No. 19-5309

In the Supreme Court of the United States

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

Petitioner,

v.

LANCELOT TODD,

Respondent.

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

BRIEF FOR THE PETITIONER

TEAM NUMBER 90

NOVEMBER 15, 2021

COUNSEL FOR THE PETITIONER

QUESTIONS PRESENTED

I. In a nationwide class action, are nonnamed members considered parties when determining whether the court can exercise specific personal jurisdiction over the claims against the defendant?

II. When determining general personal jurisdiction where the state's long-arm statute extends to the constitutional limits of due process, is alter ego jurisdiction analyzed pursuant to state or federal law?

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The United States Court of Appeals for the Thirteenth Circuit's opinion affirming the decision of the district court is unreported, but it can be found at No. 19–5309 and in the record at p. 1a–22a. The order of the United States District Court for the District of New Tejas striking the nationwide class action can be found at D.C. No. 18-cv-1292.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Thirteenth Circuit entered judgment on May 10, 2020. Mrs. Cole filed a timely petition for a writ of certiorari, and this Court granted the petition on October 4, 2021. The Court's jurisdiction rests on 28 U.S.C. § 1292(e). *See Microsoft Corp. v. Baker*, 137 S. Ct. 1702 (2017) (Rule 23(f) authorizes permissive interlocutory appeal from adverse class certification orders in the discretion of the court of appeals).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the construction and application of Federal Rule of Civil Procedure 4 and the Due Process Clause of the Fifth Amendment to the United States Constitution. Relevant portions of these provisions are displayed in the Appendix.

STATEMENT OF THE CASE

Statement of Facts

This case is about a wealthy entrepreneur randomly robocalling individuals throughout the United States, interrupting their work and personal lives, to market an unsuccessful and bizarre potato chip. Lancelot Todd, an entrepreneur and promotor of new technologies, discovered a novel flavoring for potato chips that he calls "spicy cold." Record at 2a. The chemicals in the flavoring make the potato chips taste spicy while also causing a consumer's mouth to go numb from the "cold." R. at 2a.

Shortly after acquiring the rights to "spicy cold" flavoring, Mr. Todd incorporated "Spicy Cold Foods, Inc." ("Spicy Cold") under the laws of New Tejas. R. at 2a. Mr. Todd is the sole shareholder of Spicy Cold. Unsurprisingly, the potato chip was not popular. R. at 2a. After a few unsuccessful years for Spicy Cold, Mr. Todd tried advertising the potato chips through robocalls. R. at 3a. He bought an automatic telephone dialing system to call cellular phones and residential lines and play a pre-recorded advertisement about the "coolest chips ever made." R. at 3a.

On the receiving end of these calls were individuals throughout the country who had no connection to Mr. Todd, no interest in mouth-numbing potato chips, and had not consented to receiving the calls. Gansevoort Cole, a resident of New Tejas, was one of these individuals. R. at 3a. Mrs. Cole received at least ten phone calls from Spicy Cold, five on her cellular phone and five on her residential phone. R. at 3a. Like

many others around the country, Mrs. Cole had no relationship with Spicy Cold or Mr. Todd and had not consented to these calls. R. at 3a.

Nature of the Proceedings

Mrs. Cole sued Spicy Cold Foods Inc. and Mr. Todd in the district of New Tejas for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 277. R. at 3a. Mrs. Cole sued on behalf of herself and a class of persons across the United States who received similar calls from Spicy Cold. R. at 3a. Mrs. Cole is the only named plaintiff in this nationwide class action. R. at 3a. Jurisdictional discovery showed that Spicy Cold had virtually no assets, while Mr. Todd has considerable personal wealth. R. at 4a. Mr. Todd swiftly distributed dividends to himself whenever Spicy Cold made profits. R. at 4a.

Mr. Todd moved to strike the nationwide class allegations against him, as an individual, for lack of personal jurisdiction. R. at 4a. It is undisputed that the district court could exercise general personal jurisdiction over Spicy Cold because it is incorporated in New Tejas. R. at 4a. It is also undisputed that the district court could exercise personal jurisdiction over Mr. Todd with respect to the claims alleged by Mrs. Cole. R. at 4a. What Mr. Todd disputes is the ability for the court to exercise personal jurisdiction with respect to the claims against him alleged by the out-of-state, unnamed class members. R. at 4a. The district court agreed with Mr. Todd, holding that each member of a nationwide class action must demonstrate personal jurisdiction over the defendant with respect to their claim. R. at 11a.

As an alternative argument, Mrs. Cole argued that the district court could properly exercise general personal jurisdiction over Mr. Todd because he is the alter ego of Spicy Cold under federal common law and the alter ego theories of most states. R. at 5a. However, the district court held that the alter ego must be analyzed under state law for personal jurisdiction, not the federal common law. R. at 7a. Under New Tejas's theory of alter ego, a corporation may be a shareholder's alter ego *only if* the company is incorporated for the specific purpose of defrauding an individual. R. at 6a. Under this peculiar alter ego test, Spicy Cold is not the alter ego of Mr. Todd. R. at 6a.

Thus, the district court granted Mr. Todd's motion to strike the nationwide class allegations based on lack of personal jurisdiction. R. at 7a. The United States Court of Appeals for the Thirteenth Circuit affirmed the decision of the district court. R. at 16a. Mrs. Cole appealed the judgment of the Thirteenth Circuit and this Court granted certiorari. R. at 1.

SUMMARY OF THE ARGUMENT

Mr. Todd wants to capitalize on all the advantages of robocalling people and avoid all the consequences. The Telephone Consumer Protection Act ("TCPA") was enacted to protect citizens from unwanted calls that interrupt their work and leisure. Using his automatic telephone dialing system, Mr. Todd called Mrs. Cole five times on her cellular phone and five times on her landline, leaving her no escape from the annoyance and distraction. R. at 3a. Mr. Todd's robocalling also reached numerous citizens around the country, leading to this class action. Mr. Todd should not be

permitted to escape liability for illegal robocalls by exploiting the confusion around personal jurisdiction.

