UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, - against - AMAZON.COM INC., AMAZON.COM SALES, INC., and AMAZON.COM SERVICES LLC, Defendants.	Case No. 1:21-cv-1417 (JSR) Oral Argument Requested

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND

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PRELIMINARY STATEMENT

The Office of the New York Attorney General ("OAG") filed this action seeking personalized relief for a discrete group of individuals, ostensibly under the New York Labor Law, but in reality under federal workplace safety standards. The OAG claims that the defendants (collectively, "Amazon") are not providing adequate protection against COVID-19 to employees at two Amazon facilities in Staten Island and Queens and "retaliated" against two individuals who complained about the alleged violations of law. The claims are utterly baseless—Amazon has developed and implemented industry-leading workplace protections against COVID-19 that far exceed any applicable standard, and was fully justified in taking disciplinary action against two employees who repeatedly and willfully violated Amazon's social distancing guidance and, in one instance, a quarantine order following a potential COVID-19 exposure. This Court has subject-matter jurisdiction because the real parties in interest are the individuals on whose behalf the OAG concededly seeks relief, and the OAG admittedly seeks to enforce *federal* workplace standards and *federal* COVID-19 guidance through the vehicle of a state-law cause of action.

The OAG's efforts to evade federal jurisdiction are especially transparent given that the claims in this action are the subject of three previously filed federal lawsuits, all of which are pending in, or were recently decided by, the United States District Court for the Eastern District of New York. The three related cases involve largely the same parties and the same alleged facts and events. Both individuals on whose behalf the OAG seeks relief—Derrick Palmer and Christian Smalls—have filed lawsuits in the Eastern District challenging Amazon's extensive COVID-19 safety measures at its JFK8 fulfillment center in Staten Island, and Mr. Smalls has also challenged the alleged "retaliation." Judge Cogan recently dismissed Mr. Palmer's claim under New York Labor Law § 200—the same claim that the OAG brings here—on the ground that it falls within

the primary jurisdiction of the U.S. Occupational Safety and Health Administration ("OSHA"). Separately, Amazon has sued the OAG in the Eastern District under federal law to enjoin the OAG's unlawful efforts to regulate Amazon's COVID-19 workplace safety responses—activities that are governed by federal standards and assigned to the exclusive or primary jurisdiction of federal regulators. Each of those cases is properly in federal court, and the OAG's duplicative claims here belong in the same federal forum for at least three independent reasons.

First, this Court has original diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds $75,000 and the individuals whom the OAG purports to represent—the New York citizens who work at Amazon's JFK8 and DBK1 facilities and Mr. Smalls and Mr. Palmer—are citizens of different states than Amazon. Longstanding United States Supreme Court and Second Circuit authority establishes that when a state sues to seek redress for an identifiable group of state citizens, the state is not the real party in interest for diversity purposes. That is so here, where the OAG's action seeks relief primarily for Mr. Smalls and Mr. Palmer—indeed, the OAG requests much of the same relief that those individuals seek in their lawsuits against Amazon. The fact that the OAG purports to rely on New York Executive Law § 63(12) in bringing these claims for relief on behalf of discrete and identifiable individuals does not change the personalized nature of this suit.

Second, the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 over the OAG's claims, all of which necessarily turn on substantial and disputed questions of federal law. As the OAG's Complaint itself makes clear, federal guidance defines the standard of care that the OAG seeks to enforce, and the meaning and applicability of that federal guidance is in dispute. The OAG's retaliation claims turn on the same guidance; the OAG must prove that Amazon retaliated against an employee who reported an actual violation of law, but the only asserted

violation here is of the federal guidance (or state guidance that incorporates the federal guidance). As a result, there is simply no way for the Court to resolve the OAG's claims without construing significant aspects of federal law concerning COVID-19 workplace protections. These and other federal issues belong in a federal forum.

Third, this Court independently has federal question jurisdiction over the OAG's claims seeking declaratory relief in the form of "findings" that Amazon violated New York law. Tellingly, the OAG does not deny that it seeks declaratory relief. The Supreme Court and Second Circuit have made clear that the proper jurisdictional question in a declaratory judgment action is whether the defendants could bring a "coercive action" that is the inverse of the plaintiff's declaratory judgment claim and that "present[s] a federal question." *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 571 U.S. 191, 197 (2014). That analysis is not a hypothetical exercise here because Amazon has already brought just such an action: a previously filed lawsuit in the Eastern District seeking to enjoin the OAG's use of state law to regulate Amazon's COVID-19 safety measures. Under settled law, this Court has jurisdiction over the OAG's declaratory judgment claims, which were filed in response to Amazon's federal action and seek to have those same federal issues in Amazon's lawsuit decided by judicial declaration in state court.

Any one of these grounds gives this Court subject-matter jurisdiction over the OAG's action. Moreover, to the extent the Court construes any of the OAG's claims as arising under state law, this Court should exercise supplemental jurisdiction under 28 U.S.C. § 1367(a) because those claims form part of the same case or controversy as the claim over which the Court has original jurisdiction. For each of these reasons, the OAG's motion to remand, and its request for costs and fees, should be denied.

BACKGROUND

Amazon operates two facilities that are the subject of this litigation: JFK8, a large fulfillment center in Staten Island; and DBK1, a delivery station in Queens. Compl. ¶¶ 3, 44–47. According to the OAG, Amazon is operating JFK8 without providing "reasonable and adequate . . . protect[ion]" against COVID-19 for its employees, allegedly in violation of New York Labor Law ("NYLL") § 200. *Id.* ¶ 3. The OAG also alleges that when Amazon disciplined an associate who persistently violated Amazon's social distancing rules, and terminated the employment of another associate who willfully violated Amazon's social distancing rules and a quarantine order, Amazon was actually "retaliat[ing]" against these employees for organizing "protest[s]" and whistleblowing, in violation of NYLL §§ 215 and 740. *Id.* ¶¶ 88, 118–19, 130–31, 136–37, 148–49. The OAG lumps DBK1 into these assertions but does not plead any allegations about that facility.

