No. 20-1434

**

IN THE SUPREME COURT OF THE UNITED STATES

**

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

Petitioner-Appellant,

– v. –

LANCELOT TODD,

Respondent-Appellee.

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

**

BRIEF FOR PETITIONER

**

November 15, 2021

Submitted by:

TEAM NUMBER 70
Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether, in a class action, where the purpose is to allow the named representative to litigate claims on behalf of the entire class, and where unnamed class members are not parties prior to certification, the class may rely on the named class representative's established personal jurisdiction over a defendant?

2. Whether, with respect to a claim arising under federal law, where that claim implicates significant federal interests, a federal court should apply the federal common law of alter ego to pierce the corporate veil and assert personal jurisdiction over a defendant?

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The opinion of the United States District Court for the District of New Tejas is not yet published. The United States Court of Appeals for the Thirteenth Circuit opinion is unpublished but can be located at No. 18-cv-1292 and is reprinted on pages 1a-16a of the Record.

STATEMENT OF JURISDICTION

The U.S. Court of Appeals for the Thirteenth Circuit had jurisdiction under 28 U.S.C. § 1291 and entered judgment in this case on May 10, 2020. R. at 1a. Petitioners timely filed a petition for writ of certiorari, which this Court granted pursuant to 28 U.S.C. § 1254(1) on October 4, 2021. R. at 1.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The central constitutional provision is the Due Process Clause of the Fourteenth Amendment to the United States Constitution, U.S. Const. amend. XIV, § 1. This case also involves provisions of the Telephone Consumer Protection Act, 47 U.S.C. § 227, Federal Rule of Civil Procedure 23, and the Restatement (Second) of Conflict of Laws. Each of these provisions is set forth in relevant part in Appendix A.

STATEMENT OF THE CASE

Mr. Todd Develops a Nationwide Marketing Scheme

Mr. Lancelot Todd, a resident of West Dakota, is the sole shareholder, officer, and proprietor of Spicy Cold Foods, Inc. (Spicy Cold). R. at 2a. True to its name, Spicy Cold sells potato chips coated with a "spicy cold" flavoring agent. R. at 2a. The flavor coating spurs a chemical reaction when consumed, which reportedly causes one's

mouth and tongue to go numb while eating. R. at 2a. The chips have not been a commercial success. R. at 3a. And despite their poor reception by restaurants and grocery stores, Mr. Todd doubled down on the product and engaged in a nationwide scheme to market his chips to a broad base of potential new customers. R. at 3a.

Mr. Todd devised an "automatic telephone dialing system" which, on behalf of Spicy Cold, he used to call the private cellular and residential phone lines of consumers across the country. R. at 3a. Upon answering, these unsuspecting consumers were harassed by a prerecorded voice message exclaiming, "Sure, you can handle the heat, but can you handle the cold? Face the challenge of spicy cold chips—the coolest chips ever made. Available online now. Ask for them at your local grocery store. Frost-bite into the excitement!" R. at 3a.

Victims of the Scheme Seek Redress

Mrs. Gansevoort Cole, a resident of New Tejas, was on the receiving end of ten of these calls, five to her cell phone and five to her residential line. R. at 3a. Mrs. Cole has no relation to Mr. Todd or Spicy Cold, and she did not consent to receive the robocalls. R. at 3a. Mrs. Cole, moreover, stated that she was no more likely to purchase the chips, even after the many calls she received induced her to do so. R. at 3a.

Mr. Todd's marketing tactics were an evident failure, but they also appear contrary to the plain letter of the law. The Telephone Consumer Protection Act (TCPA) prohibits "initiat[ing] 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." 47 U.S.C. § 227(b)(1)(B) (West 2021). To seek redress for

her injuries, as she is entitled to do under federal law, Mrs. Cole filed suit on behalf of herself and all those harmed by Mr. Todd's relentless efforts to sell his unpalatable potato chips. R. at 3a.

Mr. Todd Evades the Jurisdiction of the District Court

Mr. Todd incorporated Spicy Cold in New Tejas in 2015 and established the company's principal place of business in West Dakota. R. at 2a. And, since that time, Mr. Todd has disregarded any semblance of corporate formalities and failed to maintain even a measure of legal distance between himself and his company. R. at 5a. In fact, Mr. Todd made a habit of swiftly distributing Spicy Cold's profits directly into his own pocket in the form of dividends. R. at 4a. Moreover, Mr. Todd is the sole shareholder of Spicy Cold and he operates the company without a formal board of directors. R. at 5a. Mr. Todd even used Spicy Cold's bank account to pay for his own personal expenses. R. at 5a. As a result, Spicy Cold is significantly undercapitalized, yet Mr. Todd possesses a great deal of personal wealth. R. at 4a. Thus, when Mrs. Cole filed suit against Spicy Cold, she also filed suit against Mr. Todd in his individual capacity because his company, was, in effect, judgment proof. R. at 4a. Nevertheless, Mr. Todd invoked New Tejas' exceedingly deferential corporate laws and argued that the District Court could not assert personal jurisdiction over him for the claims alleged by the class she intended to represent, leaving the petitioners without recourse to bring their claims forward. R. at 4a.

Procedural History

Mrs. Cole filed her claim in the Federal District Court for the District of New Tejas in 2018. R. at 3a. Following jurisdictional discovery, the District Court granted

Mr. Todd's motion to strike the nationwide class allegations for lack of personal jurisdiction over him in his individual capacity. R. at 7a. The Thirteenth Circuit Court of Appeals affirmed. R. at 16a.

SUMMARY OF THE ARGUMENT

The Court should reverse the Thirteenth Circuit and find that the District Court can exercise personal jurisdiction over Mr. Todd with respect to the claims alleged in the nationwide class action. Additionally, the Court should find that the federal common law of alter ego jurisdiction applies, and therefore, the District Court can pierce Spicy Cold's corporate veil and assert personal jurisdiction over Mr. Todd.

A federal court may exercise personal jurisdiction as long as the named class representative establishes personal jurisdiction in the forum. This Court has never held unnamed class members to the jurisdictional standards of named parties and has never suggested imposing such procedural burdens prior to certification. If the Court determines that unnamed class members are parties for personal jurisdiction purposes, it will hinder the utility and efficiency of the class action mechanism. Moreover, requiring each unnamed class member to demonstrate independent personal jurisdiction over a defendant would destroy nationwide class actions in many cases. Additionally, this Court's holding in *Bristol-Myers Squibb Co. v. Super. Ct. of California, San Francisco County* does not extend to this case because *Bristol-Myers* addressed a state claim in a state court, and *Bristol-Myers* was brought as a mass action, not a class action.

Moreover, allowing unnamed class members to rely on the named representative's established personal jurisdiction does not violate a defendant's

Fourteenth Amendment Due Process rights and comports with traditional notions of fair play and substantial justice. Where the named class representative demonstrates the requisite relationship to allow the court to exercise personal jurisdiction, as Mrs. Cole does in this case, it is appropriate for the defendant to litigate against the class, because the class action allows individuals to aggregate their claims into one and litigate as a single entity. Reliance on the named representative's jurisdiction is also reasonable and complies with substantial justice and fair play. Class actions are an equitable procedural tool to allow aggrieved individuals to consolidate duplicative claims and obtain effective relief. This purpose is undermined if each individual class member must independently support personal jurisdiction because it would be cost-prohibitive for most individuals to seek redress or alternatively lead to duplicative claims.

This Court can also affirm personal jurisdiction by applying the federal common law of alter ego jurisdiction to pierce Spicy Cold's corporate veil and impute the company's general jurisdiction to Mr. Todd. However, because the federal common law and the state law of alter ego are in conflict, this Court must engage in a choice-of-law analysis. But where, as here, the underlying controversy implicates significant federal interests, the choice-of-law rules dictate that the federal common law controls.

Federal courts traditionally turn to the Restatement (Second) of Conflict of Laws to guide the choice-of-law analysis. The Restatement provides that the choice-of-law should be resolved in favor of the forum with the most significant relationship

to the controversy. Here, the forum with the most significant relationship to the controversy is the Federal District Court of New Tejas which applies the federal common law of alter ego jurisdiction. Applying the federal common law of alter ego jurisdiction would ensure that defendants are not allowed to game the system by incorporating in jurisdictions with laws that are so deferential to the corporate form that they effectively insulate themselves from the reach of the federal judiciary and preclude the possibility of piercing the corporate veil, even where equity demands that result.

Moreover, this Court has previously recognized the significant federal interests that inform the Telephone Consumer Protection Act (TCPA). In *Mims v. Arrowhead Services*, the Court exhaustively detailed how the TCPA is a detailed and uniform statute designed to remedy a nationwide harm. And applying a state law in this case would significantly undermine the intent and purpose of this statute. Finally, courts have long recognized that piercing the corporate veil and asserting alter ego jurisdiction is consistent with the Fourteenth Amendment's Due Process Clause and the principles of equity that inform the doctrine.

ARGUMENT

There are two independent, yet equally viable theories of personal jurisdiction available to the Court in this case. First, this Court can find that the District Court has specific personal jurisdiction over the claims Mrs. Cole raised against Spicy Cold and Mr. Todd because Mr. Todd has extensive personal contacts with New Tejas. And second, this Court can find that federal common law controls, and the District Court

can pierce the corporate veil of Spicy Cold and assume general personal jurisdiction over Mr. Todd as Spicy Cold's alter ego.

