No. 10-

IN THE

Supreme Court of the United States

SPRINT SPECTRUM L.P. d/b/a SPRINT PCS,

Petitioner,

v.

CHRISTOPHER W. HESSE AND NATHANIEL OLSON,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A Kansas state court held that a nationwide class settlement met all due process requirements, including that the class plaintiff adequately represented the interests of absent class members. The district court enforced the class settlement against respondents. Notwithstanding this Court's clear holding that the Full Faith and Credit Act requires federal courts to defer to state court class settlements, the Ninth Circuit conducted a broad collateral review of the state court's adequacy of representation determination and refused to enforce the class settlement with respect to respondents, who had notice that the class settlement would bar their subsequent claims but chose not to opt out of it. The Ninth Circuit thus adopted a rule of law in direct conflict with this Court's holding in *Matsushita Electric Industrial Co. v. Epstein*, 516 U.S. 367 (1996), and with the rule applied by the other courts of appeals.

Two questions are presented:

1. Whether a federal court may conduct a searching collateral review of a state court judgment approving a class settlement where the state court determined that the settlement satisfied all due process requirements, including adequacy of representation, but did not explicitly address each specific claim that a class member might release as part of the settlement.

2. Whether a federal court may nullify state court rules, requiring class members to opt out of a proposed state class settlement, by permitting the class members to maintain a subsequent federal action asserting claims released by the state class settlement from which the class members chose not to exclude themselves.

LIST OF PARTIES TO THE PROCEEDING

All parties before the United States Court of Appeals for the Ninth Circuit are named in the caption.

In addition to the parties named in the caption, Sprint Corporation and Sprint Nextel Corporation were initially named as defendants in the United States District Court for the Western District of Washington. Sprint Corporation was dismissed from the action when Sprint Spectrum L.P. d/b/a Sprint PCS was substituted for Sprint Corporation as a party defendant; Sprint Corporation was not a party before the United States Court of Appeals for the Ninth Circuit. Sprint Nextel Corporation was dismissed from the action by order of the district court; Sprint Nextel Corporation was not a party before the United States Court of Appeals for the Ninth Circuit. All claims against Sprint Corporation and Sprint Nextel Corporation have been dismissed, and those entities are no longer parties to the action.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Pursuant to Supreme Court Rules 14.1(b) and 29.6, petitioner Sprint Spectrum L.P. d/b/a Sprint PCS hereby states that its general partner is Sprint Spectrum Holding Company, L.P., that its limited partner is MinorCo, L.P., and that it is an indirect, wholly-owned subsidiary of Sprint Nextel Corporation, a publicly-traded company.

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FEDERAL STATUTES AND RULES

STATE STATUTES

Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 598 F.3d 581 (9th Cir. 2010), and is reprinted at Appendix ("App.") A. The order of the United States District Court for the Western District of Washington granting summary judgment in favor of Sprint PCS is available on Westlaw at 2008 WL 474063 (W.D. Wash. Feb. 20, 2008), and is reprinted at App. C. The order of the United States District Court for the Western District of Washington denying respondents' motion to reconsider the order granting summary judgment in favor of Sprint PCS, No. C06-0592-JCC, Slip Op. (W.D. Wash. Apr. 16, 2008), is reprinted at App. B.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its judgment on March 10, 2010 (App. A), and denied a timely petition for rehearing *en banc* on April 29, 2010 (App. D). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Full Faith and Credit Act, 28 U.S.C. § 1738, provides with respect to the authenticated acts, records, and judicial proceedings of any state that:

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

The Ninth Circuit's decision directly conflicts with United States Supreme Court precedent, as well as the rule applied by the other circuit courts, on a question of exceptional importance concerning the comity between federal and state courts. In *Matsushita Electric Industrial Co. v. Epstein*, 516 U.S. 367 (1996) ("Matsushita"), the Court recognized that the settlement of complex litigation, including nationwide class actions, is in the public interest and that broad releases are often necessary to achieve such settlements. The Court held that in reviewing a state court judgment approving a class settlement, a federal court must accept the state court's finding that due process was satisfied and cannot perform a searching collateral review of the bases for the state court judgment. State court class members' rights are protected by the ability to object to the settlement while it is under

consideration by the state court or to opt out of the settlement. Class members who do not exclude themselves from, and whose claims are released by, the settlement cannot subsequently relitigate those claims in federal court. The prohibition against relitigating in federal court claims previously adjudicated by a state court protects the comity between the federal and state courts prescribed by Congress in the Full Faith and Credit Act, preserves the judicial goal of promoting comprehensive class settlements, and protects the finality of those settlements and the parties' contractual rights.

In approving the nationwide class settlement at issue here, the Kansas state court ruled that the settlement met all due process requirements. The Kansas state court determined that the named plaintiff was an adequate representative of the absent class members' interests. In particular, the Kansas state court reviewed whether the named plaintiff adequately represented the interests of absent Washington class members, to which group respondents (plaintiffs below) belong. Indeed, both the earlier Kansas state court action and subsequent Washington federal court action challenged Sprint PCS's alleged failure to properly disclose surcharges in Sprint PCS's customer contracts in advance of billing customers for those surcharges. Although respondents received notice of the pending state class settlement *after* they had brought suit against Sprint PCS, respondents neither objected to the settlement on adequacy of representation grounds or on any other basis, nor did they opt out of the settlement. Moreover, as the Ninth Circuit acknowledged, the release contained in the state court settlement encompassed respondents' claims here.

