Team No. 55

No. 20-1434

IN THE

Supreme Court of the United States

OCTOBER TERM 2021

GANSEVOORT COLE, ET AL.

Petitioner,

v.

LANCELOT TODD

Respondent.

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

BRIEF FOR PETITIONER

Attorneys for Petitioner

QUESTIONS PRESENTED

I. Whether the Thirteenth Circuit properly held that personal jurisdiction must exist with respect to both named and unnamed members in a class action suit, when this Court has repeatedly found that unnamed class members are not considered "parties" for a number of different purposes.

II. Whether the Thirteenth Circuit properly held that when applying the alter ego theory, state law rather than federal law should apply where the state law significantly departs from the federal common law.

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JURISDICTIONAL STATEMENT

The United States District Court for the District of New Tejas granted Defendant, Mr. Lancelot Todd's ("Mr. Todd"), motion to strike the nationwide class allegations against him based on a lack of personal jurisdiction with respect to the claims of out-of-state members. (App. 7a). Treating the order as the equivalent of an order denying class certification, a motions panel of the Thirteenth Circuit granted Plaintiff, Mrs. Gansevoort Cole's ("Mrs. Cole"), petition for interlocutory appeal under Rule 23(f). (App. 7a). On appeal, the Thirteenth Circuit affirmed the granting of the motion to strike class allegations, concluding that the district court correctly held that it lacked personal jurisdiction over Mr. Todd with respect to the claims of out-of-state members. (App. 2a). This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

This case involves the Fourteenth Amendment to the United States Constitution, U.S. CONST. amend. XIV.

It also involves federal statutes 47 U.S.C. § 227(b)(1)(B) ("Telephone Consumer Protection Act"), 28 U.S.C. § 2072(b) ("Rules Enabling Act"), and 28 U.S.C. § 1331 ("Federal Question").

Additionally, it involves Fed. R. Civ. P. 4(k) ("Summons") and 23 ("Class Actions").

The relevant portion of each of the listed provisions is contained in the Appendix.

STATEMENT OF THE CASE

I. Factual Background

Defendant-Respondent, Mr. Lancelot Todd, is a West Dakota resident, and a prominent and wealthy entrepreneur and promoter. (App. 2a). In early 2015, Mr. Todd acquired the rights to "spicy cold" flavoring for potato chips, a flavoring that, as the result of a chemical reaction, purports to cause one's tongue and mouth to go numb from cold upon consumption of the chip. (App. 2a). Unsurprisingly, a vast majority of the public find this sensation to be unpleasant. (App. 2a).

Undeterred by the overall negative perception surrounding the flavoring, Mr. Todd incorporated "Spicy Cold Food, Inc." ("Spicy Cold") under the laws of New Tejas in late 2015 to commercialize "spicy cold" products. (App. 2a). These state laws are highly unusual in their extreme deference to the corporate form. (App. 2a). Specifically, the New Tejas Supreme Court has repeatedly recognized that in order to pierce the corporate veil, the company must have been incorporated for the specific purpose of defrauding a specific individual. (App. 6a). Mr. Todd personally owns all the shares of Spicy Cold. (App. 2a). Spicy Cold's principal and sole place of business is located in West Dakota. (App. 3a).

Originally, Spicy Cold attempted to sell its products wholesale to restaurants and grocery stores. (App. 3a). When these sales efforts failed, Mr. Todd determined that the problem was not the apparent lack of a market for the product, but rather a lack of advertising. (App. 3a). Mr. Todd's misguided solution was to acquire an "automatic telephone dialing system" in 2017. (App. 3a). On behalf of Spicy Cold,

Mr. Todd began pestering consumers with calls across the country – including both cellular phones and residential phone lines – to deliver a prerecorded voice 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!" (App. 3a).

Plaintiff-Petitioner, Mrs. Gansevoort Cole, a resident of New Tejas, received at least ten of these unsolicited calls, five on her cellular phone and five on her residential phone line. (App. 3a). Mrs. Cole had no established business relationship whatsoever with either Spicy Cold or Mr. Todd. (App. 3a). Further, Mrs. Cole in no way consented to receive any of these phone calls, nor did they make her any more likely to purchase or sample the ill-conceived spicy cold chips. (App. 3a).

II. Proceedings Below

Mrs. Cole filed a class action suit in United States District Court for the District of New Tejas against Mr. Todd under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, on behalf of herself and all persons in the country who received similar calls. (App. 3a). Jurisdictional discovery confirmed Mrs. Cole's rationale for suing Mr. Todd personally: Spicy Cold had essentially no assets, as any earnings the business generated were promptly syphoned as dividends to the wealthy Mr. Todd. (App. 4a). Mr. Todd moved to strike the nationwide class allegations against him for lack of personal jurisdiction. (App. 4a). Although he acknowledged that the New Tejas court could exercise jurisdiction over him with respect to the claims of New Tejas residents, he contended that no personal

jurisdiction existed with respect to the claims of out-of-state class members. (App. 4a).

The District Court granted Mr. Todd's motion to strike the nationwide class allegations based on a lack of personal jurisdiction. (App 7a). In doing so, the District Court rejected both of Mrs. Cole's theories asserting personal jurisdiction over Mr. Todd. (App. 7a). First, Mrs. Cole argued, and the District Court disagreed, that personal jurisdiction should be considered only with respect to the claims of the named plaintiff in a class action. (App 4a). Second, in the alternative, Mrs. Cole argued that the federal common law test of alter ego should apply, and thus the District Court could properly exercise general jurisdiction over Mr. Todd on that basis. (App 5a). The District Court agreed that under the federal common law test of alter ego, a court would readily pierce the corporate veil and hold Spicy Cold to be the alter ego of Mr. Todd. (App. 5a). However, the District Court rejected Mrs. Cole's contention that the federal common law test should apply, electing to instead apply New Tejas's highly unusual and anomalous state law of alter ego. (App 7a).

Mrs. Cole petitioned the United States Court of Appeals for the Thirteenth Circuit for an interlocutory appeal under Rule 23(f). (App 7a). Treating the order as the equivalent of an order denying class certification, a motions panel of the Thirteenth Circuit granted Mrs. Cole's petition. (App. 7a). The decision of the lower court was affirmed by two of the justices on the Court of Appeals. (App. 2a). One justice dissented, finding both of Mrs. Cole's theories regarding personal jurisdiction

independently persuasive. (App. 17a). This Court granted certiorari on October 4, 2021.