I. UNNAMED CLASS MEMBERS MAY RELY ON THE PERSONAL JURISDICTION ESTABLISHED BY THE NAMED CLASS REPRESENTATIVE.

Federal class actions allow plaintiffs to consolidate claims to litigate as a single entity where individual suits would be impractical or impossible. *Califano v. Yamasaki*, 442 U.S. 682 (1979). And though class actions can be distinguished from traditional litigation in many ways, there is a constant through-line between both types of litigation which requires the forum court to have personal jurisdiction over the defendant to bind them to a judgment. *See Hanson v. Denckla*, 357 U.S. 235, 250 (1958). Plaintiffs can establish personal jurisdiction in one of two ways: general jurisdiction or specific jurisdiction. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). General jurisdiction exists where a natural person is domiciled, or where a corporation is incorporated, as well as the location of its principal place of business. *Id.* at 924. A defendant may be brought into court in the state of general jurisdiction with regard to any claim because the court's jurisdiction extends over that party *generally*. *Walden v. Fiore*, 571 U.S. 277, 283 n.6 (2014). Specific jurisdiction is an equally valid method of establishing jurisdiction, and it entails demonstrating an existing relationship between the defendant, the litigation, and the forum. *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). Mr. Todd concedes that the New Tejas District Court has established specific jurisdiction over him with regard to Mrs. Cole's claim and the claims of New Tejas residents, satisfying the

personal jurisdiction requirement, yet claims that personal jurisdiction does not extend to the claims of unnamed out of state class members. R. at 4a.

But Mr. Todd and the court below erred in drawing this conclusion. Unnamed class members are not parties for the purposes of establishing jurisdiction, especially at the pre-certification stage of litigation, and therefore are not required to demonstrate independent personal jurisdiction over their claims. *Lyngaas v. Ag*, 992 F.3d 412, 435 (6th Cir. 2021); *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 447 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1126 (2021). Rather, unnamed class members may rely on the jurisdiction established by the named representative's claim to enable the class to litigate in the forum as a single, represented entity. *Mussat*, 953 F.3d at 445 (citing *Payton v. Cty. of Kane*, 308 F.3d 673, 680–81 (7th Cir. 2002)). Because Mrs. Cole clearly establishes personal jurisdiction over her claim against Mr. Todd in New Tejas, the unnamed class members may seek relief in the forum through Mrs. Cole's representation.

A. Unnamed Class Members Are Not Parties for the Purpose of Establishing Personal Jurisdiction and Do Not Need to Demonstrate Independent Personal Jurisdiction.

The class action, as a representative mechanism, is an exception to the general premise that individuals litigate in their own interests, and the class action vehicle brings with it special procedural considerations. *See, e.g., Califano*, 442 U.S. at 700–01. One of those procedural considerations is the settled principle that unnamed members of class actions are "parties for some purposes and not for others." *Devlin v. Scardelletti*, 536 U.S. 1, 9–10 (2002). For jurisdictional purposes, unnamed class members do not serve a meaningful procedural role as parties. This Court has found

this to be true in analogous jurisdictional analyses, recognizing that unnamed class members from the same state as the defendant cannot destroy diversity jurisdiction, as they would if they were parties in traditional litigation. *Devlin*, 536 U.S. at 10. Similarly, unnamed class members need not meet the amount in controversy requirements of 28 U.S.C. § 1332 to participate in a class action, so long as "the other elements of jurisdiction are present and at least one named plaintiff in the action satisfies the amount-in-controversy requirement." *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 549 (2005).

These same principles should extend to personal jurisdiction requirements. Class actions necessarily involve absentee litigants, and the administrative difficulty of assessing unnamed class members' residencies for diversity purposes naturally extends to the question of personal jurisdiction. *See Devlin*, 536 U.S. at 10. Upon certification, a defendant litigates against the class as a whole entity, represented by the named plaintiffs. *Payton*, 308 F.3d at 680–81. Therefore, the named representative's ability to demonstrate jurisdiction allows the class to have its day in court. *See Devlin*, 536 U.S. at 10; *Allapattah*, 545 U.S. at 549.

Similarly, defendants in a class action should have their affiliation with the forum evaluated only in terms of their relationship with the named class representatives. *Mussat*, 953 F.3d at 445. Personal jurisdiction concerns the "relationship among the defendant, the forum, and the litigation." *Shaffer*, 433 U.S. at 204. The active litigation in a class action does not include all unnamed class members; rather, the class representative litigates on *behalf* of the unnamed class

members. *Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 550 (1974). So long as the named plaintiff can satisfy their constitutional burden to establish personal jurisdiction, as Mrs. Cole can under the present facts, then the unnamed class members—who are not parties to the litigation for such jurisdictional purposes—need not demonstrate independent personal jurisdiction.

1. Unnamed class members are only elevated to party status where doing so serves the efficient administration of justice.

Courts determine if unnamed class members are to be considered "parties" on an issue-by-issue basis within the particular procedural context. "Party" is, therefore, not an immutable characteristic, but rather "a conclusion about the applicability of various procedural rules that may differ based on context." *Devlin*, 536 U.S. at 10. Courts consistently weigh the effect that "party" status has on the ease of administration and ability to preserve justice in class actions. *Id.*; *Am. Pipe & Const. Co.*, 414 U.S. at 545. Because requiring unnamed class members to demonstrate personal jurisdiction beyond that of the named representative would frustrate plaintiffs' ability to pursue efficient administration of justice through a class action, unnamed members should not be considered "parties" for personal jurisdiction purposes. *See In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, MDL 09-2047, 2017 WL 5971622, at *19 (E.D. La. Nov. 30, 2017) (noting that requiring fifty separate statewide class actions would be a "clear violation of congressional efforts at efficiency in the federal courts").

The lower court improperly compared Article III standing to personal jurisdiction, but such a comparison is incongruous with the reasoning behind the

standing requirement. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021). As this Court explained in *Clapper v. Amnesty Int'l USA*, "[t]he law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." 568 U.S. 398, 408 (2013). These principles do not apply to personal jurisdiction, which is rooted in the Constitution's due process protections. *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 702 (1982) ("The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause."). Furthermore, the plaintiff bears the burden of demonstrating standing, which is not necessarily true of personal jurisdiction. *TransUnion LLC*, 141 S. Ct. at 2208 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)); *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1036 n.1 (2021) (Gorsuch, J., concurring) (explaining that the assumption "that the plaintiff bears the burden of proving personal jurisdiction—is often mistaken" because it is also a waivable affirmative defense which shifts the burden to the defendant). And, crucially, where a plaintiff fails to demonstrate standing, they are barred from bringing a federal claim *in any federal court* because standing is a constitutional prerequisite. *Clapper*, 568 at 408. This blanket prohibition does not extend to personal jurisdiction, because even where one federal court does not have personal jurisdiction, the plaintiff is free to bring their claim in another federal court that does. Therefore, it is inappropriate to extend the burden to demonstrate standing to unnamed class members.

The procedural context most analogous to personal jurisdiction is subject matter jurisdiction, and the same considerations that inform a court's analysis when deciding whether diversity jurisdiction exists can be instructive in this case. Unnamed class members are not elevated to party status to establish diversity jurisdiction. *Devlin*, 536 U.S. at 10; *Allapattah*, 545 U.S. at 566–67. For example, where the named representative satisfies complete diversity with the defendant, unnamed class members are not considered parties such that that diversity would be destroyed if they reside in the same state as the defendant. *Devlin*, 536 U.S. at 10. "Ease of administration of class actions would be compromised by having to consider the citizenship of all class members[.] Perhaps more importantly, considering all class members for these purposes would destroy diversity in almost all class actions." *Id.* at 10. The same inefficiency would follow if this Court establishes a requirement that unnamed class members must independently establish personal jurisdiction, and many nationwide class actions would be defeated before they even reach the certification stage. The reasoning that informed this Court's exception to the diversity requirement for unnamed class members therefore supports an analogous holding to allow the named representative alone to establish personal jurisdiction.

Just as unnamed plaintiffs do not need to satisfy the diversity requirement, they also do not need to satisfy the amount in controversy requirement so long as the named representative for the class action can do so. While this was considered in the context of supplemental jurisdiction under 28 U.S.C. § 1367, this Court explicitly overruled precedent that denied unnamed class members' reliance on named

representatives' established subject matter jurisdiction. *Allapattah*, 545 U.S. at 566 (overruling *Zahn v. Int'l Paper Co.*, 414 U.S. 291 (1973)). Where the named party can demonstrate the amount in controversy, it is unnecessary for the unnamed class members to replicate it. *Id.* at 559. Similarly, where a class representative can establish a sufficient nexus between the defendant, the forum, and the litigation, it is unnecessarily burdensome and duplicative to require unnamed class members to act as parties and demonstrate independent personal jurisdiction. While unnamed class members must satisfy subject matter jurisdiction for federal question jurisdiction, *Califano*, 442 U.S. at 701, the potential class here readily meets this standard, as they are seeking redress under the TCPA. Moreover, such a requirement is met through Rule 23's requirements of typicality and common questions of law and fact. *See id.* ("The issues involved are common to the class as a whole. They turn on questions of law applicable in the same manner to each member of the class."); Fed. R. Civ. P. 23(a).

