Case No. A163867

IN THE CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION 1

HOFFMAN-LA ROCHE INC., ROCHE LABORATORIES, INC., GENENTECH, INC., AND GENENTECH USA, INC.,

Defendants and Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO—CIVIL COMPLEX DEPT.,

Respondent.

GABRIEL AUBUCHON, et al.,
Plaintiff and Real Parties in Interest.

From an Order Denying Defendants' Motion
to Dismiss or Stay Based on *Forum Non Conveniens*
Hoffman-La Roche Lariam Cases, JCCP No. 5053
Hon. Nancy L. Fineman, Judge (Dept. 4)

AMICUS CURIAE BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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INTRODUCTION

In denying Defendants' *forum non conveniens* motion, the trial court made several legal errors that threaten to disrupt our federal system and flood California courts with tort cases that lack any meaningful connection to the State.

First, the court concluded that no suitable alternative forum exists because Plaintiffs' claims would likely be time barred in their home jurisdictions, even though Defendants stipulated to toll the running of any statutes of limitations during the time the case was pending in California. (Order at 3–4.) But the claims would have been time barred in California too, if not for the trial court's application of the discovery rule, and Plaintiffs have never contended that the discovery rule is unavailable in their home jurisdictions. (*Id.* at 4.) The necessary implication of the trial court's ruling is that no alternative forum is available whenever a foreign jurisdiction *might* apply the discovery rule less generously than California courts. That application of *forum non conveniens* is a clear invitation to out-of-state plaintiffs to forum shop stale claims in California. Yet one of the primary purposes of the doctrine is to *discourage* forum shopping, as both the California Supreme Court and United States Supreme Court have recognized. (*Stangvik v. Shiley*

Inc. (1991) 54 Cal.3d 744, 763–64; *Piper Aircraft Co. v. Reyno* (1981) 454 U.S. 235, 236.)

Second, the trial court held that no suitable alternative forum exists because the cases brought by the out-of-state Plaintiffs could not all be tried in a single jurisdiction. (Order at 7.) The court likewise pointed to the unavailability of a single forum when balancing the public and private interests. (*Ibid.*) As Defendants correctly explain, however, the California Supreme Court has never imposed such a requirement when applying *forum non conveniens*. Moreover, the trial court's conclusion overlooks the fact that the out-of-state claims could all be filed in (or removed to) federal court under diversity jurisdiction and coordinated or consolidated in a single court by the Judicial Panel on Multidistrict Litigation. (28 U.S.C. § 1332(a); *id.* § 1407; *id.* § 1441(a).) Such coordination would provide all the benefits of pretrial coordination that the trial court sought to preserve while ensuring that any trials are conducted in the Plaintiffs' home jurisdictions where the relevant witnesses can be compelled to testify.

Third, the trial court failed to properly consider the burden its ruling would impose on the California judicial system. (See Order at 7.) The seven out-of-state Plaintiffs must prove their entitlement to relief on an individualized basis under the laws of their home states, so

allowing those cases to proceed in California would clearly burden both the trial court and appellate courts. And the trial court's application of the discovery rule may invite other plaintiffs to file claims against Defendants in California based on the same alleged misconduct, further clogging the State's already overburdened courts. Worse, to the extent the trial court's application of *forum non conveniens* invites other forum-shopping plaintiffs to assert potentially time-barred claims against *other* defendants based on *other* alleged misconduct, it threatens to drown California in a sea of litigation that could better be handled elsewhere. California businesses have an interest in prompt resolution of pending cases, and it is unfair to both the business community and California taxpayers to spend precious judicial resources—including time spent by jurors—on cases with no meaningful connection to the State.

Because the relevant factors all favor dismissal under *forum non conveniens*, this Court should grant the petition for writ of mandate and reverse the trial court's erroneous decision to keep these cases in California.

ARGUMENT

I. Requiring Defendants to Waive Statute of Limitations Defenses to Prevail on *Forum Non Conveniens* Motions Would Encourage Forum Shopping.

