No. 20-1434

In The

Supreme Court of the United States

January Term, 2022

GANSEVOORT COLE, on behalf of herself and others similarly situated,

Petitioner,

v.

LANCELOT TODD,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Thirteenth Circuit

BRIEF FOR RESPONDENT

Oral Argument Requested

Team 10
Counsel for Respondent
November 15, 2021

QUESTIONS PRESENTED

I. Given the ordinary principles of personal jurisdiction and this Court's holding in *Bristol-Myers*, did the district court correctly grant Mr. Todd's Motion to Strike the nationwide class allegations brought by unnamed class members based on the lack of personal jurisdiction?

II. In light of federal common law, and the tradition of following the Restatement (Second) of Conflict of Laws, did the district court correctly apply the laws of New Tejas—the state in which Spicy Cold is incorporated—over federal common law with respect to the validity of the alter ego theory?

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OPINIONS BELOW

The decision and order of the United States District Court for the District of New Tejas is unreported. R. at 1a. The decision and order of the United States Court of Appeals for the Thirteenth Circuit is unreported and set out in the record. R. at 1a–22a.

STATEMENT OF JURISDICTION

The United States District Court for the District of New Tejas had jurisdiction of the case that is docketed as D.C. No. 18-cv-1292 according to 28 U.S.C. § 1331 when it entered its judgment and order in favor of the Respondent. The district court's federal question jurisdiction was based on alleged violations of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227.

In treating the district court's order as the equivalent of an order denying class certification, a motion panel of the United States Court of Appeals for the Thirteenth Circuit properly exercised its appellate jurisdiction pursuant to 28 U.S.C. § 1292(e) and granted Mrs. Cole's petition for interlocutory appeal under Federal Rule of Civil Procedure (FRCP) 23(f). On May 10, 2020, the Thirteenth Circuit entered judgment in favor of Mr. Todd, affirming the district court. On October 4, 2021, this Court granted certiorari to the Thirteenth Circuit. Thus, jurisdiction is proper under 28 U.S.C. § 1257.

RELEVANT PROVISIONS

The Fourteenth Amendment to the United States Constitution and FRCP 4 are relevant to this case and are reprinted in Appendix A.

STATEMENT OF THE CASE

Factual Background

An Entrepreneurial Venture. West Dakota resident, Respondent Lancelot Todd is a well-known promoter, entrepreneur, and businessman. *See* R. at 2a. In early 2015, Mr. Todd acquired the patent rights to "spicy cold" flavoring for potato chips. R. at 2a. Upon consumption of spicy cold chips, this flavoring causes a numbing sensation in an individual's mouth, as well as on their tongue. R. at 2a. After discovering that people other than him enjoyed the spicy cold sensation, Mr. Todd decided to cater to this niche market by commercializing his "spicy cold" products. R. at 2a.

A Creature of New Tejas Law. Desiring a corporate-friendly state that would afford great deference to the corporate form, Mr. Todd subsequently incorporated his business, Spicy Cold Food, Inc. (Spicy Cold) under the laws of New Tejas in late 2015. R. at 2a. As a creature of New Tejas law, a New Tejas corporate entity is generally protected by New Tejas's extremely stringent standard for piercing the corporate veil and treating shareholders as an alter ego of a corporate entity. R. at 2a, 6a. The New Tejas legislature adopted laws that cater to the corporate form as an effort to attract business to a territory that "was often characterized as a wretched hive of scum and villainy." R. at 6a. Accordingly, under this standard, New Tejas courts will only disregard the corporate form upon a showing that an entity was incorporated for the sole purpose of defrauding a particular individual. R. at 6a.

Spicy Cold's Organizational Structure. Mr. Todd personally owns all the shares of Spicy Cold, making him the sole shareholder of the company. R. at 2a. As a one-man operation, Mr. Todd manages Spicy Cold without a formal board of directors in West Dakota, which is where Spicy Cold's principal place of business is located. R. at 2a–3a, 5a. Unfortunately, due to the lack of advertising and futile endeavors to sell spicy cold products wholesale to restaurants and grocery stores, this enterprise has not been as successful as Mr. Todd had originally intended, leaving Spicy Cold with insufficient capital. R. at 5a. Nevertheless, given his skills and experience as an entrepreneur, promotor, and businessman, Mr. Todd has substantial personal wealth, making him a practical target. *See* R. at 4a ("Mrs. Cole's rationale for suing Mr. Todd personally: Mr. Todd has considerable personal wealth . . . .").

Spicy Cold's Alleged Phone Calls. New Tejas resident, Petitioner Gansevoort Cole claims that in 2017, Mr. Todd, acting on behalf of Spicy Cold, purchased an "automatic telephone dialing system." R. at 3a. She further alleges that Mr. Todd began calling consumers' cell phones and landlines across the nation to deliver an automated message: "Sure, you can handle the heat, but can you handle the cold? Face the challenge of spicy cold chips—the coolest chips ever made. Available online now. Ask for them at your local grocery store. Frost-bite into the excitement!" R. at 3a. Contending to have received at least ten of these calls—five on her cell phone, five on her landline—Mrs. Cole claims she never consented to the calls and denies having any ongoing business relationship with Mr. Todd or Spicy Cold. R. at 3a.

Procedural History

United States District Court for the District of New Tejas. In 2018, Mrs. Cole filed suit against Spicy Cold and Mr. Todd individually, alleging that the phone calls she received violated the TCPA. R. at 3a. She brought this action on behalf of herself and a class of all persons in the nation who received similar phone calls. R. at 3a. Mr. Todd then filed a Motion to Strike the nationwide class allegations against him for lack of personal jurisdiction, contending that: (1) he is only subject to general jurisdiction in West Dakota, his place of domicile; and (2) no personal jurisdiction exists over him with respect to the claims of the nonresident class members. R. at 4a. Following jurisdictional discovery, Mrs. Cole presented two theories of personal jurisdiction over Mr. Todd. R. at 4a. First, she argued that there is no need to consider personal jurisdiction over the claims of unnamed class members because it is undisputed that there is personal jurisdiction over *her* claim. R. at 4a–5a. In the alternative, she argued that personal jurisdiction nevertheless exists because under the federal common law alter ego theory, Mr. Todd is the alter ego of Spicy Cold. R. at 5a. Upon consideration, the district court rejected both of her arguments and granted Mr. Todd's Motion. R. at 7a.

United States Court of Appeals for the Thirteenth Circuit. Following the district court's order, Mrs. Cole filed a petition for interlocutory appeal pursuant to FRCP 23(f). R. at 7a. Writing for the majority in an unpublished opinion, the Honorable Circuit Judge Sinclair affirmed the granting of the motion to strike class allegations on the grounds that: (1) the class-action mechanism does not permit

circumvention of the settled rules of personal jurisdiction; and (2) under the federal choice-of-law rules, courts evaluate the alter ego theory under the law of the state of incorporation. R. at 8a, 12a. Subsequently, Mrs. Cole filed a petition for writ of certiorari in this Court, which it granted on October 4, 2021. R. at 1.

SUMMARY OF THE ARGUMENT

We respectfully ask this Court to affirm the district court's order striking the nationwide class allegations against Mr. Todd based on the lack of personal jurisdiction. Federal courts are courts of limited jurisdiction; thus, the exercise of personal jurisdiction over a nonresident defendant must comport with due process principles. Contrary to Mrs. Cole's contentions, Mr. Todd is entitled to a favorable verdict because unnamed class members *are not* exempt from jurisdictional scrutiny. Although this Court has yet to rule on this issue, the enactment of FRCP 4(k) is clear evidence of Congress's intent to make the personal jurisdiction requirements for federal district courts coextensive with state courts.

To begin, because this Court has recognized that most cases—like this one—do not involve joinder or a statute containing a nationwide service provision, a district court's power to exercise personal jurisdiction is linked to service of process on a defendant according to the laws of the host state. By linking territorial jurisdiction of district courts to that of state courts, FRCP 4(k)(1)(A), in effect, imposes the Fourteenth Amendment's limits on personal jurisdiction on federal courts, including those that this Court articulated in *Bristol-Myers*.

In view of this, it only follows that the personal jurisdiction limitations of *Bristol-Myers* apply with equal force to nationwide class actions, despite simple procedural distinctions. First, this Court should reject the position that *Shutts* resolved the personal jurisdiction question at issue because that case did not speak to the specific issue of asserting personal jurisdiction over a *defendant*. Moreover, the simple fact that *Bristol-Myers* involved a mass-tort action, whereas this case involves a class action, is irrelevant. This Court has established that due process simply requires a connection between the forum and the specific claims at issue. Because this constitutional protection does not differ when the complaint is individual or on behalf of a class, personal jurisdiction in the class-action context must comport with due process just as any other case. Further, allowing plaintiffs to use the class-action mechanism to circumvent the ordinary rules of personal jurisdiction, and thus alter a defendant's substantive right, would violate the Rules Enabling Act. Accordingly, to preserve the long-standing principles of personal jurisdiction, this Court should conclude that the jurisdictional limitations of *Bristol-Myers* extend to nationwide class allegations, thus requiring a claim-by-claim, plaintiff-by-plaintiff personal-jurisdiction analysis.