Further, unnamed class members are considered parties only where fairness requires this result, and where failing to do so would "deprive nonnamed class members of the power to preserve their own interests." *Devlin*, 536 U.S. at 10. For example, this Court has treated unnamed class members as parties for the purpose of appealing a settlement decision to which they objected at a fairness hearing. *Id.* at 10. The Court reasoned that where individuals do not have the power to opt out of the action, they deserve some power to protect themselves from the results. *Id.* at 10–11. Similarly, unnamed class members do not choose where the named representative

brings suit. At such an early stage in the litigation, most potential class members are probably unaware that a suit exists at all, let alone taking the initiative to influence litigation strategy or even opt out. Thus, fairness supports extension of personal jurisdiction from the named representative to the unnamed class members because the named representative acts *on behalf of* the class members, and the named representative alone has the power to choose in what forum to file suit. *See Califano*, 442 U.S. at 700–01.

Unnamed class members are also treated as parties for statute of limitations purposes. *Am. Pipe & Const. Co.*, 414 U.S. at 552. If a potential class is not certified, the applicable statute of limitations is tolled. *Id.* One of the "principal function[s]" of a class action is to avoid "multiplicity of activity," and treating unnamed class members as parties for statute of limitations purposes avoids the need for each class member to intervene to preserve a future claim, should the present one fail. *Id.* at 551. A contrary rule would leave too much potential for unfair outcomes for the unnamed class members, many of whom may not even know the present suit is underway. *Id.* at 550–51. This same policy supports extending personal jurisdiction to unnamed class members because these individuals would similarly be forced to file duplicative suits to protect their interests.

Additionally, deeming unnamed class members parties for the purposes of personal jurisdiction is premature at the pre-certification stage of litigation. "'[A] nonnamed class member is [not] a party to the class-action litigation before the class is certified.'" *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 593 (2013) (quoting

Devlin, 536 U.S. at 16, n.1 (Scalia, J., dissenting)). Because the named representative is just that—a *representative*—they alone must establish jurisdiction. *See Am. Pipe & Const. Co.*, 414 U.S. at 550. Before the class begins arguments for certification, it is impossible to know exactly who will be included in the class, so the representative acts on the possible class's behalf. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812–813 (1985). It would be impractical to attempt to reach every *potential* class member before the certification process to confirm that they can establish the necessary relationship between the defendant, the litigation, and the forum that would support specific jurisdiction. *Ford Motor Co.*, 141 S. Ct. at 1028 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984)) (internal quotations omitted). Because unnamed class members are patently not parties at this stage in the litigation, these potential class members should be permitted to rely on Mrs. Cole's clearly established personal jurisdiction over Mr. Todd, thus allowing them the opportunity to seek certification and redress.

2. *Bristol-Myers* does not extend to class actions.

The majority below improperly relied on this Court's holding in *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017), to justify requiring unnamed class members to demonstrate independent personal jurisdiction, even in spite of the named class representative's existing personal jurisdiction over the defendant. R. at 11a. Under the present facts, *Bristol-Myers* provides little guidance, as that case arose in a very different context. *Bristol-Myers* originated in a California state court, and the plaintiffs were consumers who brought a products liability mass action against Bristol-Myers, a prescription drug manufacturer, through thirteen claims in

eight separate complaints. *Bristol-Myers*, 137 S. Ct. at 1778. By contrast, Mrs. Cole is bringing a nationwide class action arising under a federal statute in a federal court. R. at 3a. Class actions and mass actions are wholly different procedural vehicles. And, in the personal jurisdiction context, such distinctions matter. *Becker v. HBN Media, Inc.*, 314 F. Supp. 3d 1342, 1345 (S.D. Fla. 2018).

Lower courts have also limited *Bristol-Myers* in two significant ways, both of which are applicable to the case at bar. First, several courts have not extended *Bristol-Myers* to federal courts sitting in federal question jurisdiction. *Sloan v. Gen. Motors LLC,* 287 F. Supp. 3d 840, 859 (N.D. Cal. 2018); *In re Packaged Seafood Prods. Antitrust Litig.*, 338 F. Supp. 3d 1118, 1172 (S.D. Cal. 2018); *In re Takata Airbag Products Liab. Litig.*, 524 F. Supp. 3d 1266, 1278 (S.D. Fla. 2021). The importance of interstate federalism was a key underpinning of the Court's reasoning in *Bristol-Myers*. 137 S. Ct. at 1780–81 (noting that the Due Process clause acts as an instrument of interstate federalism and that the interest in federalism may be "decisive"). Thus, the core rationale that the led the Court to its holding in *Bristol-Myers* is inapplicable to claims arising under a federal statute, such as Mrs. Cole's TCPA claim. *Bristol-Myers* should not be extended to deprive a federal court of personal jurisdiction with a federal question because its holding rests on reasoning that is inapplicable to these circumstances.

Second, many federal courts have declined to extend *Bristol-Myers* to class actions. *Lyngaas*, 992 F.3d at 433; *Mussat*, 953 F.3d at 443; *Becker*, 314 F. Supp. 3d at 1344. Only two other Circuits—the Sixth and Seventh—have specifically

addressed whether unnamed class members must establish independent personal jurisdiction over a defendant with respect to their individual claims, and in both cases, the courts declined to extend the Court's narrow holding in *Bristol-Myers* to class actions. *Lyngaas*, 992 F.3d at 433; *Mussat*, 953 F.3d at 443. These cases emphasized the difference between a class action and a *Bristol-Myers* mass action. Unlike a mass action, a class action defendant "litigates against only the class representative." *Lyngaas*, 992 F.3d at 435. The class representative brings a singular, united suit against the defendant, requiring only one "unitary, coherent defense." *Id.* (quoting *Sanchez v. Launch Tech. Workforce Sols., LLC*, 297 F. Supp. 3d 1360, 1366 (N.D. Ga. 2018) (internal quotations omitted)). The Seventh Circuit similarly distinguished the two procedural vehicles as having "no analogue" because the coordinated mass action permits consolidation of individual cases, brought by individual plaintiffs, whereas the class action involves representatives litigating one action on behalf of the class. *Mussat*, 953 F.3d at 446. "Class actions, in short, are different from many other types of aggregate litigation, and that difference matters in numerous ways for the unnamed members of the class." *Id.* at 446–47.

The *Bristol-Myers* Court "was careful to cabin the scope of its decision," taking "pains" to limit its holding. *Lyngaas*, 992 F.3d at 434. In her dissent, Justice Sotomayor states that the majority *does not address* the issue of pendent party jurisdiction as it relates to class actions. *Bristol-Myers*, 137 S. Ct. at 1789 n.4 (Sotomayor, J., dissenting). Class actions proceed under Rule 23, which includes separate procedural requirements for plaintiffs, including numerosity, commonality,

typicality, and adequate representation. Fed. R. Civ. P. 23(a); *Mussat*, 953 F.3d at 446 (discussing the "careful procedural protections outlined in Rule 23"). *Bristol-Myers* should thus not extend its holding regarding aggregation of individual plaintiffs' claims to class actions because the class actions proceed under an entirely separate procedural framework.

The Court in *Bristol-Myers* was careful to explain that it was applying "settled principles of personal jurisdiction," not crafting a new rule. 137 S. Ct. at 1783. No "settled principle" has ever explicitly stated, nor even implied, that unnamed class members must demonstrate independent personal jurisdiction. Prior to *Bristol-Myers*, courts conducted personal jurisdiction tests, including minimum contacts and purposeful availment, to evaluate specific jurisdiction over a defendant in class actions *only* in relation to the named plaintiffs. *Mussat*, 953 F.3d at 445. This Court has previously opined on nationwide class action cases brought through specific jurisdiction without comment on any due process implications of unnamed class members' claims. *See*, *e.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) (defendant incorporated in Delaware with principal place of business in Arkansas, defending against class action in California); *Phillips Petroleum*, 472 U.S. 797 (defendant incorporated in Delaware with principal place of business in Oklahoma, defending against class action in Kansas). To read this meaning into *Bristol-Myers* where the Court emphasized its reliance on preexisting personal jurisdiction principles would be an unjustified expansion of the Court's limited holding.

B. Allowing Unnamed Class Members to Rely on the Personal Jurisdiction Established by the Named Class Representative Respects Defendants' Constitutional Due Process Rights.

The Due Process Clause of the Fourteenth Amendment provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. This clause lends itself to two analytically distinct types of constitutional protection: substantive and procedural. *United States v. Salerno*, 481 U.S. 739, 746 (1987). Within the protections of procedural due process, individuals may not be bound by courts that do not possess personal jurisdiction over them. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (citing *Int'l Shoe Co. v. Wash. Off. of Unempl. Compen. and Placement*, 326 U.S. 310, 319 (1945)).

Because Mr. Todd is a resident of West Dakota, the District Court does not possess general personal jurisdiction over him as a natural person. R. at 2a; *Walden*, 571 U.S. at 283 n.6. If a court does not have general jurisdiction, it may still assert personal jurisdiction through a showing of specific jurisdiction. *Goodyear*, 564 U.S. at 919 (quoting Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966)) (noting that "specific jurisdiction is confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction'").

Personal jurisdiction analyses take a two-pronged approach: (1) does the defendant have "sufficient contacts with the forum[?]" and (2) is it reasonable to exercise jurisdiction under the circumstances? *Daimler AG v. Bauman*, 571 U.S. 117, 144 (2014) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–78 (1985)). Unnamed class members need not be considered for the minimum contacts analysis

because, as a representative vehicle proceeding as a single litigating entity, the named class member's claim alone informs the relationship between the defendant, the forum, and the litigation. *See Shaffer*, 433 U.S. at 204. Moreover, it is reasonable to evaluate personal jurisdiction in reference to the named representative alone, and doing so does not violate notions of substantial justice and fair play. *See Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

1. Because of the representative nature of the class action, the defendant's minimum contacts with the forum should be evaluated in reference to the class as a single litigating entity.

