, 228, which held that “[t]he rules of finality, both statutory and judge made, treat a dismissal on statute-of-limitations grounds ... as a judgment on the merits.” In so holding, *Plaut* cited both rule 41(b) and decisional authority. (*Plaut*, at p. 228.) This is neither surprising nor particularly informative in this case. The high court acknowledged in *Semtek* that a dismissal with prejudice is a necessary, though not sufficient, condition for claim preclusion.

*Appendix A*

(*Semtek, supra*, 531 U.S. at p. 506.) It is therefore logical that the high court would cite rule 41(b), which satisfies this precondition, in a claim preclusion analysis. Rule 41(a)(1)(B) likewise satisfies this requisite precondition, i.e., it is an adjudication that bars the filing of the same claim in the same federal court. However, the School District still fails to identify any authority supplying the missing additional piece that would afford Does' voluntary dismissal claim-preclusive effect in state courts.

The School District's lack of authority to support its position became clear at oral argument. On questioning, the School District acknowledged that rule 41(a)(1)(B) is a "but for" element of its primary argument, asserting that the rule itself can "supply" the element of a final judgment for claim preclusion purposes. As stated above, we find that argument unpersuasive. The School District then acknowledged that, should we find rule 41(a)(1)(B) insufficient, we would look to federal common law. Crucially, however, the School District conceded that, absent rule 41(a)(1)(B), a voluntary dismissal without prejudice is *not* an adjudication on the merits for purposes of claim preclusion. Upon further questioning, the School District suggested that, although such a dismissal ordinarily does not constitute an adjudication on the merits, "repeated" dismissals transform into a final judgment. No authority supports this rule, however, which simply recasts the procedural bar of rule 41(a)(1)(B) as a rule of federal common law. Of course the federal courts are free to adopt such a rule, but they have not done so. Consequently, because the outcome here is the same under either the federal or state rule of claim preclusion, we need

*Appendix A*

not decide which rule applies to state law claims brought pursuant to a federal court's supplemental jurisdiction.

Even if we were to assume that the federal dismissal has some preclusive effect under federal law, a question we need not decide here, we do not think it would be so broad as to preclude the refiling of state law claims in state court. The two-dismissal rule implicates federal interests insofar as it limits a plaintiff's ability to repeatedly bring and dismiss the same claims in federal court to the detriment of the defendant and the court's docket. (See *Rose Court, supra*, 119 F.4th at p. 687.) But there is "no conceivable federal interest" (*Semtek, supra*, 531 U.S. at p. 509) in the application of a federal procedural rule to state law claims raised in state courts.<sup>6</sup> Federal rules of claim preclusion regarding supplemental state law claims lend further support to this view. Where a district court disposes of all federal question claims, its discretionary refusal to exercise supplemental jurisdiction over state law claims (i.e., the dismissal of those claims without prejudice) does not preclude a subsequent action on those

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6. The School District contends that there is a federal interest in uniformity and in avoiding situations in which litigants voluntarily dismiss their complaints and thereby avoid conditions that federal district courts might otherwise impose. Whatever force this contention might have in other contexts, we see little federal interest in precluding plaintiffs from pursuing state law claims in state court. Other courts that address this issue similarly hold that the federal interest in the two-dismissal rule is not strong enough to bar purely state law claims in state court that were previously in federal court solely by virtue of the court's supplemental jurisdiction. (See *Herington v. City of Wichita* (2021) 314 Kan. 447, 456 [500 P.3d 1168]; *Cooper v. Glasser* (Tenn. 2013) 419 S.W.3d 924, 930.)

*Appendix A*

claims in state court. (See 18A Wright et al., Federal Practice and Procedure (Apr. 2026 supp.) Jurisdiction and Related Matters, § 4436; *Audette v. International Longshoremen’s & Warehousemen’s Union, Local 24* (9th Cir. 1999) 195 F.3d 1107, 1111, fn. 1.) Thus, accepting for the sake of argument that Does’ dismissal constituted a final adjudication of their federal law claims for purposes of claim preclusion, there is no basis to extend finality to their state law claims. Indeed, had Does amended their complaint to remove the federal claims (rather than dismiss the complaint in its entirety without prejudice) the district court would have had no choice but to remand the state law claims to state court. (*Royal Canin U.S.A., Inc. v. Wullschleger* (2025) 604 U.S. 22, 34.)

In sum, we agree that some dismissals denominated “on the merits” by rule 41 enjoy claim-preclusive effect. But that does not mean all such dismissals have that effect. And where they do, it is not by virtue of rule 41, but according to the federal common law rules of claim preclusion. As discussed above, the rule 41(a)(1)(A)(i) dismissal here does not bar refiling of plaintiffs’ state law claims in state court. Rule 41(a)(1)(B) does not itself create a judgment on the merits, and the dismissal here is not otherwise claim preclusive. Accordingly, whether applying a federal or state rule of claim preclusion, Does’ voluntary dismissal of their federal action does not serve to bar the filing of the instant action raising state law claims in state court.<sup>7</sup>

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7. Does alternatively argue that the School District’s assertion of sovereign immunity in the federal court action stripped the district court of subject matter jurisdiction over their state law

*Appendix A***III. DISPOSITION**

We hold that a second voluntary dismissal subject to the two-dismissal rule of rule 41(a)(1)(B) does not preclude a subsequent suit on the same state law claims in state court. Accordingly, we reverse the judgment of the Court of Appeal and remand for further proceedings consistent with this opinion.

**EVANS, J.**

**We Concur:**

**GUERRERO, C. J.**

**CORRIGAN, J.**

**LIU, J.**

**KRUGER, J.**

**GROBAN, J.**

**BAKER, J.\***

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claims, thereby precluding the district court from entering a claim preclusive judgment as to the same. Given our holding that the federal dismissal does not preclude this subsequent state court action, we decline to consider the effect, if any, of the School District's assertion of sovereign immunity.

