

No. 20-1434

**IN THE
SUPREME COURT OF THE UNITED STATES**

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

Petitioner,

v.

LANCELOT TODD,

Respondent.

**ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT**

BRIEF FOR RESPONDENT

Team 2
Counsel for Respondent

QUESTIONS PRESENTED

- I. Can plaintiffs sustain a class action against a defendant in federal court on the sole basis of the named class members' exerting specific personal jurisdiction over the defendant when most unnamed class action members' claims lack any relationship between the forum court, and no statutory authority exists to extend federal personal jurisdiction beyond the limits of the state court's jurisdictional reach?

- II. Can a federal district court contravene federal choice-of-law principles by applying federal common law to pierce the state-created shield of liability of a corporation, and ignore the state-based definition of alter ego theory, to assert general personal jurisdiction?

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JURISDICTIONAL STATEMENT

The United States District Court for the District of New Texas had federal question jurisdiction pursuant to 28 U.S.C. § 1331. The United States Court of Appeals for the Thirteenth Circuit had jurisdiction over the final judgment of the District of New Texas pursuant to 28 U.S.C. § 1291. This Court has jurisdiction under 28 U.S.C. § 1254(1).

OPINION BELOW

The judgment of the United States Court of Appeals for the Thirteenth Circuit, Cole v. Todd, No. 19-5309, was entered May 10, 2020, and may be found in the Appendix to the Record. App. A at 1–22.

STATUTORY AND CONSTITUTIONAL PROVISIONS

This case is derived from an action under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. This case revolves around the Fifth Amendment and Fourteenth Amendment Due Process Clauses. U.S. Const. amend V; U.S. Const. amend XIV, § 1. Additionally, this case involves the Rules Enabling Act, 28 U.S.C. § 2072, and the power it confers upon the Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

Lancelot Todd, entrepreneur and principal investor of Spicy Cold Foods, Inc. (“Spicy Cold Foods”), acquired the rights to “spicy cold” flavoring in early 2015. App. A at 2. Spicy Cold Foods was incorporated in New Tejas in late 2015. App. A at 2. New Tejas has a stringent standard for piercing the corporate veil, requiring that the corporation have been incorporated for the specific purpose of defrauding a specific individual for liability to attach. App. A at 6. Spicy Cold Foods’ sole and principal place of business is in West Dakota, where Todd is also domiciled. App. A at 3–4. Todd personally owns all of the shares of Spicy Cold Foods. App. A at 2. Spicy Cold Foods began marketing “spicy cold chips” using an automatic telephone dialing system in 2017. App. A at 3.

Gansevoort Cole, on behalf of a nationwide class of phone call recipients, alleged before the District Court of New Tejas that the class members received unwanted marketing phone calls from Spicy Cold Foods all across the nation. App. A at 3. Cole brought suit in the District Court of New Tejas, where she is a resident, alleging violations under the Telephone Consumer Protection Act (“TCPA”). App. A at 3, 5. The suit was on behalf of Cole and a class of all persons in the country who received similar calls from Spicy Cold Foods. App. A at 3. Cole brought the suit against Spicy Cold Foods and Todd individually. App. A at 3. Todd moved to dismiss the suit as to the unnamed class members due to a lack of personal jurisdiction over him in New Tejas. App. A at 4.

Cole argued, first, that “unnamed class members need not demonstrate personal jurisdiction over the defendant.” App. A at 4. Additionally, Cole contended that the District Court could exercise general personal jurisdiction “because, under a federal common law test, Mr. Todd is the alter ego of Spicy Cold.” App. A at 5.

The District Court “rejected both of Mrs. Cole’s arguments,” subsequently striking “the nationwide class allegations based on lack of personal jurisdiction.” App. A 7a. The District Court of New Texas found that the plaintiffs in this suit—led by named plaintiff Gansevoort Cole—could not assert personal jurisdiction over Lancelot Todd “with respect to the claims of out-of-state class members.” App. A at 2. The case was therefore dismissed as to all claims against Todd. App. A at 2.

The Thirteenth Circuit affirmed the district court, determining that “there must be personal jurisdiction over the claims of unnamed class members” and that “choice of law principles . . . direct us to apply the New Texas law of alter ego, . . . and thus [Todd] is not subject to general jurisdiction in New Texas.” App. A at 11, 16. On October 23, 2021, this Court granted certiorari. R. at 1.

SUMMARY OF THE ARGUMENT

This Court should affirm the judgment of both the District Court of New Texas and the Thirteenth Circuit because this Court and the Constitution of the United States require a court to have personal jurisdiction over a defendant. The ensuing appeal is an attempt to diminish states’ rights under the Constitution and circumvent Todd’s Due Process Clause rights in order to effect forum shopping under the guise

of administrative efficiency concerns. Simply put, Petitioner Cole failed to demonstrate personal jurisdiction over Todd in New Tejas.

First, not all claims against the defendant, Lancelot Todd, have a causal relationship between Todd and the forum. Allowing those claims to move forward under the guise of a lower jurisdictional bar for unnamed class members runs afoul of this Court's ruling in Bristol-Myers Squibb—where this Court required each claim to have a relationship between the forum and the defendant. Second, this Court's long-established federal choice-of-law principles prohibit the forced application of federal common law over New Tejas's established corporations law, as corporations are “creatures of the state,” and, therefore, are entitled to the application of state law. Asserting federal law here violates the principle of federalism and diminishes the efficacy of established, independent state law.

A. Unnamed class members' claims lack specific personal jurisdiction over Todd.

In order to establish specific personal jurisdiction over a defendant, under this Court's holding in Bristol-Myers Squibb, the District of New Tejas must establish specific jurisdiction over each claim. As a federal court, the District of New Tejas must establish personal jurisdiction in one of two ways: either (1) by following the parameters of personal jurisdiction available to a court of general jurisdiction in the state in which the district court sits, or (2) by being empowered by statute to have a broader jurisdictional reach.

Here, the District of New Tejas was not empowered by a statute to have a broader jurisdictional reach, and, therefore, under Rule 4(k), is limited to the personal

jurisdiction defined by the long-arm statute of the state of New Texas. As this Court held in Omni Capital, a federal court may only exert personal jurisdiction over individuals when the court is empowered by a statute to do so or is permitted to serve process under Rule 4(k).

New Texas, under its long-arm statute and the Fourteenth Amendment Due Process Clause, cannot exert personal jurisdiction over Todd because the claims of the unnamed class members lack a causal nexus with New Texas. This Court, in Bristol-Myers Squibb, held that each claim must have a causal nexus between the defendant and the forum state.

Even if this were constitutionally permissible, there are at best only nominal administrative efficiency benefits to be gained by bypassing Todd's due process rights because affirming the Thirteenth Circuit's judgment does not force into existence multiple class actions. Petitioner Cole, here, has several options to move their suit forward. While Petitioners could choose to bring multiple class or individual actions in venues of their choosing, Cole is free to bring a nationwide class action in a venue with general personal jurisdiction over Todd. Thus, there is no loss in administrative efficiency—only a reduction in the Petitioner's choice of venue.