Lastly, although this Court has yet to address whether federal courts should borrow state law or apply federal common law to resolve corporate veil-piercing issues, circuit courts have consistently held that a district court exercising federal-question jurisdiction must apply federal choice-of-law rules to determine the applicable substantive law. Traditionally, federal courts have looked to the

Restatement (Second) Conflict of Laws to resolve choice-of-law issues, specifically § 307 of the Restatement to determine what law should govern the validity of the alter ego theory. Therefore, federal choice-of-law principles, as reflected in the Restatement, direct this Court to apply the law of the state of incorporation over federal common law. Lastly, despite Mrs. Cole's contention that federal common law should apply because the veil-piercing analysis implicates a uniquely federal interest (personal jurisdiction to adjudicate a federal claim), this Court should be reluctant to displace state law in disputes between private parties, particularly where the United States is not even involved. This Court, along with other federal courts, has identified only a few areas in which federal common law must apply—none of which include claims under the TCPA. Accordingly, this Court should hold that the New Tejas law of alter ego applies, and under that test, it is undisputed that Mr. Todd is *not* the alter ego of Spicy Cold and thus *not* subject to general jurisdiction in New Tejas. For the foregoing reasons, this Court should affirm the district court's order striking the nationwide class allegations against Mr. Todd based on lack of personal jurisdiction.

STANDARD OF REVIEW

The legal standard for reviewing personal jurisdiction determinations is de novo. *Fraser v. Smith*, 594 F.3d 842, 846 (11th Cir. 2010) ("We review the district court's dismissal for lack of personal jurisdiction *de novo*."). Likewise, the legal standard for reviewing choice-of-law determinations is de novo. *St. Paul Fire & Marine Ins. Co. v. Bldg. Const. Enters.*, Inc., 526 F.3d 1116, 1168 (8th Cir. 2008) ("We review the district court's choice-of-law determination de novo.").

ARGUMENT

I. This Court should affirm the district court's order striking the nationwide class allegations against Mr. Todd because unnamed class members *are not* exempt from jurisdictional scrutiny.

The Constitution of the United States creates federal judicial power. U.S. Const. art. III, § 1 ("The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."). It also defines the maximum extent of that power, providing that the "judicial Power shall extend" to "Controversies . . . between Citizens of different states." *Id.* § 2. However, this language does not automatically grant jurisdiction to the federal courts; instead, this language "authorizes Congress to do so and, in doing so, to determine the scope of the federal courts' jurisdiction within constitutional limits." *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1188 (2010) (citing *Kline v. Burke Constr. Co.*, 260 U.S. 226, 233–34 (1922)). Accordingly, as opposed to state courts, which are generally presumed to have subject-matter jurisdiction over a case, the constitutional limitations on federal jurisdiction make federal courts "courts of limited jurisdiction[;] [t]hey possess only that power authorized by [the United States] Constitution [or federal] statute . . . which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted); *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1746 (2019).

Federal law empowers and constrains federal courts in two salient ways: (1) subject-matter jurisdiction and (2) personal jurisdiction. 28 U.S.C. §§ 1331–1332; *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Ins. Corp. of Ire., Ltd. v. Compagnie*

des Bauxites de Guinee, 456 U.S. 694, 701 (1982) ("The validity of an order of a federal court depends upon that court's having jurisdiction over both the subject matter and the parties."). Although the precepts of these two categories serve different purposes, there is a presumption that an action falls outside a federal court's limited jurisdiction, and the party asserting jurisdiction has the burden of establishing the contrary. *Kokkonen*, 511 U.S. at 377 (first citing *Turner v. Bank of N. Am.*, 4 U.S. 8, 11 (1799); and then citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 182–83 (1936)).

Regarding subject-matter jurisdiction, federal district courts only have the power to hear: (1) cases that arise under federal law or (2) cases that meet the requirements for diversity jurisdiction. 28 U.S.C. §§ 1331–1332. Federal law generally includes any constitutional provision, act of Congress, administrative regulation, executive order, or federal common law provision. *See Verizon Md. Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 643 (2003); *Nat'l Farmers Union Ins. Cos. v. Crow Tribes of Indians*, 471 U.S. 845, 850 (1985). On the other hand, diversity jurisdiction occurs when "there is no plaintiff and no defendant who are citizens of the same state" and the amount in controversy is above $75,000. *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 388 (1998); 28 U.S.C. § 1332. Moreover, subject-matter jurisdiction, with respect to federal courts, is rooted in Article III of the Constitution, as well as other related federal statutes. *Compagnie des Bauxites de Guinee*, 456 U.S. at 702. Parties cannot waive subject-matter jurisdiction; Anglo-American jurisprudence has well established that a party—or even a court *sua sponte*—can

raise a challenge to subject-matter jurisdiction at any time, even on appeal. Fed. R. Civ. P. 12(b)(1), (h)(3); *see also Arbaugh v. Y & H Corp.*, 546 U.S. 500, 507 (2016) (quoting *United States v. Cotton*, 535 U.S. 625, 630 (2002)) ("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived.").

Similar to subject-matter jurisdiction, personal jurisdiction is a restriction on courts' ability to hear certain claims; however, subject-matter jurisdiction limits "classes of cases," whereas personal jurisdiction limits the "persons . . . falling within the court's adjudicatory authority." *Kontrick v. Ryan*, 540 U.S. 443, 355 (2004). Further, unlike subject-matter jurisdiction, personal jurisdiction *can* be waived if a party fails to timely raise the issue, which generally should happen in the first responsive pleading. Fed. R. Civ. P. 12(b)(2). Another key distinction is that personal jurisdiction is rooted in the Due Process Clauses of the Fifth and Fourteenth Amendments. U.S. Const. amend. V, XIV, § 1; *Compagnie des Bauxites de Guinee*, 456 U.S. at 702 ("The requirement that a [federal] court have personal jurisdiction flows not from Art[icle] III, but from the Due Process Clause."); *Int'l Shoe*, 326 U.S. at 320 (noting that personal jurisdiction is likewise rooted in the Due Process Clause of the Fourteenth Amendment with respect to claims arising under state law).

In both contexts, court can exercise personal jurisdiction in two ways—general or specific. *Goodyear Dunlop Tires Operations v. Brown*, 564 U.S. 915, 919 (2011). General jurisdiction, also known as "all-purpose" jurisdiction, only exists when a defendant is "at home" in a forum state. *Id.* For an individual, this Court has

recognized that a defendant is "at home" in the state in which he is domiciled. *Id.* at 924. In contrast, a corporation is "at home" in both the state where the corporation maintains its principal place of business and the state where the corporation is incorporated. *Id.* (citation omitted) ("[F]or a corporation, it is the equivalent place, one in which the corporation is fairly regarded as a home."). If a court cannot exercise general personal jurisdiction over a defendant, it must have specific personal jurisdiction. *Id.* at 919. Accordingly, specific jurisdiction, also known as "case-linked" jurisdiction, exists when the suit arises out of or relates to the nonresident defendant's contacts in the forum state. *Id.* at 919, 923–24 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 446 U.S. 408, 414 nn. 8–9 (1984)). In other words, specific personal jurisdiction focuses on: (1) the defendant's contacts with the forum; and (2) whether those contacts are linked to the underlying lawsuit. *Id.* at 924.

Moreover, because "[t]he personal jurisdiction requirement recognizes and protects an individual liberty interest," the Due Process Clause of the Fourteenth Amendment prohibits a court from exercising jurisdiction over a defendant in a manner that offends "traditional notions of fair play and substantial justice." *Compagnie des Bauzites de Guinee*, 456 U.S. at 702–03 (quoting *Int'l Shoe*, 326 U.S. at 316). Combining these principles, the Supreme Court's opinions in *International Shoe* and its progeny have established a two-part test for determining when the exercise of personal jurisdiction over each nonresident defendant comports with due process: (1) the defendant must establish minimum contacts with the forum state which demonstrate an intent to avail himself of the benefits and protection of state

law; and (2) it must be reasonable to require the defendant to defend the lawsuit in the forum. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291–92 (1980) (citing *Int'l Shoe*, 326 U.S. at 316, for "minimum contacts" and "traditional notion of fair play and substantial justice" standards); *see also Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985) ("So long as a commercial actor's efforts are 'purposefully directed' toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.").

A. In enacting Federal Rule of Civil Procedure 4(k), Congress elected to make the personal jurisdiction requirements for federal district courts coextensive with state courts.

The Due Process Clause of the Fifth Amendment, as it relates to personal jurisdiction of federal courts, only concerns contacts with the United States as a whole, whereas the Due Process Clause of the Fourteenth Amendment measures contacts within a particular state. *See* Fed. R. Civ. P. 4(k)(2) advisory committee's note to 1993 amendment. However, because "Congress'[s] typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process," federal courts typically employ state law in determining the bounds of their jurisdiction over individuals. *BNSF Ry. Co. v. Tyrell*, 137 S. Ct. 1549, 1555 (2017); *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014); *see also Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104–05 (1987) (stating that federal courts should look to a federal statute or to the state long-arm statute to determine a defendant's amenability to service, which is "a prerequisite to its exercise of personal jurisdiction."). Accordingly, FRCP 4(k) authorizes service of process—and thus,

personal jurisdiction—in three ways: (1) when the defendant "is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located"; (2) when the defendant is joined as a third or indispensable party and served no more than 100 miles away from the district court issuing the summons; or (3) when a federal statute authorizes service of process. Fed. R. Civ. P. 4(k)(1).