Yet on review, in disregard of this Court's decision in *Matsushita* and its Full Faith and Credit Act jurisprudence, and in conflict with the rule applied by the other circuit courts, the Ninth Circuit fashioned an entirely new standard that a federal court must employ in reviewing a prior state court class settlement. The Ninth Circuit found that a federal court must conduct a searching collateral review of the state court judgment approving a class settlement – notwithstanding the state court's determination that the settlement met all due process requirements – whenever the state court did not make an explicit adequacy of representation determination with respect to each specific claim that a class member might release as part of the settlement. In this instance, although both the state and federal actions challenged Sprint PCS's alleged failure to properly disclose surcharges, the Ninth Circuit found that the Kansas state court did not consider whether the named plaintiff adequately represented Washington class members' interests with respect to claims concerning a Washington surcharge. The Ninth Circuit thereby nullified respondents' state court release with respect to the Washington surcharge claims asserted in their subsequent federal action.

A federal court is not permitted to second-guess a state court's determination that a settlement satisfied due process, substituting its own judgment for the informed judgment of the state court. If allowed to stand, the Ninth Circuit's new collateral review standard would wreak havoc on fundamental principles of federalism, undermining the comity owed by federal courts to state courts pursuant to the Full Faith and Credit Act, and would abrogate state court class action

rules. Furthermore, federal courts' impermissible second-guessing of prior state court judgments would vitiate the judicial goal of promoting comprehensive class settlements, curtail litigants' ability to settle class claims on a nationwide basis in a fair and efficient manner, and challenge the finality of state court-approved settlement agreements by freeing class members from their obligations under those agreements.

Because the Ninth Circuit's decision is in direct conflict with *Matsushita* and this Court's Full Faith and Credit Act jurisprudence, because the decision contravenes the decisions of the other circuit courts, and because of the far-reaching effects of the decision on comity between federal and state courts and the judicial goal of promoting class settlements, review of the decision is warranted.

A. The Benney State Court Settlement Agreement And Release

On or about February 28, 2006, the District Court of Wyandotte County, Kansas, granted preliminary approval of a settlement agreement and release (the "Benney Settlement Agreement" or "Settlement") in a consolidated nationwide class action styled *Benney v. Sprint Spectrum L.P.*, C.A. No. 05-1422 ("Benney Preliminary Order").[1] App. E. On or about November 8,

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[1] In opposing Sprint PCS's motion for summary disposition of respondents' federal action, respondents did not contest the propriety of the Kansas state court's determination that the (Cont'd)

2006, the Kansas state court granted final approval of the Benney Settlement Agreement ("Benney Final Order").[2] App. F; App. at 6a. The named plaintiff in the *Benney* action claimed that Sprint PCS had failed to adequately disclose, and thus improperly collected, certain federal surcharges from Sprint PCS customers. The settlement class defined in the Benney Settlement Agreement and approved by the Kansas state court consisted of all individuals nationwide who were customers of Sprint PCS from December 1, 2000, through March 8, 2007, the date the Agreement became effective (the "Benney Settlement Class"). *See* App. at 4a-5a, 32a-34a. The Benney Settlement Class encompassed Sprint PCS's current and former customers in Washington, including respondents. *See* App. at 5a, 33a-34a. The Benney Settlement Agreement released Sprint PCS from

> *any and all claims that have been, could have been, or in the future might be asserted* in the

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(Cont'd)
Benney plaintiff adequately represented the interests of the absent class members. *See* App. at 44a (district court order granting Sprint PCS's motion for summary judgment; holding that "[p]laintiffs do not argue that their rights were not justly protected by adequate representation"). Accordingly, the record on appeal did not contain the full state court record, and the Ninth Circuit rendered its decision without the benefit of reviewing either the Benney Preliminary Order or the filings of the state court objectors (*see* Statement of the Case, Section B, below) that the state court evaluated in determining that the *Benney* plaintiff was an adequate class representative.

[2] Unless noted otherwise, the Benney Preliminary Order and Benney Final Order are hereinafter referred to collectively as the Benney Settlement Orders.

> *Benney* Action or *in any other court or proceeding which relate in any way to allegations that* Sprint *failed properly to disclose or otherwise improperly charged for surcharges, regulatory fees* or excise taxes, including but not limited to the Regulatory Fees.

App. at 5a (emphasis added; internal alterations omitted) (the "Benney Settlement Release" or "Release").

The Benney Settlement Agreement became final approximately four years after the *Benney* plaintiff filed suit and after formal and informal discovery sufficient to evaluate the merits of the claims had occurred, including depositions and the production of documents and other materials. *Six* different law firms representing the Benny Settlement Class signed the Settlement Agreement.

B. State Court Approval Of The Benney Settlement Agreement And Release

Before approving the Benney Settlement Agreement and Release, the Kansas state court conducted preliminary and final fairness hearings, considered each of the objections that class members filed, and performed an extensive due process review of the Settlement Agreement and Release, which review is set forth in the Benney Settlement Orders. *See* App. E, F. Following the preliminary fairness hearing, the court ruled that "[t]he adequacy of representation requirement is met here because the named Class

Representatives have the same interests as the members of the Class" and ordered issuance of notice of the settlement (the "Benney Settlement Notice") to the class members. App. at 52a.

It is undisputed that the Benney Settlement Notice detailed that the Release would encompass the type of surcharge at issue in respondents' subsequent federal action and set forth the precise value of the benefits available to each class member under the Settlement. It is also undisputed that respondents (1) were part of the Benney Settlement Class; (2) received actual notice of the Benney Settlement *after* bringing suit against Sprint PCS in Washington; and (3) neither opted out of the Benney Settlement, nor objected to the Settlement or Release, nor raised any issue regarding the adequacy of representation of the named plaintiff in the *Benney* action. App. at 4a-5a, 29a, 36a-37a, 44a.