This brings about the final concern: if unnamed class members do not need to have personal jurisdiction, then the door is opened for wide-spread forum shopping. Any nationwide class action could be brought in any state where there is at least one named party. This is counter to this Court's historical rulings against forum shopping.

B. The District Court of New Texas should not ignore federal choice-of-law principles and override New Texas's corporation law.

Adoption of New Texas's state law definition of alter ego is appropriate in the present action given federal choice-of-law rules and this Court's recognized adoption of federal common law principles for certain areas of law. Federal choice-of-law rules look to the Restatement (Second) of Conflict of Laws to resolve choice-of-law issues. Section 307 of the Restatement articulates that arguments about alter ego are governed by the law of the state of incorporation. Therefore, under the Restatement, the definition of alter ego theory under New Texas law governs. This Court should adopt the principles of the Restatement because they reflect this Court's precedent that corporations are creatures of state law.

In order to establish general personal jurisdiction over Todd in New Texas, Cole would have to prove that Todd is the alter ego of Spicy Cold Foods. Todd is only subject to general jurisdiction in West Dakota, his place of domicile. To exercise general jurisdiction over Todd in New Texas, the District Court would need to pierce the corporate veil of Spicy Cold Foods and hold Todd personally liable. The District Court of New Texas does not have general personal jurisdiction over Todd because under New Texas's state law definition of alter ego theory, he is not the alter ego of Spicy Cold Foods.

Notwithstanding federal choice-of-law rules, application of a state's definition of alter ego theory is preferred to the definition under federal common law. This Court has recognized certain areas of law that hold uniquely federal interests that should be governed by federal common law. Corporations law is not included in these areas

of law and conversely, this Court has recognized that corporations are creatures of state law. Universal application of the alter ego theory from the state of incorporation in choice-of-law disputes would provide lower courts with clarity and maintain this Court's accepted fields of federal common law.

Resultingly, this Court should affirm the decision of the Thirteenth Circuit because Cole did not establish general personal jurisdiction over Todd in New Tejas.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE THIRTEENTH CIRCUIT'S JUDGMENT BECAUSE THE PETITIONERS DO NOT HAVE PERSONAL JURISDICTION OVER TODD AS THE UNNAMED CLASS MEMBERS' CLAIMS DO NOT ARISE FROM CONTACT BETWEEN TODD, THE UNNAMED CLASS MEMBERS, AND THE FORUM STATE, AND NO STATUTORY POWER EXTENDS THE DISTRICT OF NEW TEJAS'S JURISDICTIONAL REACH BEYOND THAT OF THE STATE IN WHICH IT SITS.

This Court should affirm the Thirteenth Circuit's judgment because the unnamed class members cannot establish specific personal jurisdiction over Todd in New Texas because their claims lack any causal relationship with the forum state. This Court has long held that each claim must include personal jurisdiction. Personal jurisdiction exists to limit the coercive power of the state from haling individuals into court when that court does not have the power to do so under the Constitution.

Federal personal jurisdiction, generally, is limited to the parameters of the state in which the district court sits due to the Rules Enabling Act and the Federal Rules of Civil Procedure. See 28 U.S.C. § 2072 (establishing the power of the Supreme Court of the United States to create federal rules); see also Fed. R. Civ. P. 4(k) (establishing a limit to personal jurisdiction). The determination of whether a federal district court has personal jurisdiction is—unless otherwise altered by statute—linked to a state court's ability to exert personal jurisdiction. See Walden v. Fiore, 571 U.S. 277, 283 (2014). A state's ability to hale a person into court is dependent on the state's long-arm statute—and a long-arm statute that maximizes its power under Due Process is inherently limited by the Due Process Clause of the Fourteenth

Amendment of the United States Constitution. See Daimler AG v. Bauman, 571 U.S. 117, 125–26 (2014). The purpose of this constitutional protection is to ensure every citizen receives due process of law and is not unfairly subject to the powers of the state. These are essential freedoms and protections stemming from the founding of the country.

Notably, Cole argues—as did the Seventh Circuit, discussed below—not that the federal court had personal jurisdiction over claims arising outside of the state, but that it did not need to have personal jurisdiction over those claims. The outcome of such a proposition must be one of two options: either this (1) expands a state’s jurisdictional reach and is violative of the Fourteenth Amendment Due Process Clause, or (2) it expands the federal district court’s jurisdictional reach beyond that of the state without statutory authority and is violative of the Fifth Amendment Due Process Clause.

But the law directly contradicts either of the above assertions. In order to sustain an action against a defendant, each claim must have personal jurisdiction over the defendant. See Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773, 1781 (2017). In federal court, personal jurisdiction is established when the state in which the district court sits has personal jurisdiction over the claims made against a defendant. See Fed. R. Civ. P. 4(k). New Tejas’s ability to ascertain personal jurisdiction is based on New Tejas’s long-arm statute, which extends to the bounds of the Due Process Clause of the United States Constitution. See Bristol-Myers, 137 S. Ct. at 1780–81. Without personal jurisdiction under the Due Process Clause,

sustaining an action against a defendant would be violative of that defendant's constitutional rights. See id. And neither Cole nor the dissent below cite to any federal law that extends the District of New Texas's jurisdictional reach beyond that of the state in which it sits.

The claims set forth by the unnamed plaintiffs are violative of Todd's constitutional Fourteenth Amendment and Fifth Amendment Due Process Clause rights because the unnamed class members cannot establish personal jurisdiction over Todd as to their claims. Courts must not be allowed to justify this abridgment of substantive rights in pursuit of "administrative efficiency"—particularly here, where the efficiency gained is nominal, and resembles plaintiff-convenience more than efficiency. Additionally, allowing this violation of Todd's constitutional rights paves the way for class action forum shopping because plaintiffs would be permitted to place an action in any venue by choosing named plaintiffs in that venue only. Therefore, as exercising personal jurisdiction against Todd would be violative of Todd's rights—without justification and against the public policy needs of forum shopping—this Court should affirm the judgment of the Thirteenth Circuit as to the lack of personal jurisdiction.

A. The District Court of New Texas must establish personal jurisdiction over all claims because it lacked statutory authority to exercise jurisdiction beyond the scope of the State of New Texas, New Texas did not have authority to exercise personal jurisdiction, and extending a court's jurisdictional reach is not justified by administrative efficiency alone.

Allowing Cole to bring a suit without establishing personal jurisdiction over Todd as to all claims lacks statutory authority and violates the Constitution as well as this Court's precedent.

When general personal jurisdiction is unavailable in a forum, specific personal jurisdiction must exist over each claim raised because specific personal jurisdiction is a function of the limits of a state's sovereign power under the Constitution. See Bristol-Myers Squibb, 137 S. Ct. at 1781. Cole has asserted that personal jurisdiction is not needed in respect to all claims here. Cole's argument, however, is not specific as to whether personal jurisdiction should be waived concerning unnamed class members at the state court level—and would be thus subject to the Fourteenth Amendment—or if the federal court, alone, can ignore personal jurisdiction for unnamed class members. Neither of these assertions are viable, as they conflict with the Constitution, existing statutory authority, and case law. Allowing the district court to assert jurisdiction over Todd as to these claims (1) is violative of Todd's rights under the Due Process Clause, and (2) contravenes standing precedent in this Court, as established in Bristol-Myers.