Courts have long recognized that plaintiffs often file suit in inconvenient fora when they believe those jurisdictions provide them the best chance of recovery. (*Gulf Oil Corp. v. Gilbert* (1947) 330 U.S. 501, 507 [noting that a plaintiff is often "under temptation" to select a forum based on strategic considerations even if it results in "some inconvenience to himself"].) The doctrine of *forum non conveniens*, when correctly applied, ensures that defendants are not forced to suffer such gamesmanship merely because they are subject to jurisdiction in the selected forum. As the United States Supreme Court has recognized, "even when jurisdiction is authorized by the letter of a general venue statute," an "open door may admit those who seek not simply justice but perhaps justice blended with some harassment." (*Ibid.*)[1]

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[1] Federal *forum non conveniens* cases have focused almost exclusively on the relative convenience of United States courts versus foreign courts—as opposed to various courts within the United States—because Congress passed the federal venue statute one year after the United States Supreme Court adopted the common law *forum non conveniens* doctrine for federal courts. (28 U.S.C. § 1404(a), Pub. L. 87-845, 62 Stat. 937 (1948); see *Gulf Oil* (1947) 330 U.S. 501; *Koster v. (Am.) Lumbermens Mut. Cas. Co.* (1947) 330 U.S. 518.) That statute authorizes district courts to transfer cases to any other district where the case could have been brought (or where the parties have consented to proceed) "[f]or the

Courts and commentators have often remarked on the relative attractiveness of courts in this country compared to foreign courts, pointing out "their liberal discovery rules; proximity to the assets of U.S. corporate defendants; perceived higher damages awards; punitive damages; jury trials; favorable products liability laws; the contingent fee system; and the lack of a loser-pays rule for attorney fees." Ronald A. Brand, Challenges to *Forum Non Conveniens*, 45 N.Y. J. of Int'l L. & Politics 1003, 1018–19 (2013) [explaining that *forum non conveniens* is designed to "deny plaintiffs" these benefits].[2] These authorities have

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convenience of the parties and witnesses" and "in the interest of justice." (28 U.S.C. § 1404(a).) This statute obviated the need to apply the *forum non conveniens* doctrine where the defendant merely sought a transfer from one federal district court to another.

[2] (See also, e.g., Michael Wallace Gordon, *Forum Non Conveniens* Misconstrued: A Response to Henry Saint Dahl, 38 U. Miami Inter-Am. L. Rev. 141, 148 (2006) ["The intention of [foreign blocking statutes]" is in "assist[ing] their nationals in gaining access to U.S. courts that offer several benefits absent to plaintiffs in their own nations . . . includ[ing] retention of lawyers under contingency fee contracts, rules that a losing plaintiff may avoid paying costs and fees no matter how egregious the claim, jury trials, and most importantly . . . punitive damages."]; Yuliya Zeynalova, The Law on Recognition and Enforcement of Foreign Judgments: Is It Broken and How Do We Fix It?, 31 Berkeley J. Int'l L. 150, 167 (2013) [noting that American courts allow for recoveries that are "repugnant" to the policies of other nations, including punitive damages and unrestricted jury awards]; Matthew J. Eible, Making *Forum Non Conveniens* Convenient Again: Finality and Convenience for Transnational Litigation in U.S. Federal Courts, 68 Duke L. J. 1193, 1203 (2019) ["The doctrine [of *forum non conveniens*] also serves to promote. . . the avoidance of inappropriately expansive potential liability

identified *forum non conveniens* as one of the key doctrines that has prevented American businesses from being devasted by forum-shopping plaintiffs and kept American courts from being flooded with litigation having little connection to this country.

Within the United States, California is a magnet for opportunistic plaintiffs. Thousands of companies—including two of the Defendants here—are headquartered or incorporated in the State and thus subject to general jurisdiction in the State's courts.[3] And many plaintiffs may be tempted by the prospect of large awards and liberal discovery that may be unavailable elsewhere. (See, e.g., *Mendoza v. Intuitive Surgical, Inc.* (N.D. Cal. May 12, 2021) 2021 WL 1910886, at *1 [California has no cap on punitive damages]; *Howell v. Hamilton Meats & Provisions, Inc.*

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for U.S. defendants."] [citing Gary B. Born & Peter R. Rutledge, International Civil Litigation in United States Courts 369–70 (6th ed. 2018)]; *Piper Aircraft*, 454 U.S. at 252 & n.18 ["American courts . . . are already extremely attractive to foreign plaintiffs," including because "strict liability remains primarily an American innovation," "the tort plaintiff may choose . . . from among 50 jurisdictions if he decides to file suit in the United States[] [e]ach of [which] applies its own set of malleable choice-of-law rules," "jury trials are almost always available in the United States, while they are never provided in civil law jurisdictions," "American courts allow contingent attorneys' fees, and do not tax losing parties with their opponents' attorney's fees," and "discovery is more extensive in American than in foreign courts."].)