In response to the Benney Settlement Notice, approximately 425,000 current or former customers of Sprint PCS nationwide (including Washington customers) submitted claim forms, approximately 103 current or former customers objected to the settlement, and approximately twenty current or former customers opted out of the settlement. App. at 78a-79a.[3] Objectors raised purported issues with respect to various aspects of the proposed settlement, *including objections related to the very question presented here* – namely, the adequacy of representation of the named plaintiff

[3] None of the class members opting out of the Benney Settlement Agreement were current or former customers in Washington.

in light of the scope of the release. A Washington objector specifically challenged the named plaintiff's ability to adequately represent the class, and argued that the class settlement was not in the best interests of absent class members, including members from Washington such as respondents. App. at 119a-121a. Other class members also objected that the named plaintiff "[f]ailed to [a]dequately [r]epresent the [c]lass," was "conflicted and inadequate as a matter of law," and that the settlement "carries the indicia of inadequate representation." App. at 141a.[4]

In particular, objectors challenged the release language as being purportedly too broad, not litigated in the action, and inadequately investigated by the class representative. App. at 146a, 149a, 158a-159a, 159a-160a. As one objector stated, it was improper for the class representative to negotiate a release that would operate to prevent suits based on violations of state law. App. at 173a-174a. That objector noted that the release would operate to bar state law claims of Texas residents and "*all Class Members who are not Kansas residents.*" App. at 174a n.4 (emphasis added).

The Kansas state court *considered and overruled* each objection raised as to the adequacy of representation in light of the scope of the proposed release (as well as all other objections), *including the objection from the Washington customer concerning that very issue.* App. at 89a. Based on its review of the entire case record, the court entered judgment and held

[4] *See* note 1, above, with respect to the objections referred to herein.

that the Benney Settlement Agreement and Release was fair, reasonable, and adequate, and that it met each of the requirements for final approval as set forth in the Kansas state analog to Fed. R. Civ. P. 23.[5] The court found that the Settlement Agreement and Release provided notice and an opportunity to opt out of or participate in the Settlement, and determined that the named plaintiff adequately represented the interests of the absent class members. App. at 67a-84a, 87a. The court ruled that the named plaintiff was "engaged in the conduct of the case, including approving the negotiated settlement." App. at 80a. The court also held that the Settlement "substantially fulfills the purposes and objectives of" a class action, including each of the objectives set forth in the Kansas class action rule. App. at 80a-81a.

The Kansas state court further found that "[c]urrent and former customers both receive substantial benefits from the settlement, including the opportunity to obtain cash credits. Indeed, the benefits provided in many cases

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[5] The Kansas class action rule, Kan. Stat. Ann. § 60-223(a), provides, in pertinent part:

> *Prerequisites.* One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) *the representative parties will fairly and adequately protect the interests of the class.*

(emphasis added).

meet or exceed the level of damages that might be awarded to [the] class member." App. at 86a. The total value of the benefits made available to the class members exceeded $500 million. App. at 96a. The court further found that the Benney Settlement Agreement and Release "also resolves numerous state court cases currently pending around the country." App. at 88a. The Settlement Agreement and Release arose out of arm's-length settlement negotiations including numerous formal mediation sessions conducted by a retired judge of the District Court of Johnson County, Kansas.

The Benney Final Order approved the Benney Settlement Agreement in its entirety and specifically incorporated the language of the Benney Settlement Release. App. at 67a, 87a-91a. Several objectors appealed the judgment approving the Benney Settlement, and the denial of their adequacy of representation objections, to the Court of Appeals of the State of Kansas. The final appeal was dismissed on March 8, 2007, on which date the Benney Settlement Agreement and Release became effective. App. at 34a.

C. Respondents' Subsequent Federal Action Against Sprint PCS

After receiving actual notice of the Benney Settlement Agreement and Release, and after choosing not to opt out of the Settlement, respondents sought to continue prosecuting separate class actions against Sprint PCS in Washington. Each respondent's initial state court complaint was removed to federal court, and the jurisdiction of the district court was invoked pursuant to 28 U.S.C. §§ 1331 and 1332(d) in both

actions. Thereafter, the United States District Court for the Western District of Washington consolidated the actions, and respondents filed a consolidated amended complaint. Respondents alleged that Sprint PCS failed to adequately disclose, and thus improperly collected, a Washington surcharge from Washington customers.

The district court ruled that respondents had expressly released their claims concerning the alleged improper disclosure or collection of the subject surcharge when respondents chose not to exclude themselves from the Benney Settlement and that the Kansas state court judgment approving the Benney Settlement Agreement and Release was entitled to full faith and credit. The Ninth Circuit agreed that the Benney Settlement Release encompassed respondents' claims in their subsequent federal action and that the state court judgment generally addressed the adequacy of representation of the named plaintiff. Yet, the Ninth Circuit found that the state court judgment did not specifically address the adequacy of the named plaintiff to represent Washington class members' interests with respect to the Washington surcharge. Accordingly, the Ninth Circuit ruled that the state court judgment was not entitled to full faith and credit with respect to respondents' Washington claims and vacated the district court's decision. The Ninth Circuit subsequently denied Sprint PCS's timely petition for a rehearing *en banc*, *see* App. D, and stayed the issuance of its mandate pending this Court's disposition of Sprint PCS's petition for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

I. REVIEW IS WARRANTED BECAUSE THE NINTH CIRCUIT'S NEW STANDARD FOR COLLATERAL REVIEW OF A STATE COURT CLASS SETTLEMENT CONFLICTS WITH THIS COURT'S DECISIONS AND FLOUTS THE FULL FAITH AND CREDIT ACT

This matter called for the Ninth Circuit to apply the well-settled rule that on collateral review of a state court judgment approving a class settlement, a federal court must accept the state court's determination that the settlement met the minimum due process requirements. *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 377-79 (1996) ("Matsushita"). Yet, in reviewing the Kansas state court's judgment approving the Benney Settlement, the Ninth Circuit devised an entirely new standard – namely that a federal court must perform a searching collateral review of the judgment whenever a state court does not explicitly find that the named plaintiff could have prosecuted each specific claim that a class member might release as part of a settlement agreement. The Ninth Circuit's standard is in direct conflict with the jurisprudence of this Court and the rule applied by the other circuit courts, and flouts the Full Faith and Credit Act, 28 U.S.C. § 1738, undermining fundamental principles of federalism and comity. Accordingly, the Court should grant the petition for a writ of certiorari to review the Ninth Circuit's decision.