Yet, because this Court has recognized that "most cases" in federal court do not involve joinder nor do they involve a statute authorizing nationwide service of process, "a federal district court's authority to assert personal jurisdiction . . . is linked to service of process on a defendant 'who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (quoting Fed. R. Civ. P. 4(k)(1)(A)). In simpler words, this means that FRCP 4(k)(1)(A) links federal courts' power to assert personal jurisdiction to service of process on the defendant according to the laws in which the federal district is located. *Id.* By limiting the territorial jurisdiction of federal district courts to that of the courts of their host states, FRCP 4(k)(1)(A), in effect, incorporates the limits of the Fourteenth Amendment and states' long-arm statutes into the limits of the jurisdiction of federal courts. R. at 8a; *see, e.g.*, *Wilson v. Belin*, 20 F.3d 644, 646 (5th Cir. 1994) (citations omitted) ("[A] federal court has personal jurisdiction over a nonresident defendant to the same extent that a state court in that forum has such jurisdiction. The reach of this jurisdiction is delimited by: (1) the state's long-arm statute; and (2) the Due Process Clause of the Fourteenth Amendment to the federal Constitution.").

Senior Circuit Judge Silberman's dissenting opinion in *Molock v. Whole Foods Market Group, Inc.* further supports the contention that through FRCP 4(k)(1)(A), Congress has chosen to apply the due process limitations on state courts to federal courts. 952 F.3d 293, 308 (D.C. Cir. 2020) (Silberman, J., dissenting). There, plaintiffs, consisting of past and present employees of Whole Foods, brought a putative nationwide class action against Whole Foods, alleging that they had manipulated an incentive-based bonus program to deny workers bonuses. *Id.* at 295. Although the D.C. Circuit avoided a decisive ruling on personal jurisdiction in class actions, Judge Silberman's dissent provides a convincing argument worthy of this Court's attention. *Id.* at 308 (Silberman, J., dissenting). To begin, after providing an analysis similar to the one above, Judge Silberman emphasized that "nothing in the Constitution would prevent Congress from authorizing a federal court to exercise specific personal jurisdiction over claims in [a] nationwide class action . . . . *But Congress has done no such thing*." *Id.* (Silberman, J., dissenting) (emphasis added). Instead, through its enactment of FRCP 4(k)(1)(A), Congress has elected to make the personal jurisdiction of federal district courts coextensive; as a result, "a district court's analysis of personal jurisdiction in a civil case will be identical to the Fourteenth Amendment inquiry undertaken by the relevant state court." *Id.* (Silberman, J., dissenting).

Conversely, in *Mussat v. IQVIA, Inc.*, the Seventh Circuit rejected this exact argument, holding that the Fifth Amendment's Due Process Clause, not the Fourteenth Amendment's Due Process Clause, governs the personal-jurisdiction

analysis. 953 F.3d 441, 447–48 (7th Cir. 2020). In that case, after receiving two unsolicited "junk faxes" from the defendant, the plaintiff brought a class action under the TCPA. *Id.* at 443. The defendant then moved to strike the class action based on the lack of personal jurisdiction over the nonresident members. *Id.* The district court granted the motion and found that under *Bristol-Myers*, the court did not have personal jurisdiction over the out-of-state class members. *Id.* On appeal, similar to the dissent in *Molock*, the defendant argued that allowing the nonresident class members to continue would be inconsistent with FRCP 4(k). *Id.* at 447. In essence, the defendant asserted that this Rule not only requires that "a plaintiff comply with state-based rules on the service of process, but also [establishes] an independent limitation on a federal court's exercise of personal jurisdiction." *Id.* In rejecting that argument, the Seventh Circuit stated that FRCP 4(k) addresses only "*how* and *where* to serve process; it does not specify *on whom* process must be served." *Id.* at 448. Lastly, among other things, the Seventh Circuit also thought that construing FRCP 4(k)(1) to limit personal jurisdiction over the claims of absent class members would conflict "with [FRCP] 82, which stipulates that the rules 'do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts.'" *Id.*

In adopting Judge Silberman's analysis in *Molock*, this Court should affirm the trial court's order striking the nationwide class action and recognize that through its enactment of FRCP 4(k), Congress, in effect, elected to incorporate the limits of the Due Process Clause of the Fourteenth Amendment into the limits of personal jurisdiction of federal district courts. 952 F.3d at 308 (Silberman, J., dissenting); *see*

also R. at 8a. As emphasized by this Court, as well as by Judge Silberman in *Molock*, "Congress'[s] typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process." *Tyrell*, 137 S. Ct. at 1555; *Molock*, 952 F.3d at 308 (Silberman, J., dissenting). FRCP 4(k) authorizes service of process—and thus, personal jurisdiction—in three ways. Fed. R. Civ. P. 4(k). However, because the federal law on which Mrs. Cole is suing, the TCPA, does not contain a nationwide service provision, Mr. Todd was only amendable to service—and thus, only subject to personal jurisdiction—if he could be served in New Tejas under New Tejas law. *See Walden*, 571 U.S. at 283; *cf. Prac. Mgmt. Support Servs., Inc. v. Cirque de Soleil, Inc.*, 301 F. Supp. 3d 840, 862 (N.D. Ill. 2018) (quoting *Bakov v. Consolidated World Travel, Inc.*, No. 15 C 2980, 2019 WL 1294659, at *1 (N.D. Ill. 2019) ("Because the TCPA does not authorize nationwide service of process, the court . . . look[s] to [state] law for the limitation on the exercise of personal jurisdiction.").

Following the Seventh Circuit in *Mussat*, Mrs. Cole may argue that the Fifth Amendment limits the personal jurisdiction of federal courts—not the Fourteenth Amendment. 953 F.3d at 447–48. Specifically, she may assert that construing FRCP 4(k)(1) to limit personal jurisdiction over the claims of absent class members would place FRCP 4 in tension with FRCP 82. *Id.* However, FRCP 82 refers to *subject-matter* jurisdiction—not personal jurisdiction. *Miss. Pub. Corp. v. Murphree*, 326 U.S. 438, 444–45 (1946) ("[T]he [FRCP] Advisory Committee . . . has treated [FRCP] 82 as referring to venue and jurisdiction of the *subject matter* of the district court . . . ."). Moreover, like the Seventh Circuit, Mrs. Cole may insist that this Court read FRCP

4(k) narrowly, claiming that it only requires a plaintiff to comply with state rules regarding service of process. *Mussat*, 953 F.3d at 448. Nevertheless, this Court should reject this argument because FRCP 4(c)–(j) address how to serve a complaint and depending on the type of defendant to be served, service in accordance with applicable state law *is just one option* among several others. *See, e.g.*, Fed. R. Civ. P. 4(e) (providing several methods of service). More importantly, this Court has differentiated between "the method of service," which is *how* the defendant is served, and a defendant's "amenability to service," which is, whether due process constraints on personal jurisdiction authorize the defendant to be served in the first place. *Omni Cap.*, 484 U.S. at 104–05 (stating that federal courts should look to a federal statute or to the state long-arm statute to determine a defendant's amenability to service, which is "a prerequisite to its exercise of personal jurisdiction.").

Lastly, as emphasized by Judge Silberman in *Molock*, "*nothing* in the Constitution would prevent Congress from authorizing a federal court to exercise personal jurisdiction over claims in [a] nationwide class action." *Mussat*, 953 F.3d at 447–48; *Molock*, 952 F.3d at 308 (Silberman, J., dissenting) (emphasis added). However, Congress has yet to do so with respect to the TCPA. *See Prac. Mgmt.*, 301 F. Supp. 3d at 862 (quoting *Bakov*, 2019 WL 1294659, at *1). Therefore, until it does, this Court should hold that by enacting FRCP 4(k)(1)(A), Congress elected to make federal district courts coextensive, subjecting them to the same due process limits imposed by the Fourteenth Amendment on state courts. *Id.* (Silberman, J., dissenting); Fed. R. Civ. P. 4(k)(1)(A).

B. The general principles this Court adopted in *Bristol-Myers* support extending the jurisdictional limitations of that case to nationwide class actions.

While the concepts of personal jurisdiction seem relatively straightforward, there has been sparse precedent analyzing personal jurisdiction in the class-action context—at least prior to this Court's decision in *Bristol-Myers Squibb Co. v. Superior Court of California*. *See* 137 S. Ct. 1773, 1782 (2017). *Phillips Petroleum Co. v. Shutts* is the only previous occasion where this Court addressed the issue of personal jurisdiction in such context. 472 U.S. 797, 804 (1985). However, as discussed below, *Shutts* provides zero guidance to the issue presented before this Court; rather, the more informative case is *Bristol-Myers*, as a considerable amount of courts have recognized that the jurisdictional limitations of *Bristol-Myers* apply to nationwide class actions. *See, e.g.*, *Prac. Mgmt.*, 301 F. Supp. 3d at 862 (rejecting plaintiffs' argument that applying *Bristol-Myers* in the class-action context is inconsistent with *Shutts* because the cases are distinguishable).

