No. A140035

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT, DIVISION TWO

BRISTOL-MYERS SQUIBB COMPANY,
Petitioner,

v.

SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO,
Respondent.

BRACY ANDERSON, ET AL.,
Plaintiffs and Real Parties in Interest

After the March 13, 2014 Order To Show Cause As To Why The Relief Requested In The Petition Should Not Be Granted

APPLICATION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER

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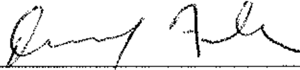
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Attorneys for Amicus Curiae Chamber of Commerce of The United States of America certify that there are no interested entities or persons that must be listed in this certificate under Cal.R. Ct. 8.208.

Dated: April 14, 2014

Respectfully submitted.



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APPLICATION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT

The Chamber of Commerce of the United States of America (the "Chamber") respectfully applies for leave to file a brief as *amicus curiae* in this matter in support of petitioner Bristol-Myers Squibb Co.[*] The Chamber is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country.

The issue presented by the petition for a writ of mandate is of substantial importance to businesses throughout the United States and beyond. The recent decisions of the United States Supreme Court in *Daimler AG v. Bauman* (2014) 134 S. Ct 746, and *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 131 S. Ct. 2846, have clarified that the federal Due Process Clause imposes specific and concrete limitations on the exercise of general personal jurisdiction over an out-of-state defendant.

The setting here provides an opportunity for this Court to align California law with the U.S. Supreme Court's recent binding precedents that limit the scope of general jurisdiction and prescribe a more structured analysis to determine its exercise. The trial court exercised general jurisdiction over the claims of 575 out-of-state plaintiffs against an out-of-state company based on events that took place entirely outside California.

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[*] No party or counsel for a party in this writ proceeding authored the proposed *amicus brief* in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity, other than the *amicus curiae* and its members, made a monetary contribution intended to fund the preparation or submission of this brief.

The defendant's limited operations in California have nothing to do with the plaintiffs here or their claims.

The Chamber has a strong interest in the correct and uniform resolution of questions of general jurisdiction. Many of its members offer products and services in most or all 50 states, often maintaining offices or representatives there. They may be subject to specific jurisdiction in a state when the subject matter of an action arises from the provision of goods or services in that state. But they should not be—and under *Bauman* are not—subject to jurisdiction in every state for actions arising from conduct in any other state. That could permit nationwide forum-shopping by any plaintiff in any action. The Chamber's members seek to foreclose that unwise and unconstitutional result.

CONCLUSION

The Court should grant this application and permit the Chamber to file an *amicus curiae* brief.

Dated: April 14, 2014

Respectfully submitted.

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INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest federation of business, trade and professional organizations representing 300,000 direct members and indirectly representing the interests of more than three million businesses and corporations of every size, from every sector and in every geographic region of the country. The Chamber routinely advocates the interests of the business community in courts across the nation by filing *amicus curiae* briefs in cases involving issues of vital concern, including the *Goodyear* and *Bauman* cases that provide the legal rules that govern the disposition of the petition for a writ of mandate. (See *Daimler AG v. Bauman* (2014) 134 S.Ct 746; *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 131 S.Ct. 2846.) The Chamber has also appeared many times before the California Supreme Court, this Court, and other districts of the Court of Appeal.

ARGUMENT

I. The Decision Below Conflicts With the United States Supreme Court's Decisions in *Goodyear* and *Bauman* Because Bristol-Myers Squibb (BMS) Is Not "At Home" In California.

This case requires the Court to determine whether California's long-arm statute may be constitutionally applied to exercise personal jurisdiction over claims by nonresident plaintiffs against a nonresident company based on conduct that occurred entirely outside this State.