Although it is ignored in the OAG's complaint, the OAG's allegations are the subject of a previously filed federal lawsuit pending before Judge Cogan in the Eastern District. *Amazon.com, Inc. v. Att'y Gen. Letitia James*, No. 1:21-cv-767 (BMC) (E.D.N.Y. filed Feb. 12, 2021). In that lawsuit, Amazon.com, Inc. sued the OAG to enjoin its unlawful attempts to use the New York Labor Law to regulate workplace conduct governed by federal standards and assigned to the exclusive or primary jurisdiction of federal regulatory agencies. Schwartz Decl., Ex. A ("Amazon Compl.") ¶¶ 17–18, 20–21. Amazon's complaint in that action addresses all of the OAG's claims and pleads many additional material facts that are inexplicably omitted from the OAG's telling of the events in question.[1]

[1] As just a small sampling of the undisputed material facts omitted from the OAG's complaint, Amazon has implemented over 150 process changes to promote social distancing and hygiene and the safety of its associates, often well before New York state officials and federal officials

In keeping with the OAG's pattern of omitting unfavorable facts, the OAG's complaint also fails to mention that the Eastern District has rejected an *identical* claim under NYLL § 200 filed by Mr. Palmer, one of the two employees who are the subject of the OAG's claims. *See Palmer v. Amazon.com, Inc.*, -- F. Supp. 3d --, 2020 WL 6388599, at *9 (E.D.N.Y. Nov. 2, 2020). Indeed, the OAG appeared in that case ostensibly as an *amicus curiae* in support of the *Palmer* plaintiffs. *See* Motion, *Palmer v. Amazon.com, Inc.*, No. 1:20-cv-2468 (BMC) (E.D.N.Y. July 9, 2020), Dkt. 49. The court in *Palmer* held that the primary-jurisdiction doctrine applied to the *Palmer* plaintiffs' NYLL § 200 claim because OSHA has primary jurisdiction over regulations of health and safety in the workplace. *Id.* at *4–7. The court further explained that because the federal Occupational Safety and Health Act ("OSH Act") allows states to promulgate "occupational safety and health standards" only by submitting a plan to the Secretary of Labor, 29 U.S.C. § 667(b), and New York withdrew its plan for private employers in 1973, New York "cannot enforce state occupational safety and health standards for issues covered by a federal standard." 2020 WL 6388599 at *9. The *Palmer* plaintiffs have appealed that decision to the Second Circuit. And the other individual whose employment was terminated, Mr. Smalls, has filed his own federal lawsuit in the Eastern District challenging Amazon's COVID-19 safety

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recommended analogous measures, and has even built its own COVID-19 testing capacity and laboratories to screen its workforce for asymptomatic cases of COVID-19. Amazon Compl. ¶¶ 2, 3, 35, 96. To date, Amazon has spent over $10 billion on COVID-related initiatives to keep associates safe and deliver essential products to customers. *Id.* ¶ 16. When the New York City Sheriff's Office conducted an unannounced inspection of JFK8 in March 2020, it concluded that Amazon's health and safety measures go "above and beyond" compliance requirements and pose "absolutely no areas of concern," *id.* ¶ 4, and that complaints about those issues were completely "baseless," *id.* ¶ 156. The workplace health and safety standard the OAG advances in this action also is far more stringent than the standard adopted by the OAG when defending, in other litigation, the New York State Courts' reasonable but more limited safety response to COVID-19 in the face of threats greater than those present in Amazon's facilities. *Id.* ¶¶ 14, 121–30. The OAG's complaint ignores all of these material facts.

practices at JFK8 and alleging that Amazon retaliated against him for organizing workplace protests. *See* Am. Compl. ¶¶ 17, 25, 30, 33, 36, 38, *Smalls v. Amazon, Inc.*, No. 1:20-cv-5492 (E.D.N.Y. Dec. 14, 2020), Dkt. 7.

Against this backdrop, when the OAG filed its complaint against Amazon on February 16, 2021, challenging the same underlying events that are the subject of these previously-filed federal cases, Amazon promptly removed the case to federal court on three grounds. First, Amazon invoked federal diversity jurisdiction under 28 U.S.C. § 1332 because the real parties in interest in the OAG's complaint are the New York citizens who work at JFK8 (and DBK1) and the two individuals who were disciplined for their unsafe conduct, who are citizens of different states than the named defendants, and the amount in controversy exceeds $75,000. Dkt. 13 ¶¶ 15–26. Second, Amazon invoked federal question jurisdiction under 28 U.S.C. § 1331 because each of the OAG's claims necessarily raises a federal question that is actually disputed, substantial, and most appropriately decided by a federal court. *Id.* ¶¶ 27–45. Third, federal question jurisdiction was appropriate for the additional reason that the OAG seeks declaratory relief for its claims, and Amazon's federal injunctive claim against the OAG in the Eastern District is the inverse "coercive" claim to the OAG's declaratory claims. *Id.* ¶¶ 46–49.

Despite the fact that all of the allegations in the OAG's complaint are the subject of one or more other federal lawsuits, the OAG has moved to remand its case to the New York Supreme Court, New York County, a venue with no connection to this litigation, on the pretense that there are no federal issues and only state sovereign interests in this ligation. *See* Mot. 2, 16. The OAG's arguments do not withstand scrutiny, and thus its motion to remand should be denied.

LEGAL STANDARD

Removal from state court is proper if the federal court would have had original jurisdiction

of the action. 28 U.S.C. § 1441(a). "The removal process was created by Congress to protect defendants." *Legg v. Wyeth*, 428 F.3d 1317, 1325 (11th Cir. 2005). The removing party need show only that there is federal jurisdiction over a single claim to remove the entire action. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 559, 563 (2005); *see* 28 U.S.C. § 1367(a).

ARGUMENT

I. This Court Has Original Diversity Jurisdiction Over This Action.

This Court has original diversity jurisdiction pursuant to 28 U.S.C. § 1332 because Amazon is a citizen of different states than the real parties in interest—the New York citizens who work at JFK8 and DBK1, and Mr. Smalls and Mr. Palmer—and it is undisputed that the amount in controversy exceeds $75,000.

A. The Real Parties In Interest Are The New York Citizens Who Work At JFK8 And DBK1 And Mr. Smalls And Mr. Palmer—Not The State.

