No. 08-___ 081107 MAR 2 - 2009

IN THE

Supreme Court of the United States

THE HERTZ CORPORATION,
Petitioner,

v.

MELINDA FRIEND, *et al.*,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, for purposes of determining principal place of business for diversity jurisdiction citizenship under 28 U.S.C. § 1332, a court can disregard the location of a nationwide corporation's headquarters – i.e., its nerve center.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Ninth Circuit.

The Petitioner here and appellant below is The Hertz Corporation.

The Respondents here and appellees below are Melinda Friend and John Nhieu. By virtue of the allegations contained in their Complaint, the Respondents seek to represent a putative class of persons similarly situated, but no motion for class certification has yet been filed and no class has been certified.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states as follows:

The Hertz Corporation is a wholly owned subsidiary of Hertz Global Holdings, Inc., a publicly traded corporation on the New York Stock Exchange. No publicly traded corporation owns 10% or more of Hertz Global Holdings, Inc.'s common stock.

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Petitioner The Hertz Corporation ("Hertz") respectfully petitions for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit in *Melinda Friend, et al. v. Hertz Corporation*, No. 08-16963.

OPINIONS BELOW

The judgment and opinion of the United States Court of Appeals for the Ninth Circuit that gives rise to this Petition is unpublished, but is available at 297 F. Appx. 690, 2008 WL 4750198 (9th Cir. 2008) and is reprinted in the Appendix to the Petition ("Pet. App.") at 1a – 3a.[1/] The opinion of the district court at issue in the appeal to the Ninth Circuit was issued on January 15, 2008 in the case of *Melinda Friend, et al. v. Hertz Corporation*, Case No. C-07-5222 MMC. *Id.* at 4a – 11a.

STATEMENT OF JURISDICTION

The Ninth Circuit issued its judgment and opinion on October 30, 2008. By Order dated December 5, 2008, the court denied rehearing and rehearing *en banc*. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

1/ Hereinafter, the United States Court of Appeals for the Ninth Circuit will be referred to as "the Ninth Circuit," and other United States Courts of Appeals will be referred to as "the First Circuit," "the Second Circuit," and so forth.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1332(c)(1) provides, in relevant part, that "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business . . . ."

STATEMENT OF THE CASE

This case involves the meaning of the phrase "principal place of business" as used in 28 U.S.C. § 1332(c)(1). As this Court previously has recognized, albeit in a very different context:

> In deciding whether a location is "the principal place of business," the commonsense meaning of "principal" suggests that a comparison of locations must be undertaken. This view is confirmed by the definition of "principal," which means "most important, consequential or influential." Webster's Third New International Dictionary 1802 (1971). Courts cannot assess whether any one business location is the "most important, consequential or influential" one without comparing it to all the other places where business is transacted.

Comm'r of Internal Revenue v. Soliman, 506 U.S. 168, 174, 113 S. Ct. 701, 706 (1993)(construing

principal place of business as used in 26 U.S.C. § 280A(c)(1)(A) of the Internal Revenue Code).[2/]

The circuit courts have divided into a deep four-way split regarding the tests to be applied in locating a corporation's principal (most important, consequential or influential) place of business for purposes of diversity jurisdiction. These tests range from the Seventh Circuit's "nerve center test," which focuses on locating the corporation's "brain," and ignores all other business operations as irrelevant, to the Ninth Circuit's "place of operations test," which focuses on the locations of the corporation's business operations, while generally ignoring its nerve center. Unlike either of these tests, the Third Circuit's "center of corporate activities test" focuses on finding the center of day-to-day corporate-wide activity and management, with the locations of other business activities being relevant, but less important, factors. Finally, the Fifth, Sixth, Eighth, Tenth and Eleventh Circuits' "totality of the circumstances test" hinges on no particular facet of corporate activities, but rather on the company as a whole, including its character, business purpose, nerve center, management center and locations of operations.