SUMMARY OF THE ARGUMENT

This Court should reverse the judgment of the Thirteenth Circuit and find that personal jurisdiction should be considered only with respect to the claims of the named plaintiff in a class action. This Court explicitly recognized in *Devlin* and *Am. Pipe & Constr. Co.* that unnamed class members may be classified as "parties" for some purposes and not for others. The underlying goals of class action litigation and longstanding precedent in both this Court and the federal courts below support the conclusion that unnamed class members should not be treated as "parties" for purposes of personal jurisdiction analysis. This Court's decision in *Bristol-Myers Squibb* has no bearing on class actions and a contrary finding would threaten significant harm to the future of class action jurisprudence.

In the alternative, this Court should apply federal law rather than state law when determining personal jurisdiction under the alter ego theory with respect to a claim arising under federal law. The Thirteenth Circuit erroneously contends that a circuit split exists as to whether to apply state or federal law when deciding jurisdiction based on an alter ego theory. The lower circuits have either applied federal law or applied state law when it is consistent with federal law. The circuit courts thus de facto apply federal law to alter ego issues. Further, these courts have failed to engage in a conflict of laws analysis, as the application of state or federal law yields identical results.

In the present case, we must engage in a conflict of laws analysis, as the state and federal law differ significantly. Supreme Court precedent demands that federal law apply when the application of state law subverts the intent of the federal statute. In this case, applying the state law's alter ego theory refutes the purpose of the federally enacted Telephone Consumer Protection Act ("TCPA"). Federal law must apply so that the purpose of the TCPA, protecting consumers from unwanted calls, can be upheld. Finally, personal jurisdiction grounds itself in the due process clause of the Fourteenth Amendment. Applying the federal alter ego law in this case upholds the purpose of the Fourteenth Amendment by fairly and justly exercising jurisdiction over Mr. Todd. To allow Mr. Todd to hide behind the outlandish state law of New Tejas undermines the foundation of our jurisdictional jurisprudence.

ARGUMENT

I. STANDARD OF REVIEW IS DE NOVO.

The appropriate standard of review is *de novo*. When the review of this Court is based on a question of law, the appropriate standard is *de novo*; if the review is based on a question of fact, the review is clearly erroneous. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 134 S. Ct. 1744, 1748 (2014). In this case, the appropriate standard of review is *de novo* because two questions of law exist for whether (1) in a class action, personal jurisdiction over a defendant is evaluated only with respect to the claims of named class members or also with respect to the claims of unnamed members; and (2) with respect to a claim arising under federal law, whether

personal jurisdiction based on an alter ego theory is determined under state law or federal law.

II. PERSONAL JURISDICTION MUST EXIST ONLY WITH RESPECT TO THE CLAIMS OF THE NAMED PARTIES IN A CLASS ACTION.

Because unnamed class members are not parties for determining personal jurisdiction, and because Mr. Todd concedes that specific personal jurisdiction exists over him as to the claim brought by Mrs. Cole, the District Court had specific personal jurisdiction over Mr. Todd and could entertain the nationwide class claims. Accordingly, this Court should reverse the decision in the Thirteenth Circuit on this issue.

A requirement of personal jurisdiction with respect to the claims of unnamed class members would make administration more difficult and would prevent nationwide classes in almost all class actions. (App. 19a). This Court has repeatedly held that nonnamed class members may be "parties" for some purposes and not for others, in part due to this concern over the possibility of compromising the ease of administrating class actions.

The label "party" does not indicate an absolute characteristic, but rather a conclusion about the applicability of various procedural rules that may differ based on context. *Devlin v. Scardelletti*, 536 U.S. 1, 9–10 (2002). Here, a ruling that unnamed class members are not "parties" for personal jurisdiction purposes is justified by the goals of class action litigation. As it is undisputed that there is personal jurisdiction over the claim of Mrs. Cole, the named plaintiff, this Court

should find that the District Court may properly entertain the nationwide class action.

Finally, this Court's decision in *Bristol-Myers Squibb* is inapplicable because it arose in the context of consolidated individual suits. Contrarily, in Rule 23 class actions, absent class members are not full parties to the case for many purposes and are instead represented by lead plaintiffs who earn the right to represent the interests of the absent class by fulfilling the Rule's requirements. *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 447 (7th Cir. 2020). *Bristol-Myers Squibb* says nothing about how the rules of personal jurisdiction apply to unnamed members of a class action.

Notably, this Court's own characterization of its holding in *Bristol-Myers Squibb* cautions against extending its reach to the claims of unnamed class members in nationwide class actions. This Court noted that its conclusion was a result of the "straightforward application . . . of settled principles of personal jurisdiction." *Bristol-Myers Squibb Co. v. Superior Court of Cal., S.F. Cnty.*, 137 S. Ct. 1773, 1783 (2017). Mr. Todd's desired application of *Bristol-Myers Squibb* would create a sea change in class action jurisprudence, and it is highly doubtful that a "straightforward application" of personal jurisdiction precedent would lead to such a result. *Jones v. Depuy Synthes Products, Inc.*, 330 F.R.D. 298, 312 (N.D. Ala., 2018). Accordingly, this Court should reverse the decision of the Thirteenth Circuit and hold that personal jurisdiction must exist only with respect to the claims of the named plaintiff in a class action.

A. This Court's jurisprudence indicates a long-standing recognition of the fact that unnamed class members may be parties for some purposes and not for others.

The notion that unnamed class members may be classified as "parties" for some purposes and not for others has been clearly established by this Court and remains binding precedent. This Court, for largely pragmatic reasons, has endorsed treating unnamed class members as "parties" *only* for purposes of tolling statutes of limitations and appealing settlement approval orders. *See generally Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 550–56 (1974); *Devlin*, 536 U.S. at 10–11. Other than in those two procedural contexts, however, unnamed class members are not normally accorded party status. American Bar Association, Section of Litigation Class Actions & Derivative Suits, *Does Bristol-Myers Squibb Co. v. Superior Court Apply to Class Actions?*, https://www.girardsharp.com/media/publication/45_Does%20BMS%20Apply%20to%20Class%20Actions.pdf (last visited Nov. 7, 2021). Thus, for nearly 50 years, courts have consistently held that "Rule 23 must be interpreted to allow inclusion of all class members, whatever their connection with the forum." *Appleton Elec. Co. v. Advance-United Expressways*, 494 F.2d 126, 140 (7th Cir. 1974).