In determining whether diversity jurisdiction exists, the citizenship of "nominal or formal parties" is disregarded, and only the citizenship of those parties with a "real and substantial" interest in the controversy are considered. *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 460–61 (1980). Thus, when a state files a lawsuit but is not the "real party in interest" to the dispute, the state's presence does not destroy diversity jurisdiction. *See Ex parte Nebraska*, 209 U.S. 436, 444–46 (1908). Under well-established Second Circuit case law, the real party in interest analysis requires courts to consider "the essential nature and effect of the proceeding" to evaluate whether the state is the real party in interest. *Finkielstain v. Seidel*, 857 F.2d 893, 895 (2d Cir. 1988) (internal quotation marks omitted). When a state files suit seeking redress for "a circumscribed group of its citizens," those citizens are the real parties in interest and their citizenship determines whether there is diversity jurisdiction. *Connecticut v. Chubb Grp. of Ins. Cos.*, 2012 WL 1110488,

at*2–4 (D. Conn. Mar. 31, 2012) (lawsuit filed by Commissioner of Labor alleging that defendant violated Connecticut's labor laws was removable on the grounds that "there is diversity of citizenship because the State is not a real party in interest"); *see also, e.g.*, *Conn. Comm'r of Labor v. AT&T Corp.*, 2006 WL 3332982, at *2–3 (D. Conn. Nov. 16, 2006) (same); *Butler v. Cadbury Beverages, Inc.*, 1998 WL 422863, at *2 (D. Conn. July 1, 1998) (same).

It is clear on the face of the Complaint that Mr. Palmer, Mr. Smalls, and the New York citizens who work at Amazon's JFK8 and DBK1 facilities—not the State of New York—are the real parties in interest for purposes of diversity jurisdiction. The Complaint devotes dozens of allegations to just two individuals: Mr. Palmer, an associate at JFK8, and Mr. Smalls, a former associate at that facility. *See* Compl. ¶¶ 5, 78–97, 115–50. Notwithstanding the fact that both Mr. Palmer and Mr. Smalls have already filed their own lawsuits against Amazon, four of the OAG's five claims seek unusually personalized relief for these two individuals. *Id.* ¶¶ 115–50. The OAG asserts claims on behalf of Mr. Palmer and Mr. Smalls under NYLL §§ 215 and 740, which create only a *private* right "to recover damages for individuals," not for the State. *Chubb Grp.*, 2012 WL 1110488, at *3; *see* NYLL §§ 215(2)(a), 740(4)(a). Further, the OAG seeks an extraordinary injunction requiring Amazon to offer Mr. Smalls "reinstatement to his former position of employment" (with backpay) and to "rescind the discipline issued to [Mr.] Palmer," and requests "emotional distress damages and liquidated damages" for both men. Compl. at pp. 28–29.

These requests for personalized relief would benefit *only* Mr. Palmer and Mr. Smalls, and do "not . . . provide any benefit to the State." *Chubb Grp.*, 2012 WL 1110488, at *3; *see also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cavicchia*, 311 F. Supp. 149, 156–57 (S.D.N.Y. 1970) ("the State of New York is not a real party in interest" in lawsuit over assets of fraudulent securities dealer because remedies sought were for defrauded New York citizens with verifiable

claims, not the state). In analogous cases, where state officials have taken the unusual step of filing suit to seek reinstatement of, or damages for, individual employees, courts have not hesitated to find that those employees—not the state—are the real party in interest for diversity purposes. *See, e.g.*, *Dep't of Fair Emp. & Hous. v. Lucent Techs., Inc.*, 642 F.3d 728, 739 & n.8 (9th Cir. 2011) (concluding that state is not the real party in interest in lawsuit where state agency seeks an order requiring defendant to "reinstate" former employee or "pay his back pay, front pay, and other benefits of employment" and requests "emotional distress" damages for that employee); *AT&T Corp.*, 2006 WL 3332982, at *2 (state is not the real party in interest in action seeking "unpaid wages" for three former employees of defendant). The same result must follow here.

The OAG does not dispute that four of its five causes of action are asserted "on behalf of," and seek relief for, Mr. Palmer and Mr. Smalls. Mot. 5. The OAG nevertheless contends that the State is the real party in interest because the Complaint seeks "broader injunctive relief." *Id.* at 10.[2] But courts have rejected similar arguments that requests for injunctive relief render the state the real party in interest for diversity purposes. *See, e.g.*, *Lucent*, 642 F.3d at 739 (rejecting argument that state agency is the "real party in the controversy for the purposes of diversity jurisdiction" because it requested injunctive relief); *Cavicchia*, 311 F. Supp. at 156–57 (concluding that State was not the real party in interest in action filed by the Attorney General seeking injunctive relief). Moreover, the injunctive relief that the OAG seeks would benefit the employees at JFK8 and DBK1, but would not "inure to the benefit of the state as a state." *Mo., Kan. & Tex. Ry. Co. v. Hickman*, 183 U.S. 53, 59 (1901). The OAG seeks an injunction ordering Amazon "to post and

[2] The fact that the OAG seeks disgorgement also does not, "by itself," demonstrate that the State is the real party in interest. Mot. 10 n.6. There is no indication in the OAG's pleading or motion to remand that the State would be the exclusive beneficiary of any disgorgement award. To the contrary, the OAG has informed Amazon that any disgorgement would be disbursed to JFK8 and DBK1 employees.

distribute notices to employees of their rights" under NYLL §§ 215 and 740 and to provide anti-retaliation "training" to managers and employees. Compl. at p. 29. Only the employees at JFK8 and DBK1 stand to benefit from this injunction, and the OAG does not, and cannot, show a "substantial state interest" in this requested relief. *Lucent*, 642 F.3d at 739 (state agency's requests for "equitable relief," including order requiring employer to "develop, implement, and disseminate a policy" and provide "train[ing]," did not "constitute a substantial state interest").

The OAG's fifth claim—which is asserted pursuant to NYLL § 200 and is the OAG's only claim that does not relate to Mr. Palmer and Mr. Smalls—seeks to secure relief for the New York citizens who work at JFK8 and DBK1, rather than the State. The allegations underlying the OAG's NYLL § 200 claim focus on the day-to-day operations and Human Resources policies at Amazon's JFK8 and DBK1 facilities, including "conveyer belt speed and the volume of products on those belts" and productivity-related performance measures for associates. Compl. ¶¶ 56–70. The OAG seeks an injunction under NYLL § 200 ordering Amazon to institute certain safety-related measures at these facilities and to "chang[e]" its employment "policies." *Id.* at p. 28. Indeed, Mr. Palmer filed an identical NYLL § 200 claim against Amazon in the Eastern District seeking substantially similar relief—which only confirms that the State is not the real party in interest.[3] *See Lucent*, 642 F.3d at 739 (state agency's requests for injunctive relief against employer do not "constitute a substantial state interest" where employee had sought "most of these forms of equitable relief" against employer).