This Court should reverse the Thirteenth Circuit's decision to strike the nationwide class action for two reasons. First, the Thirteenth Circuit erred in finding that nonnamed members of a class action are considered parties when determining specific personal jurisdiction. Second, the Thirteenth Circuit erred in finding that the New Tejas alter ego test was the appropriate test for determining general personal jurisdiction over Mr. Todd.

This Court has made clear that nonnamed members of a class action are parties for some purposes and not others. For example, this Court and federal courts around the country have consistently disregarded nonnamed members of a class action when determining diversity jurisdiction because of the representative nature of class actions and policy behind Rule 23.

In a class action, the named representative acts as a single litigating entity with a unitary claim. Thus, the specific personal jurisdiction analysis is limited to the unitary claim with respect to the defendant and the named plaintiff–not the nonnamed members. This Court has considered the goals of class action litigation and the diversity jurisdiction requirements and ultimately decided that nonnamed class members are not parties for determining diversity jurisdiction because it would destroy diversity in most nationwide class actions. In order to preserve the Rule 23 class action as a viable option to litigate claims, this Court should likewise extend its

holding to disregard nonnamed members when determining specific personal jurisdiction.

Even if the Court determines that all members of a class action must establish specific personal jurisdiction, the Court should still reverse the decision of the Thirteenth Circuit because the district court could have exercised general personal jurisdiction over Mr. Todd. When, as here, a shareholder is the alter ego of a corporation, it is consistent with due process to impute the corporation's contacts to the individual. So, where a corporation is subject to general personal jurisdiction, the alter ego shareholder is also subject to general personal jurisdiction. Alter ego theories come from state and federal law. The proper test for analyzing alter ego in this case is the federal common law because the personal jurisdiction analysis here is a matter of construing the Due Process Clause of the Fifth Amendment and thus is a uniquely federal interest. The New Tejas state alter ego test has no application in analyzing constitutional due process in a case arising under federal law in federal court.

If the Court affirms the decision of the Thirteenth Circuit, it will call into question decades of its own established personal jurisdiction precedent. Additionally, it will reward the wealthy entrepreneur, Mr. Todd, for making thousands of unwanted robocalls about his potato chip–violating the TCPA.

ARGUMENT

A federal court must have personal jurisdiction over a defendant to have authority to adjudicate the rights and obligations of the defendant. When a plaintiff chooses to file suit in a state in which the defendant does not reside and has no connection, the defendant may have to make many sacrifices to defend himself, which can be unfair. The doctrine of personal jurisdiction primarily attempts to protect defendants from this risk of fundamental unfairness. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 (1985). There are two independent ways a court may have personal jurisdiction over a defendant: (1) general personal jurisdiction; and (2) specific personal jurisdiction.

General personal jurisdiction considers only the relationship between the defendant and the forum state–it does not consider the nature of the claims. Thus, if a defendant is subject to general personal jurisdiction in the applicable forum state, the court may adjudicate any claims against the defendant, regardless of where the alleged injuries occurred.

If general personal jurisdiction is lacking, the court will look to specific personal jurisdiction, which considers the relationship between the defendant, the forum, and the litigation. *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cty.*, 137 S. Ct. 1773, 1779 (2017). In other words, the exercise of jurisdiction is specific to the particular claim against the defendant. *Id.* at 1780. Every state has a long-arm statute that dictates the exercise of personal jurisdiction over non-resident defendants. Federal Rule of Civil Procedure 4(k)(1) incorporates

the state's long arm statute to apply in federal courts in that state. *See* Fed. R. Civ. P. 4(k)(1). If the state's long-arm statute authorizes the exercise of personal jurisdiction to the limitations of the Due Process Clause, the analysis for specific personal jurisdiction collapses into one. For the exercise of specific personal jurisdiction to be consistent with due process, the claim must arise out of or be connected to the defendant's contacts with the forum state.

A federal court's exercise of personal jurisdiction on either basis is limited by the Due Process Clause of the Fifth Amendment. U.S. Const. amend V. Thus, as an additional requirement, maintenance of the suit in the forum must be fair and reasonable. In the present case, the district court in New Tejas could have exercised general personal jurisdiction or specific personal jurisdiction over Mr. Todd.

I. Nonnamed members of a class action are not required to demonstrate specific personal jurisdiction over their claims with respect to the defendant.

The district court in New Tejas could have exercised specific personal jurisdiction over Mr. Todd because the lawsuit at issue arose out of his connections with New Tejas. He incorporated his potato chip business, Spicy Cold, in New Tejas. Through Spicy Cold, he used an automatic telephone dialing system to pester citizens around the country. One of these citizens was Mrs. Cole, who is also a resident of New Tejas.

The Supreme Court in *International Shoe* recognized that when a corporation exercises the privilege of conducting business in a state, the exercise of that privilege may give rise to obligations such as responding to a suit in that state. *International*

Shoe Co. v. State of Washington, 326 U.S. 310, 319 (1945). Mrs. Cole's claims against Mr. Todd for violations of the TCPA arise out of his connections with New Tejas. Arguably, so do the claims of the unnamed plaintiffs. However, nonnamed members of a class action are not required to assert a basis for the court's exercise of specific personal jurisdiction with respect to their claims because (1) Supreme Court precedent indicates that nonnamed class members are not parties for jurisdictional purposes; (2) the representative nature of the class action permits the court to assess personal jurisdiction with respect to the named member and not the represented members; and (3) the alternative decision would render nationwide class actions categorically invalid.

A. Nonnamed members of a class action are not considered parties for jurisdictional purposes.

Class actions are a unique judicial mechanism that allow a named plaintiff to represent absent class members in a suit against a defendant that has caused common harm to all plaintiffs in the class. *See Lyngaas v. Ag*, 992 F.3d 412 (6th Cir. 2021). Absent class members "may be parties for some purposes and not for others," while the named plaintiff is a true party for all purposes. *Devlin v. Scardelletti*, 536 U.S. 1, 9–10 (2002). Nonnamed class members are parties in the sense that the filing of a suit on their behalf tolls the statute of limitations against them. *See American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974). Nonnamed class members are also parties in the sense of being bound by a judicial decision or settlement. *Devlin*, 536 U.S. 1, 10 (2002). However, nonnamed class members are not considered parties when evaluating diversity of citizenship, amount in controversy, or venue.