2/ While the definition of principal place of business in *Soliman* related to the substantive issue of a tax deduction for a home office, and not the issue of a corporation's principal place of business for purposes of determining federal court diversity jurisdiction, statutory terms are generally interpreted in accordance with their ordinary meaning. *BP America Prod. Co. v. Burton*, 549 U.S. 84, 90, 127 S. Ct. 638, 644 (2006).

Hertz seeks a writ of certiorari so that this Court can resolve this circuit split regarding the proper method for locating a corporation's principal place of business for purposes of diversity jurisdiction. This conflict presents an important question of federal law since "parties ought to know definitely what court they belong in, and not face the prospect that their litigation may be set at naught because they made a wrong guess about jurisdiction." *Dimmitt & Owens Financial, Inc. v. United States*, 787 F.2d 1186, 1191 (7th Cir. 1986) (Posner, J.). Absent resolution of this conflict, corporations can be (and are being) deemed to have more than one principal place of business for purposes of diversity jurisdiction, a result not permitted by the plain wording of 28 U.S.C. § 1332(c)(1). In addition, corporations will be deprived of the protections intended by the "minimal" diversity provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), in a jurisdiction with a penchant for class action litigation, i.e., California, simply because their business activities in that state are roughly commensurate with its rank as the most populous state in the Union.

I. Basis for Federal Jurisdiction and Procedural Summary

On September 6, 2007, Respondents Melinda Friend and John Nhieu filed this putative class action in California state court seeking damages for alleged violations of California's wage and hour laws. Pursuant to the removal provisions of CAFA, Hertz timely removed the action to the District Court for

the Northern District of California. On November 27, 2007, Respondents filed a motion to remand; or, in the alternative, a request for discovery regarding Hertz' principal place of business. In support of their remand motion, Respondents argued that Hertz was a citizen of the State of California and that diversity of citizenship did not exist between Hertz and members of the putative class. On January 15, 2008, the district court granted Respondents' motion based on the court's conclusions that "a plurality" of Hertz' business activities occur in California and that "Hertz is not the type of litigant that diversity jurisdiction was designed to protect." *See* District Court Order Granting Plaintiffs' Motion to Remand, reprinted at Pet. App. 4a – 11a.

Pursuant to 28 U.S.C. § 1453(c)(1), Hertz sought discretionary review of the district court's remand order by the Ninth Circuit. The Ninth Circuit initially denied Hertz' petition for review. *See* Ninth Circuit Order, reprinted at Pet. App. 12a. Hertz then moved for reconsideration or, in the alternative, rehearing *en banc*, and the court vacated its prior denial and agreed to review the remand order. *See* Ninth Circuit Order, reprinted at Pet. App. 13a – 14a.

On review, the Ninth Circuit concluded that the district court had correctly applied the circuit's "place of operations" test as articulated in *Industrial Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1094 (9th Cir. 1990)("the 'nerve center' test should be used only when no state contains a substantial predominance of the corporation's business

activities") and *Tosco Corp. v. Communities for a Better Env't*, 236 F.3d 495, 500 (9th Cir. 2001)(substantial predominance "requires only that the amount of corporation's business activity in one state be significantly larger than any other state in which the corporation conducts business"). In a further refinement of this test, the panel below found that no "policy concerns" justified taking California's population into account when determining whether a corporation's business activities in California were significantly larger than in any other single state. *See* Memorandum Opinion, reprinted at Pet. App. 1a – 3a. The Ninth Circuit subsequently denied rehearing and rehearing *en banc* and this Petition timely followed. *See* Ninth Circuit Order, reprinted at Pet. App. 15a.