The long-established benchmark for specific jurisdiction has been the "minimum contacts" test. *Int'l Shoe Co.*, 326 U.S. at 316. Generally, the defendant's contacts with the forum need to be such that it is "fair" to bind them in that forum. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984) (internal quotations omitted). To determine fairness in a minimum contacts analysis, courts focus on the overall "relationship among the defendant, the forum, and the litigation." *Shaffer*, 433 U.S. at 204. Thus, in the personal jurisdiction minimum contacts analysis, this Court must consider the unique nature of the class action mechanism and its impact on the defendant's relationship with the forum and litigation.

Rule 23 imposes substantial burdens on class certification to ensure that classes can appropriately litigate as a representative unit, *Wal-Mart Stores, Inc.*, 564 U.S. at 349, and these protections are grounded in due process, *Taylor v. Sturgell*, 553 U.S. 880, 901 (2008). Requiring the class to show numerosity, commonality, typicality, and adequate representation, Rule 23(a) allows one individual or a small

group of individuals to act on behalf of others. *Califano*, 442 U.S. at 700–01 (noting that Rule 23 "was designed to allow an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only"). Because the minimum contacts analysis has long been understood to evaluate the totality of the defendant's relationship with the litigation and forum, taking account of the nature of a class action does not disrupt defendants' traditional due process protections. *See BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1560 (2017) (Sotomayor, J., concurring in part and dissenting in part).

The named class representatives must, of course, meet the jurisdictional requirements of a traditionally structured suit, including minimum contacts if relying on specific jurisdiction. *See Allapattah*, 545 U.S. at 549. Indeed, Mr. Todd concedes that Mrs. Cole can demonstrate specific jurisdiction over her claim in the New Tejas district court. R. at 4a. And Petitioners are not arguing that the unique methods of the class action procedure would allow the Court to bypass any and all personal jurisdiction over a defendant. However, unnamed class members need not demonstrate independent specific jurisdiction over their own claims because they do not, in fact, *have* their own independent claims. *Lyngaas*, 992 F.3d at 435 (noting that in a class action, "the only 'suit' before the court is the one brought by the named plaintiff"). Rather, because the named plaintiffs litigate on behalf of all other class members and the action proceeds as a singular unit, the minimum contacts present between the defendant, the forum, and the named plaintiff's claim extends to the unnamed members through this representation. The burdens imposed on a potential

plaintiff class through Rule 23 ensure that defendants' due process rights remain protected in allowing named parties to bring a claim on behalf of the class. The District Court can exert personal jurisdiction over Mr. Todd because Mrs. Cole can demonstrate a sufficient relationship with the forum.

2. It is reasonable to exercise personal jurisdiction over a defendant in a nationwide class action where the named plaintiff can establish specific jurisdiction.

Beyond a defendant having certain contacts with a forum, the court's exercise of jurisdiction must be "reasonable" to require a defendant to adjudicate in the forum. *Int'l Shoe Co.*, 326 U.S. at 317. Determining reasonableness is not a mechanical or quantitative evaluation. *Shaffer*, 433 U.S. at 204. Rather, courts look to several factors to determine if the exercise of jurisdiction is reasonable, including whether the exercise complies with the traditional understanding of substantial justice and fair play. *World-Wide Volkswagen Corp.*, 444 U.S. at 292, 297. These relevant factors include the burden on the defendant, foreseeability, the plaintiff's interest in obtaining efficient relief, the judicial system's interest in ensuring efficient resolutions, and the general interest in substantive social policies. *Id.* It is reasonable to allow unnamed class members to rely on named representatives' personal jurisdiction, and doing so does not violate notions of substantial justice and fair play because the representative is acting on behalf of the class. *See Califano*, 442 U.S. at 700-01.

In the context of a class action, it is foreseeable that unnamed class members will rely on named representatives' established personal jurisdiction. Foreseeability, while not decisive, is a relevant factor in determining the reasonableness of a forum's

exercise of jurisdiction. *World-Wide Volkswagen Corp.*, 444 U.S. at 297. In *World-Wide Volkswagen Corp.*, the Court found that the foreseeability was too attenuated where the corporation did not operate or target sales in the forum State. *Id.* at 295. Nor did the company have any "contacts, ties, or relations" there. *Id.* at 312 (quoting *Int'l Shoe Co.*, 326 U.S. at 319 (internal quotations omitted)). Mr. Todd's situation is very different, however, and he should be able to foresee that he could be brought into a New Tejas court to answer for his alleged illegal conduct. Mr. Todd is the sole operator and shareholder of a New Tejas corporation, and he harassed New Tejas residents, as well as private individuals located across the country, using that New Tejas business. R. at 2a–3a.

In addition, where a named plaintiff in a class action can demonstrate personal jurisdiction over a defendant, that defendant suffers no additional burden by permitting the unnamed class members to rely on the established jurisdiction. *See World-Wide Volkswagen Corp.*, 444 U.S. at 292. Specific jurisdiction, as opposed to general jurisdiction, may be inconvenient for the defendant because a court can require the defendant to litigate where they are not "at home." *Goodyear*, 564 U.S. at 919. This inconvenience, however, does not invalidate that forum's jurisdiction, especially where other factors outweigh this burden. *See World-Wide Volkswagen Corp.*, 444 U.S. at 292 (citing *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957)) ("Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors[.]").

Through the certification requirements of Rule 23, courts permit a class to litigate as a single entity through a representative, acting in that entity's best interests on its behalf. *Phillips Petroleum Co.*, 472 U.S. at 812–13. Thus, the named representative's jurisdiction serves as the jurisdiction for the class entity, and the defendant suffers no more burden than if the named plaintiff alone brought suit. In fact, forcing each unnamed class member to demonstrate independent personal jurisdiction would actually be *more* burdensome because the defendant would then face suits in several different states, rather than a single, consolidated action.

Courts also consider the plaintiffs' interest in obtaining convenient, effective relief. Where an aggrieved claimant has no control over the forum in which their claim is being heard, their interest in relief becomes even more important. *World-Wide Volkswagen Corp.*, 444 U.S. at 292. The unnamed class members who were harassed by Mr. Todd's robocalls did not decide where to file the claim. Often, members of a class would not pursue relief if they had to bring suit individually, and recovery would likely be too low to make the prospect of litigating in a foreign forum worth the trouble. *McGee*, 355 U.S. at 223. In the interest of substantial justice, these unnamed class members should not have to demonstrate independent personal jurisdiction, as it would put them "at a severe disadvantage." *Id.* ("When claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum—thus in effect making the company judgment proof.").

Furthermore, allowing unnamed class members to establish personal jurisdiction through the named representative fosters the judicial system's interest in reaching efficient resolutions. *See World-Wide Volkswagen Corp.*, 444 U.S. at 292. The class has not been certified and potentially thousands of unnamed members have not even been identified yet. Requiring that the named plaintiff track down and gather information from such a numerous, dispersed class would be prohibitive of getting the class certified, effectively closing the door on the class action. Such a rule would also lead to bad substantive social policies, allowing defendants to evade class actions in any forum. *See id.* at 292 (citing *Kulko v. Cal. Superior Ct.*, 436 U.S. 84, 93 (1978)). This Court has taken notice of the effect personal jurisdiction has on allowing a corporation to become "judgment proof" from class actions. *McGee*, 355 U.S. at 223. Unnamed class members' reliance on the Mrs. Cole's established personal jurisdiction through the Mr. Todd's contacts with the forum and litigation thus fosters the notions of substantial justice and fair play, protecting Mr. Todd's constitutional due process.

C. Requiring Each Unnamed Class Member to Demonstrate Independent Personal Jurisdiction Would Frustrate the Purpose of the Class Action Mechanism by Leading to Inefficiency and Inequity.

The class action mechanism allows aggrieved individuals to pool their resources to achieve greater litigation posture than they could on their own. *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 266 (1972). Class actions are thus an equitable tool to allow parties to proceed in one collective suit where joinder of the interested individuals would be impracticable. *Hansberry v. Lee*, 311 U.S. 32, 41 (1940). Such impracticality may arise where "some [of those interested] are not within

the jurisdiction" of the court, yet the equitable principles underlying the class action support allowing the class to proceed. *Id.* Independent personal jurisdiction by unnamed class members is precisely the type of impractical procedure this Court sought to avoid, and prohibiting unnamed class members from receiving relief undermines the equitable principles out of which the class action was born. *See id.*

Adopting a rule that all class members must establish independent jurisdiction would effectively foreclose the possibility of certifying a nationwide class through specific jurisdiction. *Mussat*, 953 F.3d at 444. If this Court holds as such, then *only* general jurisdiction would be plausible in a nationwide class action because it would be impossible for unnamed class members to tie their specific harm to the forum. This should not be necessary because the class action often provides an avenue to relief where "conformity to the usual rules of procedure" is not an option, serving its function as an equitable tool. *Hansberry*, 311 U.S. at 41. This Court has previously recognized that imposing diversity requirements on unnamed class members would destroy "almost all class actions," and such a procedure is incompatible with the administration thereof. *Devlin*, 536 U.S. at 10. Where the named plaintiff pursuing the action can support certification of a nationwide class, the absence of independent jurisdiction by unnamed parties should not foreclose the plaintiff's right to seek such certification.

