No. 21-494

In the Supreme Court of the United States

RALPH LEWIS,
Petitioner,

v.

POWER RESEARCH, INC. AND WANDA DAVIDSON,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Nevada

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Due Process Clause permits a state court to exercise specific personal jurisdiction over a non-resident defendant when the plaintiff's claims "arise out of or relate to" the defendant's "conduct and connection with the forum." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 474 (1985).

The question presented is:

Whether the Nevada Supreme Court, in express reliance on this Court's opinion in *Walden v Fiore*, 57 U.S. 277 (2014), correctly held that Nevada may exercise specific personal jurisdiction over a defendant when the plaintiff is not the defendant's sole contact with Nevada but rather is one of many of the defendant's purposeful connections with Nevada that give rise or relate to the plaintiff's claims.

RULE 29.6 DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Power Research, Inc. certifies that it has no parent corporations and that no publicly held corporation owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

Power Research, Inc. and Wanda Davidson v. Newport Fuel Solutions, Inc. and Ralph Lewis, No. CV18-02401, in the Second Judicial District Court of the State of Nevada in and for the County of Washoe (motion to dismiss denied May 1, 2020).

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INTRODUCTION

Ralph Lewis's petition does not present an issue worthy of this Court's review. Lewis wrongly frames the issue before this Court to manufacture an alleged conflict of the Nevada Supreme Court's decision with *Walden v. Fiore*, 571 U.S. 277 (2014), and selected opinions of the Texas Supreme Court and various circuit courts. But no such conflict exists because the Nevada Supreme Court, citing *Walden*, agrees with the well-established jurisprudence holding that "the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." Pet. App. at 6 (quoting *Walden*, 571 U.S. at 285).

The Nevada Supreme Court, again citing *Walden*, also agreed that the proper focus is "on the relationship between the defendant, the forum, and the litigation and 'the defendant's suit-related conduct,' which 'must create a substantial connection with the forum.'" Pet. App. at 5 (quoting and citing *Tricarichi v. Coop. Rabobank, U.A.*, 440 P.3d 645, 650 (Nev. 2019) (quoting *Walden*, 571 U.S. at 283–84)). The court went on to specifically note that the plaintiffs in this case—Power Research, Inc. ("PRI") and Wanda Davidson—are not Lewis's sole contact with Nevada. Pet. App. at 6.

In short, the Nevada Supreme Court's exercise of personal jurisdiction over Lewis under the specific and unique facts of this case is well within the framework of this Court's longstanding jurisprudence

and is entirely consistent, rather than in conflict, with *Walden* and the other decisions Lewis cites.

Indeed, for more than seventy-five years, a state's exercise of personal jurisdiction has required sufficient minimum contacts with the forum such that maintenance of the suit over the defendant is "reasonable" and "does not offend traditional notions of fair play and substantial justice." *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1024 (2021) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945)). For specific jurisdiction to exist, the defendant must have purposefully availed itself of the privilege of conducting activities within the forum, and the plaintiff's claims must arise out of or relate to the defendant's contacts with the forum. *Id.* at 1025.

Lewis creates a false alarm by warning this Court, "[i]f the Nevada Supreme Court's erroneous conception of personal jurisdiction is allowed to prevail here, many officers and directors will be subjected to suit in Nevada *solely* by virtue of their work for a Nevada corporation, even though they do not actually do *anything* in Nevada or have anything to do with Nevada." Pet. 18. To be clear, Lewis's purposeful connections and relationship with Nevada go far beyond just working for a Nevada company.

PRI and Davidson claim Lewis breached his non-compete and confidentiality agreements with PRI and tortiously interfered with the employment and contractual relationships between PRI, a Nevada corporation, and three former PRI employees—Michael and Kalliope Hristodoulakis and Tony Yu. These claims arise from and relate to Lewis's substantial connections and contacts with Nevada.