To uphold the assertion of jurisdiction here, the trial court relied on a theory of "general jurisdiction"—that is, jurisdiction based on contacts with California that have no relation to the litigation. (Pet. Exh. 814.) Relying on the 1995 decision in *Hesse v. Best Western International, Inc.* (1995) 32 Cal.App.4th 404, 408, the superior court held that a nonresident defendant's "wide-ranging, systematic and continuous contacts with a forum state

justify the exercise of general jurisdiction over that defendant." (Pet. Exh. 813.) To support jurisdiction under this legal standard, the superior court focused on six facts: (a) the volume of BMS's sales to California, (b) the value of BMS's sales to California, (c) BMS's registration with the California Secretary of State, (d) BMS's designation of an agent to accept service of process, (e) BMS's operation of five offices in California, and (f) the presence of several hundred BMS employees and sales representatives in California. (Pet. Exh. 814.)

The trial court applied the wrong constitutional test. The correct test to determine whether an exercise of general jurisdiction over a nonresident corporation comports with due process is whether the corporation "is fairly regarded as at home" in the forum state. (*Daimler AG v. Bauman* (2014) 134 S.Ct. 746, 760; *Goodyear Dunlop Tires Ops. u. Brown* (2011) 131 S.Ct. 2846, 2853-54.) Indeed, the Court held in *Bauman* that the formulation applied by the superior court here—which would permit "the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business"—"is unacceptably grasping." (134 S.Ct. at 761.) In returning the concept of general jurisdiction to its original understanding as the means by which a corporation may be sued over almost anything so long as it is sued at home, the *Daimler* and *Goodyear* decisions disapproved that unpredictable formulation and instead imposed clear and more easily administrable limits on the scope of general jurisdiction.

In *Goodyear*, the U.S. Supreme Court rejected a theory of general jurisdiction closely paralleling the one used by the trial court in the present case. The plaintiffs in *Goodyear* sought to recover for a bus accident in France that, according to the complaint, was caused by defective tires manufactured by several foreign subsidiaries of Goodyear USA. The plaintiffs sued in North Carolina and argued that personal jurisdiction could

lie over the foreign defendants based on the distribution of different types of tires in North Carolina. Rejecting the state court's exercise of personal jurisdiction, the United States Supreme Court held that while the flow of a manufacturer's products into the forum state "may bolster an affiliation germane to *specific* jurisdiction" it did "not warrant a determination that, based on those ties, the forum has *general jurisdiction.*" (131 S. Ct. at 2855 [emphases in original].) The Court expressly rejected the state court's "sprawling view of general jurisdiction," under which "any substantial manufacturer or seller of goods would be amenable to suit, on any claim for relief, wherever its products are distributed." (*Id.* at 2856.) Instead, the Court limited general jurisdiction to those forums where the nonresident corporation "is fairly regarded as at home." (*Id.* at 2854.) Those forums included the state where the company is incorporated and, if different, the state where it maintains its principal place of business. (*Id.*)

This year's decision in *Bauman* reaffirmed and clarified this "home" principle. Like this case, *Bauman* involved application of California's long arm statute and concerned an exercise of general jurisdiction over a nonresident company. In *Bauman,* the plaintiffs asserted general jurisdiction over a nonresident company based on its alleged relationship with a U.S. subsidiary that had extensive contacts with California. (For the purposes of its analysis, the Court attributed the subsidiary's contacts to the parent.) Those contacts included "multiple California-based facilities." (134 S. Ct. at 752.) Additionally, the subsidiary was the "largest supplier of luxury vehicles in the California market," and its California sales accounted for 2.4% of the defendant's worldwide sales (*ibid.*), or more than $4 billion annually (*id.* at 766 [conc. opn. of Sotomayor, J.].) Critically, the Court assumed that *even if* all of the subsidiary's California contacts could be attributed to the nonresident defendant, general jurisdiction would not lie

because those contacts, coupled with defendant's own, would "hardly render it at home" in California. (*Id.* at 760.)

Further articulating the analysis announced in *Goodyear*, the Court reaffirmed that "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." (*Bauman*, 134 S.Ct. at 760.) The "place of incorporation and the principal place of business" are the paradigmatic places where a corporation may be subject to general jurisdiction. (*Id.* at 760.) Those characteristics "have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable." (*Ibid.*) A company's systematic penetration of many different markets does not expand the scope of general jurisdiction. "A corporation that operates in many places can scarcely be deemed at home in all of them." (*Id.* at 762 fn.20.)