II. Factual Summary

The facts relevant to the issues presented are undisputed.[3/] Hertz is incorporated in Delaware and

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[3/] Consistent with the requirements of 28 U.S.C. § 1446(a), Hertz' Notice of Removal contained "a short and plain statement of the grounds for removal," supported by a sworn declaration showing that Hertz was incorporated in Delaware, with its principal place of business in New Jersey. *See Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 199 (4th Cir. 2008)("removing party's notice of removal sufficiently establishes jurisdictional grounds for removal by making jurisdictional allegations in the same manner" as a plaintiff would be required in their original complaint); *see also McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189, 56 S. Ct. 780, 785 (1936)(a party asserting jurisdiction must allege facts essential to show jurisdiction and must support them by competent proof if challenged by his adversary or by the court).

operates "on-airport" and "off-airport" rental facilities in 44 of the 50 states. Pet. App. 26a at ¶ 3. The leadership of Hertz is found at its corporate headquarters in Park Ridge, New Jersey. *Id.* at ¶ 11. The core executive and administrative functions for Hertz' domestic operations are carried out in New Jersey and, to a lesser extent, Oklahoma. *Id.* Hertz' overall executive and administrative functions are not found in the State of California. *Id.*

During the period relevant to Hertz' removal of this action to federal court, 83% of Hertz' rental facilities were located in states other than California, 81.8% of its vehicle rentals were transacted in states other than California, 81.4% of its total revenues were generated in states other than California and 79.5% of its entire workforce were employed in states other than California. *Id.* at ¶¶ 6 - 9.

As relevant to the Ninth Circuit's place of operations test, which compares business activities between the two states containing the largest amount of those activities: (1) 17% of Hertz' rental facilities were located in California and 9.7% were located in Florida; (2) 18.2% of Hertz' vehicle rentals were transacted in California and 10.7% were transacted in Florida; (3) 18.6% of Hertz' revenues were generated in California and 11.6% were generated in Florida; and, (4) 20.5% of Hertz'

While Respondent requested discovery with respect to Hertz' principal place of business, it offered no facts controverting the allegations made in support of removal, and the district court did not challenge any of them.

employees were employed in California and 14.3% were employed in Florida. *Id.*

Similar to its requests in the District Court and Ninth Circuit, Hertz requests that this Court take judicial notice of the U.S. Bureau of the Census population figures for 2006 (est.) as follows: United States 299,398,484, California 36,457,549 (12.2% of U.S. total), Florida 18,089,888 (6.0%), Texas 23,507,783 (7.9%), Illinois 12,831,970 (4.3%), and New York 19,306,183 (6.5%). *See* U.S. Census Bureau, State & County QuickFacts, *available at* http://quickfacts.census.gov/qfd, (last visited February 2, 2009).[4/]

REASONS FOR GRANTING THE PETITION

I. The Circuit Courts Are Deeply Divided Over How to Determine a Corporation's Principal Place of Business for Purposes of Diversity Jurisdiction

The circuit courts have developed four different tests for determining a corporation's principal place of business: (1) the nerve center test, which focuses exclusively on locating the corporation's "brain," without regard to the location of its other business activities; (2) the center of

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[4/] In its filings in the District Court and the Ninth Circuit, Hertz presented population figures for 2005 from the U.S. Census Bureau's "QuickFacts" website as they were the most current data available at that time. The 2006 population figures are not materially different.

corporate activities test, which focuses primarily on locating the headquarters of day-to-day corporate activities and management, but permits consideration of the location of other business activities as relevant (but less important) factors; (3) the place of operations test, which focuses exclusively on the location of the corporation's business activities, and only considers the location of its nerve center if those business activities do not substantially predominate in any one state; and, (4) the total activities test, which requires a fact-intensive inquiry and focuses on no one factor to the exclusion of others, and requires consideration of factors such as the character of the corporation, its purposes, the kind of business in which it is engaged, the situs of its operations and the location of its headquarters.

Due to their differing emphases, these tests result in different outcomes with respect to the location of a corporation's principal place of business. For example, a court which applies the nerve center test will locate a corporation's principal place of business in one state, though a court applying the place of operations test would likely locate it in another. However, the very wording of 28 U.S.C. § 1332(c)(1) makes clear that a corporation can have one, and only one, principal place of business.

A. Nerve Center Test

The Seventh Circuit uses the nerve center test as its sole method for determining a corporation's principal place of business for purposes of diversity

jurisdiction. Under this test, a district court is to look for the location of "the corporation's brain," which ordinarily is found "where the corporation has its headquarters." *Wisconsin Knife Works v. National Metal Crafters*, 781 F.2d 1280, 1282 (7th Cir. 1986); *Metropolitan Life Ins. Co. v. Estate of Cammon*, 929 F.2d 1220, 1223 (7th Cir. 1991)("this court follows the 'nerve center' approach to corporate citizenship: a corporation has a single principal place of business where its executive headquarters are located").