1. Nonnamed members of a class action are not considered parties for determining subject-matter jurisdiction.

In a class action of trustee plaintiffs seeking a declaratory judgment regarding a retirement plan's authority to bind participants, this Court determined that the nonnamed trustees in the class were properly disregarded as "parties" when the district court was evaluating diversity of citizenship for diversity jurisdiction. *Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002).

In *Devlin*, this Court weighed the goals of class action litigation and the requirements of diversity jurisdiction and determined that the goals of class action litigation are best upheld by only evaluating diversity jurisdiction based on the named class members. First, considering all class members for diversity of citizenship purposes would "destroy diversity jurisdiction" in "almost all class actions." *Id.* Second, and consequently, the goals and benefits of class action litigation in federal court would be thwarted. Class actions allow plaintiffs to pool claims that would be uneconomical and inconvenient to litigate individually. *Phillips Petroleum Co. v. Shutts*, 477 U.S. 797, 809 (1985). Additionally, class actions allow simplicity in litigating similar or identical claims of numerous plaintiffs against a common defendant. *Devlin*, 536 U.S. at 10. To uphold these goals and preserve the convenient judicial mechanism, the Court in *Devlin* determined that disregarding nonnamed class members when evaluating diversity jurisdiction context protects the Rule 23 class action as a judicial option. *Id.*

Furthermore, nonnamed parties are not considered parties for the amount-in-controversy requirement. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546,

566–67 (2005). As long as the named representative individually meets the amount-in-controversy requirement, jurisdiction exists over the claims of all members, including the unnamed ones. *Id.*

Courts have even held that in subject-matter jurisdictional inquiries, absent class members are not considered parties at all. *See Lyngaas v. Ag*, 992 F.3d 411, 437 (6th Cir. 2021). The Court held this even though subject-matter jurisdiction is a constitutional and statutory requirement. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). Subject-matter jurisdiction "is perhaps more fundamental than personal jurisdiction because it cannot be waived or forfeited." *Lyngaas*, 992 F.3d at 437 (citing *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, (2006)). Thus, these holdings present a clear extension in the personal jurisdiction context.

2. Nonnamed members of a class action should likewise not be considered parties for determining specific personal jurisdiction.

Deciding that nonnamed members of a class action are not parties for determining specific personal jurisdiction is consistent with this Court's precedent and is well-reasoned.

For the same reasons this Court determined that nonnamed members of a class action are not parties for diversity jurisdiction, they should not be parties for determining specific personal jurisdiction over a defendant. If each nonnamed class member had to demonstrate the court's ability to exercise specific personal jurisdiction over the defendant with respect to their individual claims, nationwide class actions would be rendered virtually invalid. To preserve the purposes and goals

of class actions and uphold the validity of class actions as a litigation route, this Court must follow its own precedent.

This Court has repeatedly echoed that the focus of the specific personal jurisdiction inquiry is the defendant's contacts with the forum. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); *Bristol-Myers*, 137 S. Ct. at 1779. In *Shutts,* this Court held that a court "may exercise jurisdiction over the claim of an absent class-action plaintiff, even though that plaintiff may not possess the minimum contacts with the forum which would support personal jurisdiction over a defendant." *Shutts*, 472 U.S. at 811. In *Schutts*, this Court distinguished between the requirements imposed on a class action defendant and the class action nonnamed plaintiffs. *See id.* at 810–811. In fact, the Court noted that "[u]nlike a defendant in a normal civil suit, an absent class-action plaintiff is not required to do anything. He may *sit back* and allow the litigation to run its course. . ." *Id.* at 810.

Historically, this Court has "regularly entertained cases involving nationwide classes where the plaintiff relied on specific, rather than general, personal jurisdiction in the trial court, without any comment about the supposed jurisdictional problem." *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 445 (7th Cir. 2020) *cert denied*, 141 S. Ct. 1126 (2021) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), a nationwide class action brought in a federal court in California in which the defendant was headquartered in Arkansas and incorporated in Delaware). In sum, "[d]ecades of case law show that ... the practice of federal courts has not required the

analysis of specific personal jurisdiction with respect to nonnamed class members." *Id.*

Recently, *Bristol-Myers* established the newest standards for specific personal jurisdiction as applied to mass tort actions. But *Bristol-Myers* does not change anything for class actions.

B. *Bristol-Myers* does not apply to class actions because of the distinct requirements of Rule 23 and the representative nature of a class action.

Bristol-Myers is inapplicable to the present case and class actions in general because, as a practical matter, a defendant only litigates against the class representative(s) in a class action.

1. Rule 23 class actions in federal court are distinct from a consolidated mass tort action in state court.

In *Bristol-Myers*, hundreds of plaintiffs filed eight separate complaints in California state court, asserting state tort claims against a California drug manufacturer. *Bristol-Myers*, 137 S. Ct. at 1778. Only a fraction of the plaintiffs were residents of California. *Id.* The separate complaints were assigned as a coordinated action to a state trial-court judge. *See Bristol-Myers Squibb Co. v. Superior Court*, 1 Cal. 5th 783 (2016). The nonresident plaintiffs did not argue that they obtained the drug, sustained injuries, or received treatment in California. *Bristol-Myers*, 137 S. Ct. at 1778. This Court held that the California court lacked specific personal jurisdiction because the mere fact that resident plaintiffs sustained the same injuries as nonresident plaintiffs could not assert specific personal jurisdiction over the nonresidents' claims. *Id.* at 1781.

This Court carefully limited its decision in *Bristol-Myers*, noting that the decision did not address "whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court." *Id*. at 1780–84. It also did not discuss whether the same result would apply to a Rule 23 class action. *See id*. at 1789 n.4 (Sotomayor, J., dissenting) ("[T]he Court today does not confront the question whether its opinion here would also apply to a class action.").

This Court's precedent and the unique nature of Rule 23 class actions guide the Court to reject the extension of *Bristol-Myers* to class actions.

While the consolidated mass tort action in *Bristol-Myers* was authorized as a procedural tool under the California Civil Procedure Code, it "has no analogue in the Federal Rules of Civil Procedure." *Mussat*, 953 F.3d at 446. Rule 23 class actions are distinct from such state court mass-tort actions in several respects. *Lyngaas*, 992 F.3d at 435.