B. The OAG's Attempts To Manufacture A "Real and Substantial" State Interest In This Action Fail.

The OAG attempts to manufacture a substantial state interest based on its authority under

[3] *Compare* Am. Compl. ¶ 341, *Palmer v. Amazon.com, Inc.*, No. 1:20-cv-2468 (E.D.N.Y.), Dkt. 63, *with* Compl. at p. 28.

Executive Law § 63(12) and the State's purported "quasi-sovereign interests," but its arguments misapply the law and contort the facts. Mot. 7–9.

The OAG contends that Amazon's arguments concerning the true party in interest "depend on . . . [whether] the State brings this action only in a *parens patriae* capacity," rather than under Executive Law § 63(12), and that Amazon has somehow "waived any argument that Executive Law § 63 does not apply here." Mot. 7, 8 n.4.[4] The OAG is wrong on both counts. First, Amazon did not "waive defenses" by not articulating them in its notice of removal. *Danziger & De Llano, LLP v. Morgan Verkamp LLC*, 948 F.3d 124, 129 (3d Cir. 2020) ("removal alone does not waive defenses"). Second, the OAG conflates two distinct legal concepts—the State's standing to file suit and the real party in interest in that lawsuit. The *parens patriae* doctrine affords a state "standing to bring a cause of action that otherwise properly can be brought only by private parties." *People ex rel. Spitzer v. Grasso*, 42 A.D.3d 126, 141 (1st Dep't 2007). The law is clear that whether a state has *parens patriae* standing and whether it is a real party in interest for federal diversity purposes are fundamentally different questions governed by separate precedents. *Lucent*, 642 F.3d at 738 n.5. "[A] state can possess standing to bring forth a claim" but still "lack status as a real party in the controversy for the purposes of diversity jurisdiction." *Id.*; *California v. N. Trust Corp.*, 2012 WL 12888851, at *8 n.3 (C.D. Cal. Dec. 19, 2012) ("The determination of the real party in interest for diversity purposes is separate and distinct from the Court's standing analysis."). Thus, for purposes of evaluating diversity jurisdiction, the question is not whether the State has *parens patriae* standing, but instead whether it is the real party in interest in the dispute.[5]

[4] The OAG cites no authority to support its assertion that Amazon has "waived" an argument by not developing it in a notice of removal. A notice of removal need only include a "short and plain statement" of the grounds for removal, not a party's merits defenses. 28 U.S.C. § 1446(a).

[5] Amazon disputes that the OAG has standing or authority to enforce the NYLL, and does not waive this defense in removing this action to federal court. *See Danziger*, 948 F.3d at 129.

Moreover, the OAG's contention that it filed this action pursuant to its "express and exclusive authority" under Executive Law § 63(12) neither proves that the State is the "real party in interest" nor exempts this action from removal. Mot. 4, 7–8. The OAG's Complaint does not allege that Amazon "violate[d] New York Executive Law § 63(12)," *id.* at 1, but instead invokes that statute to assert claims under the NYLL.[6] The OAG also is not exercising its "exclusive" enforcement authority in bringing these NYLL claims because NYLL § 21 expressly authorizes the Labor Commissioner to enforce the NYLL. *See* NYLL § 21. However, this Court need not resolve the scope of the OAG's enforcement authority to determine that the State is not the real party in interest in this action. Under longstanding Supreme Court precedent, the mere fact that state law empowers a state official or agency to bring suit to enforce state law does not establish the state as the real party in interest for federal diversity purposes. *See Hickman*, 183 U.S. at 59–60 (Missouri was not party in interest in suit brought by state board pursuant to its statutory authority to enforce state law). Courts have thus repeatedly held that the State is not the real party in interest even where a state statute expressly authorized a state official or agency to file suit. *See, e.g.*, *Lucent*, 642 F.3d at 738–39 & n.6 (state was not real party in interest in action filed by state agency pursuant to statute authorizing it to enforce state law); *Chubb Grp.*, 2012 WL 1110488, at *1, *3–4 (same); *AT&T Corp.*, 2006 WL 3332982, at *1–3 (same). Indeed, the court in *Cavicchia* expressly rejected the New York Attorney General's argument that the State was the real party in interest because the Martin Act, N.Y. Gen. Bus. Law art. 23-A—which "parallels the language of" Executive Law § 63(12), *Matter of People by Schneiderman v. Trump Entrepreneur Initiative LLC*,

[6] Executive Law § 63(12) "does not create an independent cause of action," but is instead a "mechanism" for the OAG to seek relief where it "establishes that a respondent violated other statutes." *People ex rel. Schneiderman v. One Source Networking, Inc.*, 125 A.D.3d 1354, 1355–56 (4th Dep't 2015).

137 A.D.3d 409, 417–18 (1st Dep't 2016)—gave him the "power to bring an action in the name of the state." *Cavicchia*, 311 F. Supp. at 155–56.

The OAG further contends that the State's "quasi-sovereign interests" in "enforcing its labor laws" and protecting "the physical and economic health of its residents" establish it as the real party in interest in this action. Mot. 6, 9 (internal quotation marks omitted). But the Supreme Court rejected that precise argument in *Hickman*, 183 U.S. at 60. There, the Court held that Missouri was not the real party in interest to a lawsuit brought by the commissioners of a state-created board against a railroad to enforce Missouri's laws regulating rail rates. *Id.* The Court rejected the argument that Missouri's "interest in the welfare of all its citizens, in compelling obedience to the legal orders of all its officials, and in securing compliance with all its laws" established it as the real party in interest for diversity purposes, explaining that this type of "general governmental interest" is "not that which makes the state, as an organized political community, a party in interest in the litigation." *Id.* at 59–60. The Court reasoned, "[I]f that were so the state would be a party in interest in all litigation." *Id.* at 60.[7]

