

No. 26-2442

In the
United States Court of Appeals
For the Ninth Circuit

ALEX LOPEZ & TRAVELL WOODS,
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Plaintiffs-Respondents,

v.

SUZUKI MOTOR OF AMERICA, INC.,

Defendant-Petitioner.

On Appeal from the United States District Court for the
Central District of California, No. 2:25-cv-07808
Honorable Fred W. Slaughter, U.S. District Judge

**BRIEF OF *AMICUS CURIAE* THE CHAMBER OF
COMMERCE OF THE UNITED STATES OF AMERICA IN
SUPPORT OF DEFENDANT-PETITIONER AND
APPELLATE JURISDICTION UNDER § 1291**

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CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America (“Chamber”) states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

/s/ Matthew A. Fitzgerald
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IDENTITY AND INTEREST OF *AMICUS CURIAE*¹

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community. The Chamber was involved in organizing support for the Class Action Fairness Act ("CAFA") before its enactment, and the Chamber's members are often named as defendants in the sorts of lawsuits CAFA intended to receive a federal forum, including class and mass actions.

¹ Counsel for all parties were consulted. Counsel for petitioners consented. Counsel for respondents did not. *See* Fed. R. App. P. 29(a)(2). No party's counsel authored this brief in whole or in part, and no such counsel nor any party here contributed money intended to fund the preparation of this brief or its submission. No person or entity other than *amicus*, its members, and/or its counsel contributed money intended to fund the preparation or submission of this brief.

INTRODUCTION

This Court should join the circuits that have held, in published opinions, that remands based on CAFA exceptions such as the home-state exception are appealable by right under 28 U.S.C. § 1291. Such appeals do not require petitions under 28 U.S.C. § 1453 and the extra round of rapid-fire briefing and decision that § 1453 lays out. This Court could improve efficiency for itself and for parties in cases like this one by holding that appellate jurisdiction is proper under § 1291.

ARGUMENT

Suzuki Motor of America wisely appealed the district court's remand under CAFA's home-state exception by filing both a notice of appeal under § 1291 and a petition for review under § 1453. This Court stayed the appeal under § 1291, then granted the petition for review under § 1453, and set this case for expedited briefing and decision. This Court should clarify that only a notice of appeal under § 1291 is required for appeals like this one, and can proceed to the merits of the appeal without the strictures of § 1453 in this or future cases.²

² The Chamber writes as *amicus* on the question of appellate jurisdiction rather than to argue the merits of the appeal. However, the Chamber

I. Appeals of remand orders under the CAFA exceptions can be brought as of right under § 1291 and do not require § 1453 petitions.

This Court must ensure proper jurisdiction over all appeals. *See Breed v. Hughes Aircraft Co.*, 253 F.3d 1173, 1177 (9th Cir. 2001) (detailing “obligation” to verify appellate jurisdiction).

A. Remands are appealable “final” orders unless barred by § 1447(c) and (d).

As a matter of first principles, a remand order qualifies as an appealable “final order” under 28 U.S.C. § 1291. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996). A remand order “puts the litigants ... effectively out of court,” and “its effect is precisely to surrender jurisdiction of a federal suit to a state court.” *Id.* at 714. “When a district court remands a case to a state court, the district court disassociates itself from the case entirely, retaining nothing of the matter on the federal court’s docket.” *Id.* And remand orders “will not be subsumed in any other appealable order entered by the District Court.” *Id.* In sum, under both the “effectively out of court” doctrine and the collateral-order

supports Suzuki Motor’s arguments on the merits about the scope of the home-state exception, and urges this Court to reverse the district court’s remand order.

doctrine, § 1291 finality includes remand orders. *Id.* at 714–15 (adding that remand orders on abstention doctrines conclusively determine issues separate from the merits and present important issues warranting review).

Though remand orders are final orders that would otherwise be appealable, 28 U.S.C. § 1447(d) excludes many remand orders from review. In general, “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise.” 28 U.S.C. § 1447(d). This language is broad on its face. Properly read in context, however, this provision means that “only remand orders issued under § 1447(c)” —for lack of subject matter jurisdiction and “on the basis of any [other] defect,” 28 U.S.C. § 1447(c)—“are immune from review under § 1447(d).” *Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 346, 352–53 (1976), *abrogated on other grounds by Quackenbush*, 517 U.S. 706 (1996).