[3] The two Genentech entities have their principal places of business in California. (See Bohm Decl. ¶ 9.)

(2011) 52 Cal.4th 541, 548–49 [California follows the collateral source rule, which prevents reduction of damages awarded to plaintiffs for harms already recovered from third parties such as insurers]; *Flagship Theaters of Palm Desert, LLC v. Century Theaters, Inc.* (2011) 198 Cal.App.4th 1366, 1383 [California discovery rules are construed liberally in favor of disclosure]; Richard W. Sherwood, Curbing Discovery Abuse: Sanctions under the Federal Rules of Civil Procedure and the California Code of Civil Procedure, 21 Santa Clara L. Rev. 567, 569 (1981) ["Through its liberal interpretation of discovery rules, California has [] encouraged excessive use of discovery."].) Based on these factors, the U.S. Chamber Institute for Legal Reform ranks California's liability system forty-eighth out of fifty states in terms of its treatment of businesses. (U.S. Chamber Institute for Legal Reform, 2019 Lawsuit Climate Survey, at 2, 11, 12, https://tinyurl.com/2npe97t.)

None of this is a secret, and out-of-state plaintiffs are surely aware that "trial in California will enhance the possibility of substantial recovery." (*Stangvik*, 54 Cal.3d at 761; see also Cristopher Speer, The Continued Use of *Forum Non Conveniens*: Is It Justified, 58 J. Air Law & Commerce 845, 872 (1993) [noting that foreign plaintiffs began pursuing relief in state courts with less well-developed *forum non conveniens* jurisprudence relative to that of federal courts once

effectively precluded from pursuing relief in the latter].) The trial court's ruling here would only heighten the incentive to forum shop when asserting stale claims based on decades-old conduct.

Plaintiffs do not dispute that their claims would likely be time barred in *any* jurisdiction (including California) absent some sort of tolling of the accrual date. And Plaintiffs have not disputed that they are free to raise any tolling-based arguments in their home jurisdictions—each of which apply some version of the discovery rule the trial court applied here.[4] (Order at 4.) Yet the trial court apparently concluded that the opportunity to *litigate* that issue elsewhere was insufficient, presumably because the result might be different. (Order at 3–4.) Instead, the trial court insisted that no suitable forum could exist unless Defendants *completely abandoned* their statute of limitations defenses. (*Ibid.*) That outcome-focused approach to *forum non convenience* has been explicitly rejected by the California Supreme Court, which has directed courts not to consider whether a plaintiff "would be substantially disadvantaged" by the law of his home jurisdiction.

[4] (See, e.g., *Powel v. Chaminade College Preparatory, Inc.* (Mo. 2006) 197 S.W.3d 576, 582 [en banc]; N.Y. Civ. Prac. L. & R. § 214-c(3); *Gaillard v. Bayer Corp.* (E.D.N.Y. 2013) 986 F. Supp. 2d 241, 246; *Pennwalt Corp. v. Nasios* (1988) 314 Md. 433, 452; Fla. Stat. § 95.031(2)(b); Utah Jud. Code § 78B-6-706; Ohio Rev. Code § 2305.10(B)(1); *Bell v. C.B. Fleet Holding Co., Inc.* (N.D. Ga. Aug. 15, 2008) 2008 WL 11336404, at *3.)

(*Stangvik*, 54 Cal.3d at 763–64.) Indeed, as the United States Supreme Court has recognized, "the *forum non conveniens* doctrine would become virtually useless" if "substantial weight were given to the possibility of an unfavorable change in law" once the case is refiled in the appropriate jurisdiction. (*Piper Aircraft,* 454 U.S. at 236.)

If affirmed, the trial court's ruling would incentivize out-of-state plaintiffs with time-barred claims to sue in California. Such plaintiffs may reasonably believe that by filing here and obtaining a favorable ruling on the statute of limitations—whether based on the discovery rule or some other equitable exception—they can force defendants either to remain in California (to preserve an appeal) or waive their statute of limitations defense as a prerequisite for a *forum non conveniens* motion. It takes little imagination to see how attractive that proposition might be to out-of-state plaintiffs who believe their tolling arguments may fail in their home courts.

