No. 14-1136

IN THE

# Supreme Court of the United States

NESTLE PURINA PETCARE COMPANY
AND WAGGIN' TRAIN, LLC,

*Petitioners,*

*v.*

CONNIE CURTS, *et al.*,

*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

## BRIEF IN OPPOSITION FOR RESPONDENT CONNIE CURTS


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## QUESTION PRESENTED

Whether the Seventh Circuit's reversal of the District Court's anti-suit injunction against a certified state court class action warrants this Court's review on certiorari when:

(i) the case is moot because the parties have settled their dispute and no longer have a live controversy;

(ii) the Seventh Circuit's application of the Anti-Injunction Act, 28 U.S.C. § 2283, is not in conflict with the decisions of other United States courts of appeals;

(iii) the case does not present a recurring issue of national importance because federal/state conflicts in concurrent class litigation are rare; and

(iv) the Seventh Circuit's decision was correct under this Court's governing precedent.

## TABLE OF CONTENTS

## TABLE OF CITED AUTHORITIES

*Page*

**CASES**

*Cited Authorities*

*Cited Authorities*

*Page*

**STATUTES AND OTHER AUTHORITIES**

## INTRODUCTION

The law imposes tight restrictions on a federal court's ability to enjoin a pending state court proceeding because issuing such an injunction "is resorting to heavy artillery." *Smith v. Bayer Corp.*, 131 S. Ct. 2368, 2376 (2011). On review of a federal anti-suit injunction, "every benefit of the doubt goes toward the state court" and "close cases have easy answers: The federal court should not issue an injunction . . . ." *Id.* at 2376, 2382. This case is not close, but even if it were, the easy answer controls and this Court's review on certiorari is unwarranted.

There are several reasons why this Court should deny the petition. First, the issue has become moot following the parties' settlement of the Missouri action. Whatever disagreement might exist about the Seventh Circuit's ruling, the parties no longer have a live controversy in that regard and a decision by this Court would simply be an advisory opinion that would not alter the parties' legal rights.

Beyond the mootness of the issue, there are no compelling reasons to grant the petition. The purported circuit split is illusory because the Seventh Circuit did not hold that federal district courts are never allowed to enjoin parallel state court proceedings in conjunction with a class action settlement. Instead, the Seventh Circuit merely held on the facts of this case that the District Court's injunction was not properly supported by findings of law and fact that were required by the Federal Rules of Civil Procedure and the Anti-Injunction Act. The Seventh Circuit's decision preserves a federal court's ability to enjoin state court proceedings in situations where federal jurisdiction is actually threatened (not

just inconvenienced), and so it is not in conflict with the decisions of other courts of appeals on this issue.

In addition, the parties' dispute does not raise a recurring issue of national importance. With the expansion of federal jurisdiction over class litigation under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), conflicts between federal and state courts over class action administration are rare. There simply is no support for the contention that the Seventh Circuit's decision will somehow upset the orderly management of class litigation, whether in federal court, state court or both.

Finally, there is no merit to the argument that the Seventh Circuit's decision is incorrect. The Seventh Circuit's application of the Anti-Injunction Act's "in aid of jurisdiction" exception is consistent with the historic parameters established by this Court, which limit the exception to *in rem* cases affecting a federal court's authority to control a res. Even with an expanded application of the exception to *in personam* cases that are found to be the equivalent of a res, there is no error in the Seventh Circuit's decision because the federal action in this case lacked the complexity to qualify as a res, and (even if it was the equivalent of a res) the Missouri state court could not be dispossessed of control of the portion of the res (i.e., claims of Missouri consumers) over which it already had exercised jurisdiction by certifying a class of Missouri consumers. The injunction of the Missouri action rests on nothing more than the convenience of the federal litigants, a rationale that the Seventh Circuit properly rejected.

For these reasons, certiorari should be denied.