The OAG's contention that this action advances the State's interest in "securing an honest marketplace in which to transact business" is similarly meritless. Mot. 9–10. The OAG relies on inapposite cases involving claims for fraudulent or deceptive business practices that had a "widespread impact" on consumers and "the [state] economy as a whole." *In re Standard & Poor's*

[7] Federal courts of appeals have consistently followed *Hickman*. *See, e.g.*, *Grace Ranch, LLC v. BP Am. Prod. Co.*, -- F.3d --, 2021 WL 716626, at *4 (5th Cir. Feb. 24, 2021) ("Louisiana's interest in environmental regulation" is a "general governmental interest" and "does not make the State a real party in interest"); *Lucent*, 642 F.3d at 737 ("general governmental interest[s] will not satisfy the real party to the controversy requirement for the purposes of defeating diversity"); *Ramada Inns, Inc. v. Rosemount Memorial Park Ass'n*, 598 F.2d 1303, 1307 (3d Cir. 1979) ("state's general 'governmental interest in the welfare of all its citizens'" does not establish state as "a real party in interest"); *see also Skandia Am. Reinsurance Corp. v. Schenck*, 441 F. Supp. 715, 722 (S.D.N.Y. 1977); *Cavicchia*, 311 F. Supp. at 155–56.

Rating Agency Litig., 23 F. Supp. 3d 378, 404 (S.D.N.Y. 2014) (cited at Mot. 10).[8] By contrast, here, the OAG entirely fails to explain how any of its claims—which focus on a private employer's workplace safety practices at two facilities and claims of retaliation against two individuals nearly one year ago—seek to "secur[e] an honest marketplace." Mot. 9. These purported state interests are also not pleaded in the Complaint, which does not include any allegations concerning an "honest marketplace" or "proper business practices." *Id.* The OAG's argument is nothing more than a *post hoc* attempt to rewrite its pleading to manufacture a state interest in this action, and should be rejected. *Cf. Fed. Ins. Co. v. Tyco Int'l Ltd.*, 422 F. Supp. 2d 357, 368 (S.D.N.Y. 2006) ("the propriety of removal is to be determined by the pleadings at the time of removal").

In a cursory footnote, the OAG suggests that Amazon offered "no evidence" to "establish[] that all former, current, and future JFK8 and DBK1 workers are diverse citizens," Mot. 7 n.2, but the suggestion is unfounded. A notice of removal "need not contain evidentiary submissions" but "only a plausible allegation" that the requirements of 28 U.S.C. § 1446(a) are met. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84, 88 (2014). Regardless, in cases in which courts have exercised diversity jurisdiction over state enforcement actions, courts generally have not inquired into the citizenship of each of the real parties in interest, but instead have sensibly presumed that the state is representing its own citizens. *See, e.g.*, *Ohio v. GMAC Mortg., LLC*, 760 F. Supp. 2d 741, 748–51 (N.D. Ohio 2011) (finding "diversity of citizenship exists" because "Ohio homeowners with GMAC mortgages," not the state, are real parties in interest); *State ex rel. Guste v. Fedders Corp.*, 524 F. Supp. 552, 557–58 (M.D. La. 1981) (denying motion to remand

[8] *See also People by Underwood v. LaRose Indus. LLC*, 386 F. Supp. 3d 214, 216–18 (N.D.N.Y. 2019) (cited at Mot. 9) (State asserted "fraud" and "false advertising" claims relating to "sale of hazardous toys"); *State of N.Y. by Abrams v. Gen. Motors Corp.*, 547 F. Supp. 703, 704–06 (S.D.N.Y. 1982) (cited at Mot. 9, 10) (State asserted claims for "fraudulent and deceptive business practices" relating to "sale, warranting, and repair of automobiles").

because "Louisiana consumers," not the state, "are the real parties in interest"). There is no reason to question that presumption here as the OAG concededly brings this action "on behalf of the people of the State of New York," Compl. ¶ 1, pursuant to its limited statutory authority to bring an action "in the name of the people of the State of New York," N.Y. Exec. Law § 63(12). Amazon is a citizen of different states than the New York citizens whom the OAG purports to represent in its NYLL § 200 claim, and Amazon is a citizen of different states than Mr. Palmer and Mr. Smalls, both citizens of New Jersey, to the extent the OAG is properly representing them in its NYLL §§ 215 and 740 claims. *See* Dkt. 13 ¶¶ 16–17.[9]

In sum, the OAG fails to demonstrate that the State has a "real and substantial" interest in this action. *Navarro*, 446 U.S. at 460–61. The State is thus only a nominal party in this action, and the "citizen status" of the real parties in interest—Mr. Palmer, Mr. Smalls, and the New York citizens who work at JFK8 and DBK1—"rather than the sovereign status of the state, controls for diversity purposes." *AT&T Corp.*, 2006 WL 3332982, at *2; *see Ex parte Nebraska*, 209 U.S. at 444–46. This Court has original diversity jurisdiction and removal was proper.

II. This Court Has Original Federal Question Jurisdiction Because The OAG's Claims Raise Disputed, Substantial Federal Issues.

This Court independently has federal question jurisdiction under 28 U.S.C. § 1331. Federal question jurisdiction arises whenever a "state-law claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable & Sons*

[9] Even if the OAG could somehow represent citizens of other states in a representative or *parens patriae* capacity, nonnamed citizens of other states generally cannot defeat diversity in representative litigation. *See, e.g.*, *Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002) ("[N]onnamed class members cannot defeat complete diversity . . . ."); *Lopez v. Delta Funding Corp.*, 2004 WL 7196764, at *5 (E.D.N.Y. Aug. 9, 2004) (same).

Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 314 (2005). The OAG's case easily satisfies this standard. The OAG admits that it brought this case to enforce a standard of care "define[d]" in part by federal law. Mot. 16. That is sufficient to give rise to federal question jurisdiction here. But the New York Labor Law also expressly provides that its "health and safety standards," Mot. 1, 5, "apply only to employees not covered by a . . . standard promulgated under . . . the United States Occupational Safety and Health Act of 1970." NYLL § 27. Accordingly, under the state law's own terms, before the Court can even begin an analysis of the OAG's NYLL claims, the Court must ascertain whether existing federal health and safety standards govern employers' operations in response to COVID-19. For both of these reasons, OAG's case necessarily "turn[s]" on a disputed "construction of federal law," *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9 (1983), and this Court has federal question jurisdiction under § 1331.