The Court "decline[d] to foreclose the possibility" that "in an exceptional case .... a corporation's operations" in another state "may be so substantial and of such a nature as to render it at home in that State." (*Id.* at 761 fn.19.) But it found that the substantial California sales and many California facilities of the defendant's U.S. subsidiary "plainly d[id] not approach that level." (*Ibid.*)

Goodyear and *Bauman* control this case. BMS cannot be subject to general jurisdiction in California because it is not "at home" in this State. BMS is not incorporated and does not maintain its principal place of business here. Moreover, the trial court identified nothing that would make this the sort of "exceptional case" that might render a corporation "at home" in an additional state. (*Bauman*, 134 S.Ct. at 761 fn. 19.) The sole example cited by the Supreme Court in *Bauman* was its prior decision in *Perkins v. Benguet Consolidated Mining Co.* (1952) 342 U.S. 437, where the nonresident corporation had relocated its headquarters and operations to Ohio while its country of incorporation and nominal headquarters, the

Philippines, was occupied by the Japanese army. (See *Bauman,* 134 S.Ct. at 756 fn.8.) "Given the wartime circumstances," the Court observed, "Ohio could be considered a surrogate for the place of incorporation or head office." (*Ibid.* [internal quotation marks omitted].) Nothing like that happened here.

Nor are BMS's alleged connections with California any more substantial than the multiple facilities and billions in sales of the nonresident defendant in *Bauman*, which the Court found to be "plainly" insufficient to render it at home. Contrary to plaintiffs' suggestion (Opp. 20), the international character of the dispute was not dispositive. To the contrary, that aspect was literally an afterthought in the Court's analysis. The principal point of that analysis is that, in the absence of exceptional circumstances, no company is "at home," and thus subject to general jurisdiction, except in its place of incorporation or its principal place of business. Thus, BMS is not subject to general jurisdiction in California.

Although plaintiffs suggest (Opp. 18-23) that *Bauman* did not undo "the sprawling view of general jurisdiction" adopted in *Hesse* and by many federal courts, including the Ninth Circuit in *Bauman* itself (134 S.Ct. at 760), most courts to confront the issue so far have recognized that the Supreme Court's clarification of the law may be outcome-dispositive when general jurisdiction is aggressively and expansively asserted. (See, e.g., *In re Roman Catholic Diocese of Albany, New York, Inc.* (2d Cir. Feb. 7. 2014) __ F.3d __, 2014 WL 485948, at *7 [granting mandamus to vacate exercise of general jurisdiction where there was "no way to reconcile the district court's decision with *Daimler AG*" because "Daimler's contacts with the forum were far more substantial than" the petitioning defendant's with the forum]; *Air Tropiques, Sprl v. Northern & Western Ins. Co.* (S.D. Tex. Mar. 31, 2014) 2014 WL 1323046, at *10 [dismissing for lack of

general jurisdiction although, "[b]efore *Daimler*, [the foreign defendant] might have been subject to general jurisdiction in this forum"].)

This Court, too, should recognize that the intervening authority of *Bauman* removes all doubt that *Hesse* has been superseded.

II. Uncorrected Erroneous Decisions on General Jurisdiction Open The Floodgates To Suits Against Nonresident Companies and Harm the California Economy.

In the wake of *Goodyear* and *Bauman* most courts have substantially narrowed their general jurisdiction jurisprudence. Since *Goodyear,* no court in a published decision has exercised general jurisdiction over a nonresident defendant on the basis of its sales to or operations in the forum state. (See, e.g., *Abelesz v. OTP Bank* (7th Cir. 2012) 692 F.3d 638, 653-59 [granting mandamus and ordering dismissal for lack of personal jurisdiction].)[1] And since *Bauman*, no decision designated for publication has found general jurisdiction over a nonresident entity.[2]

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[1] Other examples include *Viasystems, Inc. v, EBM-Papst St. Georgen GmbH & Co.* (8th Cir. 2011) 646 F.3d 589, 597 ["Our precedent and the Supreme Court's decision in *Goodyear* make clear that even if a foreign corporation pours its products into a regional distributor with the expectation that the distributor will penetrate a discrete, multi-State trade area, this connection alone is so limited that it is an inadequate basis for the exercise of general jurisdiction."] [citations and internal quotations omitted]; *Yanmar Co. v. Slater* (Ark. 2012) 386 S.W.3d 439, 446 [finding no personal jurisdiction and noting that another state's earlier decision basing general jurisdiction on stream-of-commerce theory was incompatible with *Goodyear*]; *Russell v. SNFA* (Ill. 2013) 987 N.E.2d 778, 787 [finding general jurisdiction unavailable but relying on specific jurisdiction].

[2] See *In re Roman Catholic Diocese of Albany*, *supra*; *Alkani v. Aegis Defense Servs., Inc.* (D.D.C. Mar. 26, 2014) __ F.Supp.2d __, 2014 2014 WL 1234901, at *9-13; *Lexxion Med., Inc. v. SurgiQuest, Inc.* (D.Minn. Mar. 26, 2014) __ F.Supp.2d __, 2014 WL 1260761, at *3-4; *Bates v. Bankers Life & Cas. Co.*(D.Or. Jan. 27, 2014) __ F.Supp.2d __, 2014 WL 292508, at *7; *RELCO Locomotives, Inc. v. AllRail, Inc.*(S.D.Iowa Mar. 5, 2014) ___ F.Supp.2d ___, 2014 WL 1047153, at *5 fn.2; *Am. Recreation Prods., LLC v. Tennier Indus., Inc.* (E.D.Mo. Mar. 31, 2014) ___ F.Supp.2d

Against the background of this sister-state and federal jurisprudence, the *Hesse* decision is out of step with the rest of the nation. Consequently, California's assertion of general jurisdiction over BMS based on its alleged operations in the State threatens deleterious consequences for California's economy. Because general jurisdiction does not require any relationship between the plaintiffs' claims and the defendant's contacts with the forum state, a finding of general jurisdiction over a nonresident company means that a court can assert jurisdiction over any claim against the company for conduct taking place anywhere in the world. Moreover, after *Bauman,* general jurisdiction is no longer tempered by an analysis of whether a particular assertion of jurisdiction is reasonable. (See 134 S.Ct. at 762 fn.20.)

So once a company is found subject to a court's general jurisdiction, its only option to stave off the risk of future suits is to reduce its operations in the state. For example, in this case, the trial court noted that BMS maintained five offices in California, mostly dedicated to medical research, that have nothing to do with Plavix. If that investment suffices to subject BMS to suit in California for any claim based on conduct anywhere in the world, BMS would have little choice but to reconsider the benefits of investing in California when balanced against substantial litigation risk covering all claims worldwide.

The impact is not limited to the putative defendant. Nonresident companies already operating within California must reexamine their operations and sales to ensure that such conduct does not subject them to general jurisdiction. Nonresident companies planning new investment in California must reconsider those plans in light of their jurisdictional implications. Indeed, the Court in *Bauman* structured the general

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___, 2014 WL 1315182, at *2. Cf. *Snodgrass v. Berklee College of Music* (7th Cir. Mar. 13, 2014) __ Fed.Appx. __, 2014 WL 960898, at *1.

jurisdiction analysis as it did precisely so that "out-of-state defendants" could "'structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit'" (134 S.Ct. at 762 [quoting *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 472]), without having to be excessively cautious for fear of "exorbitant exercises of all-purpose jurisdiction" (*id.* at 761).

Put simply, the trial court's exercise of general jurisdiction against BMS based on its operations and sales in California amounts to a declaration of open season on nonresident companies doing business in the state. Because California would stand alone in punishing nonresident companies for their operations in the State by subjecting them to personal jurisdiction for claims completely unrelated to the operations—contrary to the clear command of *Goodyear* and *Bauman*—the likeliest consequence would be the flight of a substantial volume of jobs and capital away from California while new business investment in the State is deferred.

III. Exorbitant Assertions of General Jurisdiction Magnify California's Court Crisis.

Unconstitutionally "exorbitant exercises of all-purpose jurisdiction" (*Bauman*, 134 S.Ct. at 761) burden not only the business community, but California courts and citizens as well. Were the decision below to stand, 575 cases involving out-of-state plaintiffs complaining about out-of-state harms based on out-of-state sales will displace and delay 575 disputes involving California parties or California events.

California currently faces a court-funding crisis of historic proportions. As the Chief Justice explained last year, "To have your day in court, you need a courtroom," but "what we once counted on—that courts would be open, and ready, and available to deliver prompt justice—is no longer true." (Tani G. Cantil-Sakauye, Chief Justice, Address to a Joint Session of the California Legislature, State of the Judiciary (Mar. 11, 2013)

pp. 2-3.)[3] Because California's judicial resources are so scarce, the press of lawsuits having no connection to the state means that Californians must wait longer for their "day in court." (*Id.* at 3.) And impaired access to justice inevitably will lead some to "believe justice is for them." (*Id.* at 4.)

Yet despite the access-to-justice crisis currently confronting California's courts, the trial court's ruling allows hundreds of nonresident plaintiffs to bring cases with no California connection here and invites countless more. For each case brought by one of these nonresident plaintiffs, California parties must wait longer receive the court's attention. Properly enforced, the constitutional limits on personal jurisdiction foreclose that absurd result.

For California courts nonetheless to welcome cases that lack any connection to this State distorts and impairs the civil justice system. At a minimum, that practice encourages open and nearly limitless forum-shopping. Moreover, when cases lacking local contacts are allowed to proceed unchecked, the inevitable effect is the swelling of dockets of courts that are perceived as favorable to certain jurisdictional theories (even when the Supreme Court of the United States has squarely rejected those theories). When these swelling dockets overwhelm courts, they become less able to deliver justice—whether to plaintiffs with claims properly brought here or to defendants who never should have been sued here. This delay in the resolution of litigation also causes particular harm to California businesses with cases in the California courts, as it subjects those companies to prolonged uncertainty that poses difficult financial and management challenges.

Put simply, the outdated rule of general jurisdiction reflected in *Hesse* and other cases requires California's taxpayers and courts to bear all

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[3] *Available at* http://www.courts.ca.gov/documents/S0J_2013.pdf.

the costs of lawsuits arising from conduct occurring outside the state while discouraging business investment in the State. To prevent this double-whammy to the California economy, the petition should be granted and the decision below reversed.

CONCLUSION

The petition should be granted and a writ of mandate issued to direct that service of summons be quashed as to the 575 out-of-state plaintiffs in these coordinated cases.

Dated: April 14, 2014

Respectfully submitted.

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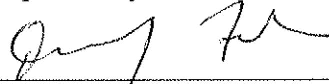
CERTIFICATE OF WORD COUNT

(California Rule of Court 8.520(c)(1))

According to the word count facility in Microsoft Word 2007, this brief, including footnotes but excluding those portions excludable pursuant to Rule 8.520(c)(3), contains 2,871 words, and therefore complies with the 14,000-word limit contained in Rule 8.520(c)(1).

Dated: April 14, 2014

Respectfully submitted.



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CERTIFICATE OF SERVICE

I, Kristine Neale, declare as follows:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is: Two Palo Alto Square, Suite 300, 3000 El Camino Real, Palo Alto, California 94306-2112. On April 14, 2014, I served the foregoing document(s) described as:

APPLICATION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS

☐ By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

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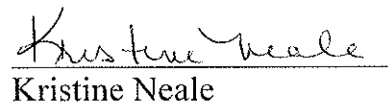
I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 14, 2014, at Palo Alto, California.



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