Any *other* remand orders remain appealable as of right under § 1291. *City of Tucson v. U.S. W. Commc’ns, Inc.*, 284 F.3d 1128, 1131 (9th Cir. 2002). Unless barred by § 1447(d), a remand “is effectively a final order; it places [the defendant] out of federal court and has the effect

of surrendering jurisdiction of a federal suit to a state court.” *Huth v. Hartford Ins. Co. of the Midwest*, 298 F.3d 800, 802 (9th Cir. 2002) (marks omitted). “Appellate review of the remand order, therefore, is appropriate.” *Id.*

B. Section 1447(c) and (d) do not bar appeal of CAFA remand orders issued under § 1332(d)(3)-(4).

The CAFA exceptions do not fall into the category of remand orders barred from appeal. Section 1447(c) and (d) apply to two types of remands—those based on subject-matter jurisdiction, and those based on “any defect other than lack of subject matter jurisdiction.” 28 U.S.C. § 1447(c). The CAFA exceptions at § 1332(d)(3)–(4) (often called the local-controversy, home-state, and discretionary exceptions) are neither of those. Thus, remand orders invoking these exceptions are final orders appealable by right under § 1291.

1. The CAFA exceptions do not go to subject-matter jurisdiction.

Remands under a CAFA exception are not based on subject-matter jurisdiction. These exceptions function as a form of abstention, not as jurisdictional requirements.

Under CAFA, “the district courts shall have original jurisdiction of any civil action” which is a class action with minimal diversity and over \$5,000,000 in controversy. 28 U.S.C. § 1332(d)(2). These are the two requirements for subject-matter jurisdiction under the statute, and jurisdiction exists in any case that meets those requirements. *See Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1022 (9th Cir. 2007); *Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1139 (9th Cir. 2013). “Once CAFA jurisdiction has been established,” it is up to “the party seeking remand” to prove an “exception” to the default rules keeping the case in federal court. *Adams v. W. Marine Prods., Inc.*, 958 F.3d 1216, 1221 (9th Cir. 2020). Two exceptions, the home-state and local-controversy exceptions, are mandatory; “a district court shall decline to exercise jurisdiction under [CAFA]” when the criteria are satisfied. 28 U.S.C. § 1332(d)(4). Another exception is discretionary; district courts “may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction.” *Id.* § 1332(d)(3); *see Serrano*, 478 F.3d at 1022.

These CAFA exceptions are “not jurisdictional.” *Visendi v. Bank of Am., N.A.*, 733 F.3d 863, 869 (9th Cir. 2013). Instead, they are “a form of

abstention.” *Adams*, 958 F.3d at 1223; *accord Morrison v. YTB Int’l, Inc.*, 649 F.3d 533, 536 (7th Cir. 2011). These exceptions are “set apart from the ... jurisdictional requirements in the statute.” *Graphic Commc’ns Loc. 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 636 F.3d 971, 973 (8th Cir. 2011). And each exception provides that the district court “may” or “shall decline to exercise jurisdiction.” 28 U.S.C. § 1332(d)(3)–(4); *see Visendi*, 733 F.3d at 869. “[I]mplicit in the statutory text” and structure “is that the court *has* jurisdiction, but the court must” or may “*decline* to exercise” it. *Visendi*, 733 F.3d at 869 (quotations omitted) (emphases added); *accord Serrano*, 478 F.3d at 1022. In sum, “rather than divesting a court of jurisdiction,” CAFA exceptions “operate[] as an abstention doctrine,” *Dutcher v. Matheson*, 840 F.3d 1183, 1190 (10th Cir. 2016), “act[ing] as a limitation upon the exercise of jurisdiction granted by CAFA,” *Watson v. City of Allen*, 821 F.3d 634, 639 (5th Cir. 2016).

2. *The CAFA exceptions are not procedural defects.*

Nor are the CAFA exceptions “defects” under § 1447(c). Remands are not appealable if based on “any *defect* other than lack of subject matter jurisdiction.” 28 U.S.C. § 1447(c) (emphasis added). “Defect” refers to a problem with the removal itself, not the existence of a later-

proven statutory exception. *Watson*, 821 F.3d at 639; *Graphic Commc'ns*, 636 F.3d at 975; *Gold v. N.Y. Life Ins. Co.*, 730 F.3d 137, 142 (2d Cir. 2013).

