No. 19-1016

In The

Supreme Court of the United States

JEFFREY KIRSCH,

Petitioner,

v.

REDWOOD RECOVERY SERVICES LLC
and ELEVENHOME LIMITED,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Nevada

PETITION FOR WRIT OF CERTIORARI

JEFFREY KIRSCH
Pro Se
77 Harbor Dr.
Key Biscayne, FL 33149
two@beach@aol.com
305-498-8265

QUESTIONS PRESENTED

1. Did the District Court violate the Due Process Clause by barring Defendant-Petitioner from presenting any evidence in his defense at trial, a sanction that was imposed for his failing to produce an individual over whom he had no legal control for a deposition, despite the absence of articulable prejudice to the other side?

2. Does the Due Process Clause require an assessment of a defendant's nationwide business activities before a court may find that it has general personal jurisdiction over the individual on the basis of a few, scattered business contacts with the state?

STATEMENT OF RELATED CASES

The underlying District Court case was the subject of a prior writ petition docketed as *Westbourne Capital, LLC v. Dist. Ct. (Redwood Recovery Services, LLC)*, Supreme Court Case No. 73576—notice in lieu of remittitur filed on February 6, 2017.

A separate Eighth Judicial District Court case involving some of the same parties, *Redwood Recovery Services, LLC v. Jeffrey Kirsch*, Case No. A-11-652803-F, was the subject of a prior writ petition docketed as Rock Bay, LLC v. Dist. Ct. (Redwood Recovery Services, LLC), Supreme Court Case No. 66728—Remittitur filed April 29, 2013. This separate case was also the subject of a prior appeal docketed as *Kirsch v. Redwood Recovery Services, LLC*, Supreme Court Case No. 61646—remittitur filed on February 23, 2017.

The underlying case currently has two motions pending:

- Statebridge Company's Rule 59 Motion to Amend the Judgment, or, in the Alternative Rule 60 Relief from Judgment (filed 07/14/17) **(Exhibit 3)**; and
- Westbourne, Rock Bay, Sloane Park, Vizcaya, and OppsREO's Motion for Rehearing/Reconsideration of Judgment and Findings of Facts or, Alternatively, Motion to Alter or Amend Findings of Facts and Conclusions of Law (filed 07/14/17) **(Exhibit 4)**.

The separate Eighth Judicial District Court case referenced above, *Redwood Recovery Services, LLC*

STATEMENT OF RELATED CASES—Continued

v. Jeffrey Kirsch, Case No. A-11-652803-F remains pending with an inactive status.

The decision by the Nevada Supreme Court denying Defendant-Petitioner Jeffery Kirsch's ("Mr. Kirsch") appeal is reported at *Kirsch v. Redwood Recovery Servs., LLC*, 2019 Nev. Unpub. LEXIS 1260. The Nevada Supreme Court issued that decision on November 15, 2019. The Order is attached at Appendix ("App.") at 1.

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The decision by the Nevada Supreme Court denying Defendant-Petitioner Jeffery Kirsch's ("Mr. Kirsch") appeal is reported at *Kirsch v. Redwood Recovery Servs., LLC*, 2019 Nev. Unpub. LEXIS 1260. The Nevada Supreme Court issued that decision on November 15, 2019. The Order is attached at Appendix ("App.") at 1.

JURISDICTION

This Court has jurisdiction over the instant Petition pursuant to 28 U.S.C. § 1257. This petition is timely insofar as Mr. Kirsch's appeal to the Nevada Supreme Court was denied on November 15, 2019, and Mr. Kirsch has filed the instant Petition within 90 days of that date.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution provides, in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . .

STATEMENT OF THE CASE

This case arises out of an attempt to sue Mr. Kirsch in Nevada—a state in which he neither resided, did any business, nor had any personal ties—to collect on a judgment issued in Florida. Despite having no ties to the state, the Nevada district court not only found it appropriate to exercise personal jurisdiction over Mr. Kirsch, but imposed discovery sanctions that made it impossible for him to rebut that finding.

On December 6, 2011, Plaintiffs Redwood Recovery Services, LLC ("Redwood") and Elevenhome Limited ("Elevenhome"), collectively ("Plaintiffs"), filed an Application of Foreign Judgment in Nevada district court in order to domesticate two Florida state court judgments awarded against Mr. Kirsch, American Residential Equities, LLC ("ARE"), and American Residential Equities LIII, LLC ("ARE 53")[1] in March 2011, in an amount of approximately $17 million.