The overarching purpose of class actions is to consolidate and streamline the litigation process to reach equitable results. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 402 (2010) (noting that "Rule 23, [is] designed to

further procedural fairness and efficiency"). Requiring multiple suits would undermine this purpose either by unnecessarily dragging out and duplicating litigation or by allowing a culpable party to avoid repercussions. Such a result is discordant with the policy underlying class actions, and a new requirement of independent personal jurisdiction by unnamed class members should not be introduced to disrupt the efficiency and justice that the class action vehicle allows aggrieved individuals to pursue.

Moreover, named representatives should not be pigeon-holed into bringing their claims in a forum where they have general jurisdiction, even where they have an equally valid showing of specific jurisdiction elsewhere because "the plaintiff is absolute master of what jurisdiction he will appeal to[.]" *See Healy v. Sea Gull Specialty Co.*, 237 U.S. 479, 480 (1915); *Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913) ("the party who brings a suit is master to decide what law he will rely upon"). Not only is the named representative acting as a plaintiff on behalf of their own claim, but also to protect the interests of the voiceless class of unnamed members. *Phillips Petroleum Co.*, 472 U.S. at 812 ("[T]he Due Process Clause of course requires that the named plaintiff at all times adequately *represent the interests* of the absent class members.") (emphasis added). Because the class litigates through its representative, the unnamed class members would be deprived of the principle that plaintiffs "are the masters of their complaints." *Standard Fire Ins. Co.*, 568 U.S. at 595. This Court should not undermine this principle by disallowing any control the class representative has over the jurisdiction from which they seek redress.

Finally, requiring each unnamed class member to demonstrate independent personal jurisdiction undermines the representative nature of the class action. As this Court has long acknowledged, "[a] federal class action is no longer 'an invitation to joinder' but a truly representative suit[.]" *Am. Pipe & Const. Co.*, 414 U.S. at 550. Scholars point to this representative aspect of class actions to support extending the named representative's jurisdiction to unnamed class members. Diane P. Wood, *Adjudicatory Jurisdiction and Class Actions*, 62 IND. L.J. 597, 616 (1987) (arguing that if a class action is "pure representational action . . . the contacts supporting the individual's claim against the defendants should support the entire class's claims"). Wood's article, cited by Justice Sotomayor in her *Bristol-Myers* dissent, explains that the "practical cohesiveness of the litigating group" as a representative class supports extension of pendent party jurisdiction to unnamed class members. *Id.* at 622; *and see Bristol-Myers*, 137 S. Ct. at 1789 n.4 (Sotomayor, J., dissenting).

Class action jurisprudence highlights the importance of representation in the class action context. *Am. Pipe & Const. Co.*, 414 U.S. at 550; *Phillips Petroleum Co.*, 472 U.S. at 808, n.1; *Hansberry*, 311 U.S. at 41. Disallowing unnamed class members' reliance on the named representative's jurisdiction cuts the representative nature out from the administration of the class action. Named plaintiffs routinely carry the jurisdictional burden for the represented class members. *Devlin*, 536 U.S. at 10; *Allapattah*, 545 U.S. at 549. Where the named plaintiff can definitively establish jurisdiction, as Mrs. Cole can here, she establishes jurisdiction for the class she represents. Requiring independent personal jurisdiction on behalf of all unnamed

class members strips away the very principles the class actions were designed to protect, and this Court should not undermine the power of the procedural mechanism by adding requirements that were never contemplated nor implied in decades of class action jurisprudence.

II. THE FEDERAL COMMON LAW OF ALTER EGO JURISDICTION CONTROLS WHEN THE CLAIM ARISES UNDER FEDERAL LAW AND IS BROUGHT IN FEDERAL COURT.

The failure to pierce Spicy Cold's corporate veil and assume personal jurisdiction over Mr. Todd as the alter ego of Spicy Cold is contrary to the principles of equity and would undermine the uniquely federal interest of adjudicating federal claims in federal courts. Piercing the corporate veil is an equitable doctrine and courts consistently acknowledge that the corporate form may be set aside where, as here, the failure to do so would undermine the interests of justice and fairness. *See Anderson v. Abbott*, 321 U.S. 349, 362–63 (1944).

The question in this case, then, is not whether the district court would be justified in piercing the corporate veil to assume personal jurisdiction over Mr. Todd under the federal common law; the answer to that question is undoubtedly, yes. Even the court below acknowledged that because Mr. Todd utterly failed to "respect the corporate form" of Spicy Cold, "a court would readily pierce the corporate veil and hold Spicy Cold to be the alter ego of Mr. Todd." R. at 5a. The question in this case is whether the district court must apply the state law of New Tejas or the federal common law to pierce Spicy Cold's corporate veil and assert personal jurisdiction over Mr. Todd.

A. The Conflict of Law Should Be Resolved in Favor of the Federal Common Law of Alter Ego Jurisdiction.

A straightforward choice-of-law analysis is often used to resolve a conflict between the laws of a state and a federal court when hearing a case under diversity jurisdiction. *See Lakota Girl Scout Council, Inc. v. Harvey Fund-Raising Mgmt., Inc.,* 519 F.2d 634, 637 (8th Cir. 1975). However, in federal question cases, like the one before this Court, the choice-of-law analysis used to resolve a conflict between state and federal law demands a balanced inquiry into the nature of the interests asserted by each forum to determine which body of law controls. In this case, the federal common law has the most significant interest in asserting alter ego jurisdiction over claims that raise a federal question and must therefore control.

Although there is not a uniform method used in a choice-of-law analysis, there are common lines of inquiry that guide the choice-of-law analysis in cases that raise a federal question. This Court should therefore follow the Second, Fifth, Sixth, Ninth, and Eleventh Circuits and find that where a true conflict of laws exists, the federal common law dictates the rule for choice-of-law which, in this case, requires the application of the federal common law of alter ego jurisdiction. *See Eli Lilly do Brasil, Ltda. v. Fed. Express Corp.*, 502 F.3d 78, 80–81 (2d Cir. 2007); *Singletary v. UPS*, 828 F.3d 342, 351 (5th Cir. 2016); *DaimlerChrysler Corp. Healthcare Benefits Plan v. Durden*, 448 F.3d 918, 922 (6th Cir. 2006); *Schoenberg v. Exportadadora de Sal, S.A. de C.V.*, 930 F.2d 777, 782 (9th Cir. 1991); *Nguyen v. JP Morgan Chase Bank, NA*, 709 F.3d 1342, 1345 (11th Cir. 2013).

1. The conflict between the federal common law and the state law of New Tejas is significant and outcome determinative, requiring a choice-of-law analysis.

In any conflict of laws analysis, the first issue that needs to be addressed is whether there is a true conflict between the laws of different jurisdictions. *See Cooper v. Tokyo Elec. Power Co. Holdings*, 960 F.3d 549, 560 (9th Cir. 2020). A true conflict exists where each jurisdiction has a "legitimate but conflicting interest in applying its own law." *See id*. And, in deciding whether to apply the federal common law or state law, "normally the guiding principle is that a significant conflict between some federal policy or interest and the use of state law in the premises must first be specifically shown." *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63, 68 (1966).

In this case, the conflict of law exists between the substantive provisions of New Tejas' "extremely stringent standard for piercing the corporate veil and treating [Spicy Cold] as the alter ego of [Mr. Todd]," R. at 6a, and the more equitable standard for piercing the corporate veil found in the federal common law. The state of New Tejas applies an unusual test for its alter ego analysis, one that is exceedingly deferential to the corporate form and is out of step with the alter ego test for personal jurisdiction used by most other states. *See* R. at 5a. In New Tejas, the court will pierce the corporate veil and assert alter ego personal jurisdiction only when the corporation was "incorporated for the specific purpose of defrauding a specific individual." R. at 6a.

Not only does the substance of the law conflict in this case, the decision of which law to apply is also outcome determinative. In proceedings before both the District Court and the Court of Appeals, Mr. Todd conceded that under the federal

common law test he would be considered the alter ego of Spicy Cold and subject to the District Court's general jurisdiction. R. at 6a. On the other hand, Mrs. Cole will be left without recourse if the court applies the New Tejas test for alter ego personal jurisdiction because she cannot show that Spicy Cold was incorporated for the "*specific* purpose of defrauding a *specific* individual." R. at 6a (emphasis added). Therefore, it is imperative that this Court resolve the conflict of law in favor of the federal common law's equitable alter ego test.

After identifying that a true conflict exists, the choice-of-law analysis typically proceeds in two parts. First, the Court must determine which choice-of-law rules govern, and second, applying those rules, the Court must determine which forum's law applies. *Schoenberg*, 930 F.2d at 782. In this case, the District Court was confronted with a federal question brought pursuant to the TCPA, a federal statute. Unlike federal courts sitting in diversity jurisdiction, federal question jurisdiction does not require the court to reflexively apply the choice-of-law rules of the state in which it sits. *Cf. Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Rather, when a court is sitting in federal question jurisdiction, federal common law choice-of-law rules apply. *Ellis v. Liberty Life Assur. Co.*, 958 F.3d 1271, 1283 (10th Cir. 2020).

If a federal statute is silent on the applicable choice-of-law rule, courts often turn to the federal common law for a choice-of-law rule, which follows the principles set forth in the Restatement (Second) of Conflict of Laws. *Harris v. Polskie Linie Lotnicze*, 820 F.2d 1000, 1003 (9th Cir. 1987). The Second, Fifth, Sixth, Ninth, and Eleventh Circuits affirmatively endorsed the use of the Restatement (Second) of

Conflict of Laws as the touchstone for choice-of-law rules in federal question cases. *See Eli Lilly*, 502 F.3d at 81; *Singletary*, 828 F.3d at 351; *DaimlerChrysler Corp. Healthcare Benefits Plan*, 448 F.3d at 922; *Schoenberg*, 930 F.2d at 782; *Nguyen*, 709 F.3d at 1345. Although the TCPA is silent on the applicable choice-of-law rule that controls, this Court can similarly invoke the federal common law choice-of-law rule and follow the Restatement (Second) of Conflict of Laws to guide the choice-of-law analysis.