This Court initially discussed the concept that unnamed class members may be classified as "parties" for some purposes and not for others in *Am. Pipe & Constr. Co. v. Utah*, in the context of tolling a statute of limitations. This Court held that commencing a class action suspends all applicable statutes of limitations against members of that class who would have been parties had the suit been allowed to

continue as a class action. *Am. Pipe & Constr. Co.*, 414 U.S. at 553–54. The policies behind statutes of limitations are to ensure fairness to defendants by "preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Id.* at 554. Those policies, however, are satisfied when a plaintiff initiates a class action lawsuit because defendants know a named plaintiff and the number and generic identities of potential plaintiffs. *Id.* at 554–55.

This Court noted that a contrary rule allowing participation only by those potential members of the class who had previously filed motions to intervene in the suit would deprive Rule 23 class actions of the efficiency and economy of litigation, which is a principal purpose of the procedure. *Id.* at 553. In cases where the determination to disallow the class action was made upon considerations that may vary with such subtle factors as experience with prior similar litigation or the current status of a court's docket, a rule requiring successful anticipation of the determination of the viability of the class would breed needless duplication of motions. *Id.* at 553–54. Thus, policy considerations and the underlying interests furthered by class actions favored treating unnamed class members as parties under these circumstances.

In *Devlin v. Scardelletti*, this Court revisited the concept that unnamed class members may be classified as "parties" for some purposes and not for others, this time in the context of appealing settlement approval orders. At issue was whether

petitioner, and unnamed class member, should be considered a "party" for the purposes of appealing the approval of the settlement. *Devlin*, 536 U.S. at 7.

This Court held that unnamed class members like petitioner who had objected in a timely manner to approval of the settlement at the fairness hearing had the power to bring an appeal without first intervening. *Id.* at 14. In coming to this conclusion, this Court reasoned that unnamed class members may be "parties" for some purposes and not for others. *Id.* at 9–10. The label "party" does not indicate an absolute characteristic, but rather a conclusion about the applicability of various procedural rules that may differ based on context. *Id.* at 10.

Under these circumstances, this Court held that the unnamed class members were parties in the sense of being bound by the settlement. *Id.* As was the case in *Am. Pipe & Constr. Co.*, this Court discussed the policy concerns underlying class actions in reaching a decision, noting that allowing such appeals would not undermine one of the major goals of class action litigation—to simplify litigation involving a large number of class members with similar claims. *Id.* at 10–11.

No compelling purpose would be served by treating class members as "parties" in personal jurisdiction analysis. Doing so would not only conflict with existing law, but also encourage wasteful, duplicative litigation in direct opposition of the goals of class actions. Unlike named parties, "a[n] [unnamed] class-action plaintiff is not required to fend for himself. The court and named plaintiffs protect his interests." *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 809 (1985) (citation omitted). Indeed, "an [unnamed] class-action plaintiff is not required to do

anything. He may sit back and allow the litigation to run its course, content in knowing that there are safeguards provided for his protection." *Id.* at 810. Precisely because unnamed class members are along for the ride, it makes sense that they are not parties for the purpose of constitutional and statutory doctrines governing whether a court has the power to adjudicate their claims. *Al Haj v. Pfizer Inc.*, 338 F. Supp. 3d 815, 820 (N.D. Ill. 2018). And that is also why it makes sense that unnamed class members are "parties" for purposes of tolling the statute of limitations or appealing a settlement's approval. *Id.*

In *Devlin*, this Court explained that "[t]he rule that nonnamed class members cannot defeat complete diversity is . . . justified by the goals of class action litigation," in that "[e]ase of administration of class actions would be compromised by having to consider the citizenship of all class members, many of whom may even be unknown, in determining jurisdiction." 536 U.S. at 10. There is no reason why this rationale does not also apply for personal jurisdiction purposes. *Jones*, 330 F.R.D. at 312. The economies achieved by aggregating claims would be similarly compromised if courts in class actions, where the defendant was not subject to general jurisdiction, had to ascertain whether specific jurisdiction could be asserted over each absent class member's claim. *Al Haj,* 338 F. Supp. 3d at 822. In short, the overall convenience of the parties – including the defendant's – is much better served by having the claims heard in a single forum rather than fifty. Because Mr. Todd must already come to New Tejas to litigate Mrs. Cole's claim and, potentially, the claims of a New Tejas class, there would be little jurisdictional unfairness in

requiring him to also come into the forum to litigate the claims of the unnamed nationwide class.

Holding that personal jurisdiction must exist only with respect to the claims of the named parties in a class action is entirely consistent with this Court's long-standing jurisprudence, as well as the sound and unwavering logic behind its relevant prior decisions. Because it is undisputed that the District Court had personal jurisdiction over Mr. Todd with respect to Mrs. Cole's claim, this Court should reverse the decision of the Thirteenth Circuit based on these grounds.

B. This Court should adopt the practice of the Sixth and Seventh Circuits because these courts correctly apply the applicable precedent and ground their decisions in well-reasoned logic that is consistent with this Court's class action practice.

The Thirteenth Circuit's holding regarding class action personal jurisdiction creates conflict between the Sixth and Seventh Circuits, the only other courts of appeals to have addressed the issue. *Lyngaas v. Ag*, 992 F.3d 412 (6th Cir. 2021); *Mussat*, 953 F.3d at 443. Long-standing precedent shows that courts have routinely exercised personal jurisdiction over out-of-state defendants in nationwide class actions, and the personal-jurisdiction analysis has focused on the defendant, the forum, and the named plaintiff who is the class representative. As such, this Court should adopt the Sixth and Seventh Circuits' holdings that to support class certification, the named representatives must be able to demonstrate either general or specific personal jurisdiction, but the unnamed class members are not required to do so.