An influx of such suits could put businesses headquartered or incorporated in California at a "competitive disadvantage" vis-à-vis companies that are not subject to general jurisdiction in this State. (*Stangvik*, 54 Cal.3d at 760.) That is precisely what the doctrine of *forum non conveniens* is designed to avoid. (See Rutter Grp. Cal. Prac. Guide: Civ. P. Before Trial, § 3:424.2 [courts should consider "[t]he competitive

disadvantage to California business if resident corporations are required to defend lawsuits here based on injuries incurred elsewhere."]; (*Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.* (2007) 549 U.S. 422, 428 [a "primary purpose of the *forum non conveniens* doctrine" is to "protect a defendant from substantial and unnecessary effort and expense"] [cleaned up]; Alexander R. Moss, Bridging the Gap: Addressing the Doctrinal Disparity Between *Forum Non Conveniens* and Judgment Recognition and Enforcement in Transnational Litigation, 106 Georgetown L. Rev. 209, 215 (2017) [*forum non conveniens* arose from common law doctrine which provided for "dismissal of suits filed in a jurisdiction posing undue hardship to the defendant"] [citing Edward J. Barrett, Jr., The Doctrine of *Forum Non Conveniens*, 35 Cal. L. Rev. 380, 386–88 (1947)].)[5]

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[5] The trial court also failed to consider the interests of the Plaintiffs' home states in *limiting* liability by imposing reasonable statutes of limitations. The California Supreme Court has "recognized that a jurisdiction ordinarily has 'the predominant interest' in regulating conduct that occurs within its borders, and in being able to assure individuals and commercial entities operating within its territory that applicable limitations on liability set forth in the jurisdiction's law will be available to those individuals and businesses in the event they are faced with litigation in the future." (*McCann v. Foster Wheeler LLC* (2010) 48 Cal.4th 68, 97–98 [citations omitted].) In purporting to require Defendants to waive their statute of limitations defenses, the trial court is preventing California's sister states "from providing reasonable assurances that the time limitation[s] in [their] law[s] would protect businesses in the future." (*Flack v. Nutribullet, LLC* (C.D. Cal. Apr. 12,

Given the trial court's glaring misapplication of California law and the harmful consequences its theory of *forum non conveniens* would entail, the trial court's denial of Defendants' motion to dismiss was a clear "abuse of discretion" and should be reversed. (*Baltimore Football Club, Inc. v. Super. Ct.* (1985) 171 Cal.App.3d 352, 365.)

II. The Trial Court Overlooked the Availability of Multidistrict Litigation in Federal Court, Which Provides the Same Efficiencies as Coordination in State Court but Ensures that Defendants Can Access Essential Witnesses at Trial.

Here, the trial court erred in focusing on the "efficiencies" of coordinated proceedings that it believed would be lost if the non-resident Plaintiffs' cases were refiled in Plaintiffs' home states. (Order at 5–6 [noting that "discovery will be coordinated" in California].) As Defendants have explained, when evaluating a *forum non conveniens* motion it is irrelevant whether individual cases consolidated or coordinated in California could all be refiled in a single jurisdiction. Indeed, in *Stangvik*, the California Supreme Court affirmed the grant of a *forum non conveniens* motion in two consolidated actions proceeding in front of the same trial court judge even though the actions would need to

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2019) 2019 WL 1596652, at *5 [discussing the California Supreme Court's reasoning in *McCann*, 48 Cal.4th 68].)

be refiled and tried in *two different countries*—Norway and Sweden—as a result. (54 Cal.3d at 744.) The Court plainly believed that both of those jurisdictions were suitable alternative fora, and implicitly rejected the notion that both cases must be tried in the same foreign court.

But even if purported "efficiencies" of coordinated proceedings were a valid consideration under the *forum non conveniens* doctrine, the trial court's reasoning is flawed. Although the trial court appeared to assume that MDL proceedings in federal court would not be available, (see Order at 7), nothing would prevent the parties from seeking coordination or consolidation in front on an MDL judge once these cases are refiled in the Plaintiffs' home states. This is because all the out-of-state Plaintiffs could file their complaints in federal court in their home jurisdictions, as the amount in controversy exceeds $75,000 in each case and Defendants are not citizens of any of the states in which Plaintiffs reside—Missouri, Georgia, New York, Maryland, Florida, Utah, and Ohio. (See 28 U.S.C. § 1332(a).) For the same reason, Defendants could remove each case to federal court if Plaintiffs filed in their home state courts. (See *id.* § 1441(a).) There is thus no reason to believe that these cases will remain in state court if Defendants' *forum non conveniens* motion is granted.