1. Ignoring personal jurisdiction is violative of Todd's due process rights.

Disregarding the need to assert personal jurisdiction against Todd as to each claim is violative of Todd's rights under the Due Process Clause because this Court has stated, barring explicit exceptions, that a federal district court's ability to impose personal jurisdiction is synonymous with the state court in which it sits, and the Due Process Clause protects Todd from being haled into court when that court lacks jurisdiction. The Fifth and Fourteenth Amendments to the Constitution of the United States provide due process rights to all citizens of the United States. See U.S. Const. amend. V; see also U.S. Const. amend. XIV, § 1 (incorporating the Due Process Clause to the states). A district court, if not authorized by statute, cannot exceed the reach of a state's long-arm statute without violating the Fifth Amendment Due Process Clause. See Omni Cap. Int'l v. Rudolf Wolff & Co., 484 U.S. 97, 104, 111 (1987).

No law or constitutional provision empowers the court to impose jurisdiction here. State courts can establish general personal jurisdiction over a resident who is an individual, or any party who is served within the state. See Daimler AG, 571 U.S. at 125–26. When general personal jurisdiction does not exist, the court may establish specific personal jurisdiction arising from the particular claim. Bristol-Myers, 137 S. Ct. at 1779–80. States may enact “long-arm” statutes in order to maximize the reach of specific personal jurisdiction. Daimler AG, 571 U.S. at 125. New Texas has a “long-arm” statute that sets the outer-bounds of the state's jurisdictional reach at the maximum allowed by the Fourteenth Amendment. App. A at 8. Federal courts—with some inapplicable exceptions—must confine personal jurisdiction to the ascertainable

jurisdiction of the state's court of general jurisdiction where the federal court is located. See Walden, 571 U.S. at 283 (stating “whether the Federal District Court . . . was authorized to exercise jurisdiction over petitioner [rests on] whether the exercise of jurisdiction comports with the limits imposed by federal due process on the State” in which the district court was situated); see also Fed. R. Civ. P. 4(k). This suit was established under the Telephone Consumer Protection Act—and the TCPA does not contain any jurisdictional exceptions that would expand the reach of a district court's personal jurisdiction. See 47 U.S.C. § 227.

Here, there is no general personal jurisdiction. The TCPA does not allow federal courts to establish personal jurisdiction in contravention of the general rule. Therefore, under this Court's analysis in Walden and Rule 4(k), the question of whether the New Texas District Court had personal jurisdiction revolves around whether a New Texas state court of general jurisdiction would have specific jurisdiction over these claims. Since New Texas's long-arm statute extends its jurisdictional reach to the maximum bounds allowed by the Fourteenth Amendment, the controlling question becomes whether New Texas has the power, under the Due Process Clause of the Fourteenth Amendment, to have personal jurisdiction over the unnamed class members' claims. The Thirteenth Circuit held that the District Court did not have that power, and this Court should affirm.

The Due Process Clause of the Fourteenth Amendment can create an absolute barrier, as it “may act to divest the State of its power to render a valid judgment.” World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 294 (1980). A state court

can only assert specific jurisdiction when there are sufficient minimal contacts between the defendant, the forum, and the “underlying controversy.” See Bristol-Myers, 137 S. Ct. at 1781. In Bristol-Myers, Bristol-Myers Squibb sold Plavix into California. Id. A mass-torts action ensued in California state court—consisting of plaintiffs in California and outside California. Id. Bristol-Myers Squibb argued that there was no specific personal jurisdiction over the claims of the non-resident party members. Id. Respondents argued, among other things, that (1) there would be no harm to Bristol-Myers Squibb, because they were already litigating the matter with the California residents and (2) that Bristol-Myers Squibb’s contractual relationship with a California based company was sufficient to establish jurisdiction. Brief for Respondent at 34–35, Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773 (2017) (No. 16-466); see also Bristol-Myers, 137 S. Ct. at 1783. This Court held that neither were relevant: “What is needed . . . is a connection between the forum and the specific claims at issue.” Bristol-Myers, 137 S. Ct. at 1781.

Here, the impact on Todd is the same as the impact on the defendant in Bristol-Myers. Whether or not the claims are made from named or unnamed class members is of no consequence to the impact, on Todd, of having a court’s jurisdiction exercised on him. If the state court did not have power to exercise an identically-situated named class member, it does not gain power to assert jurisdiction over the claims of an unnamed class member. Cole has argued, here, that this is no additional burden on Todd because of the existence of the named plaintiffs’ jurisdictionally valid claims in

New Texas, but just as in Bristol-Myers, that fact that jurisdiction may be had on some claims does not permit asserting jurisdiction over other claims.

Cole contends that Todd's use of New Texas is sufficient to justify personal jurisdiction over the unnamed class members' claims, yet, much like Bristol-Myers, where Bristol-Myers Squibb's use of California—both to dispense Plavix to residents and through its additional contractual relationships—was insufficient to establish specific personal jurisdiction over the non-resident claims, likewise, this is not enough for Cole to assert specific personal jurisdiction on behalf of the unnamed class members. The requirement here “is a connection between the forum and the specific claims at issue.” Bristol-Myers, 137 S. Ct. at 1781. But there is no connection between the unnamed class members' claims and New Texas. Significantly, Cole does not allege said connection. And without that connection, New Texas does not have constitutional authority to subject Todd to jurisdiction over these claims. Thus, under Rule 4(k), the District of New Texas cannot exercise personal jurisdiction over Todd.

Finally, as the New Texas District Court does not have the power under the state's long-arm statute to exert personal jurisdiction over Todd, it must be considered whether the District Court, acting on its own scope of power—separate and above from that of the state—may exercise broader jurisdictional authority than the state. Here, it cannot.

As this Court held in Omni Capital, a federal court must be empowered by statute to have personal jurisdiction or be able to serve process on such a defendant for such a claim. See Omni Capital, 484 U.S. at 104, 111. The TCPA did not extend

any statutory authority for personal jurisdiction. And the New Texas District Court was not authorized under Rule 4(k) to serve process as to these claims. The District Court of New Texas would have exceeded its jurisdictional authority either by violating the Fourteenth Amendment through extending the state's long-arm reach or by violating the Fifth Amendment through extending its own jurisdictional reach beyond the bounds permitted by statute and this Court. This further supports affirming the Thirteenth Circuit's judgment and dismissing Cole's suit against Todd.

2. *Without statutory power to extend its jurisdictional reach, the New Texas District Court lacked personal jurisdiction, and administrative efficiency is not a viable justification for the foreclosure of constitutional rights.*

Extending the New Texas District Court's jurisdictional reach beyond the parameters of state jurisdiction without statutory power is violative of Todd's rights under the Due Process Clause, and the purpose of the alleged administrative efficiency is not enough to trump the Due Process Clause. Yet the dissent, below, asserted that the needs of administrative efficiency are enough to disregard the need for personal jurisdiction over all claims. App. A at 18–19. But this Court has yet to modify substantive rights of class action parties only for the sake of administrative efficiency.

While it is true that “[n]on named class members . . . may be parties for some purposes and not others,” Devlin v. Scardelletti, 536 U.S. 1, 9–10 (2002), this Court has long relied on existing statutory and constitutional authority to frame those limits. There is no statutory authority within the TCPA to allow the district court to expand its reach. See 47 U.S.C. § 227. The federal rules do not make any

accommodations or allowances for unnamed class members' claims to lack of personal jurisdiction. See Fed. R. Civ. P. 23. And, even if they did, the Federal Rules are only valid under the Rules Enabling Act when they do not "abridge defendants' rights." Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 408 (2010).

This Court typically imbues unnamed class members with the same rights and standing as their named counterparts. Unnamed class members benefit when named members toll the statute of limitations. See Am. Pipe & Constr. Co v. Utah, 414 U.S. 538, 555 (1974). Unnamed class members "must have Article III standing in order to recover individual damages." Transunion LLC v. Ramirez, 141 S. Ct. 2190, 2208 (2021). Unnamed class members have the right to appeal. Devlin, 536 U.S. at 14.

In rare instances, this Court has treated unnamed class members differently by waiving impracticable obligations of the unnamed parties when they (1) do not foreclose others' rights, (2) have statutory support or do not conflict with the existing law, and (3) support the purpose of Rule 23. See, e.g., Exxon Mobil Corp. v. Allapattah Servs., 545 U.S. 546, 549 (2005) (relying on statutory authority to eliminate the amount-in-controversy requirement for unnamed class members in a diversity suit); Devlin, 536 U.S. at 14 (stating, in dicta, that full diversity was not required in class action suits). But this Court has not imbued upon class members benefits at the expense of named parties' substantive rights.

In determining whether a court has personal jurisdiction over a defendant, the "primary concern" in finding valid personal jurisdiction "is the burden on the defendant." See Bristol-Myers, 137 S. Ct. at 1780. And this Court has yet to hold that

a defendant's constitutional rights can be foreclosed or that a State's sovereign power can be expanded beyond black-line limits for the sake of administrative efficiency.

In Exxon Mobil Corp. v. Allapattah Servs., this Court waived the requirement that unnamed class members needed to meet the amount-in-controversy requirement on the basis that 28 U.S.C. § 1367 creates supplemental jurisdiction over those claims. Exxon Mobil Corp. v. Allapattah Servs., 545 U.S. 546, 549 (2005). Notably, there were no claims that this forfeited defendant's constitutional rights. See id. Instead, the question was one of statutory authority: and this Court found that there was authority, through supplemental jurisdiction, to waive the amount-in-controversy requirement. Id. (citing 28 U.S.C. § 1367). This maximized administrative efficiency and the effectiveness of Rule 23 without impinging upon other parties' substantive rights.

In American Pipe, this Court considered the purpose of Rule 23 and determined that treating the unnamed class members similarly to the named class members was "consistent . . . with the proper functions of the limitations statute," and this Court did not enumerate any violations of others' rights. See Am. Pipe, 414 U.S. at 555 (holding that unnamed class members toll the statute of limitations when the original cause of action is brought before the court); see also Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811, 811 n.3 (1985) (holding that courts can have jurisdiction over absent or unnamed plaintiffs because they can "opt out" but explicitly differentiating between the due process rights of unnamed plaintiffs and those of the defendants who cannot "opt out"). The purpose of Rule 23 exceeds mere benefits of administrative

efficiency, and its value extends beyond only the named parties. See Am. Pipe, 414 U.S. at 551–52 (“Rule 23 is not designed to afford class representation only to those who are active participants in . . . the proceedings.”).

Looking to the lower courts for an example, in Appleton Elec. Co. v. Advance-United Expressways, the Seventh Circuit held that absent defendant class members did not need to be considered in the determination of proper venue. 494 F.2d 126, 140 (7th Cir. 1974). Appleton was a suit against a class of named and unnamed defendants. Id. The named defendants contended that there was improper venue for the unnamed defendants. Id. The Appleton Court stated that unnamed defendants “have the opportunity to ‘opt out’ of the suit and not be bound by the judgment.” Id. Therefore, asserting venue against the unnamed plaintiffs did not foreclose the unnamed defendants’ rights. See id. Additionally, the court found that there was direct statutory support for enforcing venue against multiple defendants in these actions—regardless of personal jurisdiction. Id.

Below, the dissent relied on Mussat v. IQVIA, Inc., arising out of the Seventh Circuit, in making a case for treating unnamed class members’ claims differently than named class members for purposes of personal jurisdiction. Mussat v. IQVIA, Inc., 953 F.3d 441 (7th Cir. 2020). Mussat was framed around the same question that has arisen in this case: whether unnamed class members’ claims must demonstrate specific personal jurisdiction. Id. at 443. The Seventh Circuit relies heavily on the above cases—Exxon Mobil, Devlin, and Appleton—to reach a conclusion contrary to the Thirteenth Circuit’s judgment. Id. at 447. The Mussat court, however, failed to

contend with the fact that Exxon Mobil was decided based on the explicit authorization found within 28 U.S.C. § 1367. See id. (stating this fact but not discussing its relevance).

The Mussat court also failed to note that its own circuit precedent, in Appleton, was based on federal statutory authorization that exceeded Rule 4(k), coupled with the fact that the case involved unnamed defendants who had the ability to “opt out” of the suit. Compare Mussat, 952 F.3d at 447 with Appleton, 494 F.2d at 140. The Mussat court proceeded to state that they saw “no reason why personal jurisdiction should be treated any differently.” Mussat, 953 F.3d at 447. The Mussat court did not address any constitutional concerns that could be derived from exceeding the state’s jurisdictional reach beyond what is constitutionally authorized. See id. The Mussat court did not explain what statute provided authorization for this exception on the federal side. See id. (citing to Fed. R. Civ. P. 17(a)(1), which provides an exclusive list of exceptions for parties to bring actions for the benefit of unnamed parties—none of which are unnamed class members—while intimating that this provided a jurisdictional exception in support of the court’s conclusion).¹ Thus, taking these errors together, this Court should not follow the Seventh Circuit’s faulty reasoning in Mussat.

Here, following this Court’s precedent, claims generated by the unnamed class members must have personal jurisdiction over the defendant because this Court’s

¹ If anything, Fed. R. Civ. P. 17(a)(1) is evidence that unnamed class members are not excepted from Rule 4(k), as it creates an explicit list of exceptions where a party may sue on behalf of other parties—and an unnamed class members exception does not make the cut. See Fed. R. Civ. P. 17(a)(1).

precedent in Bristol-Myers, Exxon, Devlin, and American Pipe shows careful modification of the status of the unnamed parties—and not foreclosure of rights of the named defendant—that relies upon existing statutory authority. Unlike Exxon Mobile, or the dicta in Devlin, here, holding the unnamed class members to the same requirements as a party would not limit their rights or raise the specter of injustice. Those class members are able to bring suit, either independently or as a class composed of individuals whose claims occurred in a state that can maintain specific personal jurisdiction over Todd, or as a national class against Todd in the state that has general personal jurisdiction over Todd.

Much like American Pipe, where treating the unnamed class members as parties was consistent with Rule 23 and the statutory purpose in question, here, this is consistent with Rule 23, as it treats all unnamed class members as parties to the action, and it does not violate any substantive right granted by any statute.

Unlike Appleton, out of the Seventh Circuit, Todd does not have the ability to “opt out” of this suit to seek an appropriate venue, should this Court choose to waive personal jurisdiction as a requirement. And, in Appleton, the court found that there was statutory authority to bring suit against multiple defendants, regardless of personal jurisdiction. The statute, therefore, extended statutorily granted jurisdictional authority beyond the parameters of Rule 4(k), and thus was viable. Here, there is no statutory authority within the TCPA upon which the plaintiffs may rely to exceed the parameters of Rule 4(k): and thus the limits are tied to the state court’s reach under the Due Process Clause.

Looking to Mussat, the Seventh Circuit did not discuss the potential constitutional issues derived from exceeding the state's sovereign powers. Nor did the Seventh Circuit discuss any challenges against the validity of Rule 4(k), this Court's holding in Walden, or any reason Rule 23 would alter Rule 4(k). Finally, the Seventh Circuit did not find any statute that gives a federal court power to exceed the relevant state's jurisdiction. But all of the case law the Seventh Circuit discussed relied upon clear enumerated statutory authorization to reach each conclusion discussed.

Overall, ignoring the long-standing requirement that (when lacking general personal jurisdiction) every claim in the action must have a relationship with the state, is a violation of both the Fifth and Fourteenth Amendment's Due Process Clauses. While this Court has, on occasion, altered the status of unnamed class members in order to protect the substantive rights of those class members and to improve administrative efficiency, this Court has never foreclosed a named party's constitutional rights in favor of administrative efficiency. Because Rule 4(k) effectively limits the District Court's application of personal jurisdiction to the State of New Texas's long-arm statute, which in turn is tied to the Due Process Clause of the Fourteenth Amendment, moving forward with this class action violates the Due Process Clause and the long-standing precedent of this Court because, under Bristol-Myers, the unnamed parties claims have no relationship with the forum state and thus lack personal jurisdiction. Altering the Federal Rules in such a manner would diminish Todd's rights. And under this Court's rationale in Shady Grove, the Rules Enabling Act is insufficient in scope to grant such a power under the Federal Rules

alone. Therefore, we respectfully ask that this Court affirm the Thirteenth Circuit's ruling.

B. Even if it were constitutionally viable to ignore the lack of personal jurisdiction in the unnamed class members' claims, requiring personal jurisdiction does not create administrability problems nor does it foreclose avenues of suit—individual or nationwide.

The administrative rationale relied upon by Cole and the dissent is inapplicable here because it is readily determinable whether class claims have personal jurisdiction based upon the varying geographic locations of the incidents. In fact, the court in Mussat v. IQVIA, Inc. expressly noted that most nationwide class actions would be foreclosed from relying on specific personal jurisdiction and could only form on a general jurisdiction theory. 953 F.3d 441 (2020). This is only so because the determination is administratively simple: if the unnamed class members did not suffer their injury within the state, then that state does not have specific personal jurisdiction over those claims. The determination is administratively lean and straight forward. And this does not conflict with notions of justice: no one state should be able to hale anyone into court for actions taken outside of that state's sovereign bounds unless that state has general personal jurisdiction over the defendant. See Phillips Petroleum, 472 U.S. at 807 (1985) (internal citations omitted). But states with general personal jurisdiction over a defendant do not have to show the application of jurisdiction to each claim—only that the individual is domiciled there. Bristol-Myers, 137 S. Ct. at 1780.

Unnamed class members are not considered when determining citizenship in a diversity jurisdiction class action. Devlin, 536 U.S. at 10. This Court, in Devlin, stated that the administration of determining class members' citizenship would justify not requiring a citizenship assessment for unnamed class members. Id. Additionally, this Court noted, possibly “more importantly,” that requiring complete diversity amongst unnamed class members “would destroy diversity in almost all class actions”—rendering such a nationwide action impossible to bring at all. Id. Notably, this Court, in Devlin, considered the administrative efficiency concerns of class actions against parties' guarantee of substantive rights—in Devlin, the “power to preserve their own interests”—and held that unnamed class members had the power to appeal. See id. at 10–11, 14 (stating that unnamed class members who preserved their issue by objecting at the fairness hearing had the power to, as a party, appeal the determination).

Diversity jurisdiction and personal jurisdiction differ tremendously in purpose and outcome. Diversity jurisdiction exists for the purpose of allowing plaintiffs to bring an appropriately framed action in federal court instead of state court. See Meredith v. Winter Haven, 320 U.S. 228, 234 (1943). But diversity jurisdiction is borne of statutory power and is not a limit designed to protect defendants. See id.; see also 28 U.S.C. § 1332. If courts required complete diversity of class members, there could likely never be a nationwide class action sustained in federal court involving state law claims that rest on diversity jurisdiction. See § 1755 Subject-Matter Jurisdiction Over Class Actions, 7A FED. PRAC. & PROC. CIV. § 1755 (4th ed.).

Therefore, the judicial administration of requiring complete diversity is not flummoxed solely due to complex data acquisition and analytical complexity—rather it would force into existence multiple class actions in order to circumvent the diversity problem. Or prevent the claims forming as a class altogether. This is directly counter to the purpose of Rule 23.

Here, enforcing the terms of specific personal jurisdiction may add some administrative complexity, because it would create the requirement of limiting the class to those who have a claim arising with the nexus of the state and the defendant. But, unlike diversity jurisdiction, this does not automatically require an onslaught of class actions to arise to take the dismissed class action's place. Instead, a class action can be brought in a venue with general personal jurisdiction over the defendant. Also, unlike diversity jurisdiction, personal jurisdiction is not solely a creature of statute—its roots are found within the Due Process Clause, and it is designed to protect the defendant from an overextension of state sovereignty.

Therefore, alterations made to diversity jurisdiction requirements in favor of administrative efficiency are inapposite in the realm of personal jurisdiction. The administrative needs are far more reaching for the former than the latter, and the purpose of the former lacks the constitutionally-backed protective function. Ignoring specific personal jurisdiction in unnamed class members' claims does not enhance judicial administrative efficiency and gravely endangers constitutional rights.

C. Public policy needs support affirmation: Ignoring unnamed class members' claims in assessing specific jurisdiction, as Cole urges, allows for forum shopping—a concept which this Court has long opposed.

Public policy supports requiring personal jurisdiction over the defendant regarding the unnamed parties' claims because without that requirement, plaintiffs would have a wide berth for forum shopping. This Court has routinely made decisions designed to deter forum shopping. *See, e.g., Hanna v. Plumer*, 380 U.S. 460, 467–68 (1965) (internal citations omitted) (stating that one of the twin aims of *Erie* was to “avoid forum shopping”); *Shady Grove*, 559 U.S. at 415–16 (2010) (stating that forum shopping “as the consequence of judge-made rules” is “unacceptable”); *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (acknowledging “the important purpose of preventing forum shopping”). Even without allowing unnamed class members to bring claims without personal jurisdiction, plaintiffs, generally, already have out-sized power in selecting the venue. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 250 (1981) (stating that “many plaintiffs are able to choose from among several forums [and often] will select that forum whose choice-of-law rules are most advantageous”).