As the Seventh Circuit discussed in *Mussat*, any holding to the contrary would constitute a major change in the law of personal jurisdiction and class actions. 953 F.3d at 448. Prior to this Court's decision in *Bristol-Myers Squibb*, there was a general consensus that due process principles did not prohibit a plaintiff from seeking to represent a nationwide class in federal court, even if the federal court did not have general jurisdiction over the defendant. *See, e.g., Al Haj*, 338 F. Supp. 3d at 818–19 (noting that the defendant could not produce any pre-*Bristol-Myers* decision holding that "in a class action where defendant is not subject to general jurisdiction, specific jurisdiction must be established not only as to the named plaintiff(s), but also as to the absent class members").

In *Lyngaas*, the Sixth Circuit made similar findings, concluding that decades of case law precedent show that the practice of federal courts has not required any contacts, let alone minimum contacts in the specific jurisdiction sense, between absent class members and the forum. 992 F.3d at 433. The court notes that in a class action, the lead plaintiffs earn the right to represent the interests of absent class members by satisfying all four criteria of Rule 23(a) and one branch of Rule 23(b). *Id.* The defendant is presented with a unitary, coherent claim to which it need respond only with a unitary, coherent defense. *Id.* (quoting *Sanchez v. Launch Tech. Workforce Sols., LLC*, 297 F. Supp. 3d 1360, 1366 (N.D. Ga. 2018)). In this sense, the only "suit" before the court is the one brought by the named plaintiff. *Lyngaas*, 992 F.3d at 435. Thus, when the court considers whether the suit arises out of or relates to the defendant's contacts with the forum, the court only needs to

analyze the claims raised by the named plaintiff, who in turn represents the absent class members. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 155 (1982) ("The class-action device was designed as 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'") (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). The court states that it is tasked, when determining whether it may exercise specific personal jurisdiction over a defendant, to analyze the "relationship among the defendant, the forum, and the litigation," *Daimler AG v. Bauman*, 571 U.S. 117, 132–33 (2014), and that relationship does not depend on the makeup of the unnamed class members. *Lyngaas*, 992 F.3d at 437. In sum, longstanding precedent regarding personal jurisdiction over defendants as to absent class members is well supported. *Id.* at 438.

Similarly, this Court has regularly entertained cases involving nationwide classes where the plaintiff relied on specific, rather than general, personal jurisdiction in the trial court, without any comment on a supposed jurisdictional problem. *See, e.g., Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) (nationwide class action brought in California court; defendant headquartered in Arkansas and incorporated in Delaware); *Shutts*, 472 U.S. at 105 (nationwide class action brought in Kansas court; defendant headquartered in Oklahoma and incorporated in Delaware); *see also Califano*, 442 U.S. at 702 ("Nothing in Rule 23 . . . limits the geographical scope of a class action that is brought in conformity with that Rule."). The continuity in this practice, both in the jurisprudence of this Court and the

federal courts below, supports the assertion that for nationwide class actions, judicial economy is better served by having the claims of all plaintiffs heard in one forum.

The vast majority of lower courts that have ruled on the issue have similarly found that in a class action, courts are only concerned with the jurisdictional obligations of the named plaintiffs, and unnamed class members are irrelevant to the question of specific jurisdiction. *See Chernus v. Logitech, Inc.*, No. 17-673, 2018 WL 1981481, *7 (D.N.J. Apr. 27, 2018) (collecting cases).

The Thirteenth Circuit's decision undermines the core efficiency interests that lie at the foundation of modern class action practice. The unified federal courts have a stake in discouraging duplicative litigation not only within a single district but within the entire system. *Hargrave v. Oki Nursery, Inc.*, 646 F.2d 716, 720 (2d Cir. 1980). Class actions afford an efficient and fair way to avoid piecemeal litigation by answering a singular question for a class of similarly situated plaintiffs. Considerations of judicial efficiency, the federal policy against piecemeal litigation, and the plaintiff's convenience weigh in favor of requiring a defendant who already is before the court to defend against all pending claims, particularly when they fall within the same common nucleus of operative facts. Wright & Miller, Federal Practice & Procedure § 1069.7 (4th ed. 2018). The specter of judicial duplication of effort looms particularly ominously in the class action context, where the potential for inefficiency is acute. *Romine v. Compuserve Corp.*, 160 F.3d 337, 341 (6th Cir. 1998).

Here, there is no reason not to treat the class as representative. Each member has the same claims as Mrs. Cole does, under virtually identical facts and a single federal statute. Separating the class would only result in an exceptional number of separate-but-identical class actions. This would also produce the undesirable effect of weakening the TCPA, one of many consumer protection statutes meant to provide relief to parties whose individual harms do not warrant a lawsuit against parties whose bad acts would, in the aggregate, otherwise go undeterred. *See* Spencer W. Waller, et al., *The Telephone Consumer Protection Act of 1991: Adapting Consumer Protection to Changing Technology*, 26 Loy. Consumer L. Rev. 343, 358–59 (2014) (noting that the TCPA was designed to rely on enforcement by private parties and that the award of statutory damages can also be thought of as a form of bounty system). Permitting common claims to be litigated together in one forum advances the major goal of simplifying litigation involving a large number of class members with similar claims. *Devlin*, 536 U.S. at 10. However, that goal would be defeated if unnamed plaintiffs from different states had to file separate federal class action cases, causing both delay and potential conflict. *Id.*

To find that the underlying suit changes depending on the personal jurisdiction of unnamed class members is to ignore the practical realities of class action litigation and the formal status of the class representative in relation to the unnamed class members. *Lyngaas*, 992 F.3d at 437. Thus, this Court should reverse the decision of the Thirteenth Circuit and adopt the Sixth and Seventh Circuits'

holdings that named representatives must be able to demonstrate either general or specific personal jurisdiction, but unnamed class members are not required to do so.

C. *Bristol-Myers Squibb* does not extend to federal class actions because it dealt with an action for mass torts under state law, and thus is neither controlling precedent nor persuasive authority in the current matter.