Lewis signed these agreements between PRI and its former employees during his twenty-four-year tenure as a director and officer of PRI, signing for himself, for PRI, or as a witness. Each agreement is governed by Nevada law pursuant to a choice-of-law clause. After PRI fired Lewis, Lewis settled all claims to PRI or its assets and extended his non-compete agreement with PRI, which also contained a Nevada choice-of-law clause.

Shortly after the settlement, Lewis breached his extended non-compete agreement by forming his own Nevada company for the sole purpose of competing with PRI using PRI's formulas, customer information, and employees. In forming the new Nevada company, Newport Fuel Solutions, Inc. ("Newport"), Lewis, the owner, officer, and sole director of Newport, purposefully availed himself of the benefits and protections of Nevada's laws, just as he had done as a director and officer of PRI for more than twenty years. Lewis then used the promise of ownership in that Nevada company to induce PRI's sales staff to violate their confidentiality and non-compete agreements with PRI and to join Newport. Lewis even gave shares of Newport's stock to Michael while he was an employee of PRI for his "future participation" in Lewis's new Nevada company. Lewis took all these premediated actions to injure his former Nevada employer, PRI.

The Court should deny the petition because Lewis's own suit-related contacts with Nevada form the basis of Nevada's jurisdiction over him. Moreover, the jurisdictional facts here are particularly idiosyncratic, not paradigmatic, making it a poor vehicle for this Court to establish broad personal

jurisdiction principles. Not only has Lewis exaggerated the purported "conflict" of the Nevada Supreme Court's opinion with *Walden* and the opinions of other courts; this Court has repeatedly denied petitions asserting similar conflicts in cases that are the same as or similar to the cases on which Lewis relies.

STATEMENT

For twenty-four years, Ralph Lewis served as a director and officer of the Nevada corporation, Power Research, Inc. ("PRI"). Pet. App. 9, 14. Lewis had worked for PRI's predecessor since 1985, the year he married Wanda Davidson. Pet. App. 9.

Davidson incorporated PRI in Nevada in 1992. Pet. App. 9. PRI and Davidson's proprietary formulas and blending methods for production of fuel additives, however, had been perfected in Nevada before PRI's Nevada incorporation. In 1990, Lewis "found a toll blender in Las Vegas, Nevada, who could blend [PRI's] product." RIP App. 601.[1] Lewis would "drive to Las Vegas in [his] 1985 Mustang, then load as many five-gallon pails of product into the car, and drive back" to his and Davidson's California home. RIP App. 601.

In 1986 and 2015, Lewis signed confidentiality and non-compete agreements with PRI that included Nevada choice-of-law clauses. Pet. App. 9. Lewis oversaw PRI's sales team—Michael Hristodoulakis,

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[1] References to the record below are referred to herein as "RIP App. ___" and "Rel. App. ___." PRI and Davidson anticipate the record below will be included in a joint appendix if the Court grants the petition.

his daughter Kalliope, and Tony Yu—whom he directed to sign nearly identical confidentiality and non-compete agreements also governed by Nevada law. Pet. App. 9–10. Lewis signed these agreements on behalf of PRI or as a witness to these employee's signatures. Pet. App. 10.

In 2016, Lewis filed for divorce and claimed an ownership interest in Davidson's ownership of PRI and in PRI's and Davidson's assets. PRI fired Lewis in August 2016, and Lewis added PRI as a party to the divorce action. *See* Pet. App. 10. The resolution of the suit led to the execution of an October 2017 Agreement Incident to Divorce ("AID") between Lewis, Davidson, and PRI. *See id.* In the AID, Lewis confirmed Davidson's ownership in PRI and of the formulas and blending methods and disavowed ownership of all formulas associated with PRI and all property used in connection with PRI's business operations. Rel. App. 90–114; RIP App. 61–64, 67–69. In exchange for PRI's payment of $1.2 million, Lewis also agreed in the AID to extended his 2015 non-compete agreement, prohibiting him from

> directly or indirectly, either for his own account, or as a partner, shareholder, officer, director, employee, agent or otherwise, own[ing], manag[ing], operat[ing], control[ling], be[ing] employed by, participat[ing] in, consult[ing] with, perform[ing] services for, or otherwise be[ing] connected with any business the same as or similar to the business conducted by Power Research, Inc. through August 29, 2018.