The OAG makes little effort to deny that this case turns on disputed questions of federal law, and instead devotes the majority of its argument to explaining why Amazon could not have removed this case "on the basis of a federal defense . . . of pre-emption." Mot. 13. That is true enough, but irrelevant; Amazon did not remove this case based on a preemption defense. Rather, the case is removable under a straightforward application of *Grable*'s "disputed and substantial" "federal issue" test. 545 U.S. at 314.

The OAG's case raises a disputed and substantial federal issue because its claims are "rooted in violations of federal law." *D'Alessio v. N.Y. Stock Exchange, Inc.*, 258 F.3d 93, 101 (2d Cir. 2001). Federal question jurisdiction exists, for example, where "the central premise" of a state-law claim is that the defendant "violated . . . [a section] of the Exchange Act," *id.* at 102; or breached the terms of a tariff created by federal law, *Marcus v. AT&T Corp.*, 138 F.3d 46, 56 (2d

Cir. 1998); or where the state law itself "simply makes illegal any violation" of a federal statute, *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*, 136 S. Ct. 1562, 1569 (2016) (internal quotation marks omitted). A plaintiff seeking relief in those situations "must undertake to prove, as the cornerstone of [its] suit, that the defendant infringed a requirement" of federal law. *Id.*

That is exactly what the OAG undertakes to prove here. The OAG's Complaint repeatedly alleges that Amazon violated NYLL § 200 by "fail[ing] to comply with guidance issued by . . . the CDC," Compl. ¶ 51—that is, the *federal* United States Department of Health and Human Services Centers for Disease Control and Prevention. For example, the Complaint alleges that Amazon "failed to engage in adequate cleaning and disinfecting protocols" required by CDC "public health guidance." *Id.* ¶ 52. That federal guidance supposedly "directed" Amazon to "[c]lose off areas visited by the ill persons," "[o]pen outside doors and windows and use ventilating fans to increase air circulation in the area," and "[w]ait 24 hours or as long as practical before beginning cleaning"—federal CDC standards with which Amazon allegedly failed to comply. *Id.*; *see also id.* ¶ 34 (quoting the "CDC cleaning requirements").

The Complaint also alleges that Amazon violated federal OSHA standards, which are incorporated into the guidance documents the State cites. The "DOH WT Sector Guidance," Compl. ¶ 32, for instance, instructs employers to act "in accordance with OSHA guidelines." N.Y. State Dep't of Health, *Interim Guidance for the Wholesale Trade Sector During the COVID-19 Public Health Emergency* 3 (June 26, 2020), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/WholesaleTradeMasterGuidance.pdf. The "CDC Cleaning Guidance," Compl. ¶ 34, likewise instructs employers to (among other things) train workers "on the hazards of the cleaning chemicals used in the workplace *in accordance with OSHA's Hazard Communication standard (29 CFR 1910.1200)*." *Cleaning and Disinfecting Your Facility*, CDC (last updated Jan.

5, 2021), https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html (emphasis added); *cf.* Compl. ¶ 101. The OAG never explains how a court could resolve its NYLL § 200 claims without "constru[ing] [these] federal" standards. *D'Alessio*, 258 F.3d at 101–02.

The OAG's reliance on *Rubin v. MasterCard International, LLC*, is misplaced. 342 F. Supp. 2d 217 (S.D.N.Y. 2004) (cited at Mot. 11, 16). There, the plaintiff's claim did "not necessarily implicate a substantial issue of federal law" because the alleged "failure to make adequate disclosures" would have been actionable under the state statute "irrespective of whether plaintiff invoke[d] federal law." *Id.* at 221. Here, in contrast, the OAG's claims "require[ ] adjudication" of a federal standard, *id.*; the claims' "very success depends on giving effect to a federal requirement," *Manning*, 136 S. Ct. at 1570. In the OAG's view, federal law creates the very "requirements" that employers must follow, Compl. ¶¶ 4, 9, 34, 38, 42, and if they fail to do so, they violate state law, *id.* ¶ 4. By "[i]ncorporating CDC guidance into NYLL § 200" in this way, Mot. 16, the OAG envisions a statutory scheme that is indistinguishable from the hypothetical in *Manning*, in which state law "simply makes illegal 'any violation of [federal COVID-19 guidance].'" 136 S. Ct. at 1569. "Accordingly, [the OAG's] suit, even though asserting a state-created claim, is also 'brought to enforce' a duty created by" federal law. *Id.*[10]

The OAG's NYLL § 740 claims also raise disputed and substantial federal issues. To state a claim under NYLL § 740, the OAG must show (among other things) that Amazon retaliated

[10] The OAG previously agreed that the alleged COVID-19 workplace safety issues challenged here are governed by federal standards. In a letter quoted in Amazon's Notice of Removal, the OAG asserted that Amazon's conduct "would likely violate both specific OSHA safety standards applied specifically to this crisis by OSHA Guidance, and the OSHA general duty clause." Dkt. 13 ¶ 32. There should be no doubt that "vindication of a right under [the] state law [at issue here] necessarily turn[s] on some construction of federal law." *Franchise Tax Bd.*, 463 U.S. at 9.

against an employee for reporting a policy or practice "that is in violation of law, rule or regulation." NYLL § 740(2)(a). But the only asserted violation here is an alleged violation of CDC guidance and NYLL § 200, *see, e.g.*, Compl. ¶¶ 125, 127, which, as noted above, depends on federal standards. Accordingly, to prevail on its NYLL § 740 claims, the OAG "must undertake to prove[] . . . that the defendant infringed a requirement" of federal law. *Manning*, 136 S. Ct. at 1569. This case, therefore, arises under federal law.

III. This Court Independently Has Original Federal Question Jurisdiction Over The OAG's Claims Seeking Declaratory Relief Under The Mirror Image Rule.

This Court independently has federal question jurisdiction over the OAG's requests for declaratory relief. The OAG seeks an order "[f]inding that Amazon repeatedly violated" NYLL §§ 200, 215, and 740. Compl. at p. 28. Tellingly, the OAG never denies that it is seeking declaratory relief on these claims. Because the OAG filed these claims for declaratory relief in response to Amazon's federal action, this Court has jurisdiction under the "mirror image" rule.