1. *Shutts* did not speak to the propriety of asserting personal jurisdiction over a *defendant* and thus, cannot assist Mrs. Cole in establishing jurisdiction over Mr. Todd.

In *Shutts*, a Kansas resident initiated a nationwide class action in Kansas state court against the defendant on behalf of 28,000 other royalty owners, alleging that the defendant underpaid royalties stemming from natural gas operations in eleven different states. 472 U.S. at 797, 799. The defendant subsequently challenged this action, arguing that Kansas lacked personal jurisdiction because "over 99% of the gas leases and some 97% of the plaintiffs in the case had no apparent contacts to the State

of Kansas." *Id.* at 815–16. However, the defendant—in an unusual manner—also based his challenge on the contention that absent such minimum contacts with the forum, litigating the class action in Kansas violated the absent class members' due process right to personal jurisdiction. *Id.* In rejecting that argument, this Court emphasized that personal jurisdiction exists to protect *defendants*, not plaintiffs. *Id.* at 806–07, 809 ("The purpose of this test, of course, is to protect a defendant from the travail of defending in a distant forum . . . . [T]he plaintiffs in this suit were not haled anywhere to defend themselves . . . ."). Because absent class members have fewer burdens than defendants, this Court further reasoned that the existence of other procedural requirements for class actions are sufficient to protect class members' due-process rights. *Id.* at 806–07, 811 ("[T]he Due Process Clause need not and does not afford [absent class members] as much protection from state-court jurisdiction as it does [defendants].").

Following, in *Bristol-Myers*, this Court was tasked with considering the compatibility of state courts' exercise of jurisdiction within the Due Process Clause of the Fourteenth Amendment. 137 S. Ct. at 1780. There, a group of over 600 plaintiffs, the majority of whom were nonresidents of California, brought a products liability action against the defendant, Bristol-Myers Squibb, a large pharmaceutical company headquartered in New York and incorporated in Delaware, in California state court. *Id.* at 1775. After the plaintiffs sustained personal injuries that resulted from their use of Plavix, a drug that Bristol-Myers Squibb manufactured, the plaintiffs sought recovery under California law. *Id.* In deciding the issue of personal jurisdiction, this

Court ultimately held that California state courts lacked personal jurisdiction over Bristol-Myers Squibb for mass-tort claims brought by nonresident plaintiffs, reasoning that those plaintiffs did not suffer their alleged injuries in the forum state, California. *Id.* at 1775–76. This Court further emphasized that state courts could only exercise specific personal jurisdiction over a claim if there exists an "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum [s]tate and is therefore subject to the [s]tate's regulation." *Id.* at 1780. In simpler words, what was needed—and what was missing—was a "connection between the forum and the specific claims at issue." *Id.* at 1781.

Lastly, although the plaintiffs argued that *Shutts* stood for the proposition that due process is not violated when similar claims are brought in a single forum (i.e., class actions), despite the fact that most of those claims have no connection to the forum, this Court outright refused to apply *Shutts* to a defendant's personal-jurisdiction rights. *Id.* at 1780–81 (citing *Shutts*, 472 U.S. at 797); *see also id.* at 1782 (quoting Brief for Respondents, at 28–29 n.6) ("[I]t would be 'absurd to believe [this Court] would have reached the exact opposite result if the [defendant] had only invoked its own due-process rights, rather than those of the non-resident plaintiffs."). In doing so, this Court explained: "[T]he authority of a [s]tate to entertain the claims of nonresident class members *is entirely different from its authority to exercise jurisdiction over an out-of-state defendant*." *Id.* at 1783 (citing *Shutts*, 472 U.S. at 808–812) (emphasis added). Ultimately, *Shutts* addressed the due process rights of

plaintiffs—not defendants—and thus, had no bearing on the question presented in *Bristol-Myers*. *Id.* ("But the fact remains that Phillips did not assert that Kansas improperly exercised personal jurisdiction over it, and the Court did not address that issue."). In fact, the *Shutts* Court stated explicitly "that its 'discussion of personal jurisdiction [did not] address class actions where the jurisdiction is asserted against a *defendant* class.'" *Id.* (citing *Shutts*, 472 U.S. at 812 n.3).

Since *Bristol-Myers*, a number of courts have followed, acknowledging that *Shutts* does not speak to the specific issue of asserting personal jurisdiction over a defendant. *See, e.g.*, *Prac. Mgmt.*, 301 F. Supp. 3d at 862; *Greene v. Mizuho Bank., Ltd.*, 289 F. Supp. 3d 870, 874–75 (N.D. Ill. 2017); *Coffin v. Magellan HRSC, Inc.*, No. CV 20-0144, 2021 WL 2589732, at *12 (D.N.M. June 24, 2021). Instead, these courts advance the contention that "[t]he exercise of personal jurisdiction over defendants in class actions rests on the more recent Supreme Court precedent of *Bristol-Myers*." *Coffin*, 2021 WL 2589732, at *12; *see also Prac. Mgmt.*, 301 F. Supp. 3d at 862; *Greene*, 289 F. Supp. at 874–75. Accordingly, similar to the plaintiffs in *Bristol-Myers*, Mrs. Cole may argue that the *Shutts* holding suggests that due process is not offended when similar claims are brought in a single forum, even though a majority of such claims have zero connections to the forum. *See* 137 S. Ct. at 1780–81. However, as this Court explained in *Bristol-Myers*, "the authority of a [s]tate to entertain the claims of nonresident class members *is entirely different* from its authority to exercise jurisdiction over an out-of-state defendant." *Id.* at 1783 (citing *Shutts*, 472 U.S. at 808–812) (emphasis added). Moreover, the mere fact that *Shutts* addressed the issue

of personal jurisdiction in a class-action context does not automatically lead to the conclusion that it controls the specific issue of asserting personal jurisdiction over a *defendant*. *Id.* After all, given the defendant's unusual argument on appeal—that litigating the class action in Kansas violated the absent class members' due process right to personal jurisdiction—*Shutts* only addressed the due process rights of *plaintiffs*. *Shutts*, 472 U.S. at 806–09; *Bristol-Myers*, 137 S. Ct. at 1783. Lastly, because several courts have recognized *Bristol-Myers* as the leading case with respect to the exercise of personal jurisdiction over defendants in class actions, this Court should look to the general principles it adopted in that case for guidance and support in affirming the district court's order striking the nationwide class allegations against Mr. Todd for lack of personal jurisdiction. *See Coffin*, 2021 WL 2589732, at *12; *Prac. Mgmt.*, 301 F. Supp. 3d at 862; *Greene*, 289 F. Supp. at 874–75.

2. Nothing in *Bristol-Myers* suggests that its jurisdictional limitations are inapplicable to class actions.

To date, this Court has yet to address whether *Bristol-Myers* applies to class actions. *Bristol-Myers*,137 S. Ct. at 1789 n.4 (Sotomayor, J., dissenting) ("The Court today does not confront the question whether its opinion here would also apply to a class action in which a plaintiff injured in the forum [s]tate seeks to represent a nationwide class of plaintiffs, not all of whom were injured there."). However, despite simple procedural differences, a considerable number of federal district courts have held that the jurisdictional limitations of *Bristol-Myers* nevertheless extend to class

actions, and vigorous dissents accompanied circuit opinions that disagree.[1] These decisions have generally recognized that the due process requirements for class actions are no different than those for non-class actions. *In re Dental Supplies*, 2017 WL 4217115, at *9 ("The constitutional requirements of due process do[ ] not wax and wane when the complaint is individual or on behalf of a class."); *Roy v. FedEx Ground Package Sys., Inc.*, 353 F. Supp. 3d 43, 56 (D. Mass. 2018) (citation omitted) ("Nothing in *Bristol-Myers* suggests that its basic holding is inapplicable to class actions . . . ."). *But cf. Lyngaas*, 992 F.3d at 434 (citing *Mussat*, 953 F.3d at 446–47) ("The different procedures underlying a mass-tort action and a class action demand diverging specific jurisdiction analyses.")