Rel. App. 90–114; *see also* Pet. App. 10.

A month after the AID's execution, Lewis communicated to Michael his plan to form Newport—a business designed specifically to compete with PRI using PRI's trade secrets. RIP App. 538–41. Lewis promised Michael an ownership interest in his soon-to-be-formed Nevada corporation. *Id.* at 539–40. Lewis also promised positions—with better pay—for Kalliope and for Michael's wife, Anna. *Id.* at 540.

As planned, and in blatant violation of his just-extended non-compete agreement, Lewis incorporated Newport in Nevada in January 2018. *See* Pet. App. 10. Less than a month later, Lewis issued Michael 11,250 shares of Newport stock "as bonus/reward for future participation in the company." RIP App. 596–97; *see also* Pet. App. 13. At the time, Michael was a PRI employee bound by the confidentiality and non-compete agreement Lewis had signed as a witness in 2015. Michael, Kalliope, and Tony began secretly sending Lewis PRI's confidential information, including pages and pages of valuable customer intelligence, and working for Newport in violation of their confidentiality and non-compete agreements—all while still working full-time for and being paid by PRI. *See* Pet. App. 10.

Michael, Kalliope, and Tony resigned from PRI in rapid succession beginning in September 2018, and Newport's competition went into full force. *See* Pet. App. 10. Michael became Newport's vice president, and Kalliope became operations manager. RIP App. 574–76. Within only a few days, Newport and Lewis had stolen PRI's clients that had taken PRI decades to acquire—by touting Lewis's thirty-year tenure with

PRI and using PRI's confidential information, trade secrets, and employees. *See id.* Indeed, Lewis bragged he was "getting back every one of [his] old clients." RIP App. 680.

PRI and Davidson promptly filed suit against Newport, Lewis, Michael, and Kalliope in Texas. A Texas district court granted the defendants' challenge to personal jurisdiction. PRI and Davidson, therefore, were forced to immediately assert claims and secure injunctive relief against Newport in Nevada, which the Nevada trial court granted after a temporary injunction hearing at which Lewis and Michael both testified.

PRI and Davidson subsequently added claims against Lewis for his theft of trade secrets and his tortious interference with the confidentiality and non-compete agreements between PRI and its former sales team. Lewis moved to dismiss the claims for lack of personal jurisdiction. PRI and Davidson moved for leave to amend their complaint to assert a claim against Lewis for his breach of the AID, which remains pending in the trial court for a determination of whether they may assert their claims for Lewis's breach of the AID.

The trial court denied Lewis's motion to dismiss. In doing so, the trial court relied on the same standards that have governed the exercise of personal jurisdiction for seventy-five years. *See* Pet. App. at 11–12. In short, the trial court agreed that "Lewis has sufficient minimum contacts with Nevada, and [respondents'] claims arise from those contacts." Pet. App. at 11; *cf. id.* at 14.

The Nevada Supreme Court also agreed, denying Lewis's petition for a writ of prohibition. Pet. App. 1–6. The court correctly distinguished the facts from those in *Walden v. Fiore*, 571 U.S. 277 (2014), because PRI and Davidson "are not petitioner's sole contact with the forum." Pet. App. at 6. Instead, the court held jurisdiction was proper based on Lewis's suit-related contacts with Nevada. Pet. App. at 4–6.

REASONS FOR DENYING THE PETITION

I. The Nevada Supreme Court correctly applied *Walden*, and its opinion does not conflict with this Court's decisions or the other cases Lewis cites.

"Well-established principles of personal jurisdiction are sufficient to decide this case. The proper focus of the 'minimum contacts' inquiry in intentional-tort cases is 'the relationship among the defendant, the forum, and the litigation.'" *Walden v. Fiore*, 571 U.S. 277, 291 (2014) (quoting *Calder v. Jones*, 465 U.S. 783, 788 (1984)).