Forum shopping allows for a plaintiff to select the court that best suits the plaintiff's case. *See Erie R.R. v. Tompkins*, 304 U.S. 64, 74–75 (1938). Plaintiffs have, in cases past, leveraged their ability to choose the forum to bring defendants to suit under different laws, making “impossible equal protection of the law” by allowing plaintiffs to game the system. *Id.* This Court, in *Erie*, held that applying federal law in a way that encouraged forum shopping led to “injustice and confusion,” and,

therefore, overturned the case law that enabled this forum shopping. See id. at 74–75, 77, 80.

Here, if personal jurisdiction is eliminated as a requirement over the unnamed plaintiffs' claims, future plaintiffs could engineer a nation-wide suit in any state they desire by only selecting named plaintiffs in that particular state while including claims that stem from a nationwide class. This means that an individual claim in one state, with thousands of unnamed claims in other states, could come before a court in a state that has no other relationship with a defendant. And should this Court find that personal jurisdiction over the unnamed class members' claims is not required under the Fourteenth Amendment, then this same rule would be the rule for state court claims. This would allow a plaintiff in one state to hale a defendant into court riding on the scope of thousands of claims that never touched the state. This is an untenable position for Cole to take here. Especially when, alternatively, other venues² may exist where Cole may have general jurisdiction over Todd, and therefore, a denial of specific personal jurisdiction, here, does not frustrate Cole's ability to pursue justice in another court.

The fact that other reasonable venues exist only goes to reinforce the notion that Cole is forum shopping. Cole, as an individual plaintiff with a claim that has specific personal jurisdiction, may bring the claim as an individual or class of individuals with claims occurring in New Texas in the District of New Texas, or Cole may bring the nationwide class action in a state with general jurisdiction over Todd.

² Todd is domiciled in West Dakota, which, therefore, has general personal jurisdiction over Todd. App. A at 3–4.

Ultimately, specific personal jurisdiction cannot be exerted over Todd by the District Court of New Texas. Under the Fourteenth Amendment Due Process Clause, as set forth in Bristol-Myers, state courts do not have the power to assert personal jurisdiction over Todd because the unnamed class members' claims lack a causal connection with New Texas. As this Court held in Omni Capital, federal courts can only assert jurisdiction where they are authorized to do so: here, the TCPA does not extend the District Court of New Texas's jurisdictional reach; and Rule 4(k) limits the District Court's jurisdiction to the state of New Texas. Neither the dissent below nor Cole have raised viable issues of administrability that detract from requiring personal jurisdiction. But allowing named parties to assert specific personal jurisdiction while tacking on all unnamed class members' claims enables broad-sweeping forum shopping. We respectfully request, therefore, that this Court affirm the Thirteenth Circuit's judgment. The District of New Texas does not have specific personal jurisdiction over the claims of the unnamed class members, and the action was properly dismissed.

II. THIS COURT SHOULD AFFIRM THE THIRTEENTH CIRCUIT'S DECISION BECAUSE PETITIONERS DO NOT HAVE PERSONAL JURISDICTION OVER TODD BECAUSE FEDERAL CHOICE-OF-LAW RULES AND RECOGNIZED ADOPTION OF FEDERAL COMMON LAW PRINCIPLES DICTATE THAT THE ALTER EGO THEORY UNDER THE STATE LAW OF NEW TEXAS CONTROLS.

This Court should affirm the Thirteenth Circuit's decision and hold that Petitioners do not have personal jurisdiction over Todd. General jurisdiction cannot be exercised over Todd because he is not the alter ego of Spicy Cold Foods under the

state laws of New Tejas. The alter ego theory, as defined under New Tejas state law, is controlling because federal choice-of-law rules, as described in the Restatement (Second) of Conflict of Laws (“Restatement”), indicate that arguments about alter ego theory are governed by the law of the state of incorporation. Restatement (Second) of Conflicts of Law § 307 (1971). Notwithstanding the Restatement, state law definitions of alter ego theory are favored over the federal common law definition because corporations are inherently creatures of state law and fall outside the instances that this Court has recognized its exercise of federal common lawmaking power. See Kamen v. Kemper Fin. Servs., 500 U.S. 90, 98 (1991).

Under the Federal Rules of Civil Procedure, personal jurisdiction exists over a defendant if they are “subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.” Fed. R. Civ. P. 4(k)(1)(A). General jurisdiction can be exercised against Spicy Cold Foods in New Tejas because it is incorporated in the state, and a corporation’s place of domicile is considered to be both its place of incorporation and its principal place of business. Daimler AG, 571 U.S. at 139 n.19 (2014). Ordinarily, Todd would only be subject to general jurisdiction in his place of domicile in West Dakota. See id.; see also App. A at 3–4. However, federal courts have acknowledged that personal jurisdiction may be exercised over an individual or corporation that is the alter ego of a corporation that would be subject to personal jurisdiction in that court. Newport News Holdings Corp. v. Virtual City Vision, Inc., 650 F.3d 423, 433 (4th Cir. 2011). Todd would therefore be subject to

general personal jurisdiction in New Tejas only if he is the alter ego of Spicy Cold Foods.

New Tejas's alter ego theory requires that a corporation be incorporated for the specific purpose of defrauding a specific individual in order to pierce the corporate veil and treat a corporation as liable for its subsidiaries. App. A at 6. Cole acknowledges that under New Tejas's definition of alter ego theory, Todd is not the alter ego of Spicy Cold Foods, and consequently Todd is not subject to general personal jurisdiction in New Tejas. Id. The Thirteenth Circuit also recognized this proposition, and its decision should be affirmed.

Adoption of New Tejas's definition of alter ego theory is appropriate in the present action. Federal choice-of-law rules apply when a district court is exercising federal-question jurisdiction. Enter. Grp. Plan., Inc. v. Falba, 73 F.3d 361 (6th Cir. 1995). The present action is a federal question because Cole is alleging violations of the TCPA. See 47 U.S.C. § 227. Federal choice-of-law rules look to the Restatement to determine the applicable substantive law. Huynh v. Chase Manhattan Bank, 465 F.3d 992, 997 (9th Cir. 2006). Under the Restatement, issues involving the rights and liabilities of a corporation are determined by the law of the state which has the most significant relationship to the issue and the parties. Restatement (Second) of Conflicts of Law § 302 (1971). Section 307 of the Restatement explicitly states that the law of the state of incorporation is applied to determine the existence of shareholder liability to the corporation, which courts have applied to questions of piercing the corporate veil. Restatement (Second) of Conflicts of Law § 307 (1971).

Furthermore, disputes over alter ego theory favor state law definitions over the federal common law definition because laws surrounding corporations are not recognized by this Court as an instance of federal common lawmaking power.