\* Associate Justice of the Court of Appeal, Second Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**APPENDIX B — OPINION OF THE COURT OF  
APPEAL OF CALIFORNIA, THIRD APPELLATE  
DISTRICT (YUBA), FILED DECEMBER 21, 2023**

IN THE COURT OF APPEAL OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Yuba)

C095446  
(Super. Ct. No. CVPO2100697)

JOHN HR DOE *et al.*,

*Plaintiffs and Appellants,*

v.

MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT,

*Defendant and Respondent.*

APPEAL from a judgment of the Superior Court of  
Yuba County, Debra L. Givens, Judge. Affirmed.

John HR Doe filed and dismissed a state court action against the Marysville Joint Unified School District (the School District). Other Does filed and dismissed their own state court action against the School District. After that, John HR Doe and the other Does (collectively the Doe plaintiffs) filed and dismissed a federal court action. And then the Doe plaintiffs filed the instant state court action, their third action against the School District. All of the lawsuits alleged that William Babcock, a counselor at an elementary school in the School District in the 1990's

*Appendix B*

and 2000's, committed sexual misconduct causing the Doe plaintiffs to sustain injury and damages.

In this third action, the trial court sustained the School District's demurrer and dismissed the Doe plaintiffs' complaint. The trial court ruled that, under rule 41(a)(1)(B) of the Federal Rules of Civil Procedure (28 U.S.C.),<sup>1</sup> the Doe plaintiffs' dismissal of the second action in federal court constituted res judicata.

In their original briefing on appeal, the Doe plaintiffs asserted that the trial court erred in sustaining the demurrer based on res judicata. They did not dispute that they dismissed their federal action or that rule 41(a)(1)(B) provides that such a dismissal, a second voluntary dismissal, operates as an adjudication on the merits. Rather, they contended that, because the School District argued in the federal court that the Eleventh Amendment to the United States Constitution provided immunity on most of the Doe plaintiffs' claims, it divested the federal court of subject matter jurisdiction to adjudicate the claims on the merits.

After the original briefing was completed, the Doe plaintiffs filed a letter identifying new case authority, and we directed the parties to file supplemental letter briefs addressing the effect of the authority on the res judicata issue. In their supplemental letter brief, the Doe plaintiffs argued that, in considering the effect of rule 41(a)(1)(B)

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1. Undesignated rule references are to the Federal Rules of Civil Procedure (28 U.S.C.).

*Appendix B*

in this context, California state law controls, under which a second voluntary dismissal does not constitute *res judicata*. They contend rule 41(a)(1)(B) does not support dismissal of this third action.

Finding no merit in the Doe plaintiffs' contentions, we will affirm the judgment.

**BACKGROUND**

On February 20, 2020, John HR Doe (HR) filed a complaint in Yuba County Superior Court against the School District, Babcock, and a church. Because Babcock and the church are not parties to this appeal, we will summarize the procedure only with respect to the School District. As to the School District, the complaint alleged causes of action for negligence, intentional infliction of emotional distress, sexual harassment, breach of fiduciary duty, constructive fraud, and failure to perform a mandatory duty.

The School District demurred to HR's complaint, and the trial court sustained the demurrer with leave to amend as to some causes of action but without leave to amend as to others. On October 9, 2020, HR filed a first amended complaint in Yuba County Superior Court. However, he subsequently filed a request for a voluntary dismissal without prejudice, which was entered as requested on November 12, 2020.

Meanwhile, on July 20, 2020, the other Does filed a similar complaint against the School District in Yuba

*Appendix B*

County Superior Court. The School District demurred to the complaint and the trial court sustained the demurrer with leave to amend as to some causes of action but without leave to amend as to others. The other Does filed a request for a voluntary dismissal without prejudice, which was entered as requested on November 12, 2020.

On the same day the requests for dismissal were entered in the two Yuba County Superior Court actions, the Doe plaintiffs filed a complaint against the School District in the United States District Court for the Eastern District of California. The complaint asserted the causes of action that had previously been alleged in the superior court but also added causes of action under title VIII of the No Child Left Behind Act of 2001 (20 U.S.C. § 7926) (Title VIII), title IX of the Education Amendments of 1972 (20 U.S.C. § 1681(a) et seq.) (Title IX), and title 42 United States Code section 1983.

On January 13, 2021, the School District moved to dismiss the Doe plaintiffs' federal complaint. The motion argued the Eleventh Amendment to the United States Constitution provided immunity in the federal court on most of the claims against the School District. However, the School District acknowledged that the Eleventh Amendment did not provide such immunity on the Title IX claim. On February 18, 2021, the Doe plaintiffs voluntarily dismissed their federal complaint under rule 41(a).

On March 11, 2021, the Doe plaintiffs filed the instant action against the School District in Ventura County Superior Court. The complaint asserted causes of action

*Appendix B*

for negligence, negligent supervision, and negligent hiring; it did not assert any federal claims. The parties stipulated that the action should have been filed in Yuba County Superior Court, and the action was transferred to that court. After the transfer, the Doe plaintiffs filed a peremptory challenge disqualifying the judge who sustained the demurrer in the original action, and the action was assigned to a different judge.

The School District demurred to the complaint, asserting that the action was barred by res judicata because of the Doe plaintiffs' second voluntary dismissal of the complaint in federal court. The trial court sustained the demurrer and dismissed the complaint. It ruled that res judicata barred the action because the dismissal in federal court operated as an adjudication on the merits.

**DISCUSSION****I**

The Doe plaintiffs contend their dismissal of the federal action did not constitute an adjudication on the merits because the federal court did not have subject matter jurisdiction over their claims.

Federal courts have two different sources of subject matter jurisdiction as relevant here. Diversity jurisdiction arises when opposing parties are citizens of different states (28 U.S.C. § 1332), and federal question jurisdiction gives the federal courts jurisdiction if the action arises under federal law (28 U.S.C. § 1331). If the

*Appendix B*

federal court has subject matter jurisdiction, it may also exercise supplemental jurisdiction over related claims that would not otherwise have been within the federal court's jurisdiction. (28 U.S.C. § 1367.)