## STATEMENT OF THE CASE

Connie Curts is the class representative in a certified class action lawsuit filed in the Circuit Court of Jackson County, Missouri on February 4, 2013. (C.A. Appellant's App. at 115.) On August 6, 2014, following extensive briefing and an evidentiary hearing, the Missouri state court granted class certification of Curts' consumer protection claim under the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.* (*Id.* at 361-79.) The certified class included Missouri citizens who purchased allegedly contaminated and misrepresented dog treats manufactured and sold by Petitioners Nestle Purina PetCare Company and Waggin' Train, LLC (collectively, "Waggin' Train"). (*Id.* at 365.)

In addition to obtaining class certification, Curts vigorously and successfully prosecuted her lawsuit by defeating removal to federal court and defeating two motions to dismiss. (*Id.* at 225.) The parties in the Missouri class action conducted extensive written discovery and Curts was deposed. (*Id.*) Before it was enjoined, the Missouri action was scheduled for trial starting May 11, 2015. (*Id.* at 388.)

The Missouri class action proceeded concurrently with six lawsuits pending in the United States District Court for the Northern District of Illinois. (*Id.* at 1.) The federal cases were consolidated in the Northern District of Illinois after the Judicial Panel on Multidistrict Litigation denied the federal plaintiffs' request for creation of an MDL proceeding. *In re Waggin' Train Chicken Jerky Pet Treat Prods. Liab. Litig.*, 893 F. Supp. 2d 1357 (J.P.M.L. 2012). In contrast to the Missouri class action, very little

substantive litigation transpired in the federal cases—no formal discovery was conducted, no adversarial motion practice occurred after the parties finished briefing motions to dismiss in May 2013, and the District Court never entered a scheduling order. (C.A. Short Record, ECF No. 1-1, at 33-53.)

In October 2014, months after the Missouri lawsuit was certified as a class action, the District Court entered an order preliminarily approving a proposed nationwide class settlement and enjoining all other litigation. (Pet. App. at 13a-14a, 23a-24a.) It is clear from an earlier order of the District Court that the injunction was targeted at the certified Missouri class action. (C.A. Short App., ECF No. 25, at 2 (stating that preliminary settlement approval "will include enjoining other actions, including the Missouri Action, pending the result of the hearing for final approval.").)

Curts appealed and the Seventh Circuit reversed the injunction because the District Court's order "was silent about everything that matters," including the factors required to support the injunction under Rule 65(d)(1)(A) of the Federal Rules of Civil Procedure and the findings necessary to meet an exception to the Anti-Injunction Act. (Pet. App. at 3a-4a.) The Seventh Circuit noted that a federal anti-suit injunction might be warranted in an "extreme situation" where a state court proceeding threatens to "undermine federal authority," but concluded that the Missouri class action did not constitute such a threat because "Curts wants to litigate her own suit in Missouri, not to stop the federal court from adjudicating the suit pending before it." (*Id.* at 7a-8a.)

Following the Seventh Circuit's decision and the filing of this petition, Curts and Waggin' Train engaged in a mediation that resulted in the settlement of their dispute. The settlement is memorialized in a Stipulation of Class Action Settlement, which includes the parties' agreement that any decision of this Court in this proceeding will not alter the parties' resolution of the case. On May 26, 2015, the Missouri state court entered an Order and Judgment giving final approval to the settlement of the Missouri class action, which fully adjudicates and disposes of all matters in the case.[1]

## REASONS FOR DENYING THE PETITION

The petition should be denied in the first place because the parties' dispute is moot. Moreover, the petition does not identify any compelling reasons for this Court to take review on certiorari. The purported circuit split regarding application of the Anti-Injunction Act's "in aid of jurisdiction" exception is illusory, the case does not present a recurring issue of national importance that would demand this Court's review, and there is no error whatsoever in the Seventh Circuit's decision.