A state court "judgment entered in a class action, like any other judgment entered in a state judicial proceeding, is *presumptively entitled* to full faith and

credit under the express terms of the [Full Faith and Credit] Act." *Matsushita*, 516 U.S. at 374 (emphasis added). "[T]o qualify for the full faith and credit guaranteed by federal law," "state proceedings need do no more than satisfy the minimum procedural requirements of [due process]," *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 481 (1982), namely to determine that the class settlement provided notice to the class and an opportunity to opt out of or object to the settlement and that the named plaintiff adequately represented the interests of the absent class members, *Matsushita*, 516 U.S. at 378-79.

On collateral review of a state court judgment approving a class settlement, a federal court must defer to the state court's findings that the settlement met all due process requirements. *See Epstein v. MCA, Inc.*, 179 F.3d 641, 649 (9th Cir. 1999), *cert. denied*, 528 U.S. 1004 (1999) ("Epstein"). If the state court judgment made such findings, the federal court must follow the state court's discharge of its obligations under the due process clause and credit the judgment rendered by the state court system. *Matsushita*, 516 U.S. at 378-79; *Epstein*, 179 F.3d at 649; *see Brown v. Ticor Title Ins. Co.*, 982 F.2d 386, 390-91 (9th Cir. 1992). A federal court cannot collaterally second-guess the state court's determination that the settlement satisfied due process and thereby substitute its judgment for the informed judgment of the state court. *Matsushita*, 516 U.S. at 378-79; *Brown*, 982 F.2d at 390 ("[o]n collateral attack of a judgment . . . we will not second-guess a prior decision" finding adequate representation); *see In re Gen. Am. Life Ins. Co. Sales Practices Litig.*, 357 F.3d 800, 805 (8th Cir. 2004) ("we have no way to criticize the

judgment of the class representative [on collateral review]"). Even where the state court "may have made an error of law with respect to a particular question[, it] does not deprive its decision of the right to full faith and credit, so long as that court fully and fairly considered its jurisdiction to adjudicate the issue." *Underwriters Nat'l Assurance Co. v. North Carolina Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 709 n.16 (1982) ("Underwriters") (reversing and remanding with instructions to afford full faith and credit to state court decision).

The purpose of the Court's Full Faith and Credit Act jurisprudence is clear. The enforcement of the preclusive effect of state court judgments serves to "promote the comity between state and federal courts that has been recognized as a bulwark of the federal system." *Kremer*, 456 U.S. at 467 n.6 (quoting *Allen v. McCurry*, 449 U.S. 90, 96 (1980)). The Court has "*consistently emphasized* the importance of the related doctrines of res judicata and collateral estoppel in fulfilling the purpose . . . [of] conclusive resolution of disputes within [state court] jurisdiction." *Kremer*, 456 U.S. at 467 n.6 (emphasis added). Indeed, the "concept of full faith and credit is central to our system of jurisprudence." *Underwriters*, 455 U.S. at 703. Where a federal court of appeals rejects procedural rules and findings chosen by state courts, which findings are presumptively entitled to full faith and credit, in favor of "ad hoc federal rule[s]," the Court has found principles of federalism to have been violated. *Board of Regents of the Univ. of N.Y. v. Tomanio*, 446 U.S. 478, 491-92 (1980) (ruling that federal courts are obligated to apply

state law principles to bar subsequent federal action); *accord Wood v. Bartholomew*, 516 U.S. 1, 8 (1995) (per curiam) (reversing Ninth Circuit decision which "upset" "the proper delicate balance between federal courts and the States" "on the basis of little more than speculation with slight support"); *Adam Bros. Farming, Inc. v. County of Santa Barbara*, 604 F.3d 1142, 1149-50 (9th Cir. 2010) (prior state proceeding barred federal action; Ninth Circuit "unwilling 'to transform the district court into an appellate tribunal for state proceedings'").

Here, the Kansas state court complied with the procedure sanctioned by this Court and Kansas law,[6] and found that the Benney Settlement Agreement and Release satisfied each of the due process requirements, including the adequacy of representation requirement.[7]

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[6] The *Benney* court applied Kansas law in approving the Benney Settlement, and thus, Kansas law governs the determination of the preclusive effect of the Benney Settlement Release on respondents' claims in this action. *Matsushita*, 516 U.S. at 373; *see also Wallace B. Roderick Revocable Living Trust v. XTO Energy, Inc.*, 679 F. Supp. 2d 1287, 1307-08 (D. Kan. 2010) (applying law of state under which judgment was entered approving prior class action; dismissing federal court class action where plaintiff received notice, but did not opt out, of prior state court class actions).

[7] The Ninth Circuit decision does not, and cannot, challenge that the Kansas state court found the Benney Settlement Agreement and Release met each of the other due process requirements, namely that class members received notice of the Settlement and had an opportunity to opt out of or object to it.

The Kansas state court held that "the proposed Settlement Agreement meets the criteria for final approval," satisfying each of the requirements of the Kansas class action rule, which by its terms necessitates a review of the adequacy of the named plaintiff in representing the interests of the absent class members. App. at 51a, 80a-81a (citing Kan. Stat. Ann. § 60-223). The court expressly ruled that "the *adequacy of representation* requirement is met here because the named Class Representatives have the *same interests* as the members of the Class." App. at 52a (emphasis added). Furthermore, the court found that the named plaintiff adequately represented the Benney Settlement Class, where it found that the named plaintiff (1) was a member of the class; (2) shared claims with the class; (3) received invoices from Sprint PCS that were typical of the invoices sent to class members;[8] and (4) actively participated in the conduct of the litigation including the settlement. *See* App. at 50a-53a, 78a-81a, 97a.[9]

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[8] As the Court has noted in discussing Fed. R. Civ. P. 23, the federal analog on which the Kansas class action rule is based, *see Shutts v. Phillips Petroleum Co.*, 567 P.2d 1292, 1307 (Kan. 1977), the adequacy of representation requirement overlaps and "tends to merge with the commonality and typicality criteria of Rule 23(a), which serve as guideposts for determining whether . . . the interests of the class members will be fairly and adequately protected in their absence." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) (quotations and formatting omitted); *see also Shutts*, 567 P.2d at 1314 ("[n]otice to absent members of the class . . . is the greatest single safeguard against inadequate representation").