In the Doe plaintiffs' federal case, the federal court had subject matter jurisdiction because the Doe plaintiffs filed their federal action as a federal question case (based on Title VIII, Title IX, and 42 U.S.C. § 1983) with supplemental federal jurisdiction over the Doe plaintiffs' state-law claims. All parties in this action are California based, so the federal court never had diversity jurisdiction.

The Doe plaintiffs nevertheless argue that because the School District relied on the Eleventh Amendment in its motion to dismiss the federal complaint, it divested the federal court of authority to adjudicate the Doe plaintiffs' claims on the merits. For this proposition, the Doe plaintiffs cite *Wages v. Internal Revenue Service* (9th Cir. 1990) 915 F.2d 1230, 1234. In that case, a person sued the Internal Revenue Service in a federal district court, but the district court dismissed the action because it did not have subject matter jurisdiction over the claims and the complaint failed to state a claim on which relief could be granted. (*Id.* at p. 1233.) The United States Court of Appeals held it was improper for the district court to consider whether the complaint stated a claim on which relief could be granted because that went to the merits, and once the district court determined it lacked subject matter jurisdiction it had no power to address the merits. (*Id.* at p. 1234.)

*Appendix B*

*Wages* is distinguishable from this case. The federal court involved in the Doe plaintiffs’ action did not determine that it lacked subject matter jurisdiction. Rather, the School District acknowledged that the federal court had subject matter jurisdiction over the Title IX claim,<sup>2</sup> which was predicated on the same harm as the other causes of action. The Doe plaintiffs voluntarily dismissed the lawsuit.

Under the circumstances, there is no merit to the Doe plaintiffs’ contention that the federal court lacked subject matter jurisdiction.

## II

After briefing was completed in this case, the Doe plaintiffs filed a notice of additional citations for oral argument. In that notice, they cited a recent case relevant to the application of rule 41(a)(1)(B). That case is *Gray v. La Salle Bank, N.A.* (2023) 95 Cal.App.5th 932 (*Gray*) decided by the Court of Appeal for the Sixth Appellate District. We directed the parties to provide supplemental letter briefs on the effect of *Gray*, which held that a second dismissal in a federal district court did not, under rule

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2. The Eleventh Amendment bars suit against a state by its own citizens in federal court unless the state has waived its immunity or Congress has abrogated the state’s immunity. (*Seminole Tribe of Fla. v. Florida* (1996) 517 U.S. 44, 54, 68 [134 L.Ed.2d 252].) The latter is the situation for a Title IX action against a state by its own citizens in federal court. “A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of ... title IX of the Education Amendments of 1972 . . . .” (42 U.S.C. § 2000d-7(a)(1).)

*Appendix B*

41(a)(1)(B), preclude filing the same claim in a third action in state court. (*Gray*, at p. 1225.) Before discussing *Gray*, we will describe the relevant background law and the legal developments preceding *Gray*.

Res judicata or claim preclusion bars a second suit on the same cause of action when the cause of action has already been adjudicated on the merits. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896; *Needelman v. DeWolf Realty Co., Inc.* (2015) 239 Cal.App.4th 750, 757.) “[A] single cause of action is based on the harm suffered, rather than on the particular legal theory asserted or relief sought by the plaintiff. [Citations.]” (*Balasubramanian v. San Diego Community College Dist.* (2000) 80 Cal.App.4th 977, 991 (*Balasubramanian*); see also *Hi-Desert Medical Center v. Douglas* (2015) 239 Cal.App.4th 717, 733 (*Hi-Desert Medical Center*).) Here, the Doe plaintiffs’ claims constitute a single cause of action for res judicata purposes because they are based on the same alleged harm: the injury and damages caused by Babcock’s sexual misconduct.

Rule 41(a)(1)(A) allows a plaintiff to dismiss an action without a court order by filing a notice of dismissal before the defendant files an answer or motion for summary judgment. But rule 41(a)(1)(B) provides: “[I]f the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” Res judicata bars any subsequent action based on the same alleged harm. (See *Engelhardt v. Bell & Howell Co.* (8th Cir. 1962) 299 F.2d 480, 484 (*Engelhardt*).)

*Appendix B*

“The preclusive effect of a federal-court judgment is determined by federal common law.” (*Taylor v. Sturgell* (2008) 553 U.S. 880, 891 [171 L.Ed.2d 155] (*Taylor*).) If the federal court exercised diversity jurisdiction, federal common law incorporates the claim preclusion law of the state. (*Semtek Int’l Inc. v. Lockheed Martin Corp.* (2001) 531 U.S. 497, 507–508 [149 L.Ed.2d 32] (*Semtek*).) If the prior federal judgment was in a federal question case, however, federal common law requires application of “uniform federal rule[s] of res judicata,” not state law. (*Taylor*, at p. 891; see also *Guerrero v. Department of Corrections & Rehabilitation* (2018) 28 Cal.App.5th 1091, 1101–1102 (*Guerrero*) [summarizing the differences in claim preclusion in diversity and federal question cases].)

With respect to the effect of a second voluntary dismissal under rule 41(a)(1)(B), federal law is that a second voluntary dismissal under rule 41(a)(1)(B) is claim preclusive. (*Jian Ying Lin v. Shanghai City Corp.* (S.D.N.Y. 2018) 329 F.R.D. 36 (*Jian Ying Lin*); *McGhee v. High Mt. Health LLC* (D.Ariz. Apr. 21, 2020, No. CV-19-08145-PCT-DWL) 2020 U.S. Dist. Lexis 69721.)

The primary federal precedent relied on by the Doe plaintiffs in their supplemental letter brief, and by the Gray court, is *Semtek*, *supra*, 531 U.S. 497. In that United States Supreme Court case, the plaintiff filed an action in California state court, but the defendant removed the action to the federal court based on the federal court’s diversity jurisdiction. The federal district court dismissed the action based on California’s statute of limitations, as the action arose under California law. The plaintiff

*Appendix B*

also filed an action in a Maryland state court, where the limitations period had not expired. The Maryland court concluded that, because the federal court’s dismissal was designated as “on the merits” under rule 41(b), the federal dismissal was *res judicata* and precluded the Maryland state action.<sup>3</sup> (*Semtek*, at pp. 499–500.)