There exists no valid argument that this Court's decision in *Bristol-Myers Squibb* controls the current issue before the Court. Unsurprisingly, a majority of the lower courts that have squarely addressed this question, as well as the Sixth and Seventh Circuits, have determined that *Bristol-Myers Squibb* is inapplicable in the context of Rule 23 class actions. *Progressive Health and Rehab Corp. v. Medcare Staffing, Inc.*, No. 2:19-CV-4710, 2020 WL 3050185, *3 (S.D. Ohio June 8, 2020); *see also Hosp. Auth. of Metro. Gov't of Nashville v. Momenta Pharm., Inc.*, 353 F. Supp. 3d 678, 692 (M.D. Tenn. 2018) (collecting cases); *Summit Gardens Assocs. v. CSC Serviceworks, Inc.*, No. 1:17-CV-2553, 2018 WL 8898456, at *3 fn. 2 (N.D. Ohio June 1, 2018) (collecting cases); Daniel W. Townsend, *Did Bristol-Myers Squibb Kill the Nationwide Class Action?*, 129 Yale L.J.F. 205, 226 (2019) (noting that four out of every five federal district court judges to rule on the question have concluded that *Bristol-Myers Squibb* does not prohibit a class action from proceeding on a theory of specific jurisdiction, even if it contains unnamed members who reside outside the forum state).

Prior to *Bristol-Myers Squibb*, federal courts consistently held that personal jurisdiction over the defendant is determined solely by reference to class representatives, not those they propose to represent. *See Ambriz v. Coca-Cola Co.*,

No. 13-CV-03539, 2014 WL 296159, at *6 (N.D. Cal. Jan. 27, 2014) (holding that "a defendant's contacts with the named plaintiff in a class action, without reference to the defendant's contacts with unnamed members of the proposed class, must be sufficient for the Court to exercise specific personal jurisdiction over the defendant"); *AM Tr. v. UBS AG*, 78 F. Supp. 3d 977, 986 (N.D. Cal. 2015) ("[C]laims of unnamed class members are irrelevant to the question of specific jurisdiction."). *Bristol-Myers Squibb* does not alter that landscape. Townsend, 129 Yale L.J.F. at 226 (stating that a strong supermajority of the federal district judges who have considered the issue have ruled in favor of letting class actions proceed largely as they did before *Bristol-Myers Squibb*). As frequently noted by the courts below, there are material differences between mass actions, such as *Bristol-Myers Squibb*, and class actions. *Sanchez*, 297 F. Supp. 3d at 1365. In contrast to mass actions, where each plaintiff is a real party in interest, class actions are brought in a representative capacity. *See Falcon*, 457 U.S. at 155 ("The class-action device was designed as 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'") (quoting *Califano*, 442 U.S. at 700–01). *Bristol-Myers Squibb* thus does not address, let alone resolve, whether due process requires that the defendant be subject to specific jurisdiction not only as to the named plaintiff's claims, but also as to the unnamed class members' claims.

As previously discussed, this Court has held that unnamed class members are not considered "parties" when determining whether there is complete diversity of citizenship. *Devlin*, 536 U.S. at 10. This is justified by the need for ease of

administration of class actions, which would be compromised if the courts had to independently assess whether each unnamed class member met the requirements for subject matter jurisdiction. *Id.* There is no reason why this rationale does not also apply for personal jurisdiction purposes. *Jones*, 330 F.R.D. at 312; *Mussat*, 953 F.3d at 447. By this Court's own standard, a defendant seeking to extend *Bristol-Myers Squibb* must contend that although absent class members are not "parties" for purposes of diversity of citizenship, they are "parties" for purposes of personal jurisdiction over the defendant. *Al Haj*, 338 F. Supp. 3d at 820. But that cannot be right. Personal jurisdiction shares a key feature with the doctrine of diversity, as both govern a court's ability, constitutional or statutory, to adjudicate a particular person's or entity's claim against a particular defendant. *Id.*

To be sure, personal jurisdiction is governed by constitutional due process principles while diversity jurisdiction principles are governed by statute. *Id.* However, under this widely adopted and correctly applied view, there is no constitutional unfairness in subjecting a defendant to the class claims of out-of-state plaintiffs in Rule 23 class actions, so long as a court has jurisdiction over the class representative's claims. *Carpenter v. PetSmart, Inc.*, 441 F. Supp. 3d 1028, 1034 (S.D. Ca., 2020). The due process issue is avoided because Rule 23 class certification already protects a defendant's due process rights. *Id.* In a mass action, each joined plaintiff may make different claims requiring different responses. *Knotts v. Nissan N. Am., Inc.*, 346 F. Supp. 3d 1310, 1334 (D. Minn 2018). To be certified as a class

action under Rule 23, by sharp contrast, a suit must satisfy due process procedural safeguards that do not exist in mass tort actions. *Knotts*, F. Supp. 3d at 1333.

Together, these requirements ensure that a proposed class is sufficiently cohesive to warrant adjudication by representation. *Amgen Inc. v. Conn. Retirement Plans & Trust Funds*, 568 U.S. 455, 469 (2013). For example, Rule 23(b)(3)'s superiority and predominance requirements "ensure that the defendant is presented with a unitary, coherent claim to which it need respond only with a unitary, coherent defense." *Sanchez*, 297 F. Supp. 3d at 1366. A proposed class that fails even one of these requirements will not be certified. *Id.* Given the requirement that class claims be coherent, it would be far less burdensome for defendants to come to a single forum to litigate the unnamed class members' identical claims than it was for the defendants in *Bristol-Myers Squibb* who faced the possibility of each plaintiff bringing unique claims against them. *Jones*, 330 F.R.D. at 312.

Absent class members are also, by definition, not "present" or joined; instead, they are represented. *See* Rule 23(a) (stating that one or more members of a class may sue or be sued as *representative* parties on behalf of all members). The Federal Rules of Civil Procedure also empower courts to allow particular class members to intervene or "otherwise come into the action." Fed. R. Civ. P. 23(d)(1)(B)(iii). There would be no need to give the court discretion to let class members "into the action" if they were already in it for jurisdictional purposes. Thus, courts have consistently held that Rule 23 must be interpreted to allow inclusion of all class members, whatever their connection with the forum. *Appleton Elec. Co*, 494 F.2d at 140.