[9] The Kansas state court also ruled that the absent class members viewed the settlement as fair where only a "miniscule" percentage – "approximately 103 out of the 42 million current

(Cont'd)

These findings – appearing on the face of the Benney Settlement Orders approving the Benney Settlement Agreement and Release – more than support the state court's ruling that the named plaintiff adequately represented the interests of the Benney Settlement Class. *See Helmley v. Ashland Oil, Inc.*, 571 P.2d 345, 348 (Kan. App. Ct. 1977) (trial court is to be afforded "substantial discretion" in determining whether a named plaintiff can properly represent the class); *see also In re Gen. Am. Life Ins. Co. Sales Practices Litig.*, 357 F.3d at 802, 805 (court cannot second-guess prior judgment approving class settlement).

Furthermore, in approving the Benney Settlement Agreement and Release, the Kansas state court considered several specific objections that the named plaintiff did not adequately represent the interests of Sprint PCS's customers from particular states, including Washington, in connection with negotiating the Release. *See* App. at 119a-121a (objection raised by Washington customer regarding adequacy of representation); App. at 140a, 141a, 145a-146a. The court reviewed and rejected each of those objections, finding that they lacked merit, which objections were also dismissed on appeal. In rejecting the objections, the Kansas state court determined that (1) there was no conflict of interest between the named plaintiff and the absent class members, (2) the settlement

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(Cont'd)
and former [Sprint PCS] customers who were sent notice" – objected to the settlement. App. at 88a. The court "considered each of the objections properly made . . . and concluded that they [were] without merit." App. at 89a.

substantially benefited the absent class members, and (3) "the benefits provided in many cases meet or exceed the level of damages that might be awarded to [the] class member." App. at 86a-87a, 89a. Indeed, the total value of the benefits made available to the class members exceeded $500 million. App. at 96a.

In light of the Kansas state court's express finding that the Benney Settlement Agreement and Release met the due process requirements, including the adequacy of representation requirement, and the court's consideration and rejection of all objections addressing the adequacy of representation issue, the court's determination was conclusive and not subject to further review by the Ninth Circuit. Rather, the Ninth Circuit was required to enforce the judgment and accord it full faith and credit. *Matsushita*, 516 U.S. at 374, 377-79; *Epstein*, 179 F.3d at 649; *see* 28 U.S.C. § 1738. Nevertheless, the Ninth Circuit conducted a broad collateral review of the Kansas state court's judgment approving the class settlement – and impermissibly substituted its own judgment for the informed judgment of the state court – because the state court purportedly had not considered whether the named plaintiff adequately represented Washington class members' interests with respect to surcharge disclosure claims under a Washington business and occupations ("B&O") tax statute.[10] *See* App. at 11a ("[b]ecause that [B&O tax] question was not addressed with any specificity by the Kansas court, it is a proper subject for collateral review"). Thus, the Ninth Circuit articulated a new

[10] The Washington B&O tax is a gross receipts tax. *See* Wash. Rev. Code §§ 82.04.220, 82.04.250.

standard for conducting a collateral review of a state court judgment approving a class settlement, namely that the judgment is not presumptively entitled to full faith and credit but rather that a searching collateral review of the judgment is required whenever the state court does not make an explicit adequacy of representation determination with respect to each specific claim that a class member might release as part of a settlement.

The Ninth Circuit's decision cannot be reconciled with this Court's holding in *Matsushita*, with the jurisprudence of any other circuit court, or with the Ninth Circuit's own decision in *Epstein*. This Court has never held, or even suggested, that the Full Faith and Credit Act only applies to state court judgments approving nationwide class settlements where the state court explicitly finds that the named plaintiff could have prosecuted each specific claim that a class member might release as part of a settlement agreement. Rather, the Court has held that a state court may approve a class settlement and find adequacy of representation even where a claim was not presented and *might not have been presentable* in the state class action. *Matsushita*, 516 U.S. at 376-77. Indeed, as the Kansas state court found here, the requisite finding is whether the named plaintiff is part of the settlement class and "whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim." *General Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 160 (1982); *accord Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1023-24 (9th Cir. 1998) (upholding lower court's judgment approving class settlement, under the less deferential direct-review standard, even where lower

court's finding are "almost conclusory" regarding the adequacy of representation requirement). As discussed above, *Matsushita* and *Epstein* require that in conducting a collateral review, the federal court must credit the state court's determination that due process was satisfied. *Matsushita*, 516 U.S. at 378-79 ("the [Delaware court] found, and the Delaware Supreme Court affirmed, that the settlement . . . was 'in full compliance with . . . the requirements of due process'"); *Epstein*, 179 F.3d at 649 (the Supreme Court in *Matsushita* "satisfied itself that [due process] requirements had been met by referencing the Delaware courts' findings . . . , rather than by independently determining whether the requirements were met") (emphasis omitted).[11] The Ninth Circuit failed to do so here.

Finally, the Ninth Circuit's decision conflicts even with the less-deferential standard governing direct appellate review of judgments approving class settlements.[12] In that context, the Ninth Circuit has

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[11] *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113 (2d Cir. 2005) (as part of determination of adequacy of representation, "due process does not require that all claims be pursued"); *Joel A. v. Giuliani*, 218 F.3d 132, 142 (2d Cir. 2000) (release may include "claims [that] are subsumed within a more generalized claim"); *TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 461 (2d Cir. 1982).