2. The choice-of-law rule in the Restatement (Second) of Conflict of Laws dictates that the conflict be resolved in favor of the federal common law.

The second part of the choice-of-law analysis requires the Court to determine which forum's law applies. *Schoenberg*, 930 F.2d at 782. The Restatement provides a "modern" framework for the choice-of-law analysis, meaning that it looks beyond the default application of the law of the forum where the controversy occurred, and instead considers the significance of the government interests as well as the equitable and efficient resolution of the controversy. *See* Katherine Florey, *Big Conflicts Little Conflicts*, 47 AZ. ST. L.J. 683, 722–27 (2015). Section 6(2) of the Restatement provides the factors that inform the choice-of-law analysis where there is no explicit statutory guidance. Restatement (Second) of Conflict of Laws § 6(2) (Am. L. Inst. 1971). These factors include the interests of the forums, the basic policies underlying the relevant field of law, and the need for certainty and uniformity of the result. Restatement (Second) of Conflict of Laws § 6(2)(a)–(g). Taken together, these factors form the "most significant relationship test" which essentially asks which forum has the most

significant relationship to the controversy. *Calhoun v. Yamaha Motor Corp., U.S.A.*, 216 F.3d 338, 346 n.14 (3d Cir. 2000).

Here, the TCPA is silent on the choice-of-law issue, so the next step is to analyze whether the state of New Tejas or the District Court of New Tejas has the most significant relationship to the controversy. The controversy in this case is whether Mrs. Cole can proceed with a nationwide class action brought pursuant to a federal statute that demands national uniformity. Nationwide class actions are a unique and complex procedural vehicle designed to eliminate procedural inefficiencies by applying a uniform rule of law to related claims. *Eubank v. Pella Corp.*, 753 F.3d 718, 719 (7th Cir. 2014). In so doing, class actions allow individual plaintiffs, who would otherwise have no incentive to litigate low-value claims, the opportunity for redress. *Id.*

The federal common law would best serve the goals of a nationwide class action brought in federal court because it provides a uniform and efficient rule for asserting alter ego jurisdiction. The need for uniformity and efficiency is especially critical in nationwide class actions where class members would otherwise be forced to file duplicative claims, potentially leading to different outcomes for similarly situated plaintiffs. *Devlin*, 536 U.S. at 10. Yet, if this Court affirms the decision of the court below, Mrs. Cole and all those whom she represents in this case would have no incentive to pursue their disaggregated claims and would be left to endure the relentless marketing tactics Mr. Todd devised to peddle his potato chips—tactics which appear contrary to the plain letter of the law. Applying the federal common

law will, moreover, be consistent with the equitable principles that underpin the alter ego doctrine. Piercing the corporate veil is an equitable remedy that "completely disregards th[e] statutory network creating and supporting corporate structures." *Macaluso v. Jenkins*, 95 Ill. App. 3d 461, 465 (1981) (internal citation omitted). But, the court below failed to acknowledge the equitable underpinnings of the alter ego doctrine.

In reaching its conclusion, the lower court incorrectly relied on § 302 and § 307 of the Restatement, which pertain to the powers and liabilities of a corporation and provide that courts should apply local law of the state of incorporation to resolve a question of alter ego liability. Restatement (Second) of Conflict of Laws §§ 302 (2), 307; R. at 14–15a. However, liability is not at issue at this stage of the proceeding. The narrow issue before this Court is whether the District Court can pierce Spicy Cold's corporate veil to assert personal jurisdiction over Mr. Todd. Moreover, when a court pierces the corporate veil, it must disregard the corporate form and any statutory protections that insulate the corporation from liability. *Macaluso*, 95 Ill. App. 3d at 465. Therefore, relying on a section of the Restatement that serves to *reinforce* the corporate form is misguided at best and completely undermines the equitable nature of the remedy at worst.

Adding to the lower court's flawed reasoning, a textual analysis of Restatement § 302 supports the conclusion that it was not intended to mandate the rigid application of the law of the state of incorporation in every case. *See* Gregory Scott Crespi, *Choice of Law in Veil-Piercing Litigation: Why Courts Should Discard the*

Internal Affairs Rule and Embrace General Choice-of-Law Principles, 64 N.Y.U. ANN. SURV. AM. L. 85, 111–12 (2008). Restatement § 302(2) creates an explicit exception to the application of the law of the state of incorporation when "some other [forum] has a more significant relationship to the occurrence and the parties[.]" Restatement (Second) of Conflict of Laws § 302(2). This language merely creates a rebuttable presumption that the law of the state of incorporation controls and explains that it can be overcome where, as here, there is another forum with a more significant relationship to the controversy. *See* Crespi, *supra* at 111–12.

After considering the factors set forth by the Restatement, it is clear that the application of the federal common law would be consistent with the policies underlying the equitable doctrine of piercing the corporate veil and would provide a uniform and efficient rule for asserting alter ego personal jurisdiction. To hold otherwise would frustrate and undermine these same principles. Moreover, Mrs. Cole's claim implicates significant federal interests under the TCPA, and because the Restatement provides that courts should apply the law of the form with the most significant relationship to the controversy, here, the federal common law must prevail.

B. The Underlying Controversy Implicates Significant Jurisdictional and Substantive Federal Interests.

Federal courts may invoke the federal common law whenever "federal interests are sufficiently implicated to warrant the protection of federal law." *United States v. Kimbell Foods*, 440 U.S. 715, 727 (1979). This principle follows from the Court's holding in *Clearfield Trust Co. v. United States*, which preserved the supremacy of

the federal common law in certain situations. 318 U.S. 363, 367 (1943). As this Court explained, federal courts may "fashion the governing rule of law according to their own standards" in the absence of a clear statutory directive to the contrary. *Id.* at 367. The Court's holding in *Clearfield Trust* applies with equal force to the equitable doctrine of piercing the corporate veil under the federal common law. Therefore, whenever a significant federal interest is implicated in the decision to pierce the corporate veil to assert personal jurisdiction, courts should apply the federal common law. *See id.*; *U.S. Through Small Bus. Admin. v. Pena*, 731 F.2d 8, 12 (D.C. Cir. 1984) (gathering authorities where a significant federal interest compelled the application of the federal common law of piercing the corporate veil).

The reasoning in *Clearfield Trust* is also consistent with the choice-of-law rules that dictate the application of the federal common law in this case. The Restatement provides that the interests of the forum should guide a court's analysis when resolving a conflict of law. Restatement (Second) of Conflict of Laws §6(2). And, in cases involving a conflict between the state law and the federal common law, federal courts have both a jurisdictional and substantive interest in relying on the test formulated under the federal common law. *Pena*, 731 F.2d at 12. In this case, the District Court has a significant jurisdictional interest in ensuring that federal claims are heard in federal courts. The District Court also has a significant substantive interest in asserting alter ego jurisdiction over Mr. Todd because the TCPA is a federal statute that demands national uniformity. These interests are "so committed by the Constitution and laws of the United States to federal control" that it is

appropriate to supersede conflicting state law with the federal common law. *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988).

Without acknowledging the significance of the federal interests implicated in this case, the Court of Appeals proceeded to apply the state law for piercing the corporate veil which sets a nearly impossible standard for plaintiffs to prove (i.e., requiring the plaintiff to show that a corporation was incorporated for the specific purpose of defrauding a specific individual). R. at 6a. The lower court's analysis was contrary to the choice-of-law rules advanced by *Clearfield Trust* and the Restatement (Second) of Conflict of Laws which require a careful, balanced analysis of the competing interests of the forums. Therefore, this Court should find that the significant federal interests in this case outweigh any countervailing state interest in piercing the corporate veil, and that the federal common law controls.

1. Applying the federal common law of alter ego jurisdiction ensures that defendants cannot evade the authority of federal courts.

Federal courts are, by design, courts of limited jurisdiction. *See* U.S. Const. art. III, § 2, cl. 1; *Cohens v. Virginia*, 19 U.S. 264, 404 (1821) ("[Federal courts] have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given."). Federal subject matter jurisdiction is grounded in both Article III of the Constitution as well as in specific grants from Congress, while personal jurisdiction is derived from the individual liberties written into the Due Process Clause of the Fourteenth Amendment. *See* U.S. Const. art. III, § 2; U.S. Const. amend. XIV, § 1. And, although the source of each jurisdictional authority is distinct,

personal jurisdiction and subject matter jurisdiction work in tandem to define the boundaries of the federal courts' jurisdiction to hear and adjudicate claims.

Federal courts are "courts of a common sovereign," meaning that the source of their authority resides in the Constitution. *See* A. Benjamin Spencer, *Nationwide Personal Jurisdiction for our Federal Courts*, 87 DENV. U. L. REV. 325, 327 (2010). As such, the jurisdiction to hear cases in federal courts, especially cases that raise federal questions, should be administered with national uniformity, not subject to the idiosyncrasies and inconsistencies of the states. Even respecting the bounds of federalism, this Court has long recognized "the importance, and even necessity of uniformity of decisions throughout the whole United States." *Martin v. Hunter's Lessee*, 14 U.S. 304, 347–48 (1816). The need for uniformity is most acute when considered in the context of a federal program that "'by [its] nature [is] and must be uniform in character throughout the Nation.'" *Kimbell*, 440 U.S. at 728 (quoting *United States v. Yazell*, 382 U.S. 341, 354 (1966)). Federal programs therefore "necessitate formulation of controlling federal rules." *Id*.