On March 22, 2012, Plaintiffs also filed an Affidavit and Notice of Entry of Foreign Judgement in Michigan seeking to collect the amounts awarded by the Florida court from ARE.

On August 13, 2012, a court in Michigan found that ARE was the Trustee, not owner, of the assets that Plaintiffs sought to collect and issued a permanent

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[1] These Defendants are collectively referred to hereinafter as "Judgement Debtors."

injunction barring Plaintiffs from collecting those assets.[2]

On May 20, 2015, Plaintiffs filed the instant complaint alleging that the Judgement Debtors had fraudulently transferred the assets subject to the Florida Judgment to a group of companies (hereinafter "Westbourne Defendants"),[3] whom the Complaint alleged were Judgement Debtors' alter-egos and under the ownership and control of Kirsch.

On August 21, 2015, Kirsch and the Westbourne Defendants moved to dismiss for lack of personal jurisdiction on the grounds that none of the Defendants resided or did business in Nevada. On February 23, 2016, the district court denied that motion "without prejudice to further development and subject to Redwood's burden on this issue at the time of trial."[4]

Unconstitutional Sanctions Orders

Thereafter, the parties began to engage in discovery. During this time, counsel for the Westbourne Defendants withdrew and, unable to afford counsel, Mr.

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[2] *See* Order for Permanent Injunction, *Redwood Recovery Services, LLC v. Kirsch, et al.*, Case No. 12-004030 (Michigan, 3rd Judicial Circuit Court, August 13, 2012).

[3] The Westbourne Defendants consist of Westbourne Capital, LLC, Rock Bay, LLC, Sloane Park, LLC, Vizcaya Investments, LLC, and OppsREO, LLC.

[4] February 23, 2016 Notice of Entry of Order Denying Defs' (1) Motion to Dismiss Pl's Complaint or Alternatively, to Stay Proceedings; and (2) Motion to Dismiss for Lack of Personal Jurisdiction.

Kirsch decided to proceed *pro se*. Due to the breakdown in their relationship with counsel and the need to find new counsel, none of the Defendants were able to keep to the discovery schedule as established in the October 9, 2015 Rule 16 Order. On May 27, 2016, Plaintiffs moved for sanctions, arguing that (1) the Defendants deliberately failed to meet production deadlines in an effort to thwart discovery, (2) Defendants deliberately failed to produce William Hirschkowitz, the once CFO of several Kirsch entities, for deposition, (3) Kirsch failed without justification to appear for his deposition, and (4) because Kirsch exercised complete control over the Westbourne Defendants, the latter's discovery misconduct was attributable to him.[5]

On July 18, 2016, the District Court granted in part and denied in part Plaintiffs' request for sanctions. That Order (hereinafter, "First Sanctions Order") concluded that Kirsch "owns and/or controls 'the Westbourne Defendants' as well as ARE and ARE 53, and that he had "ultimate decision making authority for all Defendants." July 18, 2016 Order at 2-3. Thus, the Court held that all of Westbourne's discovery misconduct would be attributable to Kirsch. It held that "all Defendants violated [the] Court's [October 9, 2015] scheduling order and NRCP 16.1 by refusing to produce any documents as part of an initial disclosure." *Id.* at 3. The District Court faulted Defendants for "refus[ing] to produce Hirschkowitz for deposition," *id.* at 4, and faulted Kirsch for failing to appear for his

[5] Motion to Strike Answers to Complaint and for Entry of Default, filed May 27, 2016.

deposition. *Id.* at 5. It also found that all Defendants had failed to respond to Plaintiffs' February 26, 2016 requests for production of documents. *Id.* at 7. The Court characterized these actions as "intentional, willful, flagrant, unreasonable, vexatious, abusive and in bad faith, undertaken deliberately with intent to impede all discovery efforts." *Id.* at 9. The District Court rejected Defendants' argument that Plaintiffs did not suffer prejudice: "They presented no evidence of such other discovery, and any such discovery would have been many years previous on unrelated issues. Further, Kirsch pleaded the Fifth Amendment Privilege against self-incrimination repeatedly in prior matters." *Id.* at 11. By contrast, the Court described the Plaintiff as "reasonable in how it pursued discovery and attempted resolution of the discovery failures before bringing this Motion." *Id.* at 10.