### I. The Parties' Dispute Has Been Rendered Moot by Settlement

"The exercise of judicial power under Art. III of the Constitution depends on the existence of a case or

1. The settlement documents, including the Stipulation of Class Action Settlement and the Order and Judgment, are available at: https://www.missouridogtreatsettlement.com. The parties' agreement that disposition of this proceeding will not impact the resolution of the Missouri action is found in Section III.C.4 of the Stipulation of Class Action Settlement.

controversy," and "[t]he rule in federal cases is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). "A case becomes moot—and therefore no longer a "Case" or "Controversy" for purposes of Article III—when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 133 S. Ct. 721, 726 (2013) (internal quotations omitted).

Here, the matter of the injunction is moot because the parties have settled their dispute. The settlement is memorialized in a Stipulation of Class Action Settlement that has received final approval of the Missouri court in accordance with Missouri law. *See* Mo. R. Civ. P. 52.08(e). The settlement fully resolves the Missouri action in all respects for all Missouri consumers who purchased Waggin' Train dog treats; because no class member opted out of the settlement, all claims of all Missouri consumers have been dismissed with prejudice. The Order and Judgment entered by the Missouri court fully adjudicates and disposes of all matters in the case.

With this settlement, the parties no longer have a "live" controversy regarding the propriety of the Seventh Circuit's reversal of the district court's injunction of the Missouri action.[2] Indeed, the parties have agreed that their

2. The Missouri action was the only pending lawsuit that was enjoined by the District Court's order. As a practical matter, the resolution of the Missouri action ends all debate about the propriety of the injunction and the Seventh Circuit's application of the Anti-Injunction Act, which is implicated only in situations involving *pending*—not merely potential—state court proceedings. *See Dombrowski v. Pfister*, 380 U.S. 479, 484 n.2

settlement cannot be altered in any way by any decision of this Court in these proceedings. As this Court described in *Alvarez v. Smith*, 558 U.S. 87 (2009), the dispute over the injunction is moot because it "is no longer embedded in any actual controversy about the [parties'] legal rights." *Id.* at 93. The case has been reduced to "a dispute solely about the meaning of a law, abstracted from any concrete actual or threatened harm, [which] falls outside the scope of the constitutional words 'Cases' and 'Controversies.'" *Id*. This is true "[n]o matter how vehemently the parties continue to dispute" the propriety of the Seventh Circuit's decision. *Already*, 133 S. Ct. at 727.

The Court sometimes disregards mootness in cases that are "capable of repetition, yet evading review," but this doctrine applies only in "exceptional situations where the following two circumstances are simultaneously present: (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Spencer v. Kemna*, 523 U.S. 1, 17 (1998). Neither element is present in this case.

With respect to the first element, Waggin' Train has voluntarily truncated the effect of the challenged decision

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(1965) ("[The Anti-Injunction Act] do[es] not preclude injunctions against the institution of state court proceedings, but only bar[s] stays of suits already instituted."); *Barancik v. Investors Funding Corp. of N.Y.*, 489 F.2d 933, 936 n.8 (7th Cir. 1973) ("The use of the verb 'stay' in § 2283 quite clearly describes an order directed to a pending proceeding."); *id.* at 938 ("We therefore hold that the mandatory prohibition in § 2283 against injunctions staying court proceedings does not apply to state actions commenced after a motion for injunctive relief is filed in the federal court.").

by settling the Missouri action and should not be permitted to use its own conduct to its advantage. *See Sanders v. United States*, 373 U.S. 1, 17 (1963) ("[A] suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks."). Moreover, there is nothing inherently short-lived about the anti-suit injunction at issue in this case; while such an injunction may not last long in most cases, it certainly can have prolonged effect in many other cases (e.g., where final settlement approval is delayed by an extended claim-filing or objection process or is denied with instructions for the parties to renegotiate the terms of the settlement and reapply for settlement approval).[3]

The second element "requires a 'reasonable expectation' or a 'demonstrated probability' that 'the same controversy will recur involving the same complaining party.'" *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 463 (2007) (quoting *Murphy v. Hunt*, 455 U.S. 478, 482 (1982)). That is, the capable-of-repetition doctrine generally applies "only where the named plaintiff can make a reasonable showing that he will again be