On review in the United States Supreme Court, the plaintiff argued that the dismissal in the federal court did not bar the Maryland action because, under California procedural law, the dismissal based on the statute of limitations was not claim preclusive. The defendant disagreed, arguing that the dismissal in the federal court was claim preclusive under rule 41(b). (*Semtek*, *supra*, 531 U.S. at pp. 500–501.)

The *Semtek* court reversed the Maryland judgment. It held: “Because the claim-preclusive effect of the California federal court’s dismissal ‘upon the merits’ of [the plaintiff’s] action on statute-of-limitations grounds is governed by a federal rule that in turn incorporates California’s law of claim preclusion ... , the Maryland Court of Special Appeals erred in holding that the dismissal necessarily precluded the bringing of this action in the Maryland courts.” (*Semtek*, *supra*, 531 U.S. at p. 509.)

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3. Rule 41(b) deems certain *involuntary* dismissals in federal court “adjudication[s] on the merits.” Rule 41(a)(1)(B), on the other hand, deems a *second voluntary* dismissal in federal court “an adjudication on the merits.” This case involves rule 41(a)(1)(B) only, not rule 41(b), which was the rule relevant to the outcome in *Semtek*. Rule 41(b) states that an involuntary dismissal “operates as an adjudication on the merits” unless the dismissal order states otherwise.

*Appendix B*

The court in *Semtek* reasoned that an “adjudication upon the merits” under rule 41(b) does not necessarily mean the judgment has claim-preclusive effect in a case involving diversity jurisdiction. (*Semtek, supra*, 531 U.S. at p. 503.) *Semtek* noted that in such cases involving diversity jurisdiction there is no need for a uniform federal rule concerning when a federal judgment has preclusive effect because “state, rather than federal, substantive law is at issue ...” (*Semtek, supra*, 531 U.S. at p. 508.) On the other hand, *Semtek* counseled that, with respect to cases involving federal question jurisdiction, “States cannot give those judgments merely whatever effect they would give their own judgments, but must accord them the effect that this Court prescribes. [Citations.]” (*Id.* at p. 507.)

The court in *Semtek* determined that the words “operates as an adjudication upon the merits” in rule 41(b) should be interpreted in a manner consistent with rule 41(a), which “makes clear that an ‘adjudication upon the merits’ is the opposite of a dismissal without prejudice.” (*Semtek, supra*, 531 U.S. at p. 505.) Rule 41(a) makes that distinction by indicating that a second voluntary dismissal, like in this case, is an adjudication on the merits, i.e., has the same effect as a dismissal with prejudice.

In the diversity context of the *Semtek* case, however, the court explained 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. This is, it seems to us, a classic case for adopting, as the federally prescribed rule of decision, the law that

*Appendix B*

would be applied by state courts in the State in which the *federal diversity court* sits.” (*Semtek, supra*, 531 U.S. at p. 508, italics added.)

The United States Supreme Court again considered the claim-preclusive effect of federal judgments in *Taylor, supra*, 553 U.S. 880, which, unlike *Semtek*, involved federal question jurisdiction. In that case, the court considered whether a prior judgment against the petitioner’s friend in a Freedom of Information Act case precluded the petitioner’s own suit. The court determined that the friend was not the petitioner’s virtual representative, and therefore the prior judgment did not preclude the petitioner’s action. (*Id.* at pp. 884–885.) In its opinion, the court stated: “The preclusive effect of a federal-court judgment is determined by federal common law. See [*Semtek, supra*, 531 U.S. at pp. 507–508]. For judgments in federal-question cases ... federal courts participate in developing ‘uniform federal rule[s]’ of res judicata, which this Court has ultimate authority to determine and declare. [*Semtek*], at 508.” (*Taylor*, at p. 891.) In a footnote associated with that quote regarding the preclusive effect of judgments in federal question cases, the *Taylor* court, citing *Semtek*, observed: “For judgments in diversity cases, federal law incorporates the rules of preclusion applied by the State in which the rendering court sits.” (*Taylor*, at p. 891, fn. 4.)

In *Melamed v. Blue Cross of California* (9th Cir. 2014) 557 Fed. Appx. 659, a plaintiff filed and voluntarily dismissed two federal court actions against the defendants, after which the plaintiff filed a third action in California

*Appendix B*

state court. The defendants successfully removed the action to the federal district court because it involved a federal question. (*Id.* at pp. 660–661.) On the defendant’s motion, the federal district court dismissed under the two-dismissal rule of rule 41(a)(1)(B), and the Ninth Circuit Court of Appeals affirmed. (*Melamed*, at pp. 661–662.) Even after *Semtek*, federal law provides that the two-dismissal rule of rule 41(a)(1)(B) has res judicata effect and bars a third action on the same claim.

Under these federal cases, as well as California precedent, “federal common law controls the preclusive effect of a federal judgment.” (*Guerrero, supra*, 28 Cal. App.5th at p. 1100.) In federal cases based on diversity jurisdiction, the federal common law “effectively embeds state law into federal law unless some paramount federal interest calls for a departure from it.” (*Ibid.*) However, if “a prior federal judgment was based on federal question jurisdiction, the preclusive effect of the prior judgment of a federal court is determined by federal law.” (*Louie v. BFS Retail & Commercial Operations, LLC* (2009) 178 Cal.App.4th 1544, 1553 (*Louie*), italics omitted, quoted in *Guerrero*, at p. 1102.)