Importantly, plaintiffs in a mass tort case differ from the unnamed members of a class action which are not considered parties for important jurisdictional issues such as diversity and the amount in controversy. *Wiggins v. Bank of America, North America*, 488 F. Supp. 3d 611, 628 (S.D. Ohio 2020), *reconsideration denied sub nom*. *Wiggins v. Bank of Am., N.A.*, No. 2:19-CV-03223, 2021 WL 4398076 (S.D. Ohio Sept. 27, 2021). In contrast, in a mass tort case like *Bristol-Myers*, plaintiffs individually file complaints and their claims can be consolidated. *Bristol-Myers*, 137 S. Ct. at 1778.

In a class action, the named plaintiff becomes a representative of absent class members only after following certification procedures required by Rule 23. Rule 23

requires common questions of law or fact, that the class representative's claims are typical to the class's claims, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23. Meanwhile, mass tort cases like the one in *Bristol-Myers* do not have any certification requirements at the outset of the case.

Class-action procedures allow district courts to treat the class as a single litigating entity represented by one representative. *Lyngaas*, 992 F.3d at 437. Because of this, Rule 23 class actions are a closer analogue to other representative forms of litigation.

2. Disregarding nonnamed parties for determining personal jurisdiction is consistent with common practice in other representative forms of litigation.

The Rules of Civil Procedure permit a variety of representatives to sue in their own names on behalf of another party, including executors, administrators, guardians, and trustees. *See* Fed. R. Civ. P. 17(a)(1). In these situations, courts will assess personal jurisdiction with respect to the named person, not with the person being represented. *Mussat*, 953 F.3d at 448. The same should be true with class actions. If a federal court has specific personal jurisdiction over a defendant with respect to the class representative's claims, the case may proceed notwithstanding the unnamed class members. *Id.*

The requirements of Rule 23 ensure that the defendant in a class action suit will be faced with a consolidated claim. *See Lyngaas*, 992 F.3d at 437. Thus, the defendant need not present a nationwide defense. Rule 23's requirements ensure that

the defendant is litigating a unitary claim in a class action, inherently protecting defendants' due process rights. *Sotomayor v. Bank of Am., N.A.*, 377 F. Supp. 3d 1034, 1038 (C.D. Cal. 2019). So, while members of a class have common injuries, there is essentially only one "claim" in a class action that is presented by the class representative. Consequently, when courts consider whether a claim arises out of or relates to the defendant's contacts with the forum, the court need only analyze the central claim of the named plaintiff who simply represents the absent class members. *Id.* at 433.

In the present case, the plaintiffs have presented a unitary claim under the TCPA for illegal phone calls. Thus, this class action does not impede on Mr. Todd's due process rights. Mr. Todd made illegal robocalls to individuals around the country. Although the legal injuries occurred in many states, it is unnecessary to evaluate the claim with respect to each nonnamed member of the class action because the nonnamed members of the class are not considered parties for jurisdictional purposes.

C. Holding that nonnamed members are parties for personal jurisdiction purposes would cause a dramatic change in the federal landscape of personal jurisdiction and class actions.

Although the Supreme Court has yet to address the issue of specific personal jurisdiction with respect to nonnamed plaintiffs, the vast majority of district courts and the only two circuit courts to have reached the issue—the Sixth and Seventh Circuits—have determined that *Bristol-Myers* does not apply to class actions and that nonnamed members are not parties for analyzing specific personal jurisdiction. *See, e.g., Lyngaas*, 992 F.3d at 433; *Mussat*, 953 F.3d at 443; *Carranza v. Terminix Int'l*

Co. Ltd. P'ship, 529 F. Supp. 3d 1139 (S.D. Cal. 2021) ("The [c]ourt is not convinced that the holding in *Bristol-Myers* reaches unnamed plaintiffs in a class action brought in federal court alleging claims under federal law."); *Schertzer v. Bank of Am., N.A.*, 445 F. Supp. 3d 1058, 1081 (S.D. Cal. 2020) (declining to extend *Bristol-Myers* to class actions and denying defendant's motion to dismiss claims of putative non-California class members for lack of personal jurisdiction); *Sousa v. 7-Eleven, Inc.*, No. 19-CV-2142 JLS, 2020 WL 6399595, at *3 (S.D. Cal. Nov. 2, 2020) (holding "*Bristol-Myers* does not apply to unnamed class members in a putative federal class action" and distinguishing class action from a mass tort where each plaintiff is named in the complaint); *In re Morning Song Bird Food Litig.*, No. 12CV01592 JAH-AGS, 2018 WL 1382746, at *5 (S.D. Cal. Mar. 19, 2018) ("While the claims of the non-resident named plaintiffs were pertinent to the issue of specific jurisdiction in *Bristol-Myers*, claims of unnamed class members are irrelevant to the question of specific jurisdiction."); *Sotomayor v. Bank of Am., N.A.*, 377 F. Supp. 3d 1034, 1037 (C.D. Cal. 2019) ("Although the Ninth Circuit has not addressed this question, the weight of authority examining this issue has concluded that *Bristol-Myers* does not apply to class actions.").

Thus, if this Court were to accept Mr. Todd's arguments, the holding would constitute a "major change in the law of personal jurisdiction and class actions." *Mussat*, 953 F.3d at 448. There has long been a "general consensus" that due process principles do not prohibit a plaintiff from seeking to represent a nationwide class in federal court on specific jurisdiction grounds. *Id.* at 445.

However, some district courts have applied *Bristol-Myers* to the class action context. *See, e.g.*, *Maclin v. Reliable Reps. of Texas, Inc.*, 314 F. Supp. 3d 845, 850 (N.D. Ohio 2018). In *Maclin*, the plaintiff filed a complaint on behalf of himself and coworkers who were routinely working 50 to 60-hour weeks and were not paid overtime. *Id.* at 847–48. The plaintiff sought to certify a nationwide collective under the Fair Labor Standards Act, 29 U.S.C. § 201 ("FLSA"). *Id.* at 848. Most of the employees who joined under the FLSA collective had no connection to Ohio, the forum state. *Id.* The court in *Maclin* ultimately held that *Bristol-Myers* applies to FLSA claims, and that it divested the court of specific personal jurisdiction over the claims of non-Ohio plaintiffs against the defendant. *Id.* at 850. However, *Maclin* is not controlling in the present case because it is an FLSA case which is not governed by Rule 23.