In relevant part, that Order:

(1) Struck ARE and ARE 53's answers to the complaint and ordered default judgment against both entities;

(2) Directed Kirsch and the Westbourne Defendants to provide documents requested in the February 26, 2016 NRCP 34 requests no later than July 25, 2016;

(3) Overruled all of Kirsch and the Westbourne Defendants' objections to the February 26, 2016 NRCP 34 requests as a sanction;

(4) Authorized Plaintiffs to notice depositions for Hirschkowitz and the Westbourne Defendants' Rule 30(b)(6) representatives in Nevada;

(5) Ordered Kirsch and the Westbourne Defendants to "produce Hirschkowitz and cause him to appear personally";

(6) Ordered Kirsch and the Westbourne Defendants to bear the costs of the depositions.

The District Court denied the request to strike Kirsch and the Westbourne Defendants' answers without prejudice to Plaintiffs filing a renewed motion.

On August 30, 2016, Plaintiffs filed a Renewed Motion to Strike Defendants' Answers and for Entry of Default, arguing that Defendants had produced discovery late and failed to produce Hirschkowitz for deposition.

It largely granted the order as to both the Westbourne Defendants and Kirsch. It found that Kirsch had violated the First Sanctions Order by refusing to appear for his deposition. Nov. 24, 2016 Order at 2. It recognized that Kirsch had offered an alternative date, but deemed that a ruse because Kirsch knew that Westbourne's counsel was unavailable on those dates. *Id.* at 3. The Court found that Kirsch violated the First Sanctions Order by failing to produce Hirschkowitz for deposition and for failing to respond to Plaintiffs' interrogatories and requests for production. *Id.* Finally, the Court held that "given Kirsch's ownership and/or control of the Westbourne Defendants and the close unity of interest and relationship between them, Kirsch

shares responsibility for the Westbourne Defendants' violation of the Sanction Order." *Id.* at 4.

While the District Court denied Plaintiffs' request for an entry of default, the Court did the functional equivalent: it barred Mr. Kirsch from introducing any testimony or evidence in his defense at trial. Plaintiffs, by contrast, were permitted to use any of this excluded evidence. Nov. 24, 2016, Order at 12. Finally, although the Westbourne Defendants submitted thousands of pages of discovery in response to Plaintiffs' Request for Production, because they were not initially Bates stamped and because they were produced on August 1, 2016 when an Order entered on July 27, 2016 required them to be produced by July 25, 2016 (before the Order was entered), the Westbourne Defendants were not allowed to produce any evidence or witnesses at trial. And because Mr. Kirsch was deemed to control the Westbourne Defendants, the Court extended that to Kirsch.

A 3-day trial was held between January 25, 2017 and February 2, 2017. During the trial, the district court strictly enforced the sanctions order and barred any of the Defendants from introducing any evidence. The district court also limited Defendants' cross-examination to questions which tested the witnesses' credibility.

Trial Court Findings

On January 23, 2017, the district court entered judgment against all Defendants. Among other things, the district court found that Mr. Kirsch created various

entities, including ARE and the Westbourne Defendants, to funnel the assets subject to the Florida judgment through a number of entities, Findings of Fact and Law at 3-4. The district court found that it possessed personal jurisdiction over Kirsch because Kirsch formed Rock Bay LLC in Nevada, filed a Certificate of Fictitious Firm name that allowed it to do business in Nevada under the names of "ARE" and "American Residential Equities," opened a bank account in Nevada for Rock Bay, and used that bank account to funnel asset funds between the Westbourne Defendants. *Id.* at 14-15. The district court also found that Nevada courts had jurisdiction over Mr. Kirsch on agency and alter-ego principals since Kirsch created and controlled each of the Westbourne Defendants, who had their own ties to Nevada. *Id.* at 20-23.

REASONS FOR GRANTING THE WRIT

I. The Court Should Grant Certiorari to Clarify the Standards for Imposing Discovery Sanctions That Amount to an Entry of Default.

It is elemental to our system of justice that a party be given the opportunity to defend against false accusations in court. Courts have repeatedly recognized that the "opportunity to refute unfavorable evidence in some fashion . . . is an 'immutable' principle of procedural due process." *See ASSE International, Inc. v. Kerry*, 803 F.3d 1059, 1075 (9th Cir. 2015) (citing *Greene v. McElroy*, 360 U.S. 474, 496 (1959)). Thus, this Court has stated that while lower courts have broad

discretion in issuing sanctions in the form of evidentiary exclusions, such sanctions must still comport with the dictates of Due Process. *Insurance Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 705 (1982). To accord with Due Process, the Court explained, "any sanction must be 'just' [and] the sanction must be specifically related to the particular 'claim' which was at issue in the order to provide discovery." *Id.* at 707.