For instance, in *Promologics*, the district court extended the jurisdictional principles that this Court articulated in *Bristol-Myers* to the analysis of personal jurisdiction over claims of unnamed class plaintiffs. 2018 WL 3474444, at *2. In that case, the plaintiffs brought a class action against the defendants, alleging that the defendants' fax campaign violated the TCPA. *Id.* at *1. The defendants subsequently moved to strike those allegations, arguing that the court lacked personal jurisdiction over the defendants with respect to the claims of nonresident class members. *Id.* The

[1] *See, e.g.*, *Am.'s Health & Res. Ctr., Ltd. v. Promologics, Inc.*, No. 16 C 9281, 2018 WL 3474444, at *2 (N.D. Ill. July 19, 2018); *Maclin v. Reliable Reports of Tex., Inc.*, 314 F. Supp. 3d 845, 851 (N.D. Ohio 2018); *Wenokur v. AXA Equitable Life Ins. Co.*, No. CV-17-00165, 2017 WL 4357916, at *4 n.4 (D. Ariz. Oct. 2, 2017); *In re Dental Supplies Antitrust Litig.*, No. 16 CV 696, 2017 WL 4217115, at *9 (E.D.N.Y. Sept. 20, 2017); *Lyngaas v. Curaden AG*, 992 F.3d 412, 440 (6th Cir. 2021) (Thapar, J., dissenting in part) ("The majority believes that a court can resolve a class action even when it would lack personal jurisdiction to decide the claims of absent class members. I do not.")

court looked to other district court rulings, as well as to its prior decisions, for guidance and noted that the "decisions finding *Bristol-Myers* [ ] applicable to class actions have generally observed that due process requirements do not differ between class and non-class actions." *Id.* at *2. In either situation, courts have stressed that due process simply requires "a connection between the forum and the specific claims at issue." *Id.* (quoting *Bristol-Myers*, 137 S. Ct. at 1781). In agreeing with this observation, the court reaffirmed its belief that *Bristol-Myers* applies in equal force to class actions as it does in non-class actions—that is, the mass-tort versus class action distinction is irrelevant. *Id.*

While Mrs. Cole may assert that *Bristol-Myers* was limited to personal jurisdiction in mass-tort actions, this distinction is irrelevant. R. at 18a. To begin, in differentiating *Shutts*, this Court *never* emphasized that *Shutts* was a class action, nor did it indicate that this distinction even mattered. *See Bristol-Myers*, 137 S. Ct. at 1783. In lieu, the Court reasoned that *Shutts* did not apply simply because "it concerned the due process rights of *plaintiffs*." *Id.* After all, the "primary concern" in determining personal jurisdiction "is the burden on the defendant"; thus, there is no reason this concern should be lessened in a class action where a defendant is not subject to the personal jurisdiction of the forum merely because there exist procedural differences. *Id.* at 1776 (quoting *World-Wide Volkswagen*, 444 U.S. at 282); *see also Bakov*, 2019 WL 1294659, at *13–14 (citations omitted) (reaffirming that *Bristol-Myers*'s jurisdictional rule applies in class action context, "which comports with the position taken by other courts").

Moreover, as the district court in *Promologics* pointed out: Due process simply requires "a connection between the forum and the specific claims at issue." 2018 WL 3474444, at *2 (quoting *Bristol-Myers*, 137 S. Ct. at 1781). Because this constitutional requirement does not vary when the complaint is individual or on behalf of a class, "personal jurisdiction in class actions must comport with due process just the same as any other case." *In re Dental Supplies*, 2017 WL 4217115, at *9. Accordingly, in adopting these principles, this Court should affirm the district court's order striking the nationwide class allegations and recognize that *nothing* in *Bristol-Myers* indicates that its jurisdictional limitations are inapplicable to class actions. *Id.*; *Promologics*, 2018 WL 3474444, at *2; *Roy*, 353 F. Supp. 3d at 56; *Maclin*, 314 F. Supp. 3d at 851; *Wenokur*, 2017 WL 4357916, at *4 n.4.

3. FRCP 23 is *not* an adequate substitute for normal principles of personal jurisdiction nor can it alter Mr. Todd's due process rights under the Rules Enabling Act.

In following the courts that held *Bristol-Myers* inapplicable to class actions, Mrs. Cole may argue that FRCP 23 adequately protects a defendant's due process rights, notwithstanding whether the court has personal jurisdiction over the defendant as to each claim by each class member. *See, e.g.*, *Sanchez v. Launch Tech. Workforce Sols., LLC*, 297 F. Supp. 3d 1360, 1366 (N.D. Ga. 2018); *Morgan v. U.S. Xpress, Inc.*, No. 17-cv-00085, 2018 WL 3580775, at *5 (W.D. Va. July 25, 2018) (quoting *Molock v Whole Foods Market, Inc.*, 297 F. Supp. 3d 114, 126 (D.D.C. 2018)) ("Rule 23's requirements (numerosity, commonality, typicality, adequacy of representation, predominance, and superiority) supply due process safeguards not

applicable in [*Bristol-Myers*'s] mass tort context."). However, given that absent class members have fewer burdens than defendants because they are "not haled anywhere to defend themselves upon pain of a default judgment," FRCP 23's requirements exist *only* to protect absent class members' due-process rights—they have no bearing on personal jurisdiction nor did Congress design them to. *Shutts*, 472 U.S. at 806–09, 811 ("[T]he Due Process Clause need not and does not afford [absent class members] as much protection from . . . jurisdiction as it does [defendants]."); *see also Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 847 (1999) (FRCP 23's "procedural protections" exist to "protect the rights of absent class members").

To conclude otherwise would raise significant issues, as this Court has emphasized that FRCP 23's requirements "must be interpreted in keeping with Article III constraints, and with the Rules Enabling Act, which instructs that the [federal court] rules of procedure 'shall not abridge, enlarge, or modify any substantive right.'" *Amchem Prods., Inc. v. Windsor*, 512 U.S. 591, 592 (1997) (quoting 28 U.S.C. § 2072(b)); *see also* Fed. R. Civ. P. 82 (providing that the Rules "do not extend or limit the jurisdiction of the district courts"). Put differently, a defendant's due process rights should not shrink or expand based on whether he is sued individually or by a class. *In re Dental Supplies*, 2017 WL 4217115, at *9 ("The constitutional requirements of due process do[ ] not wax and wane when the complaint is individual or on behalf of a class."). If a plaintiff were able to use the class-action device to bring a claim against a defendant that a federal court would otherwise lack personal jurisdiction to hear, it would "violate[ ] the Rules Enabling

Act by giving plaintiffs and defendants different rights in a class proceeding than they could have asserted in an individual action." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1048 (2016); *see also Ortiz*, 527 U.S. at 845 ("no reading of [Rule 23] can ignore the [Rules Enabling] Act's mandate that 'rules of procedure shall not abridge, enlarge or modify any substantive right.'").

Furthermore, FRCP 23 focuses on commonality, requiring class representatives to show that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). However, because "[a]ny competently crafted class complaint literally raises common questions," the Court has admitted that this "*language is easy to misread*." *Wal-Mart Stores, Inc. v. Duke*, 564 U.S. 338, 349 (2011) (citation and internal quotations omitted) (emphasis added). More importantly, although commonality requires the plaintiff to demonstrate that class members "have suffered the same injury," such that there is a common contention answerable in one sweep, *Bristol-Myers* made it clear that the similarity of the plaintiffs' asserted claims has *nothing* to do with personal jurisdiction. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982); *see Bristol-Myers*, 137 S. Ct. at 1781. There, the California residents asserted claims that the California courts unarguably had personal jurisdiction to hear. *Bristol-Myers*, 137 S. Ct. at 1781. However, even though those claims were "similar" to the nonresidents' claims, the Court held that the California courts still could not exercise personal jurisdiction over the nonresidents' claims. *Id.* After all, the limits of personal jurisdiction guard against more than just inconvenience for a defendant—they go to "the more abstract matter of submitting to the coercive power

of a [s]tate that may have little legitimate interest in the claims in question." *Id.* at 1780.

The same logic applies to this case: the mere fact that Mrs. Cole's TCPA claim is "similar" to those of the nonresident, unnamed class members has *nothing* to do with the district court's ability to exercise personal jurisdiction over Mr. Todd. *See id.* This Court has made clear that personal jurisdiction over Mr. Todd must be evaluated on a claim-by-claim, plaintiff-by-plaintiff basis, as there is no federal-court exceptionalism that can put class actions beyond this Court's usual due process principles. *See id.* at 1781. Ultimately, because FRCP 23's standards are *not* "an adequate substitute for normal principles of personal jurisdiction" nor can they alter Mr. Todd's substantive or constitutional rights under the Rules Enabling Act, the Fourteenth Amendment due process considerations defined by this Court in *Bristol-Myers* should apply equally to protect defendants in class actions, including Mr. Todd, just as they would in any other case. *Molock*, 953 F.3d at 307 (Silberman, J., dissenting).

II. This Court should affirm the district court's order striking the nationwide class allegations against Mr. Todd because under New Tejas law, Mr. Todd is *not* the alter ego of Spicy Cold.

Anglo-American jurisprudence has established the fundamental principle that "a business operating as a legally recognized entity is *separate* and *distinct* from its owners." 114 Am. Jur. 3d *Proof of Facts* § 1 (1985) (emphasis added). For purposes of jurisdiction, as long as a shareholder and corporation remain separate and distinct, courts have acknowledged that the presence of one in a forum state cannot be ascribed

to the other. *Consol. Dev. Corp. v. Sherritt Inc.*, 216 F.3d 1286, 1293 (11th Cir. 2000) (citing *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 337 (1925)). After all, the purpose of creating a corporate form was "to allow shareholders to invest without incurring personal liability for the acts of the corporation." *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 484 (3d Cir. 2001); *Anderson v. Abbott*, 321 U.S. 349, 361 (1944) ("Normally the corporation is an insulator from liability . . . ."); *see also* 114 Am. Jur. 3d *Proof of Facts* § 1 (citations omitted) ("The concept of limited liability has been called the most attractive feature of corporation[;] [o]ften, it is the primary reason for incorporation."). A shareholder, therefore, is generally not subject to the jurisdiction of a forum state *simply because* a corporation is doing business there. *Sherritt*, 216 F.3d at 1292.