3. It stands to reason that in virtually all of the cases where the preliminary approval injunction is short-lived, the short duration is a product of final settlement approval and entry of an attendant judgment that substitutes a permanent injunction authorized by the Anti-Injunction Act's re-litigation exception. *See* 28 U.S.C. § 2283 (authorizing a federal court to enjoin state court proceedings "to protect or effectuate its judgments"). This is not the scenario contemplated by the mootness exception for cases "capable of repetition, yet evading review" because the short duration of the preliminary approval injunction does not leave the party benefiting from the injunction exposed to litigation abuses that the injunction was designed to prevent; those abuses would continue to be prevented by the substituted permanent injunction.

subjected to the alleged illegality." *Alvarez*, 558 U.S. at 93 (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983)).

Here, the named plaintiff's claim has been settled, as have the claims of the Missouri class members she represents. In connection with the settlement of the Missouri action, Curts has withdrawn her objections to the nationwide settlement. With this resolution, there is no reasonable chance that the same controversy will arise again between these parties. There also is no reasonable probability that Waggin' Train will find itself in the same situation in the future with some other adversary.[4]

This Court should deny the petition because the matter is moot and the Court is therefore deprived of the "power to act" on the merits of the case. *Spencer*, 523 U.S. at 18. Consideration of the issue would amount to nothing more than abstract review and result in a disfavored advisory opinion. *See id.* ("We are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong.").[5] And because

4. The Missouri action remained in state court under CAFA's Home State Exception, 28 U.S.C. § 1332(d)(4)(B), because all parties and class members in the action are Missouri citizens. *Curts v. Waggin' Train, LLC*, No. 13-0252-CV-W-ODS, 2013 WL 2319358, at *3 (W.D. Mo. May 28, 2013). And as Waggin' Train admits, this confluence of concurrent state and federal proceedings is rare because CAFA has expanded federal jurisdiction over class actions with the result that "more and more putative class actions are ending up in federal court and being consolidated before a single district judge." (Pet. at 12-13.)

5. Even without the clear basis for finding mootness, the circumstances highlight prudential considerations that also would justify denial of the petition. *See Padilla v. Hanft*, 547 U.S.

the case has become moot as a result of Waggin' Train's voluntary settlement, the petition simply should be denied without the Seventh Circuit's decision being vacated. *See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 512 U.S. 18, 24-29 (1994) (discussing various policy rationales supporting holding "that mootness by reason of settlement does not justify vacatur of a judgment under review.").

## II. The Seventh Circuit's Decision is Not in Conflict with the Decisions of Other United States Courts of Appeals

The Seventh Circuit's decision does not create a split of authority on the application of the Anti-Injunction Act's "in aid of jurisdiction" exception. Waggin' Train's argument to the contrary is based on the mistaken assertion that the Seventh Circuit adopted a "square legal rule" that a federal injunction of a state court proceeding may never issue to protect a district court's preliminary approval of a class action settlement. (Pet. at 10.) Waggin' Train's assertion of a "square legal rule" is belied by the fact that Waggin' Train cannot quote the rule or even cite to a specific portion of the Seventh Circuit's decision that supposedly establishes the rule.

Review of the Seventh Circuit's decision debunks Waggin' Train's strained attempt to manufacture a circuit split. There is no mystery in the decision and no need to read between the lines; the Seventh Circuit made clear

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1062, 1650 (2006) (denying certiorari based on "strong prudential considerations" weighing against determination of "hypothetical" legal rights and "fundamental issues" concerning "the role and function of the courts").

that the injunction was set aside because "[t]he district judge ha[d] not explained why he entered the injunction." (Pet. App. at 3a.) This fatal flaw rendered the injunction improper under Federal Rule of Civil Procedure 65(d)(1)(A) and the Anti-Injunction Act, both of which put the onus on the District Court to make appropriate findings of law and fact to support the injunction. As the Seventh Circuit bluntly concluded: "The district judge was silent about everything that matters." (Pet. App. at 4a.) The fact-specific basis of the Seventh Circuit's decision makes this case unsuitable for addressing broader questions about the application of exceptions to the Anti-Injunction Act.