In adopting this test, the Seventh Circuit recognized that other circuits "use a vaguer standard . . . [and] look not just to where the corporation has its headquarters but also to the distribution of the corporation's assets and employees . . . [but w]e prefer [a] simpler test. Jurisdiction ought to be readily determinable." *Wisconsin Knife* Works, 781 F.2d at 1282. Consequently, the amount of business that a corporation transacts in any particular state is "irrelevant" to the Seventh Circuit's test for locating its principal place of business. *Metropolitan Life Ins. Co.*, 929 F.2d at 1223 ("that Metropolitan Life does lots of business in Illinois is accordingly irrelevant, so long as the record reveals (as it does) that its 'principal' place of business [i.e., nerve center] is elsewhere").

B. Center of Corporate Activities Test

The Third Circuit uses the center of corporate activities test as its sole method for locating a corporation's principal place of business for purposes of diversity jurisdiction. Under this test, a district

court is to look for the location of the corporation's "headquarters of day-to-day corporate activity and management." *Kelly v. U.S. Steel Corp.*, 284 F.2d 850, 854 (3d Cir. 1960). The center of corporate activities test is similar to the nerve center test in the sense that it looks for a "headquarters," albeit of day-to-day corporate activities and management. However, unlike the nerve center test, the location of the corporation's plants, employees, etc., are relevant considerations, but they are "elements of lesser importance" in the determination. *Id.* at 854; *see also Mennen Co. v. Atlantic Mut. Ins. Co.*, 147 F.3d 287, 291 (3rd Cir. 1998)(*Kelly* requires a court to locate a corporation's headquarters for day-to-day activity and management, with the location of plants, employees, etc., being considerations of lesser importance, but some significance).

C. Place of Operations Test

In direct conflict with the tests applied by the Seventh and Third Circuits, the Ninth Circuit considers the location of a corporation's plants, employees, and assets, to be factors of paramount importance in locating its principal place of business for purposes of diversity jurisdiction. Under the Ninth Circuit's test, a corporation must first prove that no single state contains a substantial predominance of its business activities before the district court can consider the location of the corporation's nerve center or its headquarters of day-to-day corporate activities and management. *Industrial Tectonics*, 912 F.2d at 1094 ("nerve center test should be used only when no state contains a

substantial predominance of the corporation's business activities")(emphasis supplied).

According to the Ninth Circuit, a corporation fails to meet this burden when its business activities in one state, e.g., plants, employees, revenues, etc., are "significantly larger" than the next largest state. *Tosco Corp.*, 236 F.3d at 500 ("substantial predominance . . . requires only that the amount of corporation's business activity in one state be significantly larger than any other state in which the corporation does business"). Thus, the place of operations test does not make a comparison of all the places where business is transacted, i.e., the location of the corporation's nerve center, the location(s) of its day-to-day management and the location(s) of all its other business activities. Rather, it only considers whether business activities (in terms of facilities, employees, revenues, etc.) are "significantly larger" in one state in comparison to the one other state containing the next largest amount of such business activities. Further, as for the comparison of business activities between these two states, the Ninth Circuit has stated that there is no need to consider whether the difference between the two is in proportion to populations of the states being compared. *See* Ninth Circuit Opinion and Judgment, reprinted at Pet. App. 1a, 3a.