Section 1447(c) does not define “defect,” but the relevant edition of Black’s Law Dictionary defines it as “the want or absence of some legal requisite; deficiency; imperfection; insufficiency.” *Kamm v. ITEX Corp.*, 568 F.3d 752, 755 (9th Cir. 2009) (quoting *Black’s Law Dictionary* 418 (6th ed. 1990)). Likewise, Webster’s Dictionary defines “defect” as “want or absence of something necessary for completeness, perfection, or adequacy in form or function.” *Id.* (quoting *Webster’s Third New International Dictionary* 591 (1993)). Plainly read, then, “defect refers to a failure to comply with the statutory requirements for removal.” *Id.*; accord *In re Norfolk S. Ry. Co.*, 756 F.3d 282, 292 (4th Cir. 2014).

History and context confirm this meaning of “defect.” *Kamm*, 568 F.3d at 755. Before 1988, the equivalent phrase was “the case was removed improvidently.” 28 U.S.C. § 1447(c) (1987). From 1988 until 1996, the phrase was “any defect in removal *procedure*.” 28 U.S.C. § 1447(c) (1995) (emphasis added). In 1996, Congress “changed ‘any defect in removal procedure’ to simply ‘any defect.’” *Kamm*, 568 F.3d at

755; *accord Graphic Commc'ns*, 636 F.3d at 974 (explaining the history). In doing so, Congress took the old soil with it: “Congress could have changed § 1447(c) to cover a motion to remand the case on ‘any basis’ or ‘any ground,’ but instead kept the narrower term ‘defect.’” *Kamm*, 568 F.3d at 755. Reading “defect” “expansively to cover all remands” would “radically depart from the established law” that Congress did not intend to change when it created the modern text in 1996. *Graphic Commc'ns*, 636 F.3d at 975; *see Kamm*, 568 F.3d at 756 (noting that the “House Judiciary Committee viewed the bill as technical and noncontroversial”).

“Defect” thus refers to “the failure to comply with removal requirements” laid out in §§ 1441 to 1453, not “all grounds for remand.” *Kamm*, 568 F.3d at 755–57; *accord Graphic Commc'ns*, 636 F.3d at 975; *City of Albuquerque v. Soto Enters., Inc.*, 864 F.3d 1089, 1096–97 (10th Cir. 2017). Examples include not “comply[ing] with the time limit ... for filing a petition for removal,” or removing when “a removing defendant [is] a citizen of the state in which the state court suit is filed.” *Kamm*, 568 F.3d at 755–56 (citing *Schmitt v. Ins. Co. of N. Am.*, 845 F.2d 1546, 1551 (9th Cir. 1988) and *Lively v. Wild Oats Mkts., Inc.*, 456 F.3d 933, 939 (9th Cir. 2006)). In comparison, issues that “operate[] outside of the

various requirements for removal specified in §§ 1441-1453”—like a forum-selection clause—“do[] not render removal ‘defective.’” *Kamm*, 568 F.3d at 756. Those external issues may be “grounds for not exercising jurisdiction over a case,” but they are not problems in the removal itself. *Id.*

Under this well-established test, CAFA exceptions are not “defects.” The exceptions are not “statutory requirements for removal” set out in §§ 1441 to 1453. *Kamm*, 568 F.3d at 755. Instead, the exceptions “operate[] outside” those procedural requirements, akin to other forms of “abstention in favor of state court jurisdiction.” *Id.* at 756. Proving a CAFA exception applies in the weeks or months after a removal does not create a “defect” in the removal itself. The CAFA exceptions require litigation and evidence, and place burdens on the parties to prove statutory elements to warrant a remand. “[A] determination that a federal court should abstain in a particular case ... does not mean the removal was defective.” *Snapper, Inc. v. Redan*, 171 F.3d 1249, 1253 (11th Cir. 1999). One would not say, for instance, that a complaint had a “defect” just because the plaintiff’s side lost after trial. Similarly, a removal does not have a “defect” just because the opponent later manages

to prove a CAFA exception applies. *Watson*, 821 F.3d at 639; *Graphic Commc'ns*, 636 F.3d at 975.

In sum, § 1447(d) is no barrier to an appeal. That bar applies only to remands based on the two categories “described in § 1447(c),” and an “abstention-based remand order does not fall into either category.” *Quackenbush*, 517 U.S. at 712; *accord Tucson*, 284 F.3d at 1131. The CAFA exceptions function as a form of abstention, so that same principle applies equally to remand orders based on those exceptions. Because such orders are “final” orders not subject to § 1447(d)’s bar, they may be appealed by ordinary notice of appeal under § 1291.