[12] The collateral review standard is substantially *more deferential* to a state court's approval of a class settlement than the already "*extremely limited*" review that a circuit court may conduct on direct appeal of a district court's approval of a class settlement. *Hanlon*, 150 F.3d at 1026 (emphasis added); *accord Califano v. Yamasaki*, 442 U.S. 682, 703 (1979); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

repeatedly held that a district court's approval of a class settlement may be reversed "'only upon a *strong* showing that the [lower] court's decision was a *clear abuse of discretion.*'" *Hanlon*, 150 F.3d at 1027 (emphasis added). The Ninth Circuit's new collateral review standard, however, does not afford any such deference to the state court judgment. Rather, its new standard permits a federal court to conduct a *de novo* review of the propriety of the state court judgment (already previously subject to due process guarantees through state appellate review) whenever the federal court suspects that the named plaintiff could not have prosecuted each specific claim that a class member might release as part of a settlement agreement.

In approving the Benney Settlement Agreement and Release, the Kansas state court ruled that the named plaintiff adequately represented the interests of the absent class members. Accordingly, under the standard articulated in *Matsushita* and *Epstein*, and pursuant to the Full Faith and Credit Act, the Ninth Circuit was not permitted to engage in further review of the Kansas state court's judgment and adequacy of representation determination, but was required to enforce that judgment according to its terms. *Matsushita*, 516 U.S. at 374, 378-79; *Epstein*, 179 F.3d at 649; *see* 28 U.S.C. § 1738. The Ninth Circuit's new standard for when a federal court may perform a broad collateral review of the state court judgment – namely, whenever a state court does not explicitly find that the named plaintiff could have prosecuted each specific claim that a class member might release as part of a settlement agreement – is in direct conflict with this Court's decisions and undermines the comity owed to

state courts under the Full Faith and Credit Act. Accordingly, the Court should grant the petition for a writ of certiorari to review the Ninth Circuit's decision.

II. REVIEW IS WARRANTED BECAUSE THE NINTH CIRCUIT'S DECISION NULLIFIES SETTLEMENT CLASS MEMBERS' OBLIGATIONS TO OPT OUT OF OR OBJECT TO CLASS SETTLEMENTS AND ENCOURAGES RELITIGATION OF RELEASED CLAIMS

The Ninth Circuit's decision abrogates settlement class members' obligations to opt out of or object to class settlements, encouraging relitigation of claims released by such settlements. The Kansas state analog to Fed. R. Civ. P. 23(e), for example, provides absent class members with the opportunity to request exclusion from the settlement of a damages class or with the opportunity to appear and object to the terms of the proposed settlement. *See* Kan. Stat. Ann. § 60-223(e)(4), (5); *see also* Fed. R. Civ. P. 23(e)(4), (5).[13] Following the mailing of notice to class members describing these rights and the time in which they must exercise them, class members are obligated to timely exercise their rights or forfeit them.[14] *See Matsushita*, 516 U.S. at 379;

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[13] The rules governing class actions of thirty-eight states, including those of Kansas, are modeled on Fed. R. Civ. P. 23.

[14] Federal class action law, and state law analogs thereto, also prescribe that in approving a class settlement, the court must direct the parties to provide notice in a reasonable manner and must hold a hearing before the proposed settlement may become binding on the class members. *See Shutts*, 567 P.2d at (Cont'd)

Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 813-14 (1985); *Epstein*, 179 F.3d at 648.

Where, as here, a state court class action settlement "is determined to be fair and to have met all due process requirements, the class members are bound by the release. . . . Class members cannot subsequently relitigate the claims barred by the settlement in federal court." *Matsushita*, 516 U.S. at 377-78; *see Kremer*, 456 U.S. at 465 n.4 (plaintiffs "cannot escape the requirements of full faith and credit and res judicata by asserting [their] own failure to raise matters clearly within the scope of a prior proceeding" (citing *Underwriters*, 455 U.S. at 710)).[15] Rather, "absent class members' due process right[s are] . . . protected not by collateral review, but by the certifying court initially, and thereafter by appeal within the state system." *Epstein*, 179 F.3d at 648; *accord American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 550-51 (1974) (principal function of a class action suit is to avoid multiple suits by binding

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1312-13; *Steele v. Security Benefit Life Ins. Co.*, 602 P.2d 1305, 1309 (Kan. 1979) (Kansas class action statute, Kan. Stat. Ann. § 60-223, is modeled on Fed. R. Civ. P. 23, and thus Kansas courts follow federal precedent in interpreting the Kansas statute); *see also* Fed. R. Civ. P. 23(e); *Amchem Prods.*, 521 U.S. at 617. It is undisputed that the *Benney* court complied with each of these requirements.

[15] *Accord Allen*, 449 U.S. at 103-04 (no right to "an unrestricted opportunity to relitigate an issue already decided in state court simply because the issue arose in a state proceeding in which [the person] would rather not have been engaged at all").

absentees). This is true even when the named plaintiff could not have litigated claims belonging to absent class members. *Matsushita*, 516 U.S. at 376-77; *Epstein*, 179 F.3d at 642-43, 650 (rejecting collateral due process challenge even though state class members could not have litigated federal class members' claims); *see Evans v. Jeff D.*, 475 U.S. 717, 732, 736-37 (1986) (courts should not construe parties' ability to settle class actions to "reduc[e] the attractiveness of settlement," which only results in "forcing more cases to trial, unnecessarily burdening the judicial system and disserving . . . litigants").