The federal common law is one way that federal courts can ensure the uniformity of jurisdictional decisions across the states. It can, moreover, serve as a backstop to inequitable or conflicting outcomes that may occur due to the application of the state law. For example, in *Sola Electric Co. v. Jefferson Electric Co.* the Court explained that local laws "will not be permitted to thwart the purposes of statutes of the United States." 317 U.S. 173, 176 (1942). In *Sola*, the tension in the law existed between the local law of estoppel and the prohibition on price fixing codified in the

Sherman Antitrust Act. *Id*. at 175. The Court explained that price fixing constituted a violation of the Sherman Antitrust Act, the federal statute designed to promote competition in the market, and that the consequences of violating a federal statute raise federal questions which should be answered by reference to the statute and federal policy. *Id*. at 176. Therefore, the Court concluded that when a state law interferes with "federal statute and policy, conflicting state law and policy must yield." *Id*.

And in *Anwar v. Dow Chemical Co.*, the Sixth Circuit affirmed that it is possible to decide federal claims under federal law and state claims under state law, even when both claims brought in the same cause of action. 876 F.3d 841, 846 (6th Cir. 2017). The petitioner in *Anwar* brought employment discrimination claims under both Title VII and Michigan's state employment laws. *Id*. In determining which standard—the federal common law or the state law—controlled for the purpose of asserting alter ego jurisdiction, the Sixth Circuit analyzed the question separately for each of the federal and state law claims. *Id.* at 848–51. In so doing, the court afforded the appropriate deference to the federal policies that informed Title VII, and the need to apply a uniform rule of decision to claims that arise under federal law. *Id.*

Just as in *Anwar* and *Sola*, the facts of this case clearly implicate the need for national uniformity in the federal courts. Subject matter jurisdiction and personal jurisdiction are the levers through which federal courts exercise their authority, and a defendant should not be allowed to manipulate the mechanisms of personal jurisdiction to insulate themselves from the reach of the federal court's power to

adjudicate a federal claim. As this Court stated in *Sola*, local laws "will not be permitted to thwart the purposes of statutes of the United States." 317 U.S. at 176. But that is precisely what the lower court has allowed Mr. Todd, through Spicy Cold, to do in this case. Personal jurisdiction is an essential element of a court's authority, and without it, the court is "powerless to proceed to an adjudication." *Emp'rs Reinsurance Corp. v. Bryant*, 299 U.S. 374, 382 (1937).

By refusing to apply the federal common law tos pierce Spicy Cold's corporate veil, the Court of Appeals effectively precluded the class from any opportunity to present the merits of their claim and insulated Mr. Todd from the jurisdictional reach of federal courts. Moreover, applying the state law of alter ego jurisdiction undermines the very reason that Congress granted federal courts federal question jurisdiction in the first place: to engage in the uniform administration of federal laws and provide a neutral forum for litigants to resolve their disputes. *See* Spencer, *supra* at 327.

2. The TCPA is a federal statute that seeks to remedy a nationwide harm and requires national uniformity.

Congress vested federal district courts with the power to hear claims that "arise under" federal law. 28 U.S.C. § 1331 (West 2021). In this case, Mrs. Cole alleges that Spicy Cold and Mr. Todd violated the TCPA, a federal law. And, Mrs. Cole's claim "arises under" federal law such that the District Court has the authority to adjudicate her claim. *See Mims v. Arrow Financial Services*, 565 U.S. 368, 377 (2012). In fact, this Court expressly affirmed such jurisdiction in its unanimous decision in *Mims* explaining that "nothing in the text, structure, purpose, or legislative history of the

TCPA calls for displacement of the federal question jurisdiction U.S. district courts ordinarily have under 28 U.S.C. §1331." *Id.* at 386–87. The lower court therefore erred by relying on cases that were brought under diversity jurisdiction because federal courts sitting in diversity jurisdiction are required to apply the law of the forum state. *Erie R.R. Co.*, 304 U.S. at 78; *Lakota Girl Scout Council*, 519 F.2d at 637. Even the *Erie* Court recognized that their holding would not carry equal weight where, as here, a federal court considers a claim arising out of federal law. *See Erie R.R. Co.*, 304 U.S. at 78.

Therefore, where claims arise under federal law and are adjudicated in federal court, it follows that in a conflict between the state and federal common law of alter ego jurisdiction, the federal law must control. *See Nat'l Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 850 (1985) (explaining that 28 U.S.C. § 1331's "statutory grant of 'jurisdiction will support claims founded upon federal common law as well as those of a statutory origin'") (quoting *Illinois v. City of Milwaukee*, 406 U.S. 91, 100 (1972)). The supremacy of federal law and federal common law is also appropriate in cases where a federal interest predominates, or a federal statute demands national uniformity. In such cases, the Court should designate the federal common law of alter ego jurisdiction as the controlling law.

The First, Second, and D.C. Circuit Courts of Appeals each adopted a federal common law standard for piercing the corporate veil when considering claims brought under a federal statute, and the reasoning of these Circuits should apply with equal force to the statute at issue in this case. In *Brotherhood of Locomotive Eng'rs v.*

Springfield Terminal Ry., for example, the First Circuit analyzed whether the state law or the federal common law of veil piercing applied to a labor dispute brought under the Railway Labor Act, 45 U.S.C.S. § 151. 210 F.3d 18, 25 (1st. Cir. 2000). While acknowledging the "fact-intensive" nature of the choice-of-law inquiry, the First Circuit nevertheless concluded that "if the federal statute in question demands national uniformity, federal common law provides the determinative rules of decision." *Id*. at 26.

The First Circuit also explicitly distinguished veil piercing under the federal statute from "ordinary state law veil piercing cases" and explained that it "served a different function" than it did in contract or tort claims. *Id*. at 30. Similarly, in *United States v. Peters*, the Second Circuit affirmed that "federal common law, not [state] law, presumably controls the question of whether the corporate veil should be pierced" because the case arose "under federal question jurisdiction and involves a federal statute that 'demands national uniformity[.]'" 732 F.3d 93, n. 4 (2d Cir. 2013) (quoting *Bhd. of Locomotive Eng'rs*, 210 F.3d at 25–26). And in *Capital Telephone Co. v. Fed. Communications Comm'n*, the D.C. Circuit affirmed that the corporate form can be disregarded in the interest of public convenience, fairness, and equity, and therefore applied the federal common law of veil piercing in light of the "broad equitable standard[s]" of the Communications Act of 1934 which directed the Federal Communications Commission (FCC) to "provide a fair and equitable distribution of radio service." 498 F.2d 734, 737–38 (D.C. Cir. 1974).

This Court has already determined that the TCPA implicates significant federal interests. *Mims*, 565 U.S. at 383. In the unanimous decision handed down in *Mims*, this Court examined the history and purpose of the TCPA and explained that Congress was motivated to enact legislation due to widespread consumer complaints about the abuses of telephone technology. *Id*. at 368. Private individuals were being harassed by relentless, automated, and "intrusive, nuisance [telemarketing] calls" and fax transmissions and Congress therefore determined that federal legislation was necessary to protect individual privacy and stem the tide of the unwanted communications. *Id*. at 372. And although certain states had already enacted laws to combat these abuses, Congress determined that a federal law was needed because "telemarketers [could] evade [state-law] prohibitions through interstate operations." *Id*. Congress therefore designed a private right of action which individuals can use to enforce the law by alleging a violation of the TCPA. *Id*. at 374. Moreover, the Court found that Congress not only created the right of action, it also "supplie[d] the substantive rules that will govern [in] the case." *Id*. at 372.

Another example of the significant federal interests implicated by the TCPA is that Congress delegated authority to the FCC, a federal agency, to draft and enforce regulations aimed at protecting the privacy of private phone numbers. *Id*. at 373–74. The FCC also has the power to create a national "do not call" system. *Id*. With these federal interests identified, the Court determined that the TCPA was not simply a gap-filling statute designed to plug any holes in state enforcement mechanisms. *Id*. at 370. But rather, by enacting the TCPA Congress set forth "detailed, uniform,

federal substantive prescriptions and provided for a regulatory regime administered by a federal agency." *Id.* at 383. Therefore, the Court cautioned, "Congress' design would be less well served if consumers had to rely on 'the laws or rules of court of a State' . . . to gain redress for TCPA violations." *Id.* (internal citations omitted).

Moreover, this Court's dicta regarding the deference to state corporate law when piercing the corporate veil in *United States v. Bestfoods*, 524 U.S. 51 (1998), and *Kimbell*, 440 U.S. 715, is not to the contrary. In *Bestfoods* and *Kimbell*, the Court affirmed the supremacy of federal common law when a federal interest predominates in a federal question case but declined to pierce the veil on the facts of those cases. *Bestfoods*, 524 U.S. at 63; *Kimbell*, 440 U.S. at 728–29. However, the decisions can be distinguished by the fact that in *Bestfoods*, the Court did not even reach the issue of whether the Sixth Circuit correctly applied the state law of alter ego to the federal question brought under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). 524 U.S. at 63 n.9. And in *Kimbell*, the Court merely found that the federal interest did not predominate over the statute and that the application of the state law would not undermine the purpose of the federal program. 440 U.S. at 729. The same cannot be said in this case. By allowing the New Tejas state law of veil piercing to control in this case, the lower court clearly and erroneously disregarded the Congressional intent behind the TCPA and undermined the significance of the federal interests this Court identified in *Mims*. Therefore, where the choice-of-law analysis requires the Court to apply the law of the forum with the most significant relationship to the case, and where this Court and Congress

articulated a predominant federal interest underpinning the TCPA, the federal common law must control.