C. A growing consensus of courts of appeals to address this question agrees.

This conclusion is the only logical one based on first principles and this Court’s precedents. It is also now hornbook law:

An order remanding after removal under the Class Action Fairness Act ... can be appealed as of right, and § 1447(d) does not bar review if the remand is based not on a lack of jurisdiction but on a decision to decline jurisdiction under the local-controversy exception or the home-state exception.

16 Wright & Miller’s Fed. Prac. & Proc. § 3931.2 (3d ed. 2026).

Indeed, in recent years, four circuits have held in published opinions that § 1291 allows appeals by right of remands under the CAFA

exceptions. In *Simring v. GreenSky, LLC*, 29 F.4th 1262, 1266 (11th Cir. 2022), the Eleventh Circuit held that it had “appellate jurisdiction under Section 1291 alone” over an appeal of a remand under CAFA’s local-controversy exception, and thus accepted and addressed GreenSky’s appeal although it filed no § 1453 petition.

Similarly, in *Jacks v. Meridian Resource Co.*, 701 F.3d 1224, 1228 n.2 (8th Cir. 2012), *abrogated in part on other grounds by BP PLC v. Mayor & City Council of Balt.*, 593 U.S. 230 (2021), the Eighth Circuit entertained a CAFA appeal under § 1291 after *denying* permission to appeal the same order under § 1453. *See also Kitchen v. Bridgeton Landfill, LLC*, 3 F.4th 1089, 1092 (8th Cir. 2021) (holding that “we have jurisdiction under § 1291 over this appeal” in which “[t]he sole issue ... is whether CAFA’s local-controversy exception requires remand in this case, as the district court found”). And in *Cheapside Minerals, Ltd. v. Devon Energy Product Co.*, 94 F.4th 492, 495–96 & n.5 (5th Cir. 2024), the Fifth Circuit requested briefing on this topic and then agreed after extensive analysis to follow “persuasive authority,” holding that CAFA exception remands allow an appellant to rely on § 1291.

The Fourth Circuit recently joined this consensus as well. In *Skyline Tower Painting, Inc. v. Goldberg*, 148 F.4th 209 (4th Cir. 2025), faced with a direct appeal from a remand based on the local-controversy exception, the court held that “§ 1291 provides a valid basis for appellate review here,” joining “the three other circuits that have considered this issue.” *Id.* at 214. The court then “dismiss[ed] the § 1453 petitions for permission to appeal as unnecessary.” *Id.* This Court should join that growing chorus and explicitly hold that remands based on CAFA’s exceptions can be appealed under § 1291, without having to go through § 1453’s procedure for discretionary review.

D. Section 1453 is not an exclusive path for appeal after remand.

Here, this Court stayed the § 1291 appeal pending resolution of the petition for review under § 1453, and then months later, granted that petition. *See* Order, *Lopez v. Suzuki Motor of Am.*, No. 26-2599 (9th Cir. Apr. 28, 2026), Dkt. 3 (order staying the § 1291 appeal “pending resolution of the petition for permission to appeal in No. 26-2442”); Order, *Lopez v. Suzuki Motor of Am.*, No. 26-2442 (9th Cir. Sept. 28, 2026), Dkt. 9 (order granting review under § 1453). Respectfully, and although the Court may properly adjudicate the appeal in this posture, this procedure

is needlessly burdensome on the parties and the Court. *See infra* Part II. Prudent defendants, however, will continue to file § 1453 petitions in cases like this unless and until this Court announces that it is unnecessary.

Nothing in § 1453 *requires* the Court or a remanded defendant to use it. Section 1453(c) “did not supplant § 1291 and become the lone vehicle by which an appellant can obtain review of a final order remanding class action litigation to state court; it simply permits certain appeals ... that §§ 1447(d) and 1291 would have otherwise prohibited.” *Cheapside Minerals*, 94 F.4th at 496; *accord Skyline Tower*, 148 F.4th at 218–19.

“[N]othing in the plain text of § 1453 suggests it is the exclusive avenue for appealing all remand orders based on CAFA exceptions.” *Skyline Tower*, 148 F.4th at 219. The baseline rule is that remand orders are appealable final orders, and that abstention-based remands are not barred under § 1447(d). *See Quackenbush*, 517 U.S. at 711–12; *Tucson*, 284 F.3d at 1131. CAFA was enacted long after that understanding was in place. There is no reason to think that by incorporating § 1447 into CAFA in 2005, Congress meant to “contradict preexisting Supreme Court

precedent in order to eliminate the normal pathway of appellate review under § 1291.” *Skyline Tower*, 148 F.4th at 219. The fairer assumption is that Congress expected abstention-based remand orders to remain appealable, and “its intention was to provide an alternative avenue for appeal” for that relevant slice of CAFA-related appeals. *Id.* Section 1291 remains “an independent basis for [the Court’s] appellate jurisdiction.” *Simring*, 29 F.4th at 1266.