Declaratory judgment claims "are governed by special subject-matter jurisdiction rules," and courts must determine their federal question jurisdiction "as if the [declaratory judgment defendant] . . . had initiated a lawsuit against the declaratory judgment plaintiff." *Garanti Finansal Kiralama A.S. v. Aqua Marine & Trading Inc.*, 697 F.3d 59, 66, 68 (2d Cir. 2012). This entails analyzing the "nature of the threatened action" that the declaratory defendant "might have brought" to determine whether it raises a federal question. *Medtronic*, 571 U.S. at 197; *see also Pub. Serv. Comm'n v. Wycoff*, 344 U.S. 237, 248 (1952) (in declaratory judgment actions, the "character of the threatened action" "will determine whether there is federal-question jurisdiction").

Accordingly, under this "mirror image" rule, to evaluate whether a federal court has jurisdiction over declaratory judgment claims, a "court must *look beyond the declaratory judgment*

allegations" in the complaint order to determine whether a "substantial federal question arises . . . from the [declaratory] defendant's threatened action," *W. 14th St. Commercial Corp. v. 5 W. 14th Owners Corp.*, 815 F.2d 188, 194 (2d Cir. 1987) (emphasis added), or from the suit actually "filed" by the declaratory defendant, *Major League Baseball Props., Inc. v. Price*, 105 F. Supp. 2d 46, 53–54 (E.D.N.Y. 2000) (finding federal question jurisdiction because declaratory defendant "threatened to sue" and "acted on that threat and filed suit" in federal court). Where the claims available to, or actually brought by, the declaratory defendants present a federal question, a federal court has original jurisdiction over a declaratory judgment claim that "apprehends"—that is, anticipates or responds to—the coercive suit. *Garanti*, 697 F.3d at 68; *see also, e.g.*, *Fleet Bank Nat'l Ass'n v. Burke*, 160 F.3d 883, 886 (2d Cir. 1998) (in evaluating federal jurisdiction, a declaratory judgment complaint "is to be tested" as if the declaratory judgment defendant "had initiated a lawsuit against the declaratory judgment plaintiff").

These principles establish federal question jurisdiction here. On February 12, 2021, Amazon commenced a federal action to enjoin the New York Attorney General's threatened unlawful attempts to subject Amazon to state regulation of activities governed by federal law and enforced by federal regulators. Amazon seeks an injunction to prevent the Attorney General from exercising regulatory authority over health-and-safety workplace safety responses to COVID-19 pursuant to NYLL § 200 on the grounds that such regulatory authority is preempted by the OSH Act and "impermissibly seeks to regulate an area over which OSHA has primary jurisdiction." Amazon Compl. ¶¶ 214–15, 219–20, p. 64. Amazon also seeks an injunction to prevent the Attorney General from exercising regulatory authority over claims of retaliation against workers who protest working conditions pursuant to NYLL §§ 215 and 740 on the grounds that such regulatory authority is preempted by the NLRA and "falls within the exclusive jurisdiction of the

NLRB." *Id.* ¶¶ 217–20, p. 64. Because Amazon's complaint "seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute," there can be no question that it "presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve." *Shaw v. Delta Air Lines*, 463 U.S. 85, 96 n.14 (1983); *accord Cable Television Ass'n of N.Y., Inc. v. Finneran*, 954 F.2d 91, 93–95 (2d Cir. 1992). Indeed, the OAG does not dispute that Amazon's action for injunctive relief presents a federal question.

Days later, the OAG responded to Amazon's federal action by commencing an action in the New York Supreme Court concerning the exact same issues as Amazon's action. The OAG seeks, *inter alia*, an order "[f]inding" that Amazon's COVID-19 workplace safety practices and purported retaliation against Mr. Smalls and Mr. Palmer for protesting working conditions "repeatedly violated" NYLL §§ 200, 215, and 740. Compl. at p. 28. Under New York's functional approach to declaratory judgment claims, the OAG's requested findings are effectively a request for declaratory relief. New York courts have instructed that "the nature of an action or remedy does not necessarily depend upon the nomenclature used by a party, but instead, upon the character of the allegations to determine its true nature." *McCrory v. Vill. of Mamaroneck Bd. of Trustees*, 181 A.D.3d 67, 69 (2d Dep't 2020). Thus, New York courts construe claims as requests for declaratory relief where, as here, the plaintiff seeks the functional equivalent of a declaratory judgment.[11] Indeed, the OAG does not dispute, and thereby concedes, that its requests for

[11] *See, e.g.*, *159 MP Corp. v. Redbridge Bedford, LLC*, 2015 WL 13701792, at *3 (N.Y. Sup. Ct. Kings Cty. Mar. 2, 2015) (construing claims as declaratory judgment claims because plaintiffs are "essentially seeking a declaratory judgment"); *Application of Perkins & Will P'ship*, 502 N.Y.S.2d 318, 321–22 (Sup. Ct. N.Y. Cty. 1985) (converting petition for stay of arbitration into declaratory judgment action because "what petitioner is really seeking here is a declaratory judgment"); *cf. Prestige Petroleum Corp. v. Vill. of Wappingers Falls*, 110 N.Y.S.3d 501 (Sup. Ct. Duchess Cty. 2018) (petitioners' request for "a finding that the determinations made by [defendants] were invalid, null and void" sought "declaratory relief").

"finding[s]" that Amazon "repeatedly violated" the NYLL seek declaratory relief.

The OAG's complaint and its requests for declaratory relief plainly "apprehend[]" Amazon's federal complaint, a copy of which Amazon has filed with this opposition for the Court's convenience. *Garanti*, 697 F.3d at 68. The OAG filed its lawsuit in the New York Supreme Court just four days after Amazon filed its federal action, in a clear attempt to avoid federal adjudication of the federal issues in Amazon's lawsuit. The OAG's declaratory judgment claims expressly seek to subject Amazon to state regulation of the very same activities (pursuant to the exact same NYLL provisions) at issue in Amazon's federal action. To adjudicate the OAG's requests for declaratory "finding[s]" that Amazon "repeatedly violated" NYLL §§ 200, 215, and 740, Compl. at p. 28, the New York Supreme Court necessarily must determine whether the OAG has authority to regulate COVID-19 workplace safety practices pursuant to NYLL § 200 and claims of retaliation against workers who protest working conditions under NYLL §§ 215 and 740. These are the very issues raised by Amazon's federal injunctive claims. The OAG's claims effectively seek to have Amazon's affirmative federal claims decided through declaratory relief in state court.