Although the concept of limited liability serves essential public policy goals, federal courts have recognized that strict adherence to such can, at times, produce inequitable results. *Newport News Holding Corp. v. Virtual City Vision, Inc.*, 650 F.3d 424, 433 (4th Cir. 2011); *Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653 n.18 (5th Cir. 2002) (collecting cases); *Estate of Thomson v. Toyota Motor Corp. Worldwide*, 545 F.3d 357, 363 (6th Cir. 2008) (advocating "the use of the alter-ego theory to exercise personal jurisdiction"). Thus, to cure wrongs, protect against fraud, and advance the ends of justice, courts will disregard the separateness of an entity and hold shareholders liable for the acts of the corporation; this equitable doctrine is known by various names, including "disregarding the corporate entity," "piercing the corporate veil," and the "alter ego" and "instrumentality" theories. *Dole Food Co. v.*

Patrickson, 538 U.S. 468, 475 (2003); *United States v. Bestfoods*, 524 U.S. 51, 59–60 (1998); *HOK Sport, Inc. v. FC Des Moines, L.C.*, 495 F.3d 927, 935–36 (11th Cir. 2007); *Pearson*, 247 F.3d at 484 n.2 (citation omitted) ("Although the test employed to determine when circumstances justifying 'veil piercing' exist are variously referred to as the 'alter ego,' 'instrumentality,' or 'identity' doctrines, the formulations are generally similar, and courts rarely distinguish them."). Moreover, with respect to personal jurisdiction:

> [F]ederal courts have consistently acknowledged that it is compatible with due process for a court to exercise personal jurisdiction over an individual . . . that would not ordinarily be subject to personal jurisdiction in that court when the individual . . . is an alter ego . . . of a corporation that would be subject to personal jurisdiction in that court.

Newport News, 650 F.3d at 433 (quoting *Patin*, 294 F.3d at 653). Therefore, to extend personal jurisdiction, a plaintiff must satisfy the alter ego test by making a prima facie showing that: (1) there is such unity of interest and ownership that the separate personalities no longer exist; and (2) failure to disregard would result in injustice or fraud. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015) (citations omitted).

The exercise of jurisdiction over an alter ego is compatible with due process because a corporation and its alter ego are, in essence, the same entity; thus, the jurisdictional contacts of one are the jurisdictional contacts of the other for the purposes of the *International Shoe* due process analysis. *Howard v. Everex Sys., Inc.*, 228 F.3d 1057, 1069 n.17 (9th Cir. 2000); *Minn. Mining & Mfg. Co. v. Eco Chem Inc.*,

757 F.2d 1256, 1265 (Fed. Cir. 1985); *Patin*, 294 F.3d at 653. The burden of proof, however, is substantial, as the Court has emphasized that this doctrine is the *rare exception*—applied only in cases of fraud or other exceptional circumstances, on a case-by-case analysis. *Dole*, 538 U.S. at 475 (citations omitted).

Furthermore, states have adopted widely divergent and sometimes contradictory standards, resulting in varying alter ego doctrines. *See Pearson*, 247 F.3d at 484 n.2; R. at 6a, 12a (noting that New Tejas's alter ego doctrine has an extremely stringent standard compared to most states). This issue becomes even more complicated when it arises in federal court because in diversity litigation, federal courts must apply state law as the substantive law of the case. *Erie R.R. v. Tompkins*, 304 U.S. 64, 78 (1938) ("Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state."); *Klaxon v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941) (holding that a federal court sitting in diversity must apply choice-of-law rules of the forum state in which it sits). Moreover, while state law does not directly govern in federal-question cases, there exists a federal choice-of-law issue when determining the validity of jurisdictional piercing, especially when federal and state law have different standards that yield conflicting results. *See Erie*, 304 U.S. at 78; *In re Lyondell Chem. Co.*, 543 B.R. 127, 139 (S.D.N.Y. 2016) ("Caselaw on whether choice-of-law analysis is required in this context is unsettled, with some courts finding that for a jurisdictional analysis, courts should instead apply either the law governing the interpretation of the applicable jurisdictional statute . . . or federal due process

jurisprudence, or both."). This issue ultimately requires federal courts to decide whether to apply the choice-of-law rules of the state in which it presides or to follow other federal courts—i.e., federal common law. *Compare Amoco Chem. Co. v. Tex Tin Corp.*, 925 F. Supp. 1192, 1201 (S.D. Tex. 1996) (stating that courts look to the law of the state of incorporation when addressing alter ego theory of jurisdiction), *and Newport News*, 650 F.3d at 434 (applying state law to decide the validity of the alter ego theory); *with Anwar v. Dow Chem. Co.*, 876 F.3d 841, 848–49 (6th Cir. 2017) (applying the federal common law test for the alter ego theory in a case arising under federal law), *and Ranza*, 793 F.3d at 1073 (similar).

A. In light of federal choice-of-law principles, and the tradition of following the Restatement (Second) of Conflict of Laws, the law of the state of incorporation governs the application of the alter ego theory.

Although the Court has yet to address whether federal courts should borrow state law or apply federal common law to resolve corporate veil-piercing issues, circuit courts have consistently held that a district court exercising federal-question jurisdiction *must* apply federal choice-of-law rules to determine the applicable substantive law.[2] Given the absence of specific statutory guidance from Congress,

[2] *Bestfoods*, 525 U.S. at 64 n.9 (declining to resolve this issue because neither party raised it in the appeal); *Edelmann v. Chase Manhattan Bank, N.A.*, 861 F.2d 1291, 1294 (1st Cir. 1998); *Corporacion Venezolana de Fomento v. Vintero Sales Corp.*, 629 F.2d 789, 795 (2d Cir. 1980), *cert. denied*, 449 U.S. 1080 (1981) ("Were this a diversity cases, *Klaxon* . . . would require that we look to the choice of law doctrines of the forum state[;] [t]his is a federal case, however, and it is appropriate that we apply a federal common law choice of law . . . ."); *In re Merritt Dredging Co.*, 839 F.2d 203, 205 (4th Cir. 1988); *Woods-Tucker Leasing Corp. v. Hutcheson-Ingram Dev. Co.*, 642 F.2d 744, 747–49 (5th Cir. 1981); *In re Morris*, 30 F.3d 1578, 1581–82 (7th Cir. 1944); *In re Lindsay*, 59 F.3d 942, 948 (9th Cir. 1995); *Wordtech Sys., Inc. v. Integrated*

federal courts follow the Restatement (Second) Conflict of Laws (Restatement) to resolve choice-of-law issues. *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006); *Med. Mut. of Ohio v. deSoto*, 245 F.3d 561, 579 (6th Cir. 2001); Restatement (Second) Conflict of Laws § 307 (Am. L. Inst. 1977). Under § 307 of the Restatement, the law of the state of incorporation governs the application of the alter ego theory—not federal common law. Restatement (Second) Conflict of Laws § 307 (declaring that "[t]he local laws of the state of incorporation will be applied"); *Tomlinson v. Combined Underwriters Life Ins. Co.*, No. 08-CV-259, 2009 WL 2601940, at *2 (N.D. Okla. Aug. 21, 2009) ("Many jurisdictions have cited to § 307 as indicating that the law of the state of incorporation governs veil piercing claims.").

To further illustrate this point, in *Cyprus Amax Minerals Co. v. TCI Pacific Communications, Inc.*, the district court held that the veil-piercing analysis must be conducted according to the laws of Kansas—the state of incorporation of the defendant. No. 11-CV-252, 2012 WL 4006122, at *5 (N.D. Okla. Sept. 12, 2012). There, the plaintiff brough claims under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against the defendants, two defunct zinc smelting facilities, alleging that the former operation of those facilities caused environmental contamination. *Id.* at *1. The defendants subsequently filed a Motion for Choice of Law Determination, seeking a finding of whether Kansas law or federal common law should be applied to determine whether plaintiff could pierce the

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Networks Sols., Inc., 609 F.3d 1308, 1318 n.4 (Fed. Cir. 2010); *Nat'l Fair Hous. All., Inc. v. Prudential Ins. Co. of Am.*, 208 F. Supp. 2d 46, 62 (D.D.C. 2002).

corporate veil and hold defendants' shareholders liable for environmental cleanup expenses. *Id.* First, the court was tasked with deciding whether it should apply Oklahoma or federal common law choice-of-law principles. *Id.* at *3. In diversity actions, the laws of the forum state govern choice-of-law issues; however, in federal jurisdiction litigation, the court noted that "federal courts generally apply federal common law principles to resolve choice of law disputes." *Id.* at *3–4 (citing *Nat'l Fair Hous. All., Inc.*, 208 F. Supp. 2d at 62).