Unfortunately, the Court has provided little guidance since *Compagnie Des Bauxites De Guinee* as to when a particular sanction is "just." Given the frequency with which courts around the country resort to exclusion sanctions to punish discovery misconduct, additional guidance is sorely needed.

In *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88 (1990), the Nevada Supreme Court articulated a comprehensive test that—if adopted on a nationwide level—would ensure that the sanctions did not run afoul of the Due Process Clause. According to *Young*, before imposing sanctions, a Court must consider the following factors:

> [1] the degree of willfulness of the offending party, [2] the extent to which the non-offending party would be prejudiced by a lesser sanction, [3] the severity of the sanction of dismissal relative to the severity of the discovery abuse, [4] whether any evidence has been irreparably lost, [5] the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly

> withheld or destroyed evidence to be admitted by the offending party, [6] the policy favoring adjudication on the merits, [7] whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and [8] the need to deter both the parties and future litigants from similar abuses.

Young, 106 Nev. at 93. Unfortunately, and as explained in further detail below, none of the courts below followed the requirements of *Young*. This Court should grant certiorari to clarify that, when imposing sanctions akin to a default order—as happened here—courts must properly analyze all of the *Young* factors to keep with the dictates of due process.

A. The Court Should Clarify That a Lower Court May Not Bar a Party from Submitting Evidence in His Defense for Failing to Fulfill a Legally Impossible Discovery Order.

The most important factor in *Young* is willfulness. The lower courts found that Mr. Kirsch had acted willfully in failing to produce William Hirschkowitz, the once CFO of several Kirsch entities, for deposition. But none of the Nevada courts acknowledged the fact that Mr. Kirsch was legally incapable of forcing Mr. Hirschkowitz to appear in the first place.

It was undisputed below that Hirschkowitz was not a party to this action, and that he was only CFO of Westbourne from July 1, 2012 to July 1, 2013—long before Plaintiff's filed their lawsuit. Since that time,

Hirschkowitz operated his own accounting firm, and while he provided accounting and outside CFO services to some of the Defendant entities, he did so on an *ad hoc* contractual basis.[6] As a *former* employee, neither Kirsch nor the Westbourne defendants had any control over Hirschkowitz. *See JSC Foreign Econ. Ass'n Technostroyexport v. Int'l Dev. & Trade Servs.*, 220 F.R.D. 235, 237 (S.D.N.Y. 2004) (vacating deposition notices because "there is no basis to conclude that the entity defendants have control over [two former officers]"); *United States v. Afram Lines, Ltd.*, 159 F.R.D. 408, 414 (S.D.N.Y. 1994) (refusing to require deposition by notice where "the proposed deponent is not an employee of the opponent and may, in fact, be beyond its control," and where allowing deposition by notice would result in "not merely the waiver of formal subpoena procedures," but also sanctions on the opponent "for failing to produce witnesses who are in fact beyond its control").

And while the law would have allowed Mr. Kirsch to compel Hirschkowitz if the latter were deemed a managing agent, there was no support in the record to make such a finding. In considering whether an individual is a managing agent, courts must consider five factors:

> 1) whether the individual is invested with general powers allowing him to exercise judgment and discretion in corporate matters; 2) whether

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[6] *See* Declaration of Hirschkowitz ¶ 3, attached as Ex H. to Defs' Opp. to Renewed Motion to Strike.

> the individual can be relied upon to give testimony, at his employer's request, in response to the demands of the examining party; 3) whether any person or persons are employed by the corporate employer in positions of higher authority than the individual designated in the area regarding which the information is sought by the examination; 4) the general responsibilities of the individual respecting the matters involved in the litigation; and 5) whether the individual can be expected to identify with the interests of the corporation.