FLSA cases are governed by statutes allowing only for opt-in class actions, which are fundamentally different from Rule 23 class actions. Opt-in classes are more akin to collective actions like in *Bristol-Myers* than opt-out class actions like the present one. *Progressive Health & Rehab Corp. v. Medcare Staffing, Inc.*, No. 2:19-CV-4710, 2020 WL 3050185 at *4 (S.D. Ohio June 8, 2020) ("[E]ven if this Court were to accept the proposition that *Bristol-Myers* applies to FLSA collective actions, the reason for its application to those types of cases would not exist in Rule 23 class actions, which are different from other types of aggregate litigation.").

Mussat and *Progressive Health* both involved Rule 23 class actions under the TCPA, like the present case. *Mussat*, 953 F.3d at 446–57; *Progressive Health*, 2020

WL 3050185 at *1. Thus, those cases are more persuasive authority and more applicable to the present dispute. This Court should follow the Sixth and Seventh Circuit's lead and hold that *Bristol-Myers* does not apply to class actions and that nonnamed members are not parties for analyzing specific personal jurisdiction

D. Rule 23 does not "abridge, enlarge, or modify" any substantive rights.

The Rules Enabling Act provides that federal procedural rules "shall not abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b). Rule 23 does not violate the Rules Enabling Act, and neither does Rule 17.

If each claim in this class action were asserted in a separate lawsuit, New Tejas would not have specific personal jurisdiction over all of them, but Mr. Todd would have to pay damages in every state where he is held liable. The ability for the New Tejas court to exercise specific personal jurisdiction over Mr. Todd in this class action does not abridge any of his due process rights and does not enlarge any of the unnamed members' rights.

As discussed *supra*, Rule 23 class actions and Rule 17(a)(1) lawsuits are representative in nature. Representative litigation mechanisms do not offend the defendant's due process rights because the litigation is merely simplified. The defendant has one lawsuit to answer to, and one forum to travel to.

Rule 23 class actions do not enlarge any rights of the nonnamed members of the class because they could have brought separate claims in any of the states they reside in and were injured in. In the present case, each plaintiff could have filed

claims in their home states where they received phone calls. So, nonnamed members' rights are not affected at all by Rule 23.

Rule 23 has inherent protections for defendants' due process rights and should be interpreted in line with the Rules Enabling Act. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997).

E. Disregarding nonnamed parties when determining personal jurisdiction preserves nationwide class actions as a judicial option.

This Court's precedent and the nature of Rule 23 class actions suggest the correct holding: that nonnamed parties are not considered parties for purposes of determining specific personal jurisdiction. The alternative decision erodes nationwide class actions.

If courts must analyze specific personal jurisdiction with respect to each claim of each member of the class, courts would not be able to adjudicate claims of nonnamed, non-resident class members. Not only would this be a major change in the law of personal jurisdiction, but it would also eradicate many nationwide class actions. *Mussat*, 953 F.3d at 448.

Rule 23 class actions benefit litigants and the courts. Class actions reduce the costs of litigation because plaintiffs can spread the costs amongst themselves. Class actions promote uniformity by allowing similarly situated plaintiffs to recover in a similar manner. Class actions are determined in one court, saving courts across the country time and judicial resources required to litigate the claims separately. Class actions also benefit defendants. Claims against the defendant are litigated in one setting, saving time and money required to defend numerous additional lawsuits.

Like the present case, violations of the Telephone Consumer Protection Act are most conveniently litigated by utilizing the Rule 23 class action. Violations of the TCPA will often impact individuals in various states, like Mr. Todd's actions did. Mr. Todd harassed people across the country about his unpleasant potato chip using his automatic telephone dialing system. Mr. Todd used the automatic telephone dialing system to initiate unsolicited calls to nonconsenting individuals, repeatedly interrupting their work and leisure–acts that are unlawful under the Telephone Consumer Protection Act. 47 U.S.C. § 227. His illegal robocalls reached various states, so plaintiffs from numerous states have legal injuries to complain of. Rather than being bombarded with hundreds of lawsuits around the country, Mr. Todd has been sued in a class action with one named plaintiff and one forum to travel to. The Rule 23 class action is the most convenient method to litigate the present suit for all parties involved.

Mr. Todd does not have to travel to all the forums he caused harm in; Mr. Todd has isolated legal fees; Mr. Todd must only present a single defense; the plaintiffs can spread the costs of their litigation across the class; Mrs. Cole can recover on her claims and represent the interests of unnamed class members; and only one court is tasked with litigating a suit over frosty-potato-chip spam calls.

In sum, this Court should hold that the district court of New Tejas could exercise specific personal jurisdiction in this case because the nonnamed members of the class are not considered parties for determining specific personal jurisdiction. This decision is consistent with this Court's specific personal jurisdiction precedent,

well-reasoned in light of the representative nature of Rule 23 class actions, and creates the most just outcome in this case and future class actions.

II. The Court should use the federal common law theory of alter ego to evaluate general personal jurisdiction over Mr. Todd.

Even if it were necessary for the district court to have specific personal jurisdiction over Mr. Todd with respect to the unnamed class members, the district court could have exercised general personal jurisdiction over Mr. Todd using the alter ego doctrine of personal jurisdiction.

Generally, litigants are subject to general personal jurisdiction where they are "essentially at home." *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Assuming subject matter jurisdiction and standing are established, general personal jurisdiction allows a court to litigate any and all claims against a defendant, regardless of the location of his conduct or the connection the plaintiffs' injuries have to the forum. For individuals, the "essentially at home" test is the person's domicile. *Id.* A corporation is "essentially at home" where it is incorporated and where its principal place of business is located. *Id.* So, Mr. Todd would normally only be subject to general personal jurisdiction in West Dakota, his domicile. However, Spicy Cold is incorporated in New Tejas and thus is subject to general personal jurisdiction in New Tejas.