Here, the Kansas state court found that adequate notice was given, and the Benney Settlement Notice detailed the material portions of the Benney Settlement Release verbatim. In particular, the Notice made clear that approval of the Settlement would release *all* claims related to the disclosure or improper charging of surcharges, regardless of whether they were state or federal surcharges. In addition, the Notice set forth the precise value of benefits available under the proposed Settlement, as well as the procedure and deadline for class members to opt out of or object to the Settlement. It is undisputed that respondents (1) were part of the Benney Settlement Class, (2) received actual notice of the Benney Settlement Agreement and Release *after* bringing suit against Sprint PCS in Washington,[16] and

[16] Actual receipt of a class settlement notice by a class member is *not* required to trigger the member's obligations under the notice. *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994) (notice of class settlement binding on class member even (Cont'd)

(3) neither opted out of the Settlement, nor objected to the Settlement or the Release, nor took any appeal of its approval, nor raised any issue regarding the adequacy of representation of the named plaintiff in the *Benney* action. *See Matsushita*, 516 U.S. at 379 ("[r]espondents . . . were part of the plaintiff class and . . . they never opted out; they are bound, then, by the judgment").

Yet the Ninth Circuit permitted respondents to mount the very type of subsequent collateral attack on the Benney Settlement Agreement and Release proscribed by *Matsushita* and its progeny. The Ninth Circuit's ruling is in direct conflict with this Court's decisions, and the rule applied by the other circuit courts, that absent class members' due process rights are protected by direct appellate review of the state court judgment and not by subsequent collateral review by a federal court. If allowed to stand, the Ninth Circuit's decision would have the effect of nullifying all state class action rules within the circuit that require a class member to opt out of or object to a settlement before the state court's disposition of the proposed settlement. According to the Ninth Circuit, class members who are within the applicable statute of limitations period for challenging the validity of a contract are at liberty to file federal court actions with respect to any claims that the original class representative could not have

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though not received until after opt-out period expired). Due process is satisfied when the class notice is sent to an address provided by the class member. *Phillips Petroleum*, 472 U.S. at 812-13; *In re Gypsum Antitrust Cases*, 565 F.2d 1123, 1124-26 (9th Cir. 1977); *Shutts*, 567 P.2d at 1305-06, 1312.

individually prosecuted. Such a rule, however, would place untold burdens on the judicial system and would destroy the finality of state court judgments. Moreover, such a rule would abrogate the contractual rights secured by state court judgments, allowing class members to retain the compensation received but denying defendants the benefit of the release. As the Court has stated, "stripping state court judgments of finality would be far more destructive to the quality of adjudication by lessening the incentive for full participation by the parties and for searching review by" state appellate courts. *Kremer*, 456 U.S. at 478. The law does not permit litigants to sit on their rights while a class action settlement hearing goes forward in state court and then, if the judgment is not to their liking, collaterally raise objections in federal court. Accordingly, the Court should review the Ninth Circuit's decision.

III. REVIEW IS WARRANTED BECAUSE THE NINTH CIRCUIT'S NEW COLLATERAL REVIEW STANDARD VITIATES THE STRONG JUDICIAL GOAL OF PROMOTING COMPREHENSIVE CLASS SETTLEMENTS

The Court should grant the petition for a writ of certiorari because the new collateral review standard articulated by the Ninth Circuit vitiates the strong judicial goal of promoting comprehensive class settlements. The Court has recognized that courts should facilitate, not undermine, parties' contractual rights, *see Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, __ U.S. __, 130 S. Ct. 1758, 1773-75 (2010), particularly in the context of a comprehensive class settlement given

the imprimatur of a court order, *see Matsushita*, 516 U.S. at 376-78, 379. "[T]he general policy of federal courts to promote settlement before trial is even stronger in the context of large-scale class actions." *In re Exxon Valdez*, 229 F.3d 790, 795 (9th Cir. 2000). The ability of class litigants to achieve a comprehensive class settlement is of such importance to the class litigation process that this Court has ruled a settlement may permit the release of a claim even though the claim was not presented and *might not have been presentable* in the class action. *Matsushita*, 516 U.S. at 377.

The law of the circuit courts, including prior Ninth Circuit decisions, is in accord. Where the state court determines that the class settlement satisfies due process requirements, the state court may approve a settlement releasing claims broader than those specifically involved in the underlying action. *See Epstein*, 179 F.3d at 642-43, 650; *In re Gen. Am. Life Ins. Co. Sales Practices Litig.*, 357 F.3d at 805 ("no impropriety in including in a settlement a description of claims . . . broader than those that have been specifically pleaded;" approving a release including known and unknown claims); *Adams v. Southern Farm Bureau Life Ins. Co.*, 493 F.3d 1276, 1288-89 (11th Cir. 2007) (same); *Krell v. Prudential Ins. Co. of Am. (In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Actions)*, 148 F.3d 283, 325-26 (3d Cir. 1998) (class action settlement release enforceable even though the judgment approving the settlement did not specifically review each claim to be released). As the Third Circuit stated, the ability to negotiate a broad release "serves the important policy interest of judicial economy by permitting parties to enter into comprehensive

settlements that prevent relitigation of settled questions at the core of the class action." *Grimes v. Vitalink Commc'ns Corp.*, 17 F.3d 1553, 1563 (3d Cir. 1994) (quotations omitted); *cf.* Fed. R. Civ. P. 16 advisory committee's notes (1993) ("settlement should be facilitated at as early a stage of the litigation as possible").

Yet, the Ninth Circuit's new standard for when a federal court may perform a searching collateral review of a state court judgment severely undermines litigants' ability to settle class actions with finality and on a comprehensive basis. For instance, in a class action implicating each of the fifty states' consumer protection acts, to effect a nationwide release of those claims, the Ninth Circuit's decision would require the presence of a class representative from each of those states or alternatively, would require settling those claims through multiple state-based class actions. In either event, such a limitation would (1) destroy the judicial economy promoted by comprehensive nationwide class settlements, and (2) increase the transaction costs for achieving settlement and concomitantly reduce the settlement amounts available to class plaintiffs. Because the Ninth Circuit's decision vitiates the strong judicial goal of promoting comprehensive nationwide class settlements to the detriment of the future class plaintiffs, the Court should grant the petition for a writ of certiorari.