Dubai Islamic Bank v. Citibank, N.A., 2002 U.S. Dist. LEXIS 9794, No. 99 Civ. 1930, 2002 WL 1159699, *2 (S.D.N.Y. May 31, 2002) (internal citation omitted) (collecting cases). The preponderance of these factors cut against Plaintiffs. First, Hirschkowitz was only providing *ad hoc* contractual work for Defendant entities after July 2013—he had no power to exercise judgment and discretion. Second, he plainly could not be relied upon to give testimony at Defendants' request—as evidenced by his repeated refusal to appear for deposition. Third, his refusal to appear for deposition also shows that he that he did not identify with Defendants' interests. *See JSC Foreign Econ. Ass'n Technostroyexport*, 220 F.R.D. at 238 (rejecting claim that former employee was subject to deposition by notice because his failure to appear for deposition "even at the expense of sanctions for the entity defendants" precluded the conclusion that his "interests are identified with those of the entity defendants").

In short, the trial court sanctioned Mr. Kirsch for failing to accomplish something that was beyond Mr. Kirsch's legal ability. Accordingly, this Court should clarify that a court violates due process where it imposes severe discovery sanctions against a party who failed to comply with a legally impossible order.

B. The Court Should Clarify That a Showing of Prejudice is Necessary to Issue Sanctions Barring a Party from Submitting Evidence in His Defense.

Putting aside the deficiencies in the district court's findings on willfulness, Plaintiffs failed to present any evidence—and the district court failed to make any finding—that they suffered any prejudice or that any evidence was lost as a result of Mr. Kirsch's actions. This case thus raises a crucial question as to whether a discovery sanction amounting to a *de facto* default order may be imposed, consistent with the Due Process Clause, without requiring the other side to show some modicum of prejudice. This Court should grant certiorari to clarify that a prejudice showing must be required for a such a sanction to be deemed constitutional and "just" under *Insurance Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 705 (1982).

Indeed, this case illustrates the perversity of *not* insisting on such a requirement. Mr. Kirsch had already sat for depositions with the Plaintiffs on at least three occasions, including a post-judgment deposition in Florida that lasted three days, a deposition in

California in connection with a matter pending in California, and a third deposition in Florida as a person most knowledgeable.[7] At no point were Plaintiffs able to identify a single piece of evidence or subject of inquiry that they were unable to acquire or explore as a result of Kirsch failing to sit for a *fourth* deposition.

Plaintiffs also obtained a veritable mountain of discovery over the course of their litigation against Defendants in Florida, Michigan, and California. For example, they had already taken the deposition of Hirschkowitz four times, Westbourne's GC, the managing director of Statebridge, and another person most knowledgeable from Westbourne, named Pamela Perrot—all of which Plaintiffs relied on extensively at trial.[8] Plaintiffs obtained all the bank records from Rock Bay, as well as documents relating to and tracing ownership of assets allegedly owned by ARE. Again, Plaintiffs were unable to identify a single piece of evidence that they could only obtain through *additional* discovery.[9] Nor were Plaintiffs able to identify any evidence that was irreparably lost.

It is axiomatic in due process law that a discovery "sanction should be proportional to the wrong." *See,*

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[7] Declaration of Jeffrey Kirsch in Support of Opposition to Motion to Strike Answer and Enter Default ¶¶ 7-8.

[8] Trial Transcript Day 1, at 37-88, 101-139.

[9] Indeed, the allegations of transfer, and comingling of funds laid out in the motion to strike and the preceding opposition to the motion to dismiss were based on the extensive discovery that was undertaken in the Florida action. *See* Motion to Strike 5-7 (citing Opposition to Motion to Dismiss).

e.g., *Okaw Drainage District v. National Distillers & Chemical Corp.*, 882 F.2d 1241, 1248 (7th Cir. 1989). One cannot assess proportionality without determining first what harms the misconduct caused. In this case, there was no evidence of harm, yet the district court imposed among the harshest of possible sanctions. This Court should grant certiorari to declare that such conduct is unconstitutional.

C. The Court Should Clarify That Courts Must Consider the Feasibility or Fairness of Alternative, Less Severe Sanctions Before Barring a Party from Submitting Any Evidence in Their Defense.

This case also raises an opportunity for the Court to clarify that a trial cannot impose sanctions amounting to a *de facto* default as a first resort, but must consider whether less severe sanctions will accomplish the same result.

The Nevada Supreme Court actually required as much in *Young*, holding that a court abuses its discretion where it does not consider the feasibility or fairness of sanctions short of ordering default. However, as evidenced by this case, the Nevada courts have not hewed to *Young*'s requirements in this respect. Here, there were numerous sanctions the court could have imposed—for example, imposing financial penalties on Kirsch and the Westbourne defendants. Such sanctions would have also satisfied the need to deter any future

discovery misconduct. The courts never entertained such options.