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

See e.g., Patin v. Thoroughbred Power Boats Inc., 294 F.3d 640, 653 (5th Cir. 2002); *Est. of Thomson ex rel. Est. of Rakestraw v. Toyota Motor Corp. Worldwide*, 545 F.3d 357 (6th Cir. 2008); *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1072 (9th Cir. 2015); *Newport News Holdings Corp. v. Virtual City Vision, Inc.*, 650 F.3d 423, 433 (4th Cir. 2011). The theory underlying these cases is that, because the corporation and the individual are essentially the same entity, the jurisdictional contacts of one are the jurisdictional contacts of the other for the purposes of the *International Shoe* due process analysis. *See Patin*, 294 F.3d at 653.

Thus, if Mr. Todd is the alter ego of Spicy Cold, the district court could exercise general personal jurisdiction over Mr. Todd in New Tejas. States have varying alter ego theories to determine the liability of a shareholder of a corporation. When a plaintiff asserts an alter ego theory of *liability*, the governing alter ego theory is chosen using applicable choice-of-law rules. However, choice-of-law analysis for using an alter ego theory of *jurisdiction* is an unsettled area of the law which the Court is asked to establish here.

Many courts have declined to undertake choice-of-law analysis in the jurisdictional context when the outcome would be the same regardless of which alter ego test is used. *See, e.g.*, *Invesco High Yield Fund v. Jecklin*, No. 19-15931, 2021 WL 2911739, at *1 (9th Cir. July 12, 2021) ("The parties dispute whether Nevada or Delaware's alter ego law applies, but we need not decide this choice-of-law question because the result is the same under either state's law[.]"); *Fillmore E. BS Fin. Subsidiary LLC v. Capmark Bank*, 552 F. App'x 13, 15 n.1 (2d Cir. 2014) ("[T]he same

result would obtain under either California or New York standards for pleading an alter ego claim."); *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1161 (5th Cir. 1983) ("We too decline to answer the choice of law question, since our examination of Pennsylvania and Texas law also reveals an identity of result concerning the alter ego issue."); *Miami Prod. & Chem. Co. v. Olin Corp.*, 449 F. Supp. 3d 136, 183–84 (W.D.N.Y. 2020) ("[A]t this time the Court need not reach the issue of whether New York, Delaware, or federal common law applies, and instead will analyze the issue using New York law.").

Here, the court must participate in a choice-of-law analysis because the result hinges on which alter ego theory applies–the federal common law alter ego test or New Tejas's test. The Thirteenth Circuit decision expressed hesitation about using the federal common law test because the "era of general federal common law has long since passed." Record at 16a. The court's hesitation is unfounded. While the Supreme Court famously declared in *Erie Railroad Co. v. Thompkins* that "[t]here is no federal common law," there are "limited situations where there is a significant conflict between some federal policy or interest and the use of state law" that require judicially-made federal rules of common law. *Erie Railroad Co. v. Thompkins*, 304 U.S. 64, 78 (1938); *O'Melveny & Myers v. Fed. Deposit Ins. Corp.*, 512 U.S. 79, 87 (1994). Courts have determined that a federal common law alter ego test is necessary when certain federal interests are implicated. *Anwar v. Dow Chem. Co.*, 876 F.3d 841, 848 (6th Cir. 2017). So, the federal common law alter ego test is a viable option, and the correct option, in this case.

Under the federal common law, a shareholder is the alter ego of a corporation when (1) there is such unity of interest and ownership that the separate personalities of the two entities no longer exist and (2) failure to disregard their separate identities would result in fraud or injustice. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015) *cert denied*, 136 S. Ct. 915 (2015).

On the other hand, in New Tejas, an individual is only the alter ego of a corporation when the corporation's purpose in its articles of incorporation is to defraud a specific person. Record at 6a. Because "alter ego" *jurisdiction* here is a construction of due process and an inherently federal interest, the court should apply the federal common law theory of alter ego. *See Mylan Laboratories, Inc. v. Akzo, N.V.*, 2 F.3d 56, 61 (4th Cir. 1993).

A. The court should apply federal law to alter ego jurisdiction analysis because federal law provides the basis for this Court's exercise of general personal jurisdiction.

General personal jurisdiction is proper where a defendant's contacts with the forum state are so continuous and systematic that it renders them "essentially at home" in the forum state. *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). When a state's long-arm statute extends to the constitutional limits of the Due Process Clause, the analysis collapses into a two-step inquiry: (1) whether the defendant is essentially at home in the forum state; and (2) whether the exercise of general personal jurisdiction comports with due process.

The "essentially at home" test is a product of federal case law precedent, and due process is a constitutional limit on the exercise of personal jurisdiction. Because

the general personal jurisdiction analysis in this case is a construction of constitutional and federal case law, the Court should use the federal common law alter ego test to determine general personal jurisdiction. *See In re Lyondell Chem. Co.*, 543 B.R. 127, 139 (Bankr. S.D.N.Y. 2016) ("Because. . . , federal law, not New York law, provides the basis for this Court's exercise of personal jurisdiction, the Court would apply federal law to its alter ego analysis."); *compare Est. of Thomson ex rel. Est. of Rakestraw v. Toyota Motor Corp. Worldwide*, 545 F.3d 357, 361 (6th Cir. 2008) (applying Ohio alter ego test for personal jurisdiction and federal due process because Ohio's long-arm statute does not extend to the constitutional limits of due process).

Like in *Lyondell*, the district court's basis for general personal jurisdiction in this case comes from federal law. New Tejas's long-arm statute extends to the constitutional limits of due process, so the general personal jurisdiction analysis collapses into an exclusively federal inquiry. State corporate law has no place in the due process analysis. Thus, the proper alter ego test for determining general personal jurisdiction is the federal common law test.

Under this test, Mr. Todd is the alter ego of Spicy Cold, and thus, Spicy Cold's contacts with New Tejas are imputed to Mr. Todd. Because Spicy Cold is subject to general personal jurisdiction in New Tejas, the district court could have properly exercised general personal jurisdiction over Mr. Todd as well.

This is the proper outcome and is supported by caselaw applying the federal common law theory of alter ego liability when a federal interest is implicated.

B. Determining whether the exercise of general personal jurisdiction comports with the Due Process Clause is a federal interest that requires federal law resolution.