Under these circumstances, to "determine whether federal court jurisdiction exists," this Court must "apply[] the well-pleaded complaint rule not to the [OAG's] declaratory judgment complaint," but instead to the action that the declaratory defendant—Amazon—filed. *Lavastone Capital LLC v. Coventry First LLC*, 2015 WL 1939711, at *13 n.13 (S.D.N.Y. Apr. 22, 2015) (Rakoff, J.) (quoting *Speedco, Inc. v. Estes*, 853 F.2d 909, 912 (Fed. Cir. 1988)). In analogous cases, where a plaintiff files declaratory judgment claims in state court in response to a coercive action filed in federal court, courts in this Circuit have looked to the first-filed federal action in determining whether federal question jurisdiction lies. *See, e.g.*, *Lavastone*, 2015 WL 1939711, at *13 n.13 (the court has "federal question jurisdiction over the [plaintiff's] declaratory

jurisdiction claim, which is inherently related to the federal RICO claims" in declaratory defendant's first-filed federal action); *Major League Baseball*, 105 F. Supp. 2d at 53–54 (same). Similarly, because Amazon's complaint for injunctive relief asserts federal claims, the OAG's requests for declaratory relief present a federal question and removal was proper.

The OAG's arguments to the contrary confuse the nature of federal question jurisdiction here. The OAG insists that this Court must examine only its state-court complaint, and not Amazon's federal complaint, to determine whether removal was proper. Specifically, the OAG argues that because its "claims do not arise under federal law" and "federal law is relevant only as a preemption defense," this Court lacks federal question jurisdiction. Mot. 17. But the OAG's argument ignores the well-established precedents discussed above, which dictate that the proper jurisdictional inquiry in an action seeking declaratory relief is whether the declaratory defendant, *not* the plaintiff, could bring a "coercive action" that "present[s] a federal question." *Medtronic*, 571 U.S. at 197.[12] Amazon's complaint indisputably presents a federal question. *See* Amazon Compl. ¶ 22; *Shaw*, 463 U.S. at 96 n.14. Therefore, this Court has federal question jurisdiction over the OAG's retaliatory claims for declaratory relief.

The OAG further contends that this Court lacks jurisdiction because its complaint "does not even mention" Amazon's federal claims. Mot. 16. But the OAG's "artful pleading" cannot deprive this Court of federal question jurisdiction. *In re NASDAQ Market Makers Antitrust Litig.*, 929 F. Supp. 174, 178 (S.D.N.Y. 1996). The mirror image rule requires this Court to "look beyond" the allegations in the declaratory judgment complaint to determine the character of the

[12] *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983) (cited at Mot. 17), is in accord. In *Franchise Tax Board*, the Supreme Court recognized that federal courts have jurisdiction "over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question." *Id.* at 19.

action threatened by, or actually filed by, the declaratory defendant which the declaratory judgment action apprehends. *W. 14th St.*, 815 F.2d at 194. Thus, the OAG cannot evade federal jurisdiction simply by electing not to "mention" Amazon's federal lawsuit. Mot. 16. The OAG's argument that its complaint does not "request any adjudication of" Amazon's federal claims is equally meritless. *Id.* at 16–17. As discussed above, the OAG's claims for declaratory relief seek to subject Amazon to state regulation of the same activities at issue in Amazon's federal action—and are therefore a back-door attempt to avoid the proper federal forum for Amazon's injunctive relief claims and "settle those federal rights" by declaratory judgment in state court. *Id.* at 17. Thus, because Amazon's "federal cause of action is the 'adverse action the declaratory plaintiff apprehends,'" "federal question jurisdiction attaches" and removal was proper. *NSI Int'l, Inc. v. Mustafa*, 2009 WL 2601299, at *5 (E.D.N.Y. Aug. 20, 2009) (internal quotation marks omitted).

IV. This Court Should Exercise Supplemental Jurisdiction Over Any Claims Arising Under State Law.

To the extent the Court construes any of the OAG's claims as arising under state law, this Court should exercise supplemental jurisdiction over those claims under 28 U.S.C. § 1367(a). Supplemental jurisdiction can be extended to state law claims that are "so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a). Claims are part of the same case or controversy when both the state law claims and federal claims "derive from a common nucleus of operative fact." *Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 308 (2d Cir. 2004). Where a state claim is part of the same case or controversy as a federal claim, a federal court's exercise of supplemental jurisdiction is a matter of discretion, but "is a favored and normal course of action." *Promisel v. First Am. Artificial Flowers*, 943 F.2d 251, 254 (2d Cir. 1991).

The exercise of supplemental jurisdiction is warranted here. All of the OAG's claims arise from the "same common nucleus of operative fact" relating to Amazon's JFK8 and DBK1 facilities because the "facts pertinent to" these claims "substantially overlap." *BLT Rest. Grp. LLC v. Tourondel*, 855 F. Supp. 2d 4, 10 (S.D.N.Y. 2012). Moreover, the clear locus of this litigation is in the federal courts—the OAG's claims in this action are the subject of three previously filed federal lawsuits pending before the Eastern District or the Second Circuit. Under these circumstances, the exercise of supplemental jurisdiction serves the interests of "judicial economy, convenience, fairness, and comity." *Blackrock Balanced Capital Portfolio v. HSBC Bank USA, Nat'l Ass'n*, 95 F. Supp. 3d 703, 709 (S.D.N.Y. 2015). It ensures that all of the federal issues relating to the federal lawsuits filed by Amazon, Mr. Smalls, and Mr. Palmer are resolved together in a federal forum rather than piecemeal in two different forums, and it prevents the OAG from "manipulat[ing] the forum" in the hopes of obtaining a favorable ruling from the state court ahead of the resolution of pending federal claims. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 357 (1988). Thus, to the extent any of the OAG's claims arise under state law, this Court should exercise supplemental jurisdiction and deny the OAG's motion to remand.

CONCLUSION

For the foregoing reasons, as well as those stated in the Amended Notice of Removal, Amazon respectfully requests that the Court deny the OAG's motion to remand and deny the OAG's request for costs and fees since Amazon's basis for removal is reasonable.

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