Further, given that the case arose under federal law (the CERCLA) and thus federal common law principles applied, the court observed that circuit courts consistently rely upon the Restatement for the content of federal common law, specifically § 307 of the Restatement to determine what law should govern the veil-piercing analysis. *Id.* at *4–5 (first citing *Grand Isle Shipyard, Inc. v. Seacor Marine, LLC*, 589 F.3d 778, 809 (5th Cir. 2009); and then citing *Edelmann*, 861 F.2d at 1294–95). Accordingly, following federal choice-of-law principles and looking to § 307 of the Restatement, the court found that the law of the state of incorporation—Kansas—controlled the issue of veil-piercing. *Id.* at *6.

Similar to the plaintiff in *Cyprus*, Mrs. Cole brought a class action suit against Mr. Todd under federal law, the TCPA. *See id.* at *1; R. at 3a. Given that this case arises out of federal law, federal court precedent therefore demands that federal choice-of-law principles control this Court's determination of the applicable substantive law. *Vintero Sales Corp.*, 629 F.2d at 795; *Merritt*, 839 F.2d at 205; *Woods-Tucker*, 642 F.2d at 747–49; *Morris*, 30 F.3d at 1581–82; *Lindsay*, 59 F.3d at

948; *Wordtech*, 609 F.3d at 1318 n.4; *Edelmann*, 861 F.2d at 1294–95. Moreover, as emphasized in *Cyprus*, circuit courts routinely rely on the Restatement for the content of federal common law, particularly to resolve choice-of-law issues. 2012 WL 4006122, at *4–5 (first citing *Grand Isle Shipyard*, 589 F.3d at 809; and then citing *Edelmann*, 861 F.2d at 1294–95); *see also Huynh*, 465 F.3d at 997; *deSoto*, 245 F.3d at 579 (both demonstrating the circuit tradition of following Restatement principles in the absence of specific statutory guidelines from Congress). Accordingly, § 307 of the Restatement provides that *the law of the state of incorporation* governs the application of the alter ego theory—not federal common law. Restatement (Second) Conflict of Laws § 307; *Tomlinson*, 2009 WL 2601940, at *2.

While Mrs. Cole may argue that *Cyprus* as well as other cases Mr. Todd cites for support are inapposite because they are not TCPA cases, this argument is unpersuasive because these cases are *part* of the body of federal common law. *DaimlerChrysler Corp. Healthcare Benefits Plan v. Durden*, 448 F.3d 918, 922–23 (6th Cir. 2006) (rejecting similar argument made by plaintiff). After all, every distinct underlying federal issue does not have a different set of federal choice-of-law rules. *Id.* ("There is not a different set of federal common law choice of law rules for every distinct underlying federal issue."). Moreover, federal courts are free to choose any rule they deem appropriate and may look for guidance to other federal contexts when determining the contents of federal common law. *See D'Oench, Duhme & Co. v. Fed. Deposit Ins. Corp.*, 315 U.S. 447, 472 (1942) (Jackson, J., concurring) ("Federal law is no juridical chameleon . . . It is found in the federal Constitution, statutes, or common

law . . . Within these limits, federal courts are to free apply the traditional common-law technique of decision and to draw upon all the sources of common law in cases . . . .") In view of these deep-rooted principles, as well as the weight of authority following § 307 of the Restatement to resolve conflict-of-law issues, this Court, like the *Cyprus* court, should hold that the law of the state of incorporation—New Tejas—governs the validity of the alter ego theory. *See* 2012 WL 4006122, at *5.

B. Given that Spicy Cold is a creature of New Tejas law, New Tejas has a substantial, overriding interest in determining whether to pierce the corporate veil of one of its corporations.

Section 307 of the Restatement favors applying the law of the state of incorporation for three reasons: (1) it is the law which shareholders expect courts to apply; (2) exclusive application will ensure uniformity with respect to the treatment of shareholders; and (3) the state of incorporation has a substantial interest in determining whether to pierce the corporate veil of one its corporations. Restatement (Second) Conflict of Laws § 307 cmt. a. Many federal courts have relied on these policy reasons when applying the law of the state of incorporation to the veil-piercing analysis over federal common law. *See, e.g.*, *Mikropul Corp. v. Desimone & Chaplin–Airtech, Inc.*, 599 F. Supp. 940, 942 (S.D.N.Y. 1984) (emphasizing that the state of incorporation "has a paramount interest in preserving the integrity of the corporate form under [its] law by regulating the standards which control piercing the veil of [that state's] corporations"); *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 91 (1987) ("It is an accepted part of business landscape in this country for [s]tates to create corporations, to prescribe their powers, and to define the rights that are

acquired by purchasing their shares."). More importantly, § 307 is in harmony with Supreme Court precedent, known as the "internal affairs doctrine." *Cyprus*, 2012 WL 4006122, at *5 (quoting *Canal Ins. Co. v. Montello, Inc.*, 822 F. Supp. 1177, 1184 n.8 (N.D. Okla. 2011)). This doctrine "recognizes that 'only one [s]tate should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands.'" *Edgar v. MITE Corp.*, 457 U.S. 624, 645–46 (1982); *Cyprus*, 2012 WL 4006122, at *5 (quoting *Canal*, 822 F. Supp. at 1184 n.8).

Furthermore, federal courts must balance state and federal interests, and in doing so, they should not ignore state law. *See, e.g.*, *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 728 (1979) (indicating that federal courts should incorporate state law as the federal rule of decision unless "application of [the particular] state law [in question] would frustrate specific objectives of the federal program."). In particular, the Court has endorsed incorporating state law into federal common law "in areas in which private parties have entered legal relationships with the expectation that their rights and obligations would be governed by state-law standards." *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 98–99 (1991) (first citing *Kimbell Foods*, 440 U.S. at 728–29; then citing *Reconstruction Fin. Corp. v. Beaver Cnty.*, 328 U.S. 204, 210 (1946); and then citing *De Sylva v. Ballentine*, 351 U.S. 570, 580–81 (1956)). "Corporation law" falls into this category because, as the Court has emphasized,

corporations "are creatures of state law"—it is state law that is the "font" of a corporate entity's power. *Id.* (quoting *Burks v. Lasker*, 441 U.S. 471, 477–78 (1979).[3]

Despite these well-established principles, the D.C. Circuit and Sixth Circuit appear to suggest that federal common law—not the law of the state of incorporation—should apply if the veil-piercing analysis implicates *some* federal interest. *U.S. Through Small Bus. Admin. v. Pena*, 731 F.2d 8, 12 (D.C. Cir. 1984) (holding that courts have a jurisdictional and substantial basis for resorting to federal common law of veil-piercing when some federal interest is implicated by the decision of whether to pierce the corporate veil); *Anwar*, 876 F.3d at 848 (discussing D.C. Circuit approach of using federal common law when federal interest is implicated). However, a federal interest is *only* implicated in circumstances where the federal government has a financial stake in the outcome or where the government's regulatory interests are implicated through a federal statute. *See Pena*, 731 F.2d at 20–21 ("The government's interest in protecting itself from fraud, as embodied in the False Claims Act, makes it reasonable to apply the federal common law standard for piercing the corporate veil instead of the test set forth by the state [of incorporation.]"); *see also id.* at 12 ("The question whether a corporate veil ought to

[3] *See also Yazoo & M.V.R. Co. v. City of Clarksdale*, 257 U.S. 10, 26 (1921) (emphasis added) ("The corporation is completely a *creature of a state*, and it is usually within the function of the creator to say how the creature shall be brought before judicial tribunals."); *Wilson v. United States*, 221 U.S. 361, 284 (1911) (emphasis added) ("[T]he corporation is a *creature of state law* . . . It receives certain special privileges and franchises[ ] and holds then subject to the laws of the state and the limitations of its charter.").

be pierced for purposes of applying some federal statute is distinct from whether a corporate veil ought to be pierced for purposes of allocating state tort or contract liabilities."). In view of this, federal courts have explicitly necessitated the application of federal common law in the veil-piercing analysis under the Interstate Commerce Act, the Clayton Act, the Communications Act of 1934, the National Labor Relations Act, and the Consolidated Omnibus Budget Reconciliation Act (COBRA).[4]

Moreover, the Court has explained that, as a threshold matter, a case must implicate "uniquely federal interests" for federal common law to apply. *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988). The vesting of jurisdiction in a federal court does not, in and of itself, give a federal court the authority to apply federal common law. *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640–41 (1981) (citing *United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 591 (1973)). As Justice Scalia emphasized in *Boyle*, such interests arise *only in a few areas*, such as: (1) the obligations to, and rights of, the United States under its contracts; (2) the liability of federal officers for official acts; and (3) civil liabilities arising out of federal procurement contracts relating to national defense. *Id.* at 504–06 ("In a few areas