Despite the foregoing authorities, in *Hardy v. America’s Best Home Loans* (2014) 232 Cal.App.4th 795, 806 (*Hardy*), which was a second action filed in the state court after an involuntary rule 41(b) dismissal in federal court under its federal question jurisdiction, a state Court of Appeal held that the plaintiff could refile in the state court as long as it alleged only state-law claims. The court came to this conclusion by citing *Semtek* and

*Appendix B*

reasoning: “Here, while the federal order dismissed both federal and state-law claims, the claims asserted in this action involve only state claims. In that respect, the district court’s dismissal of the state law claims is similar to a federal court’s dismissal in a diversity action. Accordingly, under *Semtek*, the preclusive effect of the district court’s dismissal is determined under California law. ... California law does not bar this action because the federal action was not an adjudication on the merits.” (*Hardy*, at p. 806.)

*Hardy* indicated, without citation to supporting authority, that the federal court dismissal in that federal question case was similar to, and should be treated like, a dismissal in a diversity action because the federal claims were not renewed in the subsequent state court action. However, the United States Supreme Court has explained that it is in actual diversity jurisdiction cases where state law may be incorporated into federal law for the purpose of determining claim preclusion. (*Semtek*, *supra*, 531 U.S. at p. 509.) When a federal case is based on federal question jurisdiction, state law is not incorporated, and states cannot give those judgments the effect they would give their own judgments. (*Id.* at p. 507.)

That brings us to the appellate decision that prompted the supplemental letter briefs in this case, *Gray*, *supra*, 95 Cal.App.5th 932. In framing the issue presented, the court noted that, in California state court, the filing and voluntary dismissal without prejudice of successive lawsuits does not constitute a final judgment on the merits that would preclude a subsequent lawsuit in a California

*Appendix B*

state court. The question presented in *Gray* was whether a third suit filed in California state court alleging only state law claims was subject to claim preclusion under rule 41(a)(1)(B) because the plaintiff had previously filed two federal question lawsuits in federal court alleging federal and state claims and had voluntarily dismissed them without prejudice. (*Gray, supra*, 95 Cal.App.5th at p. 941.)

The court in *Gray* held that the plaintiffs' voluntary dismissal of the second federal lawsuit was not a final adjudication on the merits barring the third case in state court. According to *Gray*, "[t]he two-dismissal rule of Rule 41(a)(1)(B) applies when there is a voluntary dismissal in state or federal court, a second voluntary dismissal in federal court, and the subsequent filing of an action in the *same federal court* where the second suit was dismissed. We hold that this rule is inapplicable here to the filing of [the plaintiffs'] *state court lawsuit* alleging state law claims only that succeeded the filing of voluntary dismissals without prejudice in two federal lawsuits. [The plaintiffs] are not precluded from asserting the claims in the present action because, under California law, (1) a dismissal without prejudice is not a judgment on the merits that precludes a subsequent action, and (2) there is no proscription against the filing of multiple actions that are voluntarily dismissed by the plaintiff." (*Gray, supra*, 95 Cal.App.5th at p. 942, original italics.) The *Gray* court relied mainly on *Semtek, supra*, 531 U.S. 497 to support its conclusions. (*Gray*, at p. 942.)

*Gray* applied California law to determine whether the second federal dismissal in a federal question case

*Appendix B*

constituted res judicata. (*Gray, supra*, 95 Cal.App.5th at p. 942.) But its holding is contrary to authority, including *Semtek*, that res judicata is determined under federal law if the federal court jurisdiction was based on a federal question. (*Louie, supra*, 178 Cal.App.4th at p. 1553.) The court in *Gray* concluded rule 41(a)(1)(B) applies only to a third filing in the same federal court and does not apply when the third filing alleges only state law claims. (*Gray*, at p. 942.) While those conclusions have superficial appeal, they are not supported under closer scrutiny.

According to *Gray*, rule 41(a)(1)(B) applies only to a third filing in the same federal court. (*Gray, supra*, 95 Cal.App.5th at p. 942.) In *Semtek*, the court held that “adjudication upon the merits” in rule 41(b) means that refiling is barred only in the same federal district court. (*Semtek, supra*, 531 U.S. at p. 506.) However, that holding in *Semtek* was dependent on its conclusion that, in a diversity jurisdiction case, state law controls whether the prior dismissal in federal court is claim preclusive. (*Id.* at pp. 506–507.) *Semtek* expressly differentiated between diversity cases and federal question cases, explaining that the United States Supreme Court has “long held that States cannot give [federal question] judgments merely whatever effect they would give their own judgments, but must accord them the effect that this Court prescribes. [Citations.]” (*Id.* at p. 507.) *Semtek* stated that, in a federal diversity case, rule 41(b) applies only to prevent refiling in the same federal district court; but that does not apply to cases involving jurisdiction based on a federal question. After *Semtek*, federal courts continue to hold that a second voluntary dismissal under rule 41(a)(1)(B)

*Appendix B*

is claim preclusive, and not just in the federal district court where the plaintiff obtained the second dismissal. (See *Jian Ying Lin, supra*, 329 F.R.D. at p. 39 [holding that the two-dismissal rule of rule 41(a)(1)(B) applies to an action refiled in a different federal district court]; *Kerr Corp. v. Westside Resources, Inc.* (W.D.Wis. Sep. 27, 2007, No. 07-C-0177-C) 2007 U.S. Dist. Lexis 72862 [two prior voluntary dismissals in California federal court barred refiling in Wisconsin federal court].)

*Gray* also based its decision on the fact that the plaintiff alleged only state-law claims in the third action. (*Gray, supra*, 95 Cal.App.5th at p. 942.) Referencing *Hardy's* conclusion that the federal court dismissal in *Hardy* was similar to a dismissal in a diversity action because the claims asserted in the ultimate state court action involved only state claims (*Gray*, at p. 962, citing *Hardy, supra*, 232 Cal.App.4th at p. 806), the court in *Gray* held that whether the voluntary dismissal of the federal lawsuit was claim preclusive was governed by a federal rule that in turn incorporated the law of claim preclusion of the state where the federal lawsuit was brought. (*Gray*, at p. 962.) Such treatment of a voluntary dismissal in a federal question case is inconsistent with the United States Supreme Court's declaration that a federal-court judgment in a federal question case must be accorded the effect the federal courts prescribe. (*Semtek, supra*, 531 U.S. at p. 507.) While the United States Supreme Court allows that state law may determine the claim-preclusive effect in a diversity jurisdiction case, the same is not true in a federal question case. (*Taylor, supra*, 553 U.S. at p. 891; *Semtek, supra*, 531 U.S. at p. 507.)