D. Total Activities Test

The Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits apply the total activities test in locating a corporation's principal place of business for purposes

of diversity jurisdiction. *See, e.g., Teal Energy USA, Inc. v. GT, Inc.*, 369 F.3d 873, 876 (5th Cir. 2004); *Gafford v. General Elec. Co.*, 997 F.2d 150, 163 (6th Cir. 1993); *Capitol Indemnity Corp. v. Russellville Steel Co., Inc.*, 367 F.3d 831, 836 (8th Cir. 2004); *Amoco Rocmount Co. v. Anschutz Corp.*, 7 F.3d 909, 915 (10th Cir. 1993); *MacGinnitie v. Hobbs Group*, LLC, 420 F.3d 1234, 1239 (11th Cir. 2005). Pursuant to this test, a district court is to consider not only the location of the corporation's nerve center, and the locations of its business activities, but also the totality of the surrounding circumstances, including things like the character of the corporation, its purposes and the kind of business in which it is engaged. *See, e.g., Gafford*, 997 F.2d at 161; *Amoco Rocmount Co.*, 7 F.3d at 915 . Unlike the other tests described above, the total activities test "does not hinge on one particular facet of corporate operations, but on the total activity of the company considered as a whole." *Amoco Rocmount Co.*, 7 F.3d at 915.[5/]

[5/] The First, Second and Fourth Circuits have yet to formally adopt any one of the tests described above. Rather, they recognize that the nerve center and place of operations tests may point to different locations as a corporation's principal place of business and have provided guidance for selecting between the two, e.g., nerve center test should apply to corporations with far flung activities, but the center of corporate activities test or place of operations test should apply when operations are not far flung. *See, e.g., Topp v. CompAir, Inc.*, 814 F.2d 830, 834 (1st Cir. 1987)(recognizing that courts apply varying tests for determining principal place of business depending upon the factual circumstances of the corporation at issue); *R.G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 655 (2d Cir. 1979)(providing guidance for selection between

II. The Split Between the Circuits Implicates Important Questions of Federal Law that Should be Decided by This Court

A. Absent Resolution by This Court, Corporations Will be Subject to Having More than One Principal Place of Business for Purposes of Diversity Jurisdiction

"By common sense and by law, a corporation can have only one principal place of business for purposes of establishing its state of citizenship." *Gafford*, 997 F.2d at 161; *see also J.A. Olson Co. v. City of Winona, Miss.*, 818 F.2d 401, 406 (5th Cir. 1987)("the amendment makes clear that every corporation has one and only one principal place of business"); 28 U.S.C. § 1332(c)(1)("a corporation shall be deemed to be a citizen of any state by which it has been incorporated and the state where it has its principal place of business") (emphasis supplied). However, pursuant to the various tests which district courts have been instructed to use by their respective circuit courts of appeal, corporations are subject to the distinct possibility of having more than one principal place of business; a result at odds with the clear language of the diversity jurisdiction statute.

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nerve center test and place of operations test); *Peterson v. Cooley*, 142 F.3d 181, 184 (4th Cir. 1998)(approving use of either the nerve center test or place of operations test, with neither to the exclusion of the other).

For example, in *Burgos v. United Airlines, Inc.*, 2002 WL 102607, at *6 (N.D. Cal. Jan. 11, 2002), the district court concluded that United Airlines' principal place of business was in California. In doing so, the district court applied the Ninth Circuit's place of operations test, i.e., it compared United Airlines' business activities in the state at issue, California, to the state containing the next largest amount of such activities, and it did so without regard to the location of its headquarters (whether that be the nerve center or its center of corporate activities). However, pursuant to the nerve center test, a district court in the Seventh Circuit would be required to locate, and has previously located, United's principal place of business at its corporate headquarters in Illinois. *See, e.g., Kohtz v. United Airlines*, 1991 WL 171330, at *1 (N.D. Ill. Aug. 29, 1991)(granting United's motion to dismiss federal court action for lack of diversity jurisdiction due to United's principal place of business being located in Elk Grove, Illinois, the location of its corporate headquarters).

The outcome identified above is not limited to the conflict between the nerve center and place of operations tests. Thus, a district court applying the total activities test has located a corporation's principal place of business in a state other than the one containing its nerve center, and it did so on the basis of facts which would not be considered in applying the nerve center test, e.g., the nature of its business activities and the situs of its operations; *see, e.g., Shell Rocky Mountain Production, LLC v. Ultra Resources, Inc.*, 415 F.3d 1158, 1163 (10th Cir.