The fact that the U.S. District Court for the District of New Tejas has specific jurisdiction over Mrs. Cole's claim also mitigates against the concerns of forum shopping expressed in *Bristol-Myers Squibb*. Thus, allowing the unnamed non-resident class members to bring claims against Mr. Todd in this forum would not deprive him of any substantive right in violation of the Due Process Clause or the Rules Enabling Act, as the Thirteenth Circuit incorrectly contends. (App. 9a–11a).

In determining how to apply *Bristol-Myers Squibb*, both the Thirteenth Circuit and several district courts have mistakenly concluded that Rule 4(k)(1)(A) limits the exercise of personal jurisdiction by federal courts over unnamed class members. These courts have incorrectly interpreted that provision to be an overreaching limitation on federal-court jurisdiction in general, as opposed to a mechanism for establishing personal jurisdiction via service of process. *See Muir v. Nature's Bounty (DE), Inc.*, No. 15 C 9835, 2018 WL 3647115, *2 (N.D. Ill Sept. 28, 2018) (citing Rule 4(k)(1)(A) for the proposition that "a federal court's jurisdiction over a defendant's person is determined by the law of the state in which it sits"). However, the relevant question regarding Rule 4(k) concerns the appropriate scope of service of process, not a broad sweeping limitation on federal-court jurisdiction over class actions. *See Tamburo v. Dworkin*, 601 F.3d 693, 700 (7th Cir. 2010) ("Where no federal statute authorizes nationwide service of process, personal jurisdiction is governed by the law of the forum state.").

Even though Rule 4(k)(1)(A) incorporates the geographic limitations of state courts, it does so only with respect to how process is served. *Id.* Thus, a

straightforward reading of Rule 4(k) finds that it would never limit personal jurisdiction over a defendant that is properly served. *See* Fed. R. Civ. P 4(k) ("Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant . . ."). Because a class action defendant needs to be served with process only by the *named plaintiff*, and not by unnamed class members, *Bristol-Myers Squibb* does nothing to alter the true purpose of Rule 4(k) nor the bounds by which federal courts may properly exercise personal jurisdiction. Such geographic limitations on service of process have not been an obstacle to nationwide class actions before, and *Bristol-Myers Squibb* does not change the rules regarding service of process or class actions. Rule 4 determines where the named plaintiff may sue and how the named plaintiff acquires jurisdiction over the defendant, ensuring a connection between the defendant and the forum, and Rule 23 governs whether and to what extent the named plaintiff may represent a class.

Plainly, *Bristol-Myers Squibb* should not be read in a way that would hamper and curtail multistate and nationwide class actions on grounds of personal jurisdiction. *See Bristol-Myers Squibb*, 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 State seeks to represent a nationwide class of plaintiffs, not all of whom were injured there."). Because *Bristol-Myers Squibb* is not controlling precedent in the instant case, this Court should reverse the decision of the Thirteenth Circuit and

hold that personal jurisdiction must exist only with respect to the claims of the named plaintiff in a class action.

III. ALTER EGO SHOULD BE EVALUATED UNDER FEDERAL COMMON LAW WHEN DETERMINING PERSONAL JURISDICTION WITH RESPECT TO A FEDERAL CLAIM.

Personal jurisdiction based on an alter ego theory with respect to a claim arising under federal law should apply federal common law rather than state law. Accordingly, this Court should reverse the Thirteenth Circuit's decision on this issue.

The federal common law test applied by some courts to pierce the corporate veil and apply the alter ego theory requires that "(1) that there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their separate entities] would result in fraud or injustice." *Anwar v. Dow Chem. Co.*, 876 F.3d 841, 849 (6th Cir. 2017) (quoting *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015)).

Conversely, New Tejas employs a far more stringent standard for piercing the corporate veil which is far friendlier to corporations. (App. 6a). New Tejas's standard requires that "the company have been incorporated for the specific purpose of defrauding a specific individual." (App. 6a).

Mr. Todd concedes that under a federal common law test he would be the alter ego of Spicy Cold and thus subject to general jurisdiction. (App. 6a). Mrs. Cole too concedes that if New Tejas state law applies, Mr. Todd would not be the alter

ego of Spicy Cold and therefore he would not be subject to general jurisdiction. (App. 6a). Thus, the issue turns on whether federal or state law applies.

A. This Court should apply federal law as the lower courts have declined to engage in a choice of law analysis when state and federal law conflict and have de facto applied federal law in those instances.

The Fourth, Fifth, Sixth, and Ninth Circuits have all found individuals as the alter ego of a corporation either by applying federal law or by applying state law consistent with the federal law. While some of the circuits explicitly applied state law, the law was nominally different from federal law, and thus they did not undertake a conflict of laws analysis. The Thirteenth Circuit erroneously noted there is a circuit split on whether to apply state or federal law in instances of alter ego theory for federal legal questions. (App. 13a). While circuits inconsistently apply state or federal law when determining how to apply alter ego theory to a federal question, that is because the difference between applying state and federal law is nominal. There is no real circuit split, but merely an absence of a conflict of laws analysis that this Court is being asked to undertake currently. The dissent correctly picks up on this, noting that "[w]hen discussing substantive liability under an alter ego theory, courts routinely decline to conduct a choice-of-law analysis because of the similarity in state law." (App. 19a–20a). Thus, following Circuit Court precedent on applying state or federal law is only helpful to the extent this Court acknowledges that Circuit Courts' application of state law is merely an application of identical federal law.

In *Newport News Holding Corp v. Virtual City Vision, Inc.*, the court held there were sufficient facts to pierce the corporate veil and hold the individual accountable for the company's actions. 650 F.3d 423, 434 (4th Cir. 2011). Specifically, the court applied Virginia law which allows for a court to pierce the corporate veil to find that an individual is the alter ego of a corporation where: "it finds (i) a unity of interest and ownership between [the individual and the corporation], and (ii) that [the individual] used the corporation to evade a personal obligation, to perpetrate fraud or a crime, to commit an injustice, or to gain an unfair advantage." *Newport* News, 650 F.3d at 434 (citations omitted). Under that test, the Fourth Circuit found the individual was the alter ego of the corporation.