IV. REVIEW IS WARRANTED BECAUSE THE NINTH CIRCUIT'S NEW STANDARD FOR EVALUATING WHETHER A CLASS REPRESENTATIVE'S INTERESTS CONFLICT WITH CLASS MEMBERS' INTERESTS CONTRAVENES THIS COURT'S DECISIONS

The Court should review the Ninth Circuit's decision because the decision applies a new standard for evaluating whether a class representative's interests conflict with absent class members' interests, in contravention of the standard articulated by this Court. Just last term, the Court reiterated that named plaintiffs are permitted to negotiate the release of claims that differ from those that the named plaintiffs themselves possess. *See Reed Elsevier, Inc. v. Muchnick*, __ U.S. __, 130 S. Ct. 1237, 1242-43, 1249 (2010) (ruling that the district court had jurisdiction to approve a class settlement involving the release of claims that certain class members could not have asserted before the district court). The test for determining whether a class representative shares absent class members' interests is *not* whether the class representative could prosecute each of the released claims but whether the representative and class members "share common objectives and legal or factual positions." *Helmley*, 571 P.2d at 349; *accord Hanlon*, 150 F.3d at 1022 ("slightly differing remedies based on state statute or common law" not sufficient to create a conflict of interest); *Brown*, 982 F.2d at 390.[17]

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[17] *See Adams*, 493 F.3d at 1279, 1288-89 (enforcing class action settlement releasing claims relating to alleged fraudulent marketing of life insurance policies, even though

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Here, it is undisputed that the *Benney* plaintiff and respondents in this action each "shared common objectives and legal or factual positions." The *Benney* plaintiff and respondents each complained of Sprint PCS's alleged failure to properly disclose surcharges, in the context of the same customer contracts and in advance of billing customers for those surcharges.[18] The panel below acknowledged that both actions challenge Sprint PCS's method of disclosing and billing for surcharges. *See* App. at 5a-6a, 18a-19a. Under the governing law, it does not matter whether the specific surcharges delineated in this action differ from those delineated in *Benney*. According to both sets of plaintiffs, they had a right to additional disclosures regarding

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the activity contested in second class action was never specifically named in first class action); *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 748 (9th Cir. 2006); *Wal-Mart Stores, Inc.*, 396 F.3d at 107; *In re General Am. Life Ins. Co. Sales Practices Litig.*, 357 F.3d at 804-05 (enforcing class action settlement release of certain claims that were not known to plaintiff at the time the claims were released); *In re Prudential Life Ins. Co. of Am. Sales Practice Litig.*, 261 F.3d 355, 367 (3rd Cir. 2001) (prior class action settlement release "precludes class members from relying upon . . . common nucleus of operative facts" in bringing subsequent claims); *Grimes*, 17 F.3d at 1557, 1562-63 (federal courts must prohibit collateral attack on and enforce state class settlements containing broad release even though claims released could not have been brought in state court); *Nottingham Partners v. Trans-Lux Corp.*, 925 F.2d 29, 33-34 (1st Cir. 1991) (same).

[18] This action and *Benney* also assert virtually identical causes of action, namely the alleged violation of state consumer protection acts, breach of contract, and unjust enrichment.

surcharges, and Sprint PCS would be liable, regardless of the specific surcharge named or its amount, were plaintiffs to prevail on their assertion that Sprint PCS breached its alleged duty to disclose. *See Hanlon*, 150 F.3d at 1022. Because both sets of plaintiffs "shared common objectives and legal or factual positions," the *Benney* plaintiff's interests were in no way in conflict with respondents' interests here.

The Ninth Circuit, however, concluded that the *Benney* plaintiff could not have "vigorously prosecute[d]" claims on behalf of the class and had "an insurmountable conflict of interest," because Benney was not charged the Washington surcharge at issue in this action. App. at 13a. In contravention of governing precedent, the Ninth Circuit found that class representatives share absent class members' interests only where they can prosecute each of the released claims. *See* App. at 11a.

The Ninth Circuit's citation to *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), does not support its analysis. There, the Court held that because "currently injured" and "exposure-only" asbestos class members had mutually-exclusive incentives in settling the action, one group of plaintiffs was inadequate to represent the interests of the other. 521 U.S. at 626-27; *see id.* at 604 (noting that individual members possessed claims that varied by tens of thousands of dollars). Specifically, "currently injured" members would want "generous immediate payments," whereas "exposure-only" members would want "an ample, inflation-protected fund for the future." *Id.* at 626.

By contrast, *no* disparity of interests exists between the *Benney* plaintiff and respondents here. Indeed, the Benney Settlement Agreement did not discriminate among class members based on specific surcharges for which they were billed. App. at 71a-75a. Rather, *all* current or former Sprint PCS customers from December 1, 2000, including respondents, were entitled to claim a benefit under the Settlement Agreement. App. at 71a. In addition, the Benney Settlement Notice made it expressly clear that claims related to any type of surcharges or regulatory charges (like those asserted here) were included in the scope of the release. Thus, respondents had ample opportunity to assess the total value of the claims they were being asked to release (namely, the amount of surcharges paid to Sprint PCS as reflected on their monthly invoices) versus the benefit of the settlement in considering whether to opt out of the Benney Settlement Agreement. Furthermore, respondents received the Benney Settlement Notice *after* they filed this action and thus could fully account for the impact of the Benney Settlement Agreement on their claims here. Because the Ninth Circuit's new standard for evaluating the existence of a conflict of interest contravenes the governing law, the Court should grant the petition for a writ of certiorari to review the Ninth Circuit's decision.

CONCLUSION

For the foregoing reasons, Sprint Spectrum L.P. d/b/a Sprint PCS respectfully requests that the Court grant the petition for a writ of certiorari.

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Respectfully submitted,

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