*Appendix B*

To support its application of state law, the court in *Gray* relied on the federal district court opinion in *Project Drilling, LLC v. Ledy Oil & Gas Exploration & Production, SA* (N.D.Okla. Feb. 11, 2022, No. 21-CV-0427-CVE-CDL) 2022 U.S.Dist. Lexis 25408 (*Project Drilling*). (*Gray, supra*, 95 Cal.App.5th at pp. 958–960.) That case, however, was a diversity action. (*Project Drilling*, at pp. \*7–\*8.) On the issue of whether the two-dismissal rule has claim-preclusive effect, the district court did not specify whether it was relying on Oklahoma law; instead, it merely cited *Semtek*. (*Id.* at pp. \*18–\*21.) In any event, being a diversity jurisdiction case, *Project Drilling* is not authority on the effect of the two-dismissal rule in a federal question case.

*Gray* also relied on the decision of the Tennessee Supreme Court in *Cooper v. Glasser* (Tenn. 2013) 419 S.W.3d 924, in which the Tennessee court held a second dismissal in the federal court did not have claim-preclusive effect. (*Gray, supra*, 95 Cal.App.5th at p. 960.) Unlike *Semtek* and *Project Drilling*, *Cooper* was a federal question case. The court in *Cooper* recognized that *Semtek* “held that a federal district court exercising diversity jurisdiction should apply the claim-preclusion law of the state ‘in which the federal court sits.’ [Citation.]” (*Cooper*, at p. 927.) Nevertheless, the Tennessee Supreme Court applied Tennessee’s claim preclusion law even though the federal court’s subject matter jurisdiction was based on a federal question. (*Id.* at p. 930.) Like the decision in *Gray*, the decision in *Cooper* was inconsistent with the federal authority that federal law be applied to determine claim preclusion in a federal question case. (*Taylor, supra*, 553

*Appendix B*

U.S. at p. 891; see also *Guerrero*, *supra*, 28 Cal.App.5th at pp. 1101–1102.)

Why should a California state court apply the Federal Rules of Civil Procedure after a voluntary dismissal in a federal question case when that procedure will work to the detriment of California plaintiffs seeking to assert state claims in state court for the redress of alleged wrongful conduct? The first reason is that the United States Supreme Court requires it. As the court directed in *Semtek*, in cases involving federal question jurisdiction, “States cannot give those judgments merely whatever effect they would give their own judgments, but must accord them the effect that this Court prescribes. [Citations.]” (*Semtek*, *supra*, 531 U.S. at p. 507.) But the court also described one of the policy reasons for the claim-preclusive distinctions in federal question versus diversity cases, explaining that they avoid forum shopping and inequitable administration of the laws. (*Id.* at pp. 508–509.) Moreover, as the court in *Gray* noted, the two-dismissal rule prevents unreasonable abuse and harassment by preventing a plaintiff from obtaining numerous dismissals without prejudice. (*Gray*, *supra*, 95 Cal.App.5th at pp. 951–952, citing *Sutton Place Development Co. v. Abacus Mortgage Investment Co.* (7th Cir. 1987) 826 F.2d 637, 640.)

Because a second voluntary dismissal in federal court is claim preclusive in a federal question case, the plaintiff cannot strip out the federal claims and file the action in state court solely as a California law action. As we have explained, “a single cause of action is based on the harm

*Appendix B*

suffered, rather than on the particular legal theory asserted or relief sought by the plaintiff. [Citations.]” (*Balasubramanian, supra*, 80 Cal.App.4th at p. 991; see also *Hi-Desert Medical Center, supra*, 239 Cal.App.4th at p. 733.) Rule 41(a)(1)(B) speaks in terms of a “claim,” not a specific theory supporting a claim. “Rule 41(a)(1)(B)’s two-dismissal rule would be toothless if a plaintiff could evade it merely by adding to his original, voluntarily dismissed complaint a new cause of action arising from the same operative facts ... .” (*Jian Ying Lin, supra*, 329 F.R.D. at p. 40.) Here, the Doe plaintiffs’ claims constitute a single claim for res judicata purposes because they are based on the same alleged harm: the injury and damages caused by the school counselor’s abuse. Thus, stripping out the federal claims and refiling the state claims does not change the fact that a claim-preclusive judgment has already been entered concerning the Doe plaintiffs’ alleged harm.

Res judicata bars the Doe plaintiffs’ claims in this action because the federal action was based on federal question jurisdiction, and federal law, which we are bound to follow in this context, deems the second dismissal claim preclusive. (See *Engelhardt, supra*, 299 F.2d at pp. 484–485 [validity and res judicata effect of the two-dismissal rule].)

**DISPOSITION**

The judgment is affirmed. The School District is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

52a

*Appendix B*

          /S/            
MAURO, Acting P.J.

I concur:

          /S/            
WISEMAN, J.\*

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\* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

*Appendix B*

MESIWALA, J., Dissenting.

The problem with importing res judicata principles here is it applies Federal Rules of Civil Procedure, rule 41 (28 U.S.C.) too broadly, “clos[ing] the courthouse doors to an otherwise proper litigant.” (*Poloron Products, Inc. v. Lybrand Ross Bros. & Montgomery* (2d Cir. 1976) 534 F.2d 1012, 1017.)