[4] *See, e.g.*, *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 436 (1946) (Interstate Commerce Act); *Klinger v. Baltimore & O. R. Co.*, 432 F.2d 506, 510 (2d Cir. 1970) (Clayton Act); *Cap. Tel. Co. v. Fed. Commc'ns Comm'n*, 498 F.2d 734, 737 (D.C. Cir. 1974) (Communications Act of 1934); *Bhd. of Locomotive Eng'rs. v. Springfield Terminal Ry. Co.*, 210 F.3d 18, 26 (1st Cir. 2000) (National Labor Relations Act); *Shuck v. Wichita Hockey Inc.*, 356 F. Supp. 2d 1191, 1194 (D. Kan. 2005) (citations omitted) ("The issue of whether to pierce a corporate veil in the context of a claim for COBRA liability raises a question of federal common law rather than state law.").

involving 'uniquely federal interests,' state law is preempted and replaced . . . ."). That said, even when "uniquely federal interests" are implicated, the Court has stressed that federal common law applies only where there is a "significant conflict between some federal policy or interest and the use of state law." *Id.* at 504; *O'Melveny & Myers v. Fed. Deposit Ins. Corp.*, 512 U.S. 79, 87 (1994) (quoting *Wheeldin v. Wheeler*, 373 U.S. 649, 651 (1963)) ("[C]ases in which judicial creation of a special federal rule would be justified . . . are . . . 'few and restricted.'"). A "significant conflict" occurs when the application of state law would contradict a federal policy or interest. *O'Melveny*, 512 U.S. at 87–88 (expressing a distaste for displacing state law absent a significant conflict). However, absent such a conflict, it is well-established that a mere federal interest in uniformity is insufficient to justify displacing state law in favor of a federal common law rule. *Id.*; *Kimbell Foods*, 440 U.S. at 730 (The Supreme Court specifically held that "generalized pleas for uniformity" do not sufficiently allege an actual conflict between state law and federal interests). Lastly, because federal courts are reluctant to displace state law in disputes between two private parties, "a plaintiff seeking to apply federal common law *where the United States is not even a party* faces a substantial burden in trying to demonstrate an actual, significant conflict between state law and a federal interest." *Woodward Governor Co. v. Curtiss-Wright Flight Sys., Inc.*, 164 F.3d 123, 127 (2d Cir. 1999) (emphasis added).

Accordingly, this Court should affirm the granting of the motion to strike because under New Tejas law of alter ego, it is undisputed that Mr. Todd is *not* the alter ego of Spicy Cold. R. at 16a. The district court's application of state law—over

federal common law—was appropriate because New Tejas has a substantial, overriding interest in determining whether to pierce the veil of one of its corporations. Restatement (Second) Conflict of Laws § 307 cmt. a. While Mr. Todd acknowledges that *some* cases may involve strong federal interests that warrant the application of federal common law over state law in the context of piercing the corporate veil, the TCPA does not warrant such treatment. *See Bd. of Trs., Sheet Metal Workers' Nat'l Pension Fund v. Courtad, Inc.*, No. 12-cv-2738, 2014 WL 3613383, at *3–4 (N.D. Ohio July 18, 2014) ("Outside of labor law or ERISA claims, courts tend not to supplant state corporate liability doctrine with federal common law."); *Lyngaas*, 992 F.3d at 420 (noting that both parties correctly relied on state law in determining whether the alter-ego theory applies in a TCPA case). Therefore, the application of New Tejas law does not implicate any "uniquely federal interests" nor does there exist any actual, significant conflict that Mrs. Cole can point to. *Boyle*, 487 U.S. at 504; *O'Melveny*, 512 U.S. at 87.

To begin, although this Court must balance both state and federal interests, it should not ignore state law, nor should it ignore the policy reasons for favoring state law. *See Kimbell Foods*, 440 U.S. at 728; Restatement (Second) Conflict of Laws § 307 cmt. a. This Court has consistently endorsed the application of state law—over federal common law—"in areas in which private parties have entered legal relationships with the expectation that their rights and obligations would be governed by state-law standards." *Kamen*, 500 U.S. at 98–99 (first citing *Kimbell Foods*, 440 U.S. at 728–29; then citing *Reconstruction Fin. Corp.*, 328 U.S. at 210; and

then citing *De Sylva*, 351 U.S. at 580–81). It is undeniable that corporation law is one of these areas; after all, this Court has specifically categorized corporations as "creatures of state law." *Id.* (quoting *Burks*, 441 U.S. at 478).Thus, given that Spicy Cold is a creature of New Tejas and it is New Tejas law that is the "font" of Spicy Cold's power, this Court should hold that New Tejas governs the alter ego theory—not federal common law. *Id.*; *Yazoo*, 257 U.S. at 26 (emphasis added) ("The corporation is completely a *creature of a state*, and it is usually within the function of the creator to say how the creature shall be brought before judicial tribunals.").

Furthermore, although Mrs. Cole may argue that this Court should follow the D.C. Circuit and Sixth Circuit's approach, which suggest that federal common law should apply if the veil-piercing analysis implicates some federal interest, as Justice Scalia emphasized in *Boyle*, such interests exist *only* in a few areas. 487 U.S. at 504–06. A federal interest is only implicated in circumstances where the federal government has a financial stake in the outcome or where the government's regulatory interests are implicated through federal statutes—none of these circumstances are present here. *See Pena*, 731 F.2d at 12, 20–21; *see generally* R. at 1a–23a. Moreover, federal courts have explicitly recognized that federal common law applies in the veil-piercing analysis under various other federal statutes such as the Interstate Commerce Act, the Clayton Act, the Communications Act of 1934, the National Labor Relations Act, and COBRA—but *not* under the TCPA. *See, e.g.*, *Schenley*, 326 U.S. at 436 (Interstate Commerce Act); *Klinger*, 432 F.2d at 510 (Clayton Act); *Cap. Tel. Co.*, 498 F.2d at 737 (Communications Act of 1934); *Bhd. of*

Locomotive Eng'rs., 210 F.3d at 26 (National Labor Relations Act); *Shuck*, 356 F. Supp. 2d at 1194 (COBRA).

According to Circuit Judge Arroford's dissenting opinion in the decision below, "[t]he unusual alter ego law of New Tejas is being allowed to undermine federal interests by preventing a federal district court from adjudicating claims against Mr. Todd." R. at 21a. This alleged federal interest is "personal jurisdiction to adjudicate a federal claim." R. at 22a. However, this Court has explicitly held that the vesting of jurisdiction in a federal court does not, in and of itself, give a federal court the authority to apply federal common law. *Tex. Indus., Inc.*, 451 U.S. at 640–41 (citing *Little Lake*, 412 U.S. at 591). In simpler words, the mere fact that a federal court possesses jurisdiction to adjudicate a federal claim *does not warrant* the application of federal common law. *Id.* Rather, federal common law exists only in such narrow areas—again, none of which are present here. *Boyle*, 487 U.S. at 504–06 (identifying these narrow areas to be those concerned with: (1) the obligations to, and rights of, the United States under its contracts; (2) the liability of federal officers for official acts; and (3) civil liabilities arising out of federal procurement contracts relating to national defense).

Moreover, even if Mr. Todd were to concede that this is an area in which there are "uniquely federal interests," displacement of state law requires more than just the presence of uniquely federal interests. *Boyle*, 487 U.S. at 504; *O'Melveny*, 512 U.S. at 87. Displacement will only occur where there is a "significant conflict between some federal policy or interest and the use of state law." *O'Melveny*, 512 U.S. at 87–88;

Kimbell Foods, 440 at 730. That said, given that federal courts are reluctant to displace state law in disputes between two private parties, *particularly when the United States is not even involved*, this Court should affirm the granting of the motion to strike and hold that the application of New Tejas law—over federal common law—was appropriate. *See Woodward Governor*, 164 F.3d at 127.

CONCLUSION

Striking the nationwide class allegations against Mr. Todd was appropriate in this case because unnamed class members *are not* immune from jurisdictional scrutiny. Furthermore, federal choice-of-law principles, as reflected in the Restatement, direct this Court to apply the law of the state of incorporation—not federal common law—when analyzing the validity of the alter ego theory. To begin, the enactment of FRCP 4(k) demonstrates Congress's intent to make the personal jurisdiction requirements for federal district courts coextensive with state courts. Given that the Fourteenth Amendment's Due Process Clause applicable to state courts governs district courts' personal-jurisdiction analysis, it only follows that *Bristol-Myers*'s personal jurisdiction limitations extend to nationwide class actions. After all, there is no federal-court exceptionalism that can put class actions beyond this Court's ordinary due process principles. Lastly, this Court should hold that the New Tejas law of alter ego applies, and under that test, it is undisputed that Mr. Todd is not Spicy Cold's alter ego and thus not subject to general jurisdiction in New Tejas. Accordingly, it is for these reasons that this Court should affirm the district court's order striking the nationwide class allegations against Mr. Todd.

CERTIFICATE OF SERVICE

We certify that a copy of Respondent's brief was served upon the Petitioner, Mrs. Cole, through the counsel of record by certified electronic receipt requested on this, the 15th day of November 2021.

Respectfully Submitted,

/s/ Team 10

Counsel for Respondent

APPENDIX A

Relevant Provision of the United States Constitution

U.S. Const. Amend. XI, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Relevant Provision of Federal Rules of Civil Procedure

Fed. R. Civ. P. 4.

(k) Territorial Limits of Effective Service.

(1) In General. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.