2005)("[i]rrespective of whether Houston constitutes Ultra's nerve center, an evaluation of Ultra's total activity convinces us that there is ample evidence to justify the district court's conclusion that Ultra's principal place of business is either Wyoming or Colorado").

Due to the split between the circuits with respect to the appropriate test to apply in determining a corporation's principal place of business for purposes of diversity jurisdiction, a district court in California (pursuant to the place of operations test), a district court in Illinois (pursuant to the nerve center test), and a district court in Wyoming (pursuant to the total activities test), could locate the same corporation's principal place of business in three different states. Such results are not permitted by 28 U.S.C. § 1332(c)(1) and these corporations either would be deprived of the federal forum that diversity jurisdiction is intended to provide or subjected to a legal proceeding for which jurisdiction was lacking.

B. The Effect of the Ninth Circuit's Approach Will be That Nationwide Corporations Will be All Deemed California Citizens

Absent review by this Court, not only will corporations be subject to having more than one principal place of business for purposes of diversity jurisdiction, but corporations with nationwide business operations, including operations in California commensurate with its population,

invariably will have one of these multiple principal places of business located in California. Thus, it is beyond dispute that Hertz transacts business in 44 states, approximately 80% of all its business activities (in terms of employees, facilities, rentals and revenues) are located outside of California, and the headquarters from which it operates this business is located in New Jersey. Nonetheless, pursuant to the place of operations test, the court ignored the nationwide scope of Hertz' business activities, and the location of the headquarters from which it exercises control over its far flung operations, and simply compared Hertz' business activities in the state at issue, California, to the next largest state in terms of those activities, Florida. Moreover, the court made this comparison without regard to the fact that California's population is more than double that of Florida.

As has already happened to United Airlines and Hertz, numerous other corporations with nationwide business activities, and business activities in California commensurate with its size and population, will be deemed to have a principal place of business in California pursuant to such a place of operations test. This result is contrary to the underlying purposes of diversity jurisdiction in general and, CAFA jurisdiction in particular.

With respect to the underlying purposes of diversity jurisdiction in general, the legislative history of the 1958 amendments to 28 U.S.C. § 1332(c)(1) recognized that "the underlying purpose of diversity of citizenship legislation . . . is to provide a

separate forum for out-of-state citizens against the prejudices of local courts and local juries by making available to them the benefits and safeguards of the federal courts." S. Rep. 85-1830 (1958), *as reprinted in* 1958 U.S.C.C.A.N. 3099, 3102. The existence of such diversity jurisdiction was recognized as being essential to both the proper administration of justice and the free flow of commerce. *Id.* at 3116-3119.

Consistent with the above-described purposes of diversity jurisdiction, the principal place of business provision of 28 U.S.C. § 1332(c)(1) was added to address "the evil whereby a local institution, engaged in a local business and in many cases locally owned, is enabled to bring its litigation into the federal courts simply because it has obtained a corporate charter from another state." *Id.* at 3101-3102. After rejecting a suggestion that corporations be deemed citizens of every state in which they do business, as well as a suggestion that a corporation be deemed to be a citizen of the state where more than half of its gross income is received, *Id.* at 3119-3120, the Committee on Jurisdiction and Venue settled on the recommendation that a corporation be deemed to be a citizen of the state containing its principal place of business. *Id.* at 3132. According to the Committee, this provision provided a "simpler and more practical formula" for locating a corporation's citizenship, "while at the same time preserving the purpose of [its] previous recommendations to prevent frauds and abuses of the federal jurisdiction by corporations which are primarily local in character." *Id.* The Ninth Circuit's test disregards these principles and will result in

nationwide corporations, with far flung activities spread across many states, being deemed to be citizens of California simply because they have operations in that state commensurate with its population. Such corporations, however, are not "primarily local in character," and they have engaged in no "fraud or abuse" with respect to federal jurisdiction. Nonetheless, the test being applied by the Ninth Circuit will result in such corporations losing the protections intended by diversity jurisdiction with the potential for resulting interference with interstate commerce.

With respect to CAFA jurisdiction in particular, the Senate Report which accompanied CAFA recognized

> [a] mounting stack of evidence . . . demonstrat[ing] that abuses [in class action litigation] are undermining the rights of both plaintiffs and defendants . . . [with] [o]ne key reason for these problems . . . [being] that most class actions are currently adjudicated in state courts, where the governing rules are applied inconsistently . . . and where there is often inadequate supervision over litigation procedures and proposed settlements.

S. Rep. 109-14 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3, 5.

In an effort to deal with these abuses, which included "copycat class actions," and the use of class action devices as "judicial blackmail," Congress enacted CAFA for the express purpose of substantially expanding federal court jurisdiction over class actions. *Id.* at 23. This expansion was intended to address the abuses previously noted, as well as others, all of which were recognized as having the potential for interfering with interstate commerce. *Id.* at 5-6. Despite these underlying purposes of CAFA, nationwide corporations with operations in California commensurate with that state's population will be deprived of the statute's protections in a jurisdiction with a penchant for class action litigation.

C. This Court Infrequently Has the Opportunity to Review Principal Place of Business Issues

This Court has not previously addressed the proper test for locating a corporation's principal place of business for purposes of diversity jurisdiction, and its opportunities for doing so are limited. First, remand orders in traditional diversity cases are not subject to appellate review. *See* 28 U.S.C. § 1447(d)("[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise . . ."); *see also Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127-128, 116 S. Ct. 494, 497 (1995)("[a]s long as a district court's remand is based on a timely raised defect in removal procedure or on lack of subject-matter jurisdiction . . . a court of appeals lacks jurisdiction to

entertain an appeal of the remand order under [28 U.S.C.] § 1447(d)"). Second, remand orders in CAFA cases are subject to discretionary review only. *See* 28 U.S.C. § 1453(c)(1)("a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed . . ."). Consequently, this is an important issue relating to federal court jurisdiction which may evade review for many years to come.

CONCLUSION

The "prompt, economical and sound administration of justice depends to a large degree upon definite and finally accepted principles governing important areas of litigation, such as the respective jurisdictions of federal and state courts . . . . " *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 7, 71 S. Ct. 534, 537 (1951). As evidenced by the circuit split described above, such "definite and finally accepted" principles do not exist with respect to determining the location of a corporation's principal place of business for purposes of diversity jurisdiction.

Hertz respectfully submits that a test for determining a corporation's principal place of business for purposes of diversity jurisdiction should be guided by: (1) the ordinary meaning of those words, i.e., the most important, consequential or influential place of business in comparison to all others; (2) the underlying purposes of diversity jurisdiction, e.g., protecting out-of-state citizens

against the bias of local tribunals and promoting the free flow of commerce; and, (3) Congress' expressed reasons for adding the principal place of business provision to 28 U.S.C. § 1332(c)(1), i.e., "a simple [and] practical" method for readily determining the existence of jurisdiction, which also allows judges to protect against "frauds and abuses of federal jurisdiction by corporations which are primarily local in character." S. Rep. 85-1830 (1958), *as reprinted in* 1958 U.S.C.C.A.N. 3099, 3132.

The Ninth Circuit's place of operations test, which reduces a corporation's nerve center to an afterthought, does not comport with the ordinary meaning of the statute, it is not tailored to address the "evil" which prompted Congress to amend the statute, and it is inconsistent with the underlying purposes of diversity jurisdiction. Corporations like Hertz, United Airlines, Target, Home Depot and countless others, who do business in California commensurate with its population, are not California institutions, engaged in a California business, while seeking to avoid the jurisdiction of California state courts through some fraud or artifice. Rather, they are nationwide corporations, headquartered and operated from states outside of California.

Hertz respectfully submits that this Court should grant certiorari in order to establish definite and accepted principles pursuant to which federal courts can readily and uniformly determine their jurisdiction in a manner consistent with the wording of 28 U.S.C. § 1332(c)(1), and the underlying purposes of diversity jurisdiction.

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