State claim preclusion law governs unless that law is incompatible with federal interests. (*Gray v. La Salle Bank, N.A.* (2023) 95 Cal.App.5th 932, 962 (*Gray*); see also *Hardy v. America’s Best Home Loans* (2014) 232 Cal. App.4th 795, 806; *Hately v. Watts* (4th Cir. 2019) 917 F.3d 770, 777 [when a federal court exercises supplemental jurisdiction over a state law claim, “[t]he federal rule of decision in such cases is to apply state preclusion law, unless the state preclusion law is incompatible with federal interests”]; *Cooper v. Glasser* (Tenn. 2013) 419 S.W.3d 924, 927–930; *Herington v. City of Wichita* (Kan. 2021) 500 P.3d 1168, 1176 (*Herington*) [“a federal court must apply state law to state law claims in both diversity and supplemental jurisdiction cases”]; *Paramount Pictures Corp. v. Allianz Risk Transfer AG* (N.Y.Ct.App. 2018) 96 N.E.3d 737, 754–755 (dis. opn. of Wilson, J.).)

Here, Doe plaintiffs have sued in state court asserting only state law claims, and there is no “incompatibility between applying California claim-preclusion law with federal interests.” (*Gray, supra*, 95 Cal.App.5th at p. 962.) In these circumstances, California’s claim preclusion law governs, allowing plaintiffs who voluntarily dismiss an action without prejudice to refile, not federal law.

*Appendix B*

The majority concludes that under Federal Rules of Civil Procedure, rule 41 (28 U.S.C.), a second voluntary dismissal in federal court of a case involving federal question jurisdiction has claim preclusive effect in a third case filed in state court, relying on *Taylor v. Sturgell* (2008) 553 U.S. 880, 891 and *Louie v. BFS Retail & Commercial Operations, LLC* (2009) 178 Cal.App.4th 1544, 1553. But *Taylor* and *Louie* did not involve Federal Rules of Civil Procedure, rule 41 (28 U.S.C.), particularly a voluntary dismissal under Federal Rules of Civil Procedure, rule 41(a) (28 U.S.C.) and did not consider the effect of such a dismissal on a state court action asserting only state claims.

The majority also relies on *Melamed v. Blue Cross of California* (9th Cir. 2014) 557 Fed. Appx. 659 and *Jian Ying Lin v. Shanghai City Corp.* (S.D.N.Y. 2018) 329 F.R.D. 36. But those cases instruct that where a federal court is exercising federal question jurisdiction, the two-dismissal rule of Federal Rules of Civil Procedure, rule 41 (28 U.S.C.) bars a third action in federal court. They do not instruct what happens when the third action is brought in state court asserting only state law claims.

“The United States Supreme Court has never addressed the issue presented here,” specifically what law governs the claim preclusive effect of a federal court disposition of a state law claim under Federal Rules of Civil Procedure, rule 41(a) (28 U.S.C.) in a case in which federal court jurisdiction over the state law claim was based on supplemental jurisdiction. (*Herington, supra*, 500 P.3d at p. 1176.)

55a

*Appendix B*

For these reasons, I would reverse the trial court's judgment and allow the Doe plaintiffs' claims to proceed in state court.

          /S/            
MESIWALA, J

**APPENDIX C — ORDER AFTER HEARING  
OF THE SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF YUBA, FILED NOVEMBER 5, 2021**

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF YUBA

Case No. CV PO 21-00697

JOHN HR DOE, AN INDIVIDUAL, *et al.*,

*Plaintiffs,*

MARYSVILLE JOINT UNIFIED SCHOOL  
DISTRICT, A CALIFORNIA LOCAL  
PUBLIC ENTITY, *et al.*,

*Defendants.*

**ORDER AFTER HEARING**

Defendant Marysville Joint Unified School District's (MJUSD) demurrer and Motion to Strike came on regularly for hearing on November 1, 2021, before the Honorable Debra L. Givens. Appearances are as reflected in the minutes.

MJUSD's demurrer is sustained without leave to amend pursuant to Civil Code of Procedure 430.10(e). The Court finds that this entire action is barred by the doctrine of res judicata. Res judicata has three elements: 1. The same claims; 2. The same parties or privies, and 3. A final judgment on the merits. *DKN Holdings LLC v. Faerber* (2015) 61 Cal. 4th 813, 824. Here, there is no dispute that

*Appendix C*

all claims arise out of the alleged sexual molestation by William Babcock while employed by MJUSD and that the same parties are involved. The only issue is whether there was a final judgment on the merits.

Plaintiffs previously filed two actions in Yuba County Superior Court, which they dismissed after demurrers were sustained with and without leave to amend. Subsequently, plaintiffs filed an action in Federal District Court arising out of the same alleged conduct. While a motion to dismiss was pending, plaintiffs dismissed that action purportedly without prejudice.

FRCP, Rule 41 provides:

“unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal or state court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.”

Under the “two-dismissal rule” a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any state or federal court an action based on or including the same claim. *Friedman v. Washburn Co.* (7th Cir. 1944) 145 F. 2d 715. If a plaintiff dismisses an action in federal court after previously dismissing any federal or state court action based on or including the same claim, the notice of dismissal operates as an adjudication on the merits. FRCP 41(a)(1)(B). This is known as the “two-dismissal

*Appendix C*

rule.” *Commercial Space Mgmt. Co. v. Boeing Co.* (9th Cir. 1999) 193 F. 3rd 1074, 1076.

The Court therefore finds that the two-dismissal rule bars this action. Both plaintiffs’ earlier actions in this court and the action in the Eastern District were against the same defendants and arose from the same set of operative facts. Plaintiffs dismissed both actions voluntarily. The second dismissal constituted an adjudication on the merits; which prevents the institution of another action like this one, ‘based on the same claim. 9 *Charles Alan Wright et. al. Federal Practice & Procedure* 2368 (3d Ed 1998). Thus, this case is now barred.

It does not matter that the second judgment was a federal judgment rather than one which issued from a California Court.

“a federal judgment has the same effect in the courts of this state as it would have in a federal court The federal rule is that a judgment or order, once rendered, is final for purposes of res judicata until reversed on appeal or modified or set aside in the court of rendition.” *Lumpkin v. Jordan* (1996) 49 Cal. App. 4th 1223, 1230.