The Fifth, Sixth, and Ninth Circuits declined to address the choice of law question, as the alter ego question came out the same under either state or federal law. In *Hargrave v. Fibreboard Corp.*, the Fifth Circuit evaded the choice of law question as it wasn't relevant to their analysis. 710 F.2d 1154 (5th Cir. 1983). "In evaluating Nicolet's claim with respect to the alter ego issue, we face a preliminary question regarding the law to be applied. The district court made no explicit choice of law; instead, the court held that the alter ego issue comes out the same under either Texas or Pennsylvania law. We too decline to answer the choice of law question, since our examination of Pennsylvania and Texas law also reveals an identity of result concerning the alter ego issue." *Id.* at 1161. As the *Hargrave* court would have undertaken the same analysis under state and federal law, they did not

spend time deciding which law to apply, and in effect applied federal law simultaneously with state law.

In *Estate of Thomson ex. Rel. Estate of Rakestraw v. Toyota Motor Corp Worldwide*, the Sixth Circuit turned to Ohio law when assessing alter ego theory. 545 F.3d 357, 362 (6th Cir. 2008) ("In applying the alter-ego theory of personal jurisdiction in this diversity action, we must look to Ohio law."). But the court explained that Ohio law had "historical antecedents in both federal and state law." *Estate of Thomson*, 545 F.3d at 362. Thus, by applying Ohio law the court was not usurping federal law.

Eleven years later in the Sixth Circuit, *Anwar v. Dow Chem. Co.*, applied federal law to the federal claim in that action but state law to the state claim. 876 F.3d at 848. But the court noted in a footnote: "Sixth Circuit precedent is not entirely clear regarding how to apply the alter-ego theory of personal jurisdiction to federal claims. The Indah court cited favorably to *Estate of Thomson*, which applied Ohio law." *Id.* at 848 n.2 (citations omitted). While the court ultimately held the alter ego theory did not apply given the facts of the case, they did so under both a federal and state law analysis. The outcome for the case would have been the same, regardless if federal or state law applied.

The Ninth Circuit recently held in *Invesco High Yield Fund v. Jecklin*, that individual defendants were the alter ego of their companies Swiss Leisure Group and JPC Holdings AG by applying both federal and state law. No. 19-15931, 2021 WL 2911739 (9th Cir. July 12, 2021). The Ninth Circuit, too, declined to conduct a

conflict of laws analysis. "The district court also correctly found Defendants liable on Morgan Stanley's alter ego claims. The parties dispute whether Nevada or Delaware's alter ego law applies, but we need not decide this choice-of-law question because the result is the same under either state's law: Defendants are the alter egos of SCGC." *Invesco*, 2021 WL 2911739, at *1. In reaching their conclusion, the Ninth Circuit did not engage in a choice of law analysis as it did not impact the holding, thus effectively applying federal law concurrently with state law.

In the present case, New Tejas's alter ego law substantially differs from federal law. The Fourth, Fifth, Sixth, and Ninth Circuits provide no guidance as to how this Court should conduct a conflict of laws analysis when state law drastically differs from federal law. These Circuits consistently failed to conduct a conflict of laws analysis as the difference between state and federal law was nominal. Thus, this Court should turn to binding Supreme Court precedent to determine whether federal or state law applies. When state law clearly contravenes with the purpose of federal law, public policy and Supreme Court precedent demands we apply federal law.

B. This Court's jurisprudence demands that federal law should apply.

Application of federal common law over conflicting state law has been clearly addressed by this Court and remains binding precedent. Although this exact issue – application of federal common law under the alter ego theory for the Telephone Consumer Protection Act ("TCPA") – has not been addressed, precedent dictates that federal common law apply.

Two earlier cases decided by this Court – *Burks v. Lasker* and *Kamen v. Kemper Fin. Servs. Inc.* – held narrowly that under the Investment Company Act ("ICA") state law should apply. 441 U.S. 471 (1979); 500 U.S. 90 (1991). However, in reaching their conclusion, both courts emphasized state law must remain consistent with federal law to govern. Thus, applying *Burks* and *Kamen* presently dictates that federal common law governs, as applying state law subverts federal law and threatens federal policy and interests.

In 1979, *Burks v. Lasker* decided whether state or federal law applied when assessing shareholders of Fundamental Investors, Inc.'s derivative suit brought under the ICA. This Court noted that state law was not irrelevant merely because the action was brought under federal law, and that corporations are generally "creatures of state law." *Burks*, 441 U.S. at 478. Importantly, and relevant here, this Court applied that general framework to the ICA specifically. *Id.* at 484–85 ("In short, the structure and purpose of the ICA indicate that Congress entrusted to the independent directors of investment companies, exercising the authority granted to them by state law primary responsibility for looking after the interests of the funds' shareholders.").

The holding from *Burks* narrowly applies state laws to federal questions arising from the ICA, so long as state law does not conflict with federal law. Notably, this Court did not actually apply state law to the issue, but remanded for the lower courts to apply state law "to the extent such law is consistent with the policies of the ICA and IAA." *Id.* at 486. Thus, the holding in *Burks* did not actually

decide whether federal or state law should apply in this case or future ICA cases, but merely provided a framework for when to apply federal or state law. That framework required that state law apply only when it is consistent with the policies of the federal law. *Id.*

Concurring opinions attempted to clarify the vague framework of the holding. Justice Blackmun highlighted that lower courts should determine whether state law is at odds with federal law and apply federal law when that's the case, and Justices Stewart and Powell noted "no possible conflict between this generally accepted principle of state law and the federal statutes in issue." *Burks*, 441 U.S. at 487.

Twelve years later, *Kamen v. Kemper Fin. Servs. Inc.* affirmed *Burks* when deciding whether state or federal law applied when a shareholder brought a Rule 23.1 derivative action against her company under the federal ICA. 500 U.S. at 108. To assess whether state or federal law applied, this Court first addressed "the source and content of the substantive law." *Id.* at 97. In this case, the ICA is federal and thus "any common law rule necessary to effectuate a private cause of action under that statute is necessarily federal in character." *Id.* (citations omitted). 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 programs." *Id.* (quoting *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 728 (1979)). In reaffirming *Burks*, this Court unanimously held "where a gap in the federal securities laws must be bridged by a rule that bears on

the allocation of governing powers within the corporation, federal courts should incorporate state law into federal common law *unless the particular state law in question is inconsistent with the policies underlying the federal statute." Id.* at 108–09 (emphasis added). Thus, *Kamen* held that state law should apply in narrow instances for the ICA so long as state law is consistent with the policies underlying the federal statute.