We respectfully ask this Court to affirm the decision of the Thirteenth Circuit in concluding that the alter ego theory under New Texas state law is applicable, and pursuant to that theory, Cole has failed to establish general personal jurisdiction over Todd.

A. Federal choice-of-law rules dictate that disputes about alter ego theory are governed by the law of the state of incorporation.

This Court should follow federal choice-of-law rules and adopt the principle of Restatement Section 307 that disputes about alter ego theory should be governed by the law of the state of incorporation. This Court has recognized that corporations are “creatures of state law” and state law is thus the basis of a corporate entity’s power. See Kamen, 500 U.S. at 98–99 (citing Burks v. Lasker, 441 U.S. 471, 478 (1979)). The principles in Section 307 of the Restatement follow this Court’s precedent in determining issues with respect to powers and liabilities of a corporation, namely that the law of the state of incorporation is applicable. Restatement (Second) of Conflicts of Law § 307 (1971).

Lower courts have routinely applied Restatement Section 307 to determinations of alter ego theory, recognizing that the local law of the state of incorporation is “the law which the shareholders, to the extent that they thought about the question, would usually expect to have applied to determine their liability”

and that the state of incorporation “will usually have the dominant interest in the determination of this issue.” Restatement (Second) of Conflicts of Law § 307, cmt. A; see also Soviet Pan. Am. Travel Effort v. Travel Comm., Inc. 756 F. Supp. 126, 131 (S.D.N.Y. 1991) (“Because a corporation is a creature of state law whose primary purpose is to insulate shareholders from legal liability, the state of incorporation has the greater interest in determining when and if that insulation is to be stripped away.”).

In Kalb, Voorhis & Co. v. American Financial Corporation, a creditor of Circle K Corporation sued prior to a Chapter 11 Bankruptcy filing to impose liability on a former controlling stockholder. Kalb, Voorhis & Co. v. Am. Fin. Corp., 8 F.3d 130, 131 (2d Cir. 1993). The creditor sought to establish liability through piercing the corporate veil under the theory that Circle K was the alter ego of the controlling stockholder. Id. The Second Circuit determined that Texas substantive law applied to the alter ego claim because Texas was the state of Circle K Corporation’s incorporation. Id. at 132. The Second Circuit cited Section 307 of the Restatement in support of its holding that the “law of the state of incorporation determines when the corporate form will be disregarded and liability will be imposed on the shareholders.” Id.

In Volvo Construction Equipment Rents, Inc. v. NRL Rentals, LLC, the Ninth Circuit held that two members of an LLC were not personally liable under an alter ego theory for a judgment entered against the Nevada-based LLC, Bosworth Nevada Investments, and its Texas franchises. Volvo Constr. Equip. Rents, Inc. v. NRL

Rentals, LLC, 614 F. App'x 876, 877–78 (9th Cir. 2015). The Court followed the Restatement in determining that Texas law was appropriate to determine liability under an alter ego theory, because the Texas franchises were organized under Texas law. Id. at 879. Under the more stringent Texas law definition of alter ego theory, which provides that “the veil of an LLC may be pierced with respect to the entity’s contractual liabilities only upon the proof that the defendant used the LLC to perpetrate actual fraud for the defendant’s direct personal benefit,” the court found that the corporate veil had not been pierced. Id. (citing Shook v. Walden, 368 S.W.3d 604, 607 (Tex. App. 2012)).

Numerous district courts have adopted the principle in Section 307 of the Restatement and have consequently applied the law of the state of incorporation to issues of alter ego and piercing the corporate veil. See Echostar Satellite Corp. v. Ultraview Satellite, Inc., No. 01-cv-00739, 2009 WL 1011204, at *7 (D. Colo. April 15, 2009) (stating that the Restatement provides that the law of the state of incorporation sets the standard for piercing the corporate veil); see also Tomlinson v. Combines Underwriters Life Ins. Co., No. 08-cv-259-TCK-FHM, 2009 WL 2601940, at *3 (N.D. Okla. Aug. 21, 2009) (following Section 307 of the Restatement and finding that the law of the state of incorporation accordingly determines whether a corporate veil may be pierced); In re World Vision Ent., Inc., 275 B.R. 641, 662 (M.D. Fla. 2002) (citing to Restatement Section 307 in support of application of the law of the state of incorporation).

The Thirteenth Circuit correctly held that the state law definition of alter ego theory under New Texas law was appropriate under Section 307 of the Restatement. App. A at 16. Application of the local law of the state of incorporation follows this Court's precedent, and adoption of Section 307 of the Restatement clarifies the standard for lower courts deciding disputes of alter ego theory.

As the Restatement outlines, and courts have agreed to, the state of incorporation has the prevailing interest in determining shareholder liability. Individuals who engage with corporations would expect liability based on the local laws of the state where the corporation is incorporated or maintains its principal place of business. New Texas adopted laws that favored the corporate forum to attract business to their state.³ App. A at 6. When Todd incorporated Spicy Cold Foods in New Texas, it was with the expectation that New Texas's laws would govern disputes. Although Cole alleges a cause of action under a federal statute, the state law definition of alter ego theory under New Texas law should still govern.

The Thirteenth Circuit correctly follows other circuit and district courts that have adopted the principle in Section 307 of the Restatement and applied the law of the state of incorporation for piercing the corporate veil. In Volvo Construction Equipment Rents, for example, the Ninth Circuit held that it was appropriate to apply the more stringent standard under Texas law for piercing the veil of an LLC. The fact that state laws have varying standards for piercing the corporate veil does not invite automatic adoption of federal common law. The LLC in Volvo Construction

³ Petitioners do not allege that these laws were impermissibly adopted. See App. A at 12.

Equipment Rents, similar to Spicy Cold Foods, was organized under specific state laws that should govern the corporation's liabilities.

Following federal choice-of-law rules, this Court should adopt the principle that the local law of the state of incorporation governs issues with respect to the powers and liabilities of a corporation under Section 307 of the Restatement, and affirm the decision of the Thirteenth Circuit.

B. Notwithstanding federal choice-of-law rules, application of a state's definition of alter ego theory is preferred to the definition under federal common law.

Notwithstanding federal choice-of-law rules and the Restatement, state law definitions of alter ego theory are favored over the federal common law definition in disputes because corporations are inherently creatures of state law and fall outside the instances that this Court has recognized its exercise of federal common lawmaking power. See Kamen v. Kemper Fin. Servs., 500 U.S. 90, 98 (1991). Federal courts have frequently applied state law definitions of alter ego theory to various kinds of cases, including cases involving federal-question jurisdiction. See generally Iconlab, Inc v. Bausch Health Cos., 828 F. App'x 363, 363 (9th Cir. 2020); see also Sys. Div., Inc. v. Teknek Elecs., Ltd., 253 F. App'x 31, 35 (Fed. Cir. 2007). The decision of the Thirteenth Circuit should be affirmed because it correctly recognized that federal common law should not be applied to corporation law, an area that is inherently within the lawmaking power of the states. Furthermore, the Thirteenth Circuit establishes a clear standard that follows other federal courts that have repeatedly applied state law definitions of alter ego theory to disputes.

1. Federal common law notions indicate that corporation law is within the lawmaking power of the states.

The notion of federal common law dates to this Court’s decision in Erie R.R. v. Tompkins, when this Court first recognized that “[t]here is no federal common law.” Erie, 304 U.S. at 78. This Court has traditionally expanded recognition to certain “enclaves” where federal common law governs: (1) cases affecting the rights and obligations of the United States; (2) interstate controversies; (3) international relations; (4) admiralty; (5) the government contractor defense; and (6) certain federal rules of preclusion. Jay Tidmarsh, A Theory of Federal Common Law, 100 NW. L. REV. 585, 594 (2006). In the 2020 case Rodriguez v. FDIC, this Court unanimously maintained that federal common lawmaking must be “necessary to protect uniquely federal interests.” Rodriguez v. FDIC, 140 S. Ct. 713, 717 (2020).

The Rodriguez decision follows what has been termed the “modern standard” of federal common law, specifically that federal common law consists of “federal rules of decision whose content cannot be traced by traditional methods of interpretation to federal statutory or constitutional commands.” Jay Tidmarsh, A Theory of Federal Common Law, 100 NW. L. REV. 585, 594 (2006). A more stringent definition of federal common law articulates that courts may recognize federal common law only on topics that explicitly or implicitly are beyond the reach of the states’ lawmaking powers. Caleb Nelson, The Legitimacy of (Some) Federal Common Law, 101 VA. L. REV. 1, 4 (2015).

This Court indicated in Kamen v. Kemper Financial Services that federal courts should incorporate state law as the federal rule of decision in situations where

federal remedial schemes are lacking. Kamen, 500 U.S. at 98. This presumption is particularly strong 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.” Id. (citing United States v. Kimbell Foods, Inc., 440 U.S. 728–29 (1979)). This Court has explicitly stated that corporation law is such an area of law. Kamen, 500 U.S. at 98.

Following accepted notions of federal common law, state law is appropriate in questions concerning corporation law. From the inception of federal common law in Erie, to modern day standards, this Court has been consistent in recognizing that federal common law is applicable in certain areas and of law that are inherently federal. This Court specifically recognized in Kamen that the laws governing corporations fall outside the scope of unique federal interests, and that resulting disputes should be decided by state law. See generally Kamen, 500 U.S. at 99 (noting a lack of congressional intent for federal courts to “fashion an entire body of federal corporate law out of whole cloth”).

Corporation law is inherently state law based, and individuals look to local law when deciding to enter relationships concerning corporations. Private parties enter legal relationships surrounding corporations under the impression that their rights and obligations will be governed by the local law of the state of incorporation or the principal place of business. See Restatement (Second) of Conflicts of Law § 307, cmt. a; see also 1 William M. Fletcher, Fletcher Cyclopedia of the Law of Corporations §

41.90 (“the state of incorporation has the greater interest in determining when and if the corporate veil should be pierced”).

Both Cole and the dissent incorrectly argued that federal common law is applicable in the current action because Cole alleged a claim under a federal statute, the TCPA. App. A at 22. The core issue in determining the applicable alter ego theory is the relationship between a corporation and its owners, and not the statutory claim. This relationship is an essential element of corporation law and is thus a question of state law. App. A at 16. It therefore follows that the jurisdictional effects of this relationship should also be governed by state law.

2. Federal courts have repeatedly applied state law definitions of alter ego theory.

Numerous circuit and district courts have applied state law definitions of alter ego theory in varying circumstances. In Newport News Holding Corporation v. Virtual City Vision, for example, the Fourth Circuit applied Virginia state law of alter ego theory to a case arising out of Virginia. Newport News Holdings Corp., 650 F.3d at 434. In Systems Division, Inc. v. Teknek Electronics, Ltd., the Federal Circuit applied the California state law definition of alter ego theory for a case involving patent infringements. Sys. Div., Inc. v. Teknek Elecs., Ltd., 253 F. App’x 31, 35 (Fed. Cir. 2007). And in BASF Corporation v. Willowood, LLC, a patent infringement case in the District Court in Colorado, the court noted that although the laws of the Federal Circuit controlled questions of personal jurisdiction, state law governed whether an alter ego relationship existed. BASF Corp. v. Willowood, LLC, 359 F. Supp. 3d 1018, 1025 (D. Colo. 2019).

Courts that have applied the federal common law definition of alter ego theory to choice-of-law disputes have not done so consistently. The Sixth Circuit applied the federal common law test of alter ego theory in Anwar v. Dow Chemical Co. for an employment dispute. Anwar v. Dow Chem. Co., 876 F.3d 841, 848 (6th Cir. 2017); however, the Sixth Circuit also included in their opinion an analysis of the alter ego theory under Michigan state law. Id. at 850. The Sixth Circuit alternatively applied the Ohio state law test for alter ego to a case arising out of Ohio. Estate of Thomson v. Toyota Motor Corp. Worldwide, 545 F.3d 357, 362 (6th Cir. 2008). The Ninth Circuit similarly applied the federal common law test for alter ego theory in Ranza v. Nike, Inc., and in Iconlab, Inc. v. Bausch Health Companies, Inc., applied state law to the question of jurisdiction in a federal-question jurisdictional case that rested on arguments of alter ego and agency theories. See Ranza v. Nike, Inc., 793 F.3d 1059, 1071 (9th Cir. 2015); see also Iconlab, Inc., 828 F. App'x at 364. This inconsistency should be avoided by the universal adoption of state law alter ego theory.

State law definitions of alter ego theory are preferred over the federal common law definition to provide clarity to lower courts and to maintain states' interests over corporations. Currently, the circuits are not consistent in their own application of federal or state-based definitions of alter ego theory. Considering the “Gordian knot” of alter ego theory disputes, it seems most efficient and consistent with current precedent to set the standard that the law of the state of incorporation is binding. App. A at 12–14. Federal courts have already participated in the practice of applying

state law definitions of alter ego theory to determine when to pierce the corporate veil.

We respectfully request that this Court affirm the Thirteenth Circuit's judgment that the District of New Tejas does not have general personal jurisdiction over Todd because under the applicable alter ego theory of New Tejas, Todd is not the alter ego of Spicy Cold Foods. The state law definition of alter ego theory is appropriate in the present dispute given federal choice-of-law rules and the recognized adoption of federal common law principles in certain areas of law that are inapplicable here. Universal adoption of state-based definitions of alter ego theory follows this Court's precedent, and would provide uniformity and clarity to all federal courts.

CONCLUSION

Personal jurisdiction exists as a product of the Due Process Clauses of the Fifth and Fourteenth Amendments, and creates a functional limit of a court's reach over an individual defendant that should not be disregarded in pursuit of minimal administrative efficiency needs. Here, Petitioners should not be allowed to sustain a class action suit against a defendant when the unnamed class members' claims do not have a causal nexus with the forum state. Personal jurisdiction should furthermore not be exercised under a theory of federal common law over the relationship between a corporation and its owners, because the state law definition of alter ego theory is controlling. Therefore, we respectfully request that this Court affirm the decision of the United States Court of Appeals for the Thirteenth Circuit.

Respectfully Submitted,
/s/ Team 2
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