“California follows the rule that the preclusive effect of a prior judgment of a federal court is determined by federal law, at least where the prior judgment was on the basis of federal question jurisdiction. [citations]” *Butcher v.*

59a

*Appendix C*

*Truck Ins. Exchange (2000) 77 Cal. App. 4th  
1442, 1452.*

Rule 41, under which plaintiffs dismissed their second suit, prescribed the effect of a second dismissal, that is that the dismissal would be deemed a dismissal “on the merits.” Because each of the claims contained in this suit was also in the federal suit, the doctrine of res judicata no bars this action.

Accordingly, defendant’s Motion to Strike is **Moot**.

Plaintiff’s Request for Judicial Notice: 1. MJUSD’s Motion to Dismiss: Granted Court records Evidence Code 452(d).

DATED: November 5, 2021

/s/ Debra L. Givens  
DEBRA L. GIVENS  
JUDGE OF THE SUPERIOR COURT

**APPENDIX D — JUDGMENT OF DISMISSAL  
OF THE SUPERIOR COURT OF THE STATE  
OF CALIFORNIA, COUNTY OF YUBA,  
FILED NOVEMBER 23, 2021**

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**SPINELLI, DONALD & NOTT**  
A Professional Corporation  
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Attorneys for Defendant  
MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT

SUPERIOR COURT OF THE STATE  
OF CALIFORNIA  
IN AND FOR THE COUNTY OF YUBA  
Case No.: CVP021-697

JOHN HR DOE, *et al.*,

*Plaintiff,*

MARYSVILLE JOINT UNIFIED  
SCHOOL DISTRICT, *et al.*,

*Defendants.*

**[~~PROPOSED~~] JUDGMENT OF DISMISSAL  
BY DEFENDANT MARYSVILLE JOINT  
UNIFIED SCHOOL DISTRICT**

61a

*Appendix D*

Judge: Hon. Debra L. Givens

Dept.: 1

Action Filed: July 21, 2021

Trial Date: Not Assigned

**[Fee Exempt Pursuant to Gov. Code§ 6103]**

TO ALL PARTIES AND THEIR ATTORNEYS OF  
RECORD:

Based on the Court's Order entered on November 5, 2021, sustaining without leave to amend the Demurrer of MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT to Plaintiffs' Complaint contained therein, pursuant to Civil Code of Procedure 430.1 0(e). The Court finds that this entire action is barred by the doctrine of res judicata.

IT IS HEREBY ADJUDGED, ORDERED and DECREED that Judgment is hereby entered in favor of Defendant MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT.

Dated: 11-3-202

1

/s/ Debra L. Givens

JUDGE OF THE SUPERIOR COURT  
HONORABLE DEBRA L. GIVENS

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CRISTINA NOLAN

Attorneys for Plaintiffs

**APPENDIX E — RELEVANT STATUTORY  
PROVISIONS**

**28 U.S.C. § 1332**

**Diversity of citizenship; amount in controversy; costs**

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of \$75,000, computed without regard to any setoff or

*Appendix E*

counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title--

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of--

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

*Appendix E*

(d)(1) In this subsection--

(A) the term “class” means all of the class members in a class action;

(B) the term “class action” means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

(C) the term “class certification order” means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term “class members” means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which--

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

*Appendix E*

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of--

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and

*Appendix E*

the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)--

(A)(i) over a class action in which--

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant--

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant

*Appendix E*

were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which--

(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial

*Appendix E*

pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim--

(A) concerning a covered security as defined under 16(f)(3) 1 of the Securities Act of 1933 (15 U.S.C. 78p(f) (3) 2 ) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

*Appendix E*

**(11)(A)** For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

**(B)(i)** As used in subparagraph (A), the term “mass action” means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs’ claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

**(ii)** As used in subparagraph (A), the term “mass action” shall not include any civil action in which--

**(I)** all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

**(II)** the claims are joined upon motion of a defendant;

**(III)** all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

**(IV)** the claims have been consolidated or coordinated solely for pretrial proceedings.

*Appendix E*

**(C)(i)** Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

**(ii)** This subparagraph will not apply--

**(I)** to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

**(II)** if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

**(D)** The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.

**(e)** The word “States”, as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

71a

*Appendix E*

28 U.S.C. § 1367

**Supplemental jurisdiction**

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

*Appendix E*

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

73a

*Appendix E*

20 U.S.C. § 1681

**Sex**

**(a) Prohibition against discrimination; exceptions**

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

**(1) Classes of educational institutions subject to prohibition**

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

**(2) Educational institutions commencing planned change in admissions**

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the

*Appendix E*

Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

**(3) Educational institutions of religious organizations with contrary religious tenets**

this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

**(4) Educational institutions training individuals for military services or merchant marine**

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

**(5) Public educational institutions with traditional and continuing admissions policy**

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

75a

*Appendix E*

**(6) Social fraternities or sororities; voluntary youth service organizations**

this section shall not apply to membership practices--

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

**(7) Boy or Girl conferences**

this section shall not apply to--

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for--

*Appendix E*

- (i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
- (ii) the selection of students to attend any such conference;

**(8) Father-son or mother-daughter activities at educational institutions**

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

**(9) Institution of higher education scholarship awards in “beauty” pageants**

this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

*Appendix E***(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance**

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

**(c) “Educational institution” defined**

For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

78a

*Appendix E*

**20 U.S.C. § 7926**

**Prohibition on aiding and abetting sexual abuse**

**(a) In general**

A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this chapter shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

**(b) Exception**

The requirements of subsection (a) shall not apply if the information giving rise to probable cause--

(1)(A) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and

(B) has been properly reported to any other authorities as required by Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C.

*Appendix E*

1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of Federal Regulations, or any succeeding regulations; and

(2)(A) the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;

(B) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or

(C) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

**(c) Prohibition**

The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section.

**(d) Construction**

Nothing in this section shall be construed to prevent a State from adopting, or to override a State law, regulation,

*Appendix E*

or policy that provides, greater or additional protections to prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.

81a

*Appendix E*

**42 U.S.C. § 1983**

**Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.