C. Invoking the Federal Common Law to Pierce Spicy Cold's Corporate Veil and Assert Personal Jurisdiction over Mr. Todd Is Consistent with Due Process and Principles of Equity.

The choice-of-law analysis in this case dictates the application of the federal common law which would allow the District Court to pierce Spicy Cold's corporate veil and assert alter ego jurisdiction over Mr. Todd. This result is consistent with the Due Process Clause of the Fourteenth Amendment to the Constitution, and moreover, honors the equitable principles that inform the alter ego doctrine. If this court does not pierce the corporate veil and maintains Spicy Cold's corporate form, then Mrs. Cole and her class will suffer significant harm and be precluded from pursuing the merits of their claim.

1. Courts regularly assert alter ego jurisdiction when two entities are acting as one, recognizing that it is consistent with the Due Process Clause.

Regardless of whether a court seeks to acquire jurisdiction through specific or general jurisdiction, the requirement that a court possess personal jurisdiction over a defendant flows from the Due Process Clause of the Fourteenth Amendment to the Constitution. *See* U.S. Const. amend. XIV, § 1; *Ins. Corp. of Ir.*, 456 U.S. at 702. As this Court explained in *Insurance Corp. of Ireland*, "the personal jurisdiction requirement recognizes and protects an individual liberty interest." 456 U.S. at 702. The preservation of this individual liberty interest therefore restrains the reach of judicial power so that a court will not offend "traditional notions of fair play and

substantial justice" when exercising its authority to hear a claim against the defendant. *Milliken*, 311 U.S. at 463.

Federal courts have long held that alter ego jurisdiction does not offend the Fourteenth Amendment's Due Process Clause and is wholly consistent with the "traditional notions of fair play and substantial justice" required by the Constitution. *Id.*; *see Anwar*, 876 F.3d at 848 (noting that the "alter-ego theory of personal jurisdiction does not depart from traditional notions of due process"); *Patin v. Thoroughbred Power Boats*, 294 F.3d 640, 653 (5th Cir. 2002) (acknowledging that "it is compatible with due process for a court to exercise personal jurisdiction . . . when the individual or corporation is an alter ego or successor of a corporation that would be subject to personal jurisdiction in that court.").

As the Sixth Circuit explained in *Anwar*, "the crux of the alter-ego theory of personal jurisdiction . . . is that courts are to look for two entities acting as one." 876 F.3d at 848. But demonstrating that two entities are acting as one is a high standard to meet, even under the federal common law test. In *Anwar*, the plaintiff filed suit in Michigan against her employer alleging that she was unlawfully terminated due to her gender, religion, national origin, and marital status. *Id.* at 846. The plaintiff named a domestic subsidiary company of her international employer as the defendant in her Michigan lawsuit because the subsidiary was registered to do business in the state, but the subsidiary maintained that personal jurisdiction was lacking because it was not the alter ego of its parent company. *Id.* at 847–48.

The Sixth Circuit affirmed that alter ego jurisdiction is compatible with due process. *Id*. at 848. But given the significance of the due process issue, the court still needed to determine whether the two entities were operating as one. As the court explained, the "'unity of interest' . . . goes beyond mere ownership and shared management personnel," and extends to factors like shared addresses and phone lines, shared assets, shared books, and the exertion of significant control over the daily operations of the other company. *Id*. at 849 (quoting *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015)). The Sixth Circuit determined that the plaintiff in *Anwar* failed to meet this burden, but the court's adherence to the federal common law of alter ego jurisdiction ensured that the court did not violate the subsidiary company's right to due process under the law. *Id*. at 850.

The federal common law therefore stands to preserve a defendant's due process rights because a court will pierce the corporate veil and assert alter ego jurisdiction only when the facts of the case are sufficient to meet the standards set forth under the law. And, unlike the plaintiff in *Anwar*, Mrs. Cole can demonstrate facts that would support piercing Spicy Cold's corporate veil and asserting alter ego jurisdiction over Mr. Todd. There is no dispute that the District Court has general jurisdiction over Spicy Cold. Spicy Cold is incorporated in New Tejas, and this fact alone is enough to satisfy the standard for general jurisdiction. *See Goodyear*, 564 U.S. at 919. Therefore, if Mrs. Cole can satisfy her burden under the federal common law, Mr. Todd's due process rights will remain intact. As even the court below acknowledged, given the inextricable link between Mr. Todd and Spicy Cold, "a court would readily

pierce the corporate veil and hold Spicy Cold to be the alter ego of Mr. Todd" under the federal common law. R. at 5a. Mr. Todd is the sole shareholder of Spicy Cold. R. at 5a. He operated the company without a formal board of directors, used Spicy Cold's accounts to pay for his own personal expenses, and left Spicy Cold severely undercapitalized while attempting to market and sell his potato chips. R. at 5a. These facts are sufficient to justify piercing the corporate veil and asserting alter ego jurisdiction over Mr. Todd without disturbing his due process rights because Spicy Cold and Mr. Todd are clearly acting as one.

2. Equity demands that courts pierce the corporate veil when the failure to do so would result in a significant injustice.

The "dominant characteristic" of the business corporation is the potential of limited liability for investors. *See Baker v. Raymond Int'l*, 656 F.2d 173, 179 (5th Cir. 1979). As this Court has recognized, when it comes to corporate law, "limited liability is the rule, not the exception." *Anderson*, 321 U.S. at 362. The liability shield grants shareholders a measure of security to assume large undertakings, launch vast enterprises, and attract capital. *Id*. That said, limited liability is not a guarantee. *Id.* Courts will readily abandon the premise of limited liability and disregard the corporate form when doing so serves "the interests of justice where [the corporate form] is used to defeat an overriding public policy," *Bangor Punta Operations, Inc. v. Bangor Aroostook R.R. Co.*, 417 U.S. 703, 713 (1974), or "where equity requires the action to assist a third party," *McCarthy v. Azure*, 22 F.3d 351, 362–63 (1st Cir. 1994) (quoting William M. Fletcher, 3A Fletcher Cyclopedia of the Law of Private Corporations § 1135 (Sept. 2021)).

As this Court recognized in *Bestfoods*, it is an "equally fundamental principle of corporate law" that "the corporate veil may be pierced and the shareholder held liable for the corporation's conduct when, *inter alia*, the corporate form would otherwise be misused to accomplish certain wrongful purposes, most notably fraud, on the shareholder's behalf." 524 U.S. at 62. Under those circumstances, a court can invoke the equitable remedy of piercing the corporate veil to find that the parent corporation, or even an individual, operates as the alter ego of the subsidiary corporation. *Anderson*, 321 U.S. at 362.

This case proves the exception to the rule. By failing to maintain any degree of separation between himself and the company he runs, Mr. Todd forfeited his right to the benefits of limited liability. Federal courts should not be obliged to respect Spicy Cold's corporate form where Mr. Todd himself failed to do so. Moreover, Mrs. Cole and all those whom she represents will suffer a significant injustice if this Court enforces the corporate form. Corporations are, of course, creatures of state statutes and by choosing to incorporate in one state over another they are entitled to a certain degree of foresight for when they will be brought into court. But when corporations fail to abide by corporate formalities, they are no longer entitled to the benefits that would traditionally inure to them, such as limited liability.

Moreover, granting too much deference to the corporation would likely induce forum shopping so that corporations and their shareholders would seek out states, like New Tejas, with a body of law that is "extremely friendly" to the corporate form. And, as a result, corporations would be insulated from the reach of federal courts

while injured parties in a national class action would be left with few, if any viable options to pursue their claims. Finally, subjecting class action plaintiffs whose claims arise out of federal law to the inconsistencies in state law would undermine the purpose of federal statutes which, like the TCPA, were designed to remedy nationwide harms and to be administered in a uniform way. Therefore, this Court can find that piercing Spicy Cold's corporate veil and asserting personal jurisdiction over Mr. Todd is consistent with the principles of equity that inform the doctrine.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit, and remand to the United States District Court for the District of New Tejas for further proceedings.

Respectfully submitted,

/s/ Team 70
Petitioner-Appellant

APPENDIX

Constitutional Provisions

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

> 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[.]
>
> U.S. Const. amend. XIV, § 1.

Statutory Provisions

47 U.S.C. § 227 provides in pertinent part:

> (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[.]
>
> 47 U.S.C. § 227(b)(1)(B).

Federal Rules of Civil Procedure

Federal Rule of Civil Procedure 23 provides in pertinent part:

> (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.
>
> Fed. R. Civ. P. 23(a).

Restatement (Second) of the Conflict of Laws

The Restatement (Second) of the Conflict of Laws provides in pertinent part:

> Sec. 6. Choice-of-law principles
>
> (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include
>
> (a) the needs of the interstate and international systems,
>
> (b) the relevant policies of the forum,
>
> (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
>
> (d) the protection of justified expectations,
>
> (e) the basic policies underlying the particular field of law,
>
> (f) certainty, predictability and uniformity of result, and
>
> (g) ease in the determination and application of the law to be applied.

Restatement (Second) of Conflict of Laws § 6(2) (Am. L. Inst. 1971).