The Nevada Supreme Court recited and properly applied *Walden*'s holding. As the court explained, "Specific jurisdiction is proper only where the cause of action arises from the defendant's contacts with the forum." Pet. App. 4. Moreover, the proper focus of this test is "on the relationship between the defendant, the forum, and the litigation, and the defendant's suit-related conduct, which must create a substantial connection with the forum." Pet App. 5 (internal quotation marks omitted).

Lewis's effort to base a "conflict" of decisions among various courts and the Nevada Supreme Court's at best incorrect label for the right test has no merit and does not provide a basis for this Court's review. *See* Rule 10. Indeed, this Court has repeatedly denied petitions asserting similar "conflicts." *See, e.g.*, *Teck Metals Ltd. v. Confederated Tribes of the Colville Reservation*, 139 S. Ct. 2693 (2019) (No. 18-1160); *Waite v. Union Carbide Corp.*, 139 S. Ct. 1384 (2019) (No. 18-998); *Exxon Mobil Corp. v. Healey*, 139 S. Ct. 794 (2019) (No. 18-311); *Aker Biomarine Antarctic AS v. Huynh*, 139 S. Ct. 64 (2018) (No. 17-1411); *GlaxoSmithKline LLC v. M.M.*, 138 S. Ct. 64 (2017) (No. 16-1171); *Hinrichs v. Gen. Motors of Can., Ltd.*, 137 S. Ct. 2291 (2017) (No. 16-789); *TV Azteca v. Ruiz*, 137 S. Ct. 2290 (2017) (No. 16-481); *MoneyMutual LLC v. Rilley*, 137 S. Ct. 1331 (2017) (No. 16-705); *AEP Energy Servs. v. Heartland Reg'l Med. Ctr.*, 135 S. Ct. 2048 (2015) (No. 14-1). Moreover, because the Nevada Supreme Court applied *Walden* correctly, there is no conflict between its decision and the decisions of other courts on which Lewis relies.

II. The facts of this case are nothing like the facts in *Walden*, and the Nevada Supreme Court's decision was correct.

The facts of this case are nothing like the facts that did not support personal jurisdiction in *Walden*.

In *Walden*, the Georgian police officer "had never taken any act to 'form[ ] a contact' of his own'" with Nevada. *Ford*, 141 S. Ct. at 1031 (quoting *Walden*, 571 U.S. at 289–90). Walden "had 'never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada.'" *Ford*, 141 S. Ct.

at 1031 (quoting *Walden*, 571 U.S. at 289–90). The *Walden* plaintiffs were residents of California, who just happened to be traveling from Puerto Rico, through Atlanta, to Las Vegas. *Walden*, 571 at 279–80, 289–90. Walden thus "formed no jurisdictionally relevant contacts with Nevada." *Id.* at 289.

Lewis did not simply cause an injury to a Nevada resident without forming any jurisdictionally relevant connection with the forum. PRI and Davidson's claims against Lewis center on his long-time purposeful contacts with Nevada, and Lewis's suit-related conduct connects him to Nevada in a meaningful way.

Lewis reached out to Nevada and—for thirty years—has had continuing relationships and obligations both with Nevada residents and the State of Nevada itself. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473, 479 (1985) (finding specific jurisdiction despite the defendant having never traveled to the forum because the defendant had reached out to the forum to establish a twenty-year relationship with a forum resident).

Lewis was a director and officer employed by a Nevada corporation for twenty-four years—which enabled him to acquire PRI's and Davidson's confidential trade secrets. Pet. App. 9, 14. Indeed, Lewis claims he perfected the formulas and blending methods he would later steal with the help of PRI's Nevada toll blender, which required him to make numerous trips from California to Las Vegas to obtain PRI's Nevada-made product. RIP App. 601.