This reading does not render § 1453 a nullity—far from it. For one, an order *denying* any CAFA remand is appealable solely through § 1453. Remand denials are not otherwise appealable final orders, because no litigant has been put out of federal court. *Quackenbush*, 517 U.S. at 714. Likewise, § 1453 is the sole avenue for appealing orders *granting* remands on grounds covered by § 1447(d), namely, subject matter jurisdiction and removal defects. As an example, if the district court remands for failure to satisfy the amount-in-controversy rule, then defendants must follow the § 1453 route.

The two “avenues for appeal” are thus “complementary, not contradictory.” *Skyline Tower*, 148 F.4th at 219; *accord Cheapside Minerals*, 94 F.4th at 496–97. Section 1291 allows certain appeals as of

right, and § 1453 fills the gaps for orders that otherwise would not be appealable.

II. Allowing defendants to appeal remands under § 1291 would increase efficiency for the Court and parties.

This case presents a good opportunity to make clear the circumstances in which § 1453 is needless and § 1291 provides a mechanism for appeal. It would often be in courts' best interest to avoid the § 1453 route when § 1291 is sufficient. This Court should take this opportunity to join its sister circuits and hold, in a published opinion, that remands based on CAFA exceptions are appealable by right under § 1291. *See Cheapside Minerals*, 94 F.4th at 495 (doing just that after granting permission to appeal under § 1453).

A. Section 1453(c) requires a scramble by counsel and the courts.

First, § 1453 sets exceptionally short timelines for both counsel and the courts. *See Skyline Tower*, 148 F.4th at 218. Counsel have only ten days to prepare an initial petition. 28 U.S.C. § 1453(c)(1). And then § 1453 requires the court to decide the entire appeal, "including rendering judgment," within 60 days. *Id.* § 1453(c)(2); *see id.* § 1453(c)(3)

(allowing an extension of time that cannot exceed 10 days without all parties' consent).

This 60-day timeline is so tight that this Court and others have created a “loophole.” *Patterson v. Dean Morris, LLP*, 444 F.3d 365, 371 (5th Cir. 2006) (Garza, J., dissenting). Rather than run the 60-day clock from the day the petition is filed, courts run the clock from the day the petition is granted. *Amalgamated Transit Union Loc. 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.*, 435 F.3d 1140, 1144–45 (9th Cir. 2006); *see also, e.g., Scott v. Cricket Commc'ns, LLC*, 865 F.3d 189, 193 n.2 (4th Cir. 2017) *cf. Patterson*, 444 F.3d at 370 (Garza, J., dissenting) (asserting that, plainly read, the statute requires that the 60-day period run from the day the petition is *filed*).

Indeed, in practice it often takes more than 60 days from the filing of the petition just for a busy court to grant it, let alone decide the appeal. *See, e.g., Yount v. Whole Foods Mkt. Pac. Nw., LLC*, No. 26-1549 (9th Cir. Sept. 28, 2026) (granting a § 1453 petition 199 days after it was filed); *Perez v. Rose Hills Co.*, No. 24-4798 (9th Cir. Jan. 6, 2025) (154 days); *Townsend v. J.B. Hunt Transp. Servs. Inc.*, No. 22-80094 (9th Cir. Jan. 16, 2023) (138 days). (And the § 1453 petition was granted in this case

161 days after it was filed). Petitioners are in no position to complain about this, because if the court simply fails to act within 60 days, their appeal is deemed denied. 28 U.S.C. § 1453(c)(4). The short timing provision in § 1453 creates hydraulic pressure to misshape a statute that requires judgment “not later than 60 days after the date on which such appeal was filed” and limits most extensions to 10 days.