And to the extent the Seventh Circuit went further in discussing the Anti-Injunction Act, there is nothing in that discussion that puts the decision in conflict with any other authority on the subject. Indeed, the Seventh Circuit's decision is entirely consistent with this Court's recent reaffirmation that the exceptions to the Anti-Injunction Act "are narrow and are not to be enlarged by loose statutory construction" and that "any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed." *Bayer*, 131 S. Ct. at 2375 (quoting *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988); *Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 287, 297 (1970) (internal quotations and brackets omitted)).

As it did below, Waggin' Train catalogs various decisions of other courts of appeals that purportedly contradict the Seventh Circuit's ruling. The Seventh Circuit found, however, that these decisions have no bearing on the matter because they are factually

varied, fail to address this Court's governing concept of "jurisdiction," and predate this Court's decision in *Bayer*:

> Although the parties and Curts debate the significance of many decisions outside the Seventh Circuit, those opinions are so various that it would not be helpful to catalog them. It is enough to say that, to the extent any of them supports injunctive relief before the settlement of a federal class action has become final, it fails to discuss the Supreme Court's understanding of "jurisdiction" and predates its reminder in Bayer that doubts must be resolved in favor of allowing state courts to proceed with litigation pending there.

(Pet. App. at 9a-10a.)

The Seventh Circuit did not adopt a *per se* rule against federal injunctions of parallel state court class actions, and a closer examination of the decisions cited by Waggin' Train reveals that they are not inconsistent with the Seventh Circuit's decision. In particular, the Seventh Circuit stated that it "can imagine extreme situations in which a state could imperil a federal court's adjudicatory power over *in personam* actions" like the federal class action in this case. (Pet. App. at 7a.) This includes circumstances in which the state court action is designed to "undermine federal authority" (*Id.* at 8a), which leaves open the possibility for injunctions like those approved by the Third and Fifth Circuits in situations where the state court litigants have waged "preemptive strikes" against federal actions. *See In re Diet Drugs*, 282 F.3d 220, 238 (3d Cir. 2002) (affirming injunction of state court

class action in which the plaintiffs made a "preemptive strike" against the federal action by procuring a state court order for the mass opt out of class members); *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189, 203 (3d Cir. 1993) (affirming injunction of state court class action used as "preemptive strike" to "challenge the propriety of the federal class action" through mass opt out); *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1335 (5th Cir. 1981) (affirming injunction of state court class action that sought court order enjoining defendants from consummating the federal settlement). As the Seventh Circuit noted, however, the Missouri action did not implicate the same principles at issue in *Diet Drugs*, *Carlough* and *Corrugated Container* because "Curts want[ed] to litigate her own suit in Missouri, not to stop the federal court from adjudicating the suit pending before it." (Pet. App. at 8a.)

Other decisions cited by Waggin' Train to buttress a supposed circuit split are of no import. The Anti-Injunction Act was mentioned only in passing by the Ninth Circuit, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998), discussed in dicta by the First Circuit, *James v. Bellotti*, 733 F.2d 989, 993 (1st Cir. 1984), and simply not at issue in the decisions of the Second and Eighth Circuits, *In re Baldwin-United Corp.*, 770 F.2d 328, 335 (2d Cir. 1985), *Liles v. Del Campo*, 350 F.3d 742, 746-47 (8th Cir. 2003).[6]

6. Waggin' Train concedes that *Baldwin-United* and *Liles* "rest on the All Writs Act, not the Anti-Injunction Act" (Pet. at 9), but argues that the holdings of these cases are relevant because the All Writs Act and the Anti-Injunction Act both authorize injunctions "necessary in aid of jurisdiction." While the language of the two statutes might be similar, the decisions applying the All Writs Act are not persuasive in this context because they cannot

As discussed in greater detail below, other significant factual differences in the cases cited by Waggin' Train include: (1) the complexity of those cases, which (unlike this case) involved enormous multidistrict proceedings; and (2) the timing of the injunctions in those cases, which (unlike this case) were entered before the state courts had certified the parallel lawsuits as class actions.

The argument in favor of a federal injunction against the Missouri action boils down to convenience. As the Seventh Circuit noted, the settling parties' contention below was simply that "if the Missouri case proceeds to final decision before [the final approval hearing in the federal case], then their settlement must be renegotiated and may well collapse." (Pet. App. at 5a.) The Seventh Circuit's reversal of the anti-suit injunction in this circumstance is consistent with the decisions of other courts of appeals holding that the Anti-Injunction Act's "in aid of jurisdiction" exception cannot be invoked merely when it is "convenient to enjoin related state court proceedings." *Negrete v. Allianz Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1101 (9th Cir. 2006) (quoting *Ret. Sys. of Ala. v. J.P. Morgan Chase & Co.*, 386 F.3d 419, 430 (2d Cir. 2004)); *see also Texas v. United States*, 837 F.2d 184, 186 n.4 (5th Cir. 1988) ("In no event may the 'aid of jurisdiction'

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account for Anti-Injunction Act's "core message . . . of respect for state courts" or its heightened burden demanding that "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed." *Bayer*, 131 S. Ct. at 2375.

Another glaring distinction of *Liles* is that the injunction there was issued in order to "prevent further draining of the limited settlement fund." 350 F.3d at 746-47. The same exigency did not exist in this case.

exception be invoked merely because of the prospect that a concurrent state proceeding might result in a judgment inconsistent with the federal court's decision.").

Waggin' Train has not demonstrated an actual split of authority among the courts of appeals. The cases cited in the petition are different in outcome because they are different in their facts. And as the Seventh Circuit noted, it is significant that all of those cases predate this Court's "reminder in *Bayer* that doubts must be resolved in favor of allowing state courts to proceed with litigation pending there." (Pet. App. at 10a.) The Seventh Circuit certainly did not perceive a split of authority on the application of the Anti-Injunction Act, and it is unnecessary for this Court to grant review on certiorari until a real, concrete conflict develops following this Court's decision in *Bayer*. At the very least, this issue should be left to further percolation among the lower courts so that any purported split of authority can be clearly defined.

## III. The Seventh Circuit's Decision Does Not Concern a Recurring Issue of National Importance

As noted above, the application of the Anti-Injunction Act in the context of concurrent state and federal class actions is not a frequently recurring issue. This is largely the result of CAFA, which has expanded federal jurisdiction over class actions so that—in Waggin' Train's words—"more and more putative class actions are ending up in federal court and being consolidated before a single district judge." (Pet. at 12-13.) The ability of defendants to remove most class actions to federal court under CAFA greatly reduces the chance of federal and state conflict over concurrent class litigation and the propensity for a

federal court "to go so far as to enjoin a state proceeding." *Bayer*, 131 S. Ct. at 2382.

The dearth of appellate decisions regarding application of the Anti-Injunction Act to parallel class actions, particularly since the enactment of CAFA in 2005, confirms that federal/state conflicts do not often arise in multi-forum class actions. And while Waggin' Train cites a handful of district court decisions granting settlement-related injunctions during the past 15 years, many of these cases involve only boilerplate injunctions that do not target any specific proceedings, let alone concurrent state court proceedings. Most others are inapposite because they involve injunctions of *potential* state court lawsuits (which do not implicate the Anti-Injunction Act) or injunctions of *putative* state court class actions (which are fundamentally different than the injunction entered in this case against the already certified Missouri class action).

Waggin' Train argues that this is an issue of national importance to federal litigants, who "have every incentive to ensure that their hard-earned settlement is not jeopardized by parallel state-court proceedings." (Pet. at 14.) This concern is greatly exaggerated. In general, some risk of parallel litigation is inevitable in every settlement of a Rule 23(b)(3) class because all class members have the right to opt out of the settlement to pursue their own claims. Fed. R. Civ. P. 23(c)(2)(B)(v), (e)(4). In this case specifically, the concern of preserving a "hard-earned" resolution was illusory because very little substantive litigation ever occurred in the federal proceeding; the parties did not conduct any formal discovery, no adversarial motion practice occurred after the parties finishing briefing motions to dismiss in May 2013, and

there was never any scheduling order entered by the District Court.

Waggin' Train also argues that this is an issue of national importance to district courts, whose efforts and resources might "go to waste because of further state-court proceedings that could disrupt the parties' compromise." (Pet. at 14.) This assertion overlooks the fact that district courts have other means available to them to preserve and protect class action settlements. For instance, once a district court grants final settlement approval and enters judgment in the federal action, the re-litigation exception to the Anti-Injunction Act authorizes the district court to enjoin state court proceedings "to protect or effectuate" that judgment. 28 U.S.C. § 2283; *see also* Pet. App. at 6a ("After a final decision, an injunction could be appropriate to protect the federal judgment, although class members who opt out would remain entitled to pursue their own suits.").

As the Seventh Circuit explained, the mere existence of a parallel state proceeding is not remarkable and is insufficient to justify a federal court's anti-suit injunction:

> Parallel state and federal litigation is common. The first to reach final decision can affect the other, either through rules of claim and issue preclusion (res judicata and collateral estoppel) or through effects such as reducing the scope of a class from 50 to 49 states. Yet the potential effect of one suit on the other does not justify an injunction.

(Pet. App. at 6a.) The class nature of this case does not change that basic rule because the Anti-Injunction Act

makes no special exception for class actions. Simply put, there is nothing in this case that raises an issue of such national importance that it would warrant this Court's review.

## IV. The Seventh Circuit's Decision is Correct

The Seventh Circuit's decision to reverse the District Court's injunction of the Missouri action is consistent with the well-settled rule that "[p]roceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts." *Atl. Coast*, 398 U.S. at 287. This respect for state courts is the "core message" of the Anti-Injunction Act, which "broadly commands that those tribunals 'shall remain free from interference by federal courts.'" *Bayer*, 131 S. Ct. at 2375 (quoting *Atl. Coast*, 398 U.S. at 282). This Court has stated many times that the exceptions to the Anti-Injunction Act "are narrow and are not to be enlarged by loose statutory construction." *Id.* (quoting *Chick Kam Choo*, 486 U.S. at 146 (internal brackets omitted)). And it is beyond debate that "any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed." *Id.* (quoting *Atl. Coast*, 398 U.S. at 297 (internal brackets omitted)).

In this framework, the Anti-Injunction Act's exception for federal injunctions "in aid of jurisdiction" must be strictly construed in accordance with its limited historical application exclusively to *in rem* actions:

> In *Toucey v. New York Life Insurance Company*, [314 U.S. 118, 134-35 (1941)], we acknowledged the existence of an historical exception to the Anti-Injunction Act in cases where the federal

> court has obtained jurisdiction over the res, prior to the state-court action. Although the "necessary in aid of" exception to § 2283 may be fairly read as incorporating this historical in rem exception, . . . the federal and state actions here are simply in personam. The traditional notion is that in personam actions in federal and state court may proceed concurrently, without interference from either court, and there is no evidence that the exception to § 2283 was intended to alter this balance. We have never viewed parallel in personam actions as interfering with the jurisdiction of either court[.]

*Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 641-42 (1977) (plurality opinion); *see also Kline v. Burke Constr. Co.*, 260 U.S. 226, 230 (1922) ("[A]n action brought to enforce [a personal liability] does not tend to impair or defeat the jurisdiction of the court in which a prior action for the same cause is pending. Each court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court.").

Waggin' Train concedes the general principle in *Vendo* that *in personam* actions fall outside of the Anti-Injunction Act's "aid of jurisdiction" exception, but it argues for an extension of the exception in this case because the federal action is the "virtual equivalent" of a res. (Pet. at 20-21.) This res-by-analogy argument is misplaced because the cases equating an *in personam* proceeding with a res are markedly more complex that this case. *See, e.g.*, *In re Diet Drugs*, 282 F.3d at 236-37 (MDL proceeding representing a "massive consolidation" of more than 2,000 cases involving six million class members; district court had

"entered well over one thousand orders" over two years of "exhaustive" litigation); *Baldwin-United*, 770 F.2d at 331 (MDL proceeding involving more than 100 federal securities lawsuits and two years of court-consolidated settlement negotiations).

This case, in contrast, does not involve a complex MDL proceeding; in fact, the Judicial Panel on Multidistrict Litigation denied a request to create an MDL because it was "unconvinced" that the issues in the cases against Waggin' Train were "sufficiently complex or numerous to warrant the creation of an MDL." *In re Waggin' Train Chicken Jerky Pet Treat Prods. Liab. Litig.*, 893 F. Supp. 2d 1357, 1358 (J.P.M.L. 2012). In addition to an "apparent lack of complexity," the Panel also found that the litigation had only a "small number of involved actions" and a "correspondingly limited number of involved counsel." *Id.* The manner in which the parties have litigated the federal action (with no formal discovery, very little motion practice, and no scheduling order) further confirms that the case is not the type of "lengthy, complicated litigation" that could be considered "the virtual equivalent of a res." *Cf. Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877, 882 (11th Cir. 1989) ("[I]t makes sense to consider this case, involving years of litigation and mountains of paperwork, as similar to a res to be administered.").

Even if a res analogy was applied in this case, the District Court's injunction still would be improper because the Missouri state court was the first to exercise jurisdiction over the portion of the res at issue in this case—i.e., claims of Missouri consumers who comprise the certified class in the Missouri action. The District Court could not stake a claim of control over the Missouri class members until it entered its order of conditional

class certification, *Bayer*, 131 S. Ct. at 2380 (a "properly conducted class action" does not exist in the "absence of a certification under [Rule 23]"), and by the time it did so in October 2014, the Missouri state court had already entered its own class certification order in August 2014. In this case, the District Court was compelled to defer to the predominant jurisdiction of the Missouri state court. *See, e.g.*, *Trs. of the Carpenter's Health & Welfare Trust Fund of St. Louis v. Darr*, 694 F.3d 803, 811 (7th Cir. 2012) ("This ['in aid of jurisdiction'] exception applies when a federal court acquires jurisdiction, prior in time to the state-court action, over a case involving the disposition of a res."); *Pelfresne v. Vill. of Williams Bay*, 865 F.2d 877, 880 n.2 (7th Cir. 1989) ("[W]hen the state court first acquired jurisdiction over the res, a federal court injunction is inappropriate."). Waggin' Train has not cited any decision of this Court or any court of appeals that would permit a federal injunction of an already certified state court class action, particularly one like the Missouri action that was on the eve of trial when it was halted.

Waggin' Train's argument is simply that the injunction should be permitted because, without one, the nationwide settlement in federal court could be more difficult to consummate. This rationalization is foreclosed by this Court's decision in *Atlantic Coast* and was properly rejected by the Seventh Circuit. *See Alt. Coast*, 398 U.S. at 294 ("[A] federal court does not have inherent power to ignore the limitations of § 2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right . . . , even when the interference is unmistakably clear."). While the phrase "necessary in aid of" jurisdiction is "admittedly broad," this Court was clear in *Atlantic Coast* that "it is not enough that the requested injunction is related to [the

district court's] jurisdiction"; "necessary" means that the injunction is required to prevent serious impairment of a "federal court's flexibility *and authority* to decide [the] case." *Atl. Coast*, 398 U.S. at 295 (emphasis added).

Waggin' Train has not identified anything in the conduct of the Missouri action that would threaten the District Court's authority to adjudicate the federal action. There should be no dispute that the District Court's injunction was improper under these circumstances and that the Seventh Circuit reached the correct decision in reversing the injunction. Even if this was a close case, the rule in *Bayer* would prevail that "close cases have easy answers: The federal court should not issue an injunction . . . ." *Bayer*, 131 S. Ct. at 2382.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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