Lewis contracted to keep PRI's information confidential and not to compete with PRI in a contract

with a Nevada choice-of-law clause. Pet. App. 9. He later reaffirmed and extended these obligations in a contract with a Nevada resident after he claimed an interest in PRI. *See* Pet. App. 10. Yet he violated those agreements months later when he formed a new Nevada company—and yet another "substantial and continuing relationship" with the forum—that would directly compete with PRI using its trade secrets, confidential information, and employees.

Lewis also signed for PRI or as a witness to the same confidentiality and non-compete agreements between PRI and Michael, Kalliope, and Tony forming the basis of PRI's and Davidson's tortious interference claims. Pet. App. 9–10. All of these agreements also include a Nevada choice-of-law clause. *See also Burger King*, 471 U.S. at 482 (finding that a choice-of-law clause and the defendant's twenty-year relationship "reinforced [his] deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there.").

Lewis then violated his own non-compete agreement with PRI and tortiously interfered with the contracts between PRI and its now-former employees by using shares of his Nevada stock to induce those employees to violate the contracts, secretly share PRI's information with him while still working for PRI, and to later openly join his new Nevada company. Pet. App. 9–10, 13.

Lewis did not hide his purpose to injure PRI, either. Lewis spoke openly of his PRI reboot when he presented his "plans" to Michael while the ink on the AID was still drying. RIP App. 538–41. Lewis bragged to his toll blender that he was "[g]etting back every

one of [his] old [PRI] clients." *Id.* at 680. Lewis did so by touting his extensive experience with PRI, using PRI's employees and confidential information, comparing Newport's products and specifically discounted prices relative to those of PRI's in every solicitation of PRI's clients. *Id.* at 102, 105–14, 681–740.

Lewis is subject to personal jurisdiction in Nevada, and that outcome does not "offend traditional notions of fair play and substantial justice" because Lewis had to have reasonably anticipated being hauled into court in Nevada under these facts.

III. *Ford* bolsters the Nevada Supreme Court's decision and does not provide a reason to vacate and remand.

Lewis's contention that the Court's decision in *Ford*—a products-liability case in which the Court found personal jurisdiction—supports remand is based on his selective recitation of the jurisdictional facts in this case and his misreading of *Ford*.

The Court in *Ford* reaffirmed rather than altered the Court's well-established personal jurisdiction jurisprudence. *See, e.g.*, *Ford*, 141 S. Ct. at 1024–1025 & n. 2 ("resolv[ing] these cases by proceeding as the Court has done for the last 75 years—applying the standards set out in *International Shoe* and its progeny ….").

Ford, like Lewis here, argued that although it had purposefully availed itself of the privileges of the forum states, it was not subject to personal jurisdiction because the link between its forum

activities did not directly cause the plaintiffs' injuries. *Id.* at 1026. In Ford's view, it must have either sold or manufactured the cars in the forum state—making "the place of the accident and injury … immaterial." *Id.* Ford's significant contacts with the forums and the fact that the plaintiffs were injured in the forum states were of no moment. *Id. at* 1031–32.

First, Lewis is unlike Ford because his activities in Nevada did cause damage to PRI. But even if Lewis was like Ford, the Court expressly rejected Ford's argument, reasoning that its "causation-only approach" had "no support" from the Court's jurisprudence. *Id.* Instead, the suit must only "arise out of or relate to the defendant's contacts with the forum." *Id.* The Fourteenth Amendment does not require "proof that the plaintiff's claim came about because of the defendant's *in-state* conduct." *Id.* (emphasis added). It requires a "'relationship among the defendant, the forum, and the litigation'—the 'essential foundation' of specific jurisdiction." *Id.* at 1028. Ford's significant manufacturing and sales business in the forums and enjoyment of the benefits and protections of those states' laws created "reciprocal obligations" for Ford and gave Ford "clear notice" that Ford could be subject to suit for automobiles that malfunctioned in those states. *Id.* at 1029–1030. The same is true for Lewis in this case.

The Court has no reason to grant, vacate, and remand because *Ford* does not change the longstanding personal jurisdiction jurisprudence correctly applied by the Nevada Supreme Court in this case.

CONCLUSION

For the foregoing reasons, certiorari should be denied.

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