Not only is there a sprint at the front end, but if a petition is granted, then a scramble again ensues to get a case briefed, potentially argued, and decided within 60 more days. This case well illustrates that rush. The district court remanded the case on April 8, 2026. D.Ct. Dkt. 31. Suzuki Motor petitioned for permission to appeal 10 days later, on April 18. D.Ct. Dkt. 33. In September, the Court granted the petition for permission to appeal and committed to “resolve the appeal within 60 days,” despite carrying the heaviest workload of any circuit. To make that possible, the Court ordered each side to submit “simultaneous briefs” within 10 days and scheduled oral argument for the end of October, long after the calendar for that sitting had been otherwise finalized. *See also*, e.g., *Townsend v. J.B. Hunt Transp. Servs. Inc.*, No. 23-55044 (9th Cir. Jan. 17, 2023), Dkt. 1 (adhering to a similarly stressed schedule). This

truncated process will deprive the parties (both sides) of the normal back-and-forth in briefing, potentially making these written submissions less helpful to the Court. It also requires the Court and counsel to prepare for oral argument on a grueling timeline, and the panel to resolve the issues and draft a reasoned opinion in mere weeks, regardless of the demands of the rest of its calendar.

Section 1453 *sometimes* requires all of this burdensome procedure. But when § 1291 applies, the process is unnecessary, and it would be in the Court's and litigants' interest to avoid it.

B. Analyzing whether to accept a § 1453 appeal requires meaningful effort and analysis, worth avoiding when needless.

Next, § 1453 allows courts of appeals to entertain petitions for permission to appeal a remand order, but identifies no legal standard to guide courts in exercising that discretion in making that decision. This Court, like others, has adopted an eight-factor test to determine whether a § 1453 appeal should be granted. *See Coleman v. Estes Express Lines, Inc.*, 627 F.3d 1096, 1100 (9th Cir. 2010). These factors include:

- (1) the presence of an important CAFA-related question; (2) whether the question is unsettled; (3) whether the question, at first glance, appears to be either incorrectly decided or at least fairly debatable; (4) whether the question is

consequential to the resolution of the particular case; (5) whether the question is likely to evade effective review if left for consideration only after final judgment; (6) whether the question is likely to recur; (7) whether the application arises from a decision or order that is sufficiently final to position the case for intelligent review; and (8) whether the probable harm to the applicant should an immediate appeal be refused outweighs the probable harm to the other parties should an immediate appeal be entertained.

BP Am., Inc. v. Oklahoma ex rel. Edmondson, 613 F.3d 1029, 1034 (10th Cir. 2010); *see Coleman*, 627 F.3d at 1100 (explicitly incorporating these factors).

Most of these factors, of course, have nothing to do with the propriety of the remand in question. So this test invites parties to spill substantial ink over debatable, factually uncertain points, as the 60-plus pages of petition-stage briefing in this case illustrates. When a § 1291 appeal by right is available, briefing those factors is a wasteful sideshow for the parties, and analyzing them is equally wasteful of the Court's time.

C. CAFA exceptions are common bases for appeal, and the dual practice of filing both a petition and notice of appeal is wasteful.

Lastly, the CAFA exceptions are common bases for appeal. This case, concerning the home-state exception, is one example. Other

examples in this Circuit include *Employees at Clark County Government Center v. Monsanto Co.*, 163 F.4th 602, 604 (9th Cir. 2025) (local-controversy exception); *Adams*, 958 F.3d at 1218 (discretionary exception); *Singh v. American Honda Finance Corp.*, 925 F.3d 1053, 1058 (9th Cir. 2019) (home-state exception); *Brinkley v. Monterey Financial Services, Inc.*, 873 F.3d 1118, 1120 (9th Cir. 2017) (home-state exception); *Benko v. Quality Loan Service Corp.*, 789 F.3d 1111, 1115 (9th Cir. 2015) (local-controversy exception); *Coleman v. Estes Express Lines, Inc.*, 631 F.3d 1010, 1012 (9th Cir. 2011) (local-controversy exception).

Under the current system, prudent counsel facing remand under CAFA's exceptions should file two different appeals from the same remand order: a § 1453 petition and a § 1291 notice of appeal. Counsel should file the § 1453 petition because this Court has not yet announced that it is unnecessary (and indeed, cases like this one suggest that maybe the Court believes it *is* necessary). And they should also file a § 1291 notice of appeal, to preserve proper appeal rights and avoid a possible rapid denial of the § 1453 petition. The Court's current practice and lack of guiding precedent proliferates paperwork, runs up litigation costs, and

requires more needless effort by this Court in time spent weighing permission to appeal even though by-right appeal is available.

CONCLUSION

For these reasons, the Court should hold that appellate jurisdiction is proper under § 1291.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 4,371 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it has been prepared in 14-point Century Schoolbook font.

/s/ Matthew A. Fitzgerald
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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2026, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate ACMS system. All participants in the case are registered ACMS users and will be served by the system.

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