Once in federal court, these cases would be natural candidates for "coordinated or consolidated pretrial proceedings" because they involve "one or more common questions of fact." (*Id.* § 1407(a).) Accordingly, the Panel on Multidistrict Litigation could transfer the case to a single district court for pretrial proceedings, whether on a motion or on its own initiative (*Id.* § 1407(c); *cf. Oneok, Inc. v. Learjet, Inc.* (2015) 575 U.S. 373, 383 [describing similar circumstance where state-law claims were asserted in various state courts, defendant removed, and the cases were "consolidated and sent for pretrial proceedings"].) When deciding whether to coordinate or consolidate cases, the Panel on Multidistrict Litigation considers "the convenience of the parties and witnesses" and whether transfer "will promote the just and efficient conduct of such actions." (28 U.S.C. § 1407(a).) Those are precisely the interests the trial court sought to promote when it erroneously denied Defendants' *forum non conveniens* motion. (See Order at 5–7.)

Coordination or consolidation in front of an MDL judge would have all the advantages of coordinated proceedings in California, with none of the drawbacks. For example, the trial court asserted that one benefit of coordinated proceedings is that "Defendants' employees and experts will sit for one deposition" instead of being deposed in each case. (*Id.* at 6.) The same would be true in an MDL proceeding. The court also noted that

"the same attorneys can represent all the Plaintiffs in the actions." (*Id.* at 5.) An MDL court could provide the same "efficiencies" (*ibid.*) by "designat[ing] a lead counsel" or "hold[ing] some cases in abeyance while proceeding with others." (*In re Korean Air Lines Co.* (9th Cir. 2011) 642 F.3d 685, 700.) Moreover, if California is the most convenient location for pretrial discovery, as Plaintiff contends, the Panel on Multidistrict Litigation could assign the MDL proceeding to a federal district judge in California.

In addition to managing discovery, MDL courts have "broad" authority to resolve cases before trial, including by "decid[ing] dispositive pretrial motions." (*Id.* at 699; see also *Oneok*, 575 U.S. at 383 [MDL judge granted Defendants' summary judgment motion].) As the Supreme Court has recognized, "[f]ew cases [consolidated pursuant to § 1407] are remanded for trial" because "most multidistrict litigation is settled in the transferee court." (*Gelboim v. Bank Am. Corp.* (2015) 574 U.S. 405, 415 n.6 [quoting Manual for Complex Litig. § 20.132, p. 223 (4th ed. 2004)].) Indeed, several large products liability cases have been resolved by MDL courts in just the past few months. (See, e.g., *In Re: Takata Airbag Prods. Liab. Litig.*, Case No. 1:15-md-02599-FAM (S.D. Fla. Sept. 1, 2021) [unopposed motion for preliminary approval of $42 million settlement agreement covering 1.35 million vehicles]; *In Re: Apple Inc. Device*

Performance Litig., Case No. 5:18-md-02827-EJD (N.D. Cal. Mar. 17, 2021) [order approving several hundred-million-dollar settlement in MDL involving over sixty suits initially filed in various courts]; see also *In RE: JUUL Labs, Inc., Marketing, Sales Practices, and Products Liab. Litig.*, Case No. 3:19-md-02913-WHO (N.D. Cal. May 18, 2020) [order appointing settlement master in MDL consolidating hundreds of cases].) The parties to these suits would have the same opportunity to resolve these cases efficiently before trial. An MDL proceeding in these cases would thus be an efficient way of handling discovery, dispositive pretrial motions, and settlement discussions.

In addition to creating these efficiencies, an MDL proceeding would avoid the fundamental problem that precipitated Defendants' *forum non conveniens* motion in the first place—namely, that Plaintiffs' treating physicians and other key witnesses are outside the subpoena power of the trial court and thus cannot be forced to testify at trial. This defect would not be present in MDL proceedings because once discovery is closed each case would be "remanded" "to the district from which it was transferred" for trial. (28 U.S.C. § 1407(a); see also *Gelboim*, 574 U.S. at 406 ["MDL pretrial proceedings ordinarily retain their separate identities."].) An MDL proceeding would thus enable Plaintiffs to efficiently take discovery from Defendants while allowing Defendants to

call the necessary witnesses for live examination in the Plaintiffs' home jurisdictions should a trial be necessary.