Certain areas involving "uniquely federal interests" are so committed by the Constitution and laws of the United States to federal control that state law is pre-empted… and where necessary, by a federal law proscribed by the courts – "federal common law." *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988).

As the Sixth Circuit and the D.C. Circuit have explained—courts should "use the federal common law of veil-piercing when a federal interest is implicated by the decision of whether to pierce the corporate veil." *Anwar v. Dow Chem. Co.*, 876 F.3d 841, 848 (6th Cir. 2017) (discussing *Flynn v. Greg Anthony Constr. Co.*, 95 F. App'x 726, 732 (6th Cir. 2003)).

1. Federal courts have applied the federal common law theory of alter ego liability when a federal interest is implicated.

Federal courts routinely apply the federal common law alter ego test rather than the state law test when a federal interest is implicated by the decision to pierce the corporate veil. *See U.S. Through Small Bus. Admin v. Pena*, 731 F.2d 8, 12 (D.C. Cir. 1984).

The federal common law alter ego test has been applied to maritime cases, ERISA cases, patent infringement cases, and labor union disputes. *See Clipper Wonsild Tankers Holding A/S v. Biodiesel Ventures, LLC*, 851 F. Supp. 2d 504 (S.D.N.Y. 2012) (holding that federal common law applied to alter ego claims centered on a maritime contract); *Thomas v. Peacock*, 39 F.3d 493, 502–03 (4th Cir. 1994) (concluding that federal law is used when determining whether to pierce the

corporate veil in ERISA cases)*, rev'd on other grounds*, 516 U.S. 349, 353–54 (1996); *Flynn v. Greg Anthony Constr. Co.*, 95 F. App'x 726, 732 (6th Cir. 2003) (same); *I.A.M. Nat'l Pension Fund v. Wakefield Indus., Inc.*, 1991 WL 511071, at *3 (D.D.C. 1991) (noting that when the court determines whether an individual has incurred alter-ego liability under ERISA, it follows the "federal common law of veil piercing"); *United Food & Com. Workers Union v. Fleming Foods East, Inc.*, 105 F.Supp.2d 379, 388 (D.N.J. 2000) ("[I]t is settled that federal law governs liability for breach of a labor contract between a union and employer, including liability based on a theory of corporate veil piercing.").

In federal questions cases, the Court must use federal common law, not state law to determine alter ego liability. *Holcomb v. Pilot Freight Carriers, Inc.*, 120 B.R. 35, 43 (M.D.N.C. 1990) (citing *United Steelworkers of America v. Connors Steel Co.*, 855 F.2d 1499, 1506 (11th Cir. 1988), *cert denied*, 489 U.S. 1096 (1989) (applying federal common law alter ego theory in a dispute over a collective bargaining agreement).

Like these federal interests, the determination of whether the exercise of general personal jurisdiction comports with Due Process is a "uniquely federal interest" that warrants the application of federal common law rather than state law. *See Boyle*, 487 U.S. at 504.

2. The determination of general personal jurisdiction in this case is a federal interest.

The ability to exercise general personal jurisdiction over Mr. Todd in this case is a construction of Federal Rule of Civil Procedure 4 and the Due Process Clause of

the Fifth Amendment of the Constitution. The appropriate construction of federal jurisdictional statutes and constitutional provisions are of federal interest and warrant application of federal law. *See United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 726–727 (1979) ("In such contexts, federal interests are sufficiently implicated to warrant the protection of federal law."). Thus, the district court should have applied the federal common law theory of alter ego to determine whether it could exercise general personal jurisdiction over Mr. Todd.

State law plays no role in construing the Fifth Amendment Due Process Clause, and the Thirteenth Circuit Court of Appeals incorrectly condoned the use of New Tejas's alter ego test. By allowing the use of New Tejas's unusual alter ego law, the court undermined the federal interest of determining general personal jurisdiction to adjudicate a federal claim in federal court. The correct alter ego test in this case is the federal common law test.

C. Using the choice-of-law inquiry based on the law that provides the court's basis for exercising personal jurisdiction is a clear jurisdictional rule that will promote predictability.

Here, the general personal jurisdiction analysis is a construction of due process because the New Tejas long-arm statute extends to the constitutional limits of due process. Thus, the analysis is purely a matter of federal law, and the federal common law alter ego theory is appropriate. This is not to say that in all cases the federal common law alter ego theory will be appropriate for analyzing personal jurisdiction. Where a state's long-arm statute does not extend to the constitutional limits of due process, the application of relevant state alter ego theories is appropriate.

The correct choice-of-law inquiry for alter ego personal jurisdiction is simple and logical: apply the law that provides the court the basis for exercising personal jurisdiction. When state law provides the court's basis for personal jurisdiction, state alter ego law is applicable. When federal law provides the court's basis for personal jurisdiction, the federal common law theory of alter ego is appropriate.

This inquiry ensures that state law is not permeating federal courts' analysis of the Fifth Amendment Due Process Clause. It aligns federal interests with federal law and state interests with state law. It respects separation of powers principles while simultaneously protecting federal interests from inappropriate state intervention.

The Court will settle much confusion among federal courts by adopting this principle. The proposed analysis method makes good sense, is easy to apply, and will promote uniformity in how federal courts across the country perform alter ego jurisdiction analysis. A flurry of benefits comes with establishing simple jurisdictional tests. *See Hertz Corp v. Friend*, 559 U.S. 77, 94–95 (2010).

First, complex tests encourage gamesmanship, produce appeals and reversals, and the time spent litigating them wastes judicial resources. *Id.* Second, courts benefit from straightforward rules because they can swiftly assure themselves of their power to hear a case. *Id.* Third, "[s]imple jurisdictional rules also promote greater predictability." *Id.*

Predictability of jurisdictional rules is of value to all parties. Predictability of jurisdictional rules allows corporations and other entities make informed and

prepared business and investment decisions. *Id.* (citing *First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 621 (1983)). Predictability of jurisdictional rules also gives plaintiffs a more informed basis when deciding whether to file suit in a state or federal court. *Id.*

In this case, Mrs. Cole filed a class action–a judicial mechanism created in the Federal Rules of Civil Procedure–in federal court, asserting violations of a federal law, and the personal jurisdiction analysis is a matter of due process. It is illogical to apply New Tejas's theory of alter ego to the personal jurisdiction analysis in this purely federal setting. Applying the federal common law alter ego test for personal jurisdiction is the correct and most just result in this case.