Accordingly, this Court should grant certiorari to declare that the Due Process Clause requires courts to impose the least severe sanction necessary to deter discovery misconduct.

II. This Court Should Grant Certiorari to Affirm that General Jurisdiction Will Only Attach Where a Substantial Proportion of Defendant's Activities Are in That State.

This Court has long recognized that the "Due Process Clause . . . operates to limit the power of a State to assert in personam jurisdiction over a nonresident defendant." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413-14 (1984). "Due process requirements are satisfied when in personam jurisdiction is asserted over a nonresident . . . defendant that has 'certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Id.* at 414 (alteration in original) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Where the requisite "minimum contacts" exist, the exercise of personal jurisdiction over the defendant must also be "reasonable []" in light of factors such as "the burden on the defendant, the interests of the forum State, and the "plaintiffs interest in obtaining relief." *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 113 (1987); *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462,

477-78 (1985). A court may only exercise "general jurisdiction" over a corporation if "the continuous corporate operations within a state are so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853 (2011) (internal quotation marks and alterations omitted). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile." *Id.* at 2853-54.

Here, it was undisputed that Mr. Kirsch was not domiciled in Nevada. Yet, the Nevada courts found that they could properly exercise jurisdiction over him based on a few fleeting contacts in the state. However, given that these alleged contacts constituted a tiny percentage of his overall business activities, he cannot, under this Court's precedent, be deemed to have been "at home" in Nevada.

The Supreme Court clarified in *Goodyear* and *Daimler* clarified that "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler*, 187 L. Ed. 2d 624, 633 (quoting *Goodyear*, 564 U.S. at 919). The "paradigm" forums in which a corporate defendant is "at home," the Court explained, are the corporation's place of incorporation and its principal place of business. *Id.*; *Goodyear*, 564 U.S. at 924. The exercise of general

jurisdiction is not limited to these forums; in an "exceptional case," a corporate defendant's operations in another forum "may be so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 640, n.19.

Crucially, the Court held in *Daimler* that "the general jurisdiction inquiry does not focus solely on the magnitude of the defendant's in-state contacts." *Id.* at 641, n.20 (internal quotation marks and alterations omitted). Rather, the inquiry "calls for an appraisal of a corporation's activities in their entirety"; "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.*

In this case, the lower courts engaged in no fact-finding regarding Mr. Kirsch or the other Defendants' nationwide business activities. Instead, the District Court concluded that Kirsch has substantial, continuous, and systematic contact with Nevada based on: (1) his causing the formation of Rock Bay and Sloane Parke, two Nevada LLCs; (2) his filing a fictitious firm name certificate with the Clerk of County so that Vizcaya could do business as "ARE" and "American Residential Equities"; (3) his opening a bank account for Rock Bay in Nevada; (4) his filing articles of dissolution for Rock Bay; (5) his causing checks payable to Judgment Debtors to be deposited into the Rock Bay account; (6) his seeking a protective order to halt Redwood's post-judgment discovery; and (7) his filing an appeal

before the Supreme Court of Nevada when the aforementioned protective order was denied.[10]

At the time the instant lawsuit was filed in Nevada, Mr. Kirsch had caused the formation of some 80 LLCs in states other than Nevada; he had opened up at least 80 bank accounts in states other than Nevada; he has participated in business ventures in at least 40 states other than Nevada; and he had managed at least 62 employees in states other than Nevada. Under this Court's precedent, such contacts are not sufficient.

The Nevada Supreme Court's judgment to stand would not merely inflict an injustice on Mr. Kirsch. Rather, it would have a ripple effect across all individuals in the United States and abroad who have fleeting encounters in the state of Nevada. It is important for all corporations and individuals—both foreign and domestic—to operate within a framework of clear, uniformly applied jurisdictional rules that permit "defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King*, 471 U.S. at 472 (internal quotation marks omitted). The Nevada Supreme Court's decision represents an outlier in personal jurisdiction law that would undermine this predictability.

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[10] *See* Findings of Fact and Conclusions of Law, filed June 26, 2017.

For these reasons, the Court should grant certiorari to bring Nevada into alignment with the rest of the courts on the subject of minimum contacts.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Certiorari and reverse the decision of the Nevada Supreme Court.

Dated: February 11, 2020

Respectfully submitted,

JEFFREY KIRSCH
Pro Se
77 Harbor Dr.
Key Biscayne, FL 33149
two@beach@aol.com
305-498-8265