The trial court's myopic focus on the supposed advantages of coordinated proceedings in California thus misstates the law and misperceives how these cases could proceed if the *forum non conveniens* motion were granted.

III. The Trial Court Erroneously Disregarded the Effects Its Ruling Would Have on California's Judicial System.

One of the primary goals of the *forum non conveniens* doctrine is to prevent the congestion of local courts. The importance of this factor was recognized in the very first California Supreme Court case applying the *forum non conveniens* doctrine. (See *Price v. Atchison, T. & S.F. Ry. Co.* (1954) 42 Cal.2d 577, 584–85 [expressing concern "for courts when litigation is piled up in congested centers instead of being handled at its origin"] [quoting *Gulf Oil*, 330 U.S. at 508–09]; see also *Stangvik*, 54 Cal.3d at 751.) Indeed, in both *Price* and *Stangvik*, the California Supreme Court stated that concerns about statewide court congestion should "*require* that our courts, acting upon [] equitable principles . . . , exercise their discretionary power to decline to proceed in those causes of action which they conclude . . . may be more appropriately and justly

tried elsewhere." (*Price*, 42 Cal.2d at 583–84 [emphasis added]; *Stangvik*, 54 Cal.3d at 751 [emphasis added].)

The trial court's cursory analysis of this factor badly missed the mark. The court reasoned that because there "are only ten cases in total," the burden "on this Court will not be substantial." (Order at 7.) That is a dubious conclusion given that each Plaintiff must prove his or her own injury, which will require extensive testimony from dozens of non-overlapping witnesses. It also ignores the likelihood that other claims involving the same product will be filed in California as a result of the court's ruling. (See *Stangvik*, 54 Cal.3d at 758 [noting "the already congested courts of this state would be burdened by the trial of the numerous and complex actions relating to the heart valve brought by plaintiffs who reside" outside California].) And as noted above, the trial court's application of *forum non conveniens* would hang a welcome sign on California courthouses for other out-of-state plaintiffs with potentially time-barred claims.

Some state court systems might be equipped to handle such an influx in litigation, but California's is not. On the contrary, it has among the lowest clearance rates of any state court system in the country. (S. Gibson *et al.*, Court Statistics Project, last accessed Nov. 5, 2021, https://tinyurl.com/yefmznvc [ranking California forty-sixth out of fifty

states in civil docket clearance rate for 2019, the latest year's data available at the time of visiting].) California superior courts have fallen short of their goals for timely disposition of civil actions—both limited and unlimited—for each of the past ten fiscal years. (Judicial Council of California, 2020 Court Statistics Report, at 50, https://tinyurl.com/4fpv4n6h.)

The Courts of Appeal are equally congested. For example, during fiscal year 2018–2019, it took a median of 589 days—over 19 months—for California appellate courts to file opinions after receiving notices of appeal. (*Id.* at 36.) The painfully slow nature of litigation in California creates inefficiencies for the state judiciary, deprives businesses of much-needed predictability, hinders investment, and drives up litigation costs. Given the clear burden that these cases (and others like them) would impose on California courts, this factor militates strongly in favor of granting Defendants' *forum non conveniens* motion.

The rest of the public and private factors point in the same direction. With respect to the out-of-state Plaintiffs, "the fact that [they] chose to file their complaint in California is not a substantial factor in favor of retaining jurisdiction here." (*Stangvik*, 54 Cal.3d at 755.) And although two of the *Defendants* are California residents, that factor should be given little weight because while "it is not unfair to a defendant

to hold the trial in a state where a substantial part of the wrongful conduct was committed," (*id.* at 760–61), *none* of the allegedly culpable conduct occurred in California. Indeed, the California-resident Defendants are apparently only in this case based on alleged successor liability. Finally, the California Plaintiffs will continue to litigate their cases here, so whatever nominal interest the state may have in deterring wrongful conduct that Defendants may have engaged in *outside* the State would be "amply vindicated if the actions filed by the California resident plaintiffs resulted in judgments in their favor." (*Stangvik*, 54 Cal.3d at 763.)

CONCLUSION

For the foregoing reasons, the Chamber urges the Court to grant the Petition for Writ of Mandate.

Dated: November 8, 2021 Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that the attached amicus curiae brief of the Chamber of Commerce of the United States of America consists of 4,286 words as counted by the Microsoft Word version 2102 word processing program used to generate the brief.

Dated: November 8, 2021

/s/Robert E. Dunn
Robert E. Dunn