While this Court has not directly addressed the issue of federal or state law applying under the alter ego theory for a TCPA claim, this Court unanimously held in 2012 that the TCPA squarely falls under federal law and thus it is properly heard in federal court. *See generally Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368 (2012). The issue in *Mims* centered on whether the permissive language in the TCPA made state court jurisdiction exclusive over private actions brought under TCPA claims. *Id.* at 376. Unanimously, this Court held that the TCPA is a federal law and "Federal courts have § 1331 jurisdiction over claims that arise under federal law." *Id.* at 387.

Here, federal common law should apply as we are dealing with a federal question, as noted in *Mims*. Further, applying state law would be "inconsistent with the federal policy underlying the cause of action" and thus not allowed in accordance with this Court's decisions in *Burks* and *Kamen*. The purpose of the TCPA in 1991 and its subsequent revisions is to offer "consumers greater protection from intrusive telemarketing calls and protect consumers from unwanted autodialed or prerecorded telemarketing calls to wireless numbers and from

unwanted prerecorded telemarketing calls to residential lines, also known as "telemarketing robocalls . . .". FCC Telephone and Consumer Protection Act, 47 C.F.R. § 77.112 (2012). Applying federal law here effectuates the purpose of Congress's intent in passing the TCPA. Holding Mr. Todd responsible as the alter ego of Spicy Cold protects consumers from unwanted and intrusive robocalls. Conversely, the state law of New Tejas directly conflicts with the federal policy underlying the cause of action. Allowing Mr. Todd to hide behind the extreme application of alter ego theory in New Tejas subverts the purpose of the TCPA.

In short, applying this Court's precedent under *Burks* and *Kamen* requires that federal common law apply here. Applying state law is inconsistent with the purpose of the TCPA and thus federal law must govern.

C. Applying federal law to the personal jurisdiction question complies with due process and comports with the purpose of the alter ego theory.

The due process clause of the Fourteenth Amendment is the cornerstone of our personal jurisdiction jurisprudence. Ultimately, the due process clause ensures that defendants are fairly notified about where they will be tried and under what prevailing laws. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471–72 (1985) ("By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit") (citations omitted); *see also*

Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement, 326 U.S. 310, 319 (1945) (the Due Process clause protects an individual's liberty interest in not being subject to the binding judgments of a forum where he has no contacts).

Exercising jurisdiction over an alter ego of a company is compatible with due process because a corporation and its alter ego are the same entity. *Sys. Div., Inc. v. Teknek Elecs., Ltd.*, 253 F. App'x 31, 37 (Fed. Cir. 2007). Both the Fifth and Ninth Circuits explicitly noted that using alter ego theory to determine jurisdiction complies with the due process requirement as well. *Patin v. Thoroughbred Power Boats, Inc.*, 294 F.3d 640, 653 & n. 18 (5th Cir. 2002) ("federal courts have consistently acknowledged that it is compatible with due process for a court to exercise personal jurisdiction over an individual or a corporation that would not ordinarily be subject to personal jurisdiction in that court when the individual or corporation is an alter ego or successor of a corporation that would be subject to personal jurisdiction in that court"); *see also Howard v. Everex Sys., Inc.*, 228 F.3d 1057, 1069 n. 17 (9th Cir. 2000) ("where the parent totally controls the actions of the subsidiary so that the subsidiary is the mere alter ego of the parent, jurisdiction is appropriate over the parent as well.").

In the present case, finding Mr. Todd as the alter ego of Spicy Cold complies with the due process requirement. Both parties concede that any profits Spicy Cold earned were swiftly distributed to Mr. Todd as a dividend. (App. 4a). Further, Mr. Todd personally owns all of the shares of Spicy Cold. (App. 2a). Acting on behalf of

Spicy Cold, Mr. Todd then initiated contact with states around the country through his prerecorded voice messages. (App. 3a).

Applying federal law in this case does not infringe on Mr. Todd's due process rights. Mr. Todd is Spicy Cold; he is the sole owner and all of the company's decisions and activities were Mr. Todd's decisions and activities. Applying federal law in this case, and thus finding Mr. Todd to be the alter ego of Spicy Cold, fairly applies the due process requirement for personal jurisdiction. Failing to find Mr. Todd as the alter ego of Spicy Cold would lead to absurd results where an individual can essentially use a shell corporation to bother individuals, so long as the company wasn't created for the "specific purpose of defrauding a specific individual." (App 6a). Applying New Tejas state law would lead to staggering results and has far reaching policy implications.

This Court, however, does not need to spend time discussing how disastrous New Tejas's alter ego theory is. Due process under the Fourteenth Amendment governs whether jurisdiction is fair. As the dissent accurately noted, this is a federal inquiry. (App. 21a). In this present case, finding Mr. Todd as the alter ego of Spicy Cold complies with due process. Applying federal law rather than state law, as this Court's jurisprudence demands, does not contravene the purpose of the due process clause.

CONCLUSION

This Court should reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit. The Court should find that that the District Court can exercise personal jurisdiction over Defendant, Lancelot Todd, on two grounds: (1) in a class action, jurisdiction is determined solely with respect to the claims of the named plaintiffs. Because it is undisputed that there is personal jurisdiction over the claim of the named Plaintiff, Mrs. Gansevoort Cole, the District Court can properly entertain a nationwide class action; and (2) in the alternative, general jurisdiction can be exercised over Defendant, Mr. Lancelot Todd, because under federal law he is the alter ego of Spicy Cold Foods, Inc., a corporation organized under the laws of the state of New Tejas.

DATED: November 15, 2021

RESPECTFULLY SUBMITTED

By Attorneys for Petitioner

APPENDIX

U.S. Const. amend. IXV

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.

47 U.S.C. § 227(b)(1)(B)

(b) Restrictions on the Use of Automated Telephone Equipment

(1) Prohibitions

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

. . .

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party . . .

28 U.S.C. § 2072(b)

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

28 U.S.C. § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Fed. R. Civ. P. 4(k)

(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.

Fed. R. Civ. P. 23

(a) Prerequisites.

One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions.

A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

. . .

(d) Conducting the Action.

(1) *In General.*

In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.