D. The district court's decision to apply the New Tejas alter ego test for jurisdiction created an absurd and inequitable result.

Aside from being well-reasoned and grounded in precedent, using the federal common law alter ego test in this case creates the most just result. The federal common law test for alter ego is well-established and provides the basis for most states' theories of alter ego. In most states, little difference exists between the federal common law test and the state alter ego test. *See Aldana v. Fresh Del Monte Produce, Inc.*, No. 01-3399-CIV, 2007 WL 7143959, at *5 (S.D. Fla. Aug. 30, 2007) (noting that the determination of alter ego is the same under state law and federal common law); *Miami Prod. & Chem. Co. v. Olin Corp.*, 449 F. Supp. 3d 136, 183–84 (W.D.N.Y. 2020) (noting the similarity between the New York and federal common law alter ego theories).

The most common test for alter ego is reflected in the federal common law theory: (1) unity between the corporation and shareholder; and (2) injustice. *See Castleberry v. Branscum*, 721 S.W.2d 270, 272 (Tex. 1986) ("Alter ego applies when there is such unity between corporation and individual that the separateness of the corporation has ceased and holding only the corporation liable would result in injustice."); *Norman v. Murray First Thrift & Loan Co.*, 596 P.2d 1028, 1030 (Utah 1979) (same); *Ashley v. Ashley*, 482 Pa. 228, 236–238, 393 A.2d 637, 641 (1978) (same).

The alter ego doctrine allowing the piercing of the corporate veil has its roots in law and equity. *Wm. Passalacqua Builders, Inc. v. Resnick Devs. S., Inc.*, 933 F.2d 131, 136 (2d Cir. 1991). The essential legal test in most jurisdictions is whether it would be equitable to allow the shareholders to invoke the corporate mantle to shield themselves from personal liability. *Pena*, 731 F.2d 8, 13 (D.C. Cir. 1984).

New Tejas's alter ego test defies logic and cuts this underlying common thread among alter ego tests: equity. The New Tejas test is more corporate friendly than Delaware—the country's corporate safe haven. In Delaware, a shareholder is a corporation's alter ego (or vice versa) if the plaintiff can show a mingling of operations of the entity and the owner plus an overall element of injustice. *Kertesz v. Korn*, 698 F.3d 89 (2d Cir. 2012) (citing *Harco Nat. Ins. Co. v. Green Farms, Inc.*, 15 Del. J. Corp. L. 1030, 1039 (Del. Ch. 1989)).

In New Tejas, alter ego only applies when the corporation was formed for the specific purpose of defrauding an individual. This alter ego theory borders absurdity. Presumably, so long as a corporation does not have a purpose to defraud listed in its

articles of incorporation, it will have absolute protection from liability. If the Court applies the New Tejas alter ego test to the personal jurisdiction analysis in the present case, Mr. Todd would not be the alter ego of Spicy Cold and the district court could not exercise general personal jurisdiction over Mr. Todd. It would be illogical, unjust, and inequitable to apply the New Tejas theory to the personal jurisdiction analysis here.

Because the analysis of general personal jurisdiction in this case is reduced to a strictly federal inquiry, the federal common law alter ego test applies. Under the federal common law test, Mr. Todd is the alter ego of Spicy Cold. Factors considered for determining whether a shareholder is an alter ego of a corporation are: (1) commingling personal and corporate assets, (2) failure to maintain corporate formalities; and (3) undercapitalization. *See Sabine Towing & Transp. Co. v. Merit Ventures, Inc.*, 575 F. Supp. 1442 (E.D. Tex. 1983); *Clipper Wonsild Tankers Holding A/S v. Biodiesel Ventures, LLC*, 851 F. Supp. 2d 504 (S.D.N.Y. 2012). Mr. Todd is the sole shareholder of the corporation. R. at 2a. He diverted all profits from the corporation to himself immediately upon earning them. R. at 4a. He ran the corporation with no board of directors. R. at 5a. He often used Spicy Cold's bank account to pay his personal expenses. R. at 5a. And the entity was severely undercapitalized. R. at 5a. The equitable and correct result is that Mr. Todd is the alter ego of Spicy Cold. *See Trustees of Nat. Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 332 F.3d 188, 198–99 (3d Cir. 2003) (affirming the lower court's holding that the sole shareholder was the alter ego of a corporation when there

was evidence of siphoning funds, undercapitalization, and an element of fundamental unfairness).

Because Spicy Cold is subject to general personal jurisdiction in New Tejas, and Mr. Todd is the alter ego of Spicy Cold, the district court could exercise general personal jurisdiction over Mr. Todd in New Tejas. Thus, the Thirteenth Circuit Court of Appeals erred in determining that the district court could not exercise general personal jurisdiction over Mr. Todd.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court reverse the judgment of the Thirteenth Circuit Court of Appeals on both issues.

Respectfully submitted this 15th day of November, 2021.

/s/ Team # 90

Team # 90
Counsel for Petitioner

CERTIFICATE OF SERVICE

By our signature, we, counsel for the Petitioner, certify that a true and correct copy of Petitioner's brief on the merits was forwarded to Respondent, Lancelot Todd, through the counsel of record by certified U.S. mail, return receipt requested, on this, the 15th day of November, 2021.

/s/ Team #90

Team #90
Counsel for the Petitioner
November 15, 2021

CERTIFICATE OF COMPLIANCE

Pursuant to Competition Rule 2.5 and Supreme Court Rule 33, the undersigned hereby certifies that the Brief of Petitioner contains 8,811 words, beginning with the Statement of Jurisdiction through the end of the brief, including all headings and footnotes, but excluding the Certificate of Service, Certificate of Compliance, and the Appendix.

/s/ Team #90

Team #90
Counsel for the Petitioner
November 15, 2021

APPENDIX

Federal Rule of Civil Procedure 4(k)

(k) Territorial Limits of Effective Service.

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

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

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

(C) when authorized by a federal statute.

(2) Federal Claim Outside State-Court Jurisdiction. For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

U.S. Const. amend V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation.