IN THE
United States Court of Appeals for the Third Circuit
No. 21-2424

DAVID RUFFING,

Appellant,

vs.

WIPRO, LTD.

On appeal by permission from the order of the United States District Court for the Eastern District of Pennsylvania in No. 2:20-cv-05545

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE

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CORPORATE DISCLOSURE

The Chamber of Commerce of the United States of America ("Chamber") states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

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INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 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. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber files this brief to address the two important personal-jurisdiction issues in this case. Many businesses the Chamber represents do business in states beyond their states of incorporation and their principal places of business, and so they have a substantial interest in whether registering to do business subjects them to general personal jurisdiction in those states. Similarly, the Chamber and its members have a strong interest in ensuring that all plaintiffs, not just the original named plaintiffs, are required to establish the prerequisites for specific personal jurisdiction in FLSA collective actions.

Were the Court to take an expansive view of personal jurisdiction on either issue (or both), companies would be forced to defend against claims that lack the requisite connection to the forum states, meaning that companies could not reasonably have expected to be sued over those claims in those states. Such a holding would encourage abusive forum shopping and impose substantial harm on businesses and on the judicial system.[1]

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Chamber respectfully requests that this Court affirm the district court's holdings on the two important personal-jurisdiction issues that are presented in this appeal.

First, Pennsylvania's purported consent statute is unconstitutional. It has been 30 years since this Court last addressed whether a company's registration to do business in a state amounts to consent for the courts of that state to exercise general personal jurisdiction over the company. While that decision, *Bane v. Netlink, Inc.*, 925 F.2d 637 (3d Cir. 1991), found such consent, the Supreme Court's recent general-personal-jurisdiction cases have

[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E). All parties have consented to the filing of this brief.

effectively removed *Bane*'s underpinnings. In *Daimler AG v. Bauman*, 571 U.S. 117 (2014), the Supreme Court tightly constrained states' exercise of general personal jurisdiction by holding that the Fourteenth Amendment prohibits nationwide general jurisdiction—and embracing a consent by registration theory would impermissibly negate this holding by creating nationwide general jurisdiction for many corporations. *Bane* is no longer good law and, for the reasons the district court set out and others, Pennsylvania's statute is unconstitutional.

Second, in a collective action under the Fair Labor Standards Act (the "FLSA"), 29 U.S.C. § 201, *et seq.*, a district court may not exercise specific personal jurisdiction over a defendant with respect to claims by out-of-forum plaintiffs who lack sufficient connection to the forum.[2]

This Court has not yet addressed this second question. But it is hardly without guidance. Just as the Supreme Court has rejected an expansive view of *general* personal jurisdiction, the Supreme Court has in recent years rejected a broad interpretation of *specific* personal jurisdiction in situations similar to this one. In *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773

[2] The Court has the issue before it in *Fischer v. Federal Express Corp.*, No. 21-1683, which is now fully briefed and set for argument in January 2022. The Chamber filed an *amicus curiae* brief in that case as well.

(2017), the Court held that a state court could not exercise specific personal jurisdiction in a mass-tort lawsuit over claims by plaintiffs that did not have sufficient connection to the forum state. *Id.* at 1781. In *BMS*, it was not sufficient that the non-forum plaintiffs raised claims similar to those raised by forum plaintiffs. *Id.* The non-forum plaintiffs' claims had to have their own connection with the forum, and they did not. *Id.*

Two courts of appeals have already held that *BMS* applies to FLSA collective actions. *See Canaday v. Anthem Companies, Inc.*, 9 F.4th 392 (6th Cir. 2021); *Vallone v. CJS Solutions Group, LLC*, 9 F.4th 861 (8th Cir. 2021). The district court in this case joined a majority of other district courts that have likewise applied the *BMS* holding to FLSA collective actions. These courts are correct. The Supreme Court's reasoning in *BMS*—rooted in Due Process—applies to collective FLSA actions just as it does to mass-tort actions, and it applies in federal courts just as it does in state courts. The Chamber respectfully asks this Court to affirm the district court's holding limiting the collective FLSA action to those Pennsylvania employees who can establish specific personal jurisdiction under the *BMS* analysis.

ARGUMENT

I. The Court is not constrained to follow *Bane*, and it should conclude that Pennsylvania's consent-to-general-jurisdiction statute is unconstitutional in light of *Daimler*.

A. Daimler *has dismantled* Bane*'s underpinnings.*

Mr. Ruffing incorrectly argues that this Court is required to follow *Bane*. That is not so. Where this Court's prior decision rests on a constitutional standard that is later replaced, a panel should revisit the previous decision. *See Ruffing v. Wipro Limited*, 529 F. Supp.3d 359, 367 (2021) (citing *Planned Parenthood of Southeastern Pa. v. Casey*, 947 F.2d 682, 697-98 (3d Cir. 1991) (*rev'd on other grounds,* 505 U.S. 833 (1992)). In *Planned Parenthood*, the Court explained that "a change in the legal test or standard governing a particular area is a change binding on lower courts that makes results reached under a repudiated legal standard no longer binding." 947 F.2d at 698.

Daimler and the Supreme Court's other, recent general personal jurisdiction cases brought about just such a sea change. This Court decided *Bane* at a time when the standard for exercising general personal jurisdiction was more lax. At that time, the extant Supreme Court jurisprudence held that the Fourteenth Amendment would allow the exercise of general personal jurisdiction when the defendant had maintained "continuous and substantial fo-

rum affiliations." *Bane*, 925 F.2d at 639. The Court held that "[b]y registering to do business in Pennsylvania, Netlink 'purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.* at 640 (quotations omitted).

But *Daimler* made clear that neither "continuous and substantial" contacts nor "purposeful availment" suffices. 571 U.S. at 137-38 (2014). Indeed, *Daimler* held that general jurisdiction is limited to where a corporation is "at home," which, except in exceptional circumstances, is only where the corporation is incorporated and has its principal place of business. 571 U.S. at 137 and 139 n.19. Accordingly, as Judge Robreno colorfully wrote in *Sullivan v. A.W. Chesterton, Inc.*, 384 F. Supp.3d 532 (E.D. Pa. 2019), "*Daimler* effectively disassembled the legal scaffolding on which *Bane* was based." *Id.* at 543.

The Court is not bound by *Bane*, and that decision's conflict with *Daimler* requires that the Court reconsider the general-jurisdiction-by-registration issue *tabula rasa*, guided by the Supreme Court's more recent decisions.

B. **Daimler** *precludes any determination that consent by registration is effective to subject a foreign corporation to general personal jurisdiction.*

As noted, the Supreme Court has significantly restricted general personal jurisdiction. *See Daimler*, 571 U.S. at 137. While *Daimler* did not specifically address the consent-by-registration theory, its broader guidance is critical in this case, and allowing consent by registration would significantly undercut its mandate.

In *Daimler*, the Supreme Court made clear that the Constitution does not permit nationwide general jurisdiction and, for many corporations, consent by registration would lead to that prohibited result. Every state requires foreign corporations to register in order to do business there and, so, treating registration as consent to general personal jurisdiction would cause a corporation to be subject to general jurisdiction wherever it does business (and, in many cases, where it used to do business or might one day do business). *See Genuine Parts Co. v. Cepec*, 137 A.3d 123, 143 (Del. 2016) (jurisdiction by registration would cause corporation to be too broadly amenable to general jurisdiction). But that runs headlong into the Supreme Court's declaration that it would be "unacceptably grasping" to hold that every state where a corporation "engaged in a substantial, continuous, and systematic course of busi-

ness has general jurisdiction." *Daimler*, 571 U.S. at 138. Such an "exorbitant" exercise of personal jurisdiction is "barred by due process constraints on the assertion of adjudicatory authority." *Id.* at 121. As the Second Circuit has explained, if registration were allowed to confer general jurisdiction, "*Daimler*'s ruling would be robbed of meaning by a back-door thief." *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 640 (2d Cir. 2016).

C. Pennsylvania's statute is not saved by its reference to "consent."

Mr. Ruffing argues that Pennsylvania's long-arm statute alerts businesses that, by registering to do business in Pennsylvania, they are consenting to general personal jurisdiction there. That is not so and, in any event, any such consent is unenforceable because it would violate the Constitution.

1. The text of the statute does not support Mr. Ruffing's interpretation.

The relevant statute, 42 Pa.C.S. § 5301(a)(2), provides that any one of three activities may subject a corporation to general personal jurisdiction: (1) incorporation or qualification as a foreign corporation, (2) consent, and (3) carrying on a continuous and systematic part of its general business in Pennsylvania. The fact that qualification and consent are separately listed means that registration itself is not a form of consent—to conclude otherwise would

render the reference to qualification superfluous since it would otherwise be covered by "consent." Statutes must be read to give effect to all their terms. *See* 1 Pa.C.S. § 1922(2). Thus, as a matter of statutory construction, a corporation that registers to do business in Pennsylvania has not expressly consented to general personal jurisdiction.

2. Coerced consent by registration would be unconstitutional.

Even if the long-arm statute *did* expressly equate registration with consent, that mandate would be unconstitutional.

Pennsylvania mandates that "a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department [of State]." 15 Pa.C.S. § 411(a). That presents a foreign corporation with an illusory choice: "consent" to general jurisdiction or completely forego doing business in the Commonwealth.[3] "Extorted actual consent and equally unwilling implied consent are not the stuff of due process." *Leonard v. USA Petroleum Corp.*, 829 F. Supp. 882 (S.D.

[3] Mr. Ruffing suggests that corporations are not in fact coerced because, he says, the only penalty for not registering is that a corporation may not bring suit in Pennsylvania. Of course, that is no small matter but, in any event, it would be peculiar indeed to say that a corporation could evade general personal jurisdiction by blithely ignoring a mandatory statute.

Tex. 1993) (quotation marks omitted). Consent by registration is akin to signing a contract under duress or agreeing to a contract of adhesion. *See* Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1391 (2015). As with a party acting under duress, "there are no good [choices], only less bad ones." *Id.*

Coerced consent is not only invalid, it is also unconstitutional when made a condition of a registrant's right to do business. The unconstitutional conditions doctrine bars a state from "requir[ing] [a] corporation, as a condition precedent to obtaining a permit to do business within [a] State, to surrender a right and privilege secured to it by the Constitution." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607 (2013) (quotation omitted). For example, the Supreme Court has held that a state's "vain" enactment of a law that barred a company from exercising its right of removing a suit to federal court in exchange for the privilege of doing business in the state was "unconstitutional and void." *South Pacific Co. v. Denton*, 146 U.S. 202, 207 (1892).

Accordingly, if the Pennsylvania statute could be read to require a corporation to consent to general personal jurisdiction in order to do business in the Commonwealth, that statute would be unconstitutional.

D. Coerced consent by registration is bad policy.

Coercing consent as a condition to registration is unconstitutional. It is also bad policy.

The Supreme Court has long held that the due-process limits on personal jurisdiction confer "a degree of predictability ... that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quotation omitted). As the Court held in *Daimler*, a corporation's place of incorporation and its principal place of business—where it is subject to general jurisdiction under that case's principal holding—"have the virtue of being unique" and "easily ascertainable" so that a corporation may anticipate where it might be sued. 571 U.S. at 137. That predictability is crucial to a corporation's ability to make business and investment decisions. *See Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). But if consent by registration rendered a corporation subject to nationwide (or nearly nationwide) general personal jurisdiction, any predictability would be effectively lost and a corporation could be haled into court almost anywhere and with no consideration of the extent of its contacts with the forum.

That sort of nationwide general jurisdiction is not only unfair to corporations, it is unnecessary. As the Delaware Supreme Court has explained, we no longer "live in a time when states have no effective bases to hold foreign corporations accountable for their activities within their borders." *Cepec*, 137 A.3d at 137. States, including Pennsylvania, may exercise specific personal jurisdiction so that foreign corporations may be brought into Pennsylvania courts when suits have actual connections to Pennsylvania.

There is a final policy concern. The sort of national (or even just widespread) general personal jurisdiction for which Mr. Ruffing argues simply invites the sort of forum shopping that *Daimler* sought to prevent. *See* Monestier, *supra*, at 1409-10.

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The district court correctly held that *Daimler* overruled the doctrinal underpinnings of *Bane* and that, under the Supreme Court's current articulation of the due-process implications of general personal jurisdiction, any presumption of consent by registration is unconstitutional.

II. The Due Process Clause of the Fourteenth Amendment requires that a court find a sufficient connection between the forum state and each plaintiff's claim before exercising specific personal jurisdiction in an FLSA collective action.

The district court also correctly concluded that it could not properly exercise *specific* personal jurisdiction over Wipro with respect to claims by non-Pennsylvania plaintiffs.

A. Specific personal jurisdiction relates to the connection between the claim and the forum state.

Referred to by the Supreme Court as "conduct-linked" personal jurisdiction, specific jurisdiction allows a court to exercise personal jurisdiction over a defendant when the lawsuit arises out of or relates to the defendant's activities in the state. *Daimler*, 571 U.S. at 122, 127. The court must conclude that the defendant's "suit-related conduct" creates a substantial connection with the forum state, *Walden v. Fiore*, 571 U.S. 277, 284 (2014), so that it is "reasonable" to compel the defendant into court in the forum state to answer the particular plaintiff's claim. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

B. Bristol-Myers Squibb Co. v. Superior Court *highlights that specific personal jurisdiction must exist for each plaintiff's claim.*

BMS is the most instructive Supreme Court precedent for the FLSA-specific personal-jurisdiction problem with this suit. In *BMS*, the Supreme Court reaffirmed a core principle of specific personal jurisdiction: that in a

multiple-plaintiff case, the court must have specific jurisdiction over each plaintiff's claim.

BMS involved a mass action by 86 California residents and 592 plaintiffs from other states in California, each alleging injuries from taking the medication Plavix. 137 S.Ct. at 1778. The non-resident plaintiffs claimed no connection to California. Nevertheless, the California Supreme Court held that the trial court had specific jurisdiction with respect to the non-residents' claims because they were "similar in several ways" to those of the California residents, who could claim specific personal jurisdiction. *Id.* at 1778-79.

The U.S. Supreme Court reversed, explaining that there was no "adequate link" between California and the non-residents' claims. *Id.* at 1781. The fact that the *California* plaintiffs were prescribed, obtained and ingested Plavix in California and allegedly sustained the same injuries as did the non-residents was insufficient to confer specific personal jurisdiction over the *non-residents*' claims. *Id.* Rather, plaintiffs must show that the defendant has a sufficient relationship to the forum with respect to *each* plaintiff's claim. *Id.* Importantly, the Court summarized its holding by noting that "What is needed—and what is missing here—is a connection between the forum *and the specific claims at issue*." *Id*. at 1781 (emphasis added).

C. The Supreme Court's reasoning in BMS *applies to FLSA collective actions.*

An FLSA collective action is "a form of group litigation in which a

named employee plaintiff or plaintiffs file a complaint 'in behalf of' a group of other, initially unnamed employees who purport to be 'similarly situated' to the named plaintiff." *Halle v. West Penn Allegheny Health System Inc.*, 842 F.3d 215, 223 (3d Cir. 2016). While Mr. Ruffing seeks to equate collective actions to class actions, there are material differences for personal-jurisdiction purposes. "The existence of a collective action depends upon the affirmative participation of opt-in plaintiffs." *Id.* at 224. The requirement that a plaintiff affirmatively opt in to an FLSA collective action is "the most conspicuous difference between the FLSA collective action and a class action under Rule 23" because "every plaintiff who opts into a collective action has party status, whereas unnamed class members in Rule 23 class actions do not." *Id.* at 225 (quotation omitted). Congress indicated that opt-in FLSA collective-action plaintiffs should have the same status in relation to the claims of the lawsuit as the named plaintiffs. *Id.* (quotation omitted). Thus, by opting in, FLSA collective-action plaintiffs "assert[] claims in their own right." *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165, 173 (1989). Indeed, this Court has treated FLSA collective actions as a sort of permissive joinder. *Mineo v. Port Auth. of N.Y. & N.J.*, 779 F.2d 939, 941 n.5 (3d Cir. 1985).

In these regards, an FLSA collective action materially resembles the mass action in *BMS*. In *BMS* and in an FLSA case like this one, a group of plaintiffs seeks to assert individual claims *en masse* with each plaintiff having

his or her own party capacity. As the Sixth Circuit held in *Canaday*,

> [t]he principles animating *Bristol-Myer*'s application to mass actions under California law apply with equal force to FLSA collective actions under federal law. As other circuits have acknowledged, an FLSA "collective action is more accurately described as a kind of mass action, in which aggrieved workers act as a collective of individual plaintiffs with individual cases."

9 F.4th 392, 397 (6th Cir. 2021) (quoting *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1105 (9th Cir. 2018)). Indeed, this Court has compared FLSA collective actions to mass actions like the one in *BMS*. *Abraham v. St. Croix Renaissance Group, L.L.L.P.*, 719 F.3d 270, 272 n.1 (3d Cir. 2013).

Accordingly, just as there had to be specific personal jurisdiction over each plaintiff's claim in *BMS*, there must be specific personal jurisdiction over the claims of each plaintiff who opts into an FLSA collective action.

D. Mr. Ruffing's challenges to the district court's analysis are unavailing.

Mr. Ruffing asks the Court to find fault with various aspects of the district court's analysis, but there is no basis for the Court to do so. In its brief, Wipro has addressed each of these challenges, Appellee's Br. at 40, and this brief adds a few additional points.

First, Mr. Ruffing argues that the district court relied on the wrong part of Federal Rule of Civil Procedure 4(k). Appellant's Op. Br. at 46. The district court followed Rule 4(k)(1)(A), which allows service of process on and personal jurisdiction over a defendant to the extent the forum state's law

would permit, an analysis performed under the Fourteenth Amendment. *See Ruffing*, 529 F.Supp.3d at 364 (citing *Daimler*, 571 U.S. at 125; 42 Pa.C.S. § 5322(b)). Mr. Ruffing contends that the relevant provision is Rule 4(k)(1)(C), which allows service of process on and personal jurisdiction over a defendant when it is "authorized by a federal statute." Appellant's Op. Br. at 47. From that initial contention, Mr. Ruffing then asserts that the Fifth Amendment rather than the Fourteenth Amendment controls the personal-jurisdiction analysis, an important distinction because, he says, the Fifth Amendment does not focus on a defendant or claim's contacts with a state but with the nation as a whole. *Id.*

Even if Mr. Ruffing had properly raised the issue below—which Wipro notes he did not—Mr. Ruffing's argument falters at the first step. Nothing in the FLSA provides rules for service of process, much less nationwide service of process. In *Max Daetwyler Corp. v. R. Meyer*, 762 F.2d 290 (3d Cir. 1985), this Court explained that, "[i]n the absence of a federal statute authorizing nationwide service of process, federal courts are referred to the statutes or rules of the state in which they sit. ... When a federal question case arises under a federal statute that is silent as to service of process, [Fed. R. Civ. P.] 4(e) adopts an incorporative approach requiring that both the assertion of jurisdiction and the service of process be gauged by state

amenability standards." *Id.* at 295.[4]

The district court correctly applied Rule 4(k)(1)(A), with its incorporation of the Fourteenth Amendment's focus on state contacts.

Second, Mr. Ruffing takes issue with the district court's requirement that each plaintiff's claim have a sufficient connection to Pennsylvania. He contends that *BMS* is more flexible than the district court understood, and he sets out what he says are three circumstances in which courts have been permitted to exercise specific personal jurisdiction over an entire case even though some claims arise from a defendant's non-forum activities. *See* Appellant's Op. Br. at 50. But none of the examples ultimately supports Mr. Ruffing's position.

He asserts that such a broad exercise of specific jurisdiction is permitted "when, as here, Congress has authorized representative litigation," and he discusses class actions under Rule 23. *Id.* But, as we explained above, this Court has already recognized the material differences between class actions and FLSA collective actions in *Halle*, 842 F.3d at 224.

Mr. Ruffing suggests that, in FLSA collective actions, only the claims of the representative plaintiffs must have the requisite forum connections because that was the approach of the federal class-action rule in 1947 when Congress added the opt-in provision to the FLSA. He cites *Knepper v. Rite*

[4] At the time the Court decided *Max Daetwyler Corp.*, what is now Rule 4(k)(1) was Rule 4(e).

Aid Corp., 675 F.3d 249 (3d Cir. 2012), for the proposition that "[t]he FLSA's opt-in provision accordingly incorporated this jurisdictional rule." Appellant's Op. Br. at 51. Mr. Ruffing overreaches. *Knepper* made no such pronouncement. It addressed the compatibility of FLSA opt-in actions with opt-out class actions to enforce other wage laws, and it did not suggest that Congress incorporated any "jurisdictional rule."

Mr. Ruffing then suggests that multidistrict litigation allows courts to exercise jurisdiction over claims with no relation to the forum states. Appellant's Op. Br. at 52. But he oversimplifies. As the Judicial Panel on Multidistrict Litigation explained in *In re Delta Dental Antitrust Litig.*, 509 F. Supp.3d 1377, 1380 (J.P.M.L. 2020), a plaintiff must always demonstrate that the court in which an action is originally filed has personal jurisdiction over the defendant and the claim. When a case is transferred, it is only for pretrial proceedings and, unless the parties enter into a *Lexecon* waiver, trial and judgment must occur in the transferor court—which, as noted, must be able to exercise personal jurisdiction. That situation is materially different from this case.

Mr. Ruffing's final example is pendent personal jurisdiction, in which a court may exercise personal jurisdiction over all claims against a particular defendant even if the court has personal jurisdiction only with respect to some of the claims. *See* Appellant's Op. Br. at 53. But Mr. Ruffing points to only one pendent-personal-jurisdiction case decided by this Court post-

BMS—Laurel Gardens, LLC v. McKenna, 948 F.3d 105 (3d Cir. 2020)—and there is no indication that the defendant in that case raised a *BMS* argument or that the Court otherwise considered the issue. And, in any event, as Wipro notes in its brief, *Laurel Gardens* arose under the RICO statute, which expressly allows for nationwide service of process such that it implicates Rule 4(k)(1)(C), which the FLSA cannot. *See* Appellee's Br. at 48.

Third, Mr. Ruffing argues that only the representative plaintiff in a FLSA collective action must actually effect service on the defendant. Appellant's Op. Br. at 53-54. But that improperly conflates questions of service and jurisdiction. The issue is not whether a particular plaintiff must effect service under Rule 4 but whether that plaintiff *could* do so consistent with the due process limits of the Fourteenth Amendment. Rule 4(k) recognizes a default rule that personal jurisdiction is appropriate over a defendant only if the defendant is subject to personal jurisdiction in "a court of general jurisdiction in the state where the district court is located," is joined under Rules 14 or 19 and served within certain geographical limits or is authorized by federal statute. *See* Fed. R. Civ. P. 4(k). And, although the rule is phrased in terms of when service may be effective, this Court has applied it to the separate question of whether an exercise of personal jurisdiction is appropriate. *See Max Daetwyler*, 762 F.2d at 295. ("When a federal question case arises under a federal statute that is silent as to service of process, Rule 4[(k)] adopts an incorporative approach requiring that *both* the assertion of jurisdiction and

the service of process be gauged by state amenability standards.") (emphasis added); *see also, Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 103 n.6 (1987) (recognizing that personal jurisdiction under Rule 4 rests not simply on the method of service but on the defendant's amenability to service). Thus, while it may be true that opt-in plaintiffs in a FLSA collective action need not themselves physically serve process on the defendant, it is incorrect to conclude that their claims are not subject to the territorial limits of the Fourteenth Amendment per Rule 4(k). They are.

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The district court correctly determined that it could not exercise specific personal jurisdiction over claims by plaintiffs who lived and worked outside Pennsylvania. Mr. Ruffing's challenges to this determination are without merit.

E. Permitting courts to exercise specific personal jurisdiction over claims with no connection to the forum would harm businesses and the judicial system.

Not long ago, the plaintiffs' bar relied heavily on expansive theories of general personal jurisdiction to bring nationwide or multi-state suits in plaintiff-friendly "magnet jurisdictions." U.S. Chamber Inst. for Legal Reform, BMS *Battlegrounds: Practical Advice for Litigating Personal Jurisdiction after* Bristol-Myers at 3-5 (June 2018) (https://perma.cc/8QYZ-C48M).[5]

[5] Last visited December 16, 2021.

The Supreme Court responded to that abuse by limiting general personal jurisdiction to those states where a corporation is "at home," meaning usually only the state or states where it is incorporated and where it has its principal place of business. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). Even a "substantial, continuous, and systematic course of business" by the defendant in the forum state is not enough to render a defendant "at home" there. *Daimler*, 571 U.S. at 138.

Mr. Ruffing's suggested approach would allow an end run around those limits. A collective action could be filed in any state where a single, forum-based plaintiff agreed to sign on as the named plaintiff, even when the forum state has no "legitimate interest" in the claims of the remaining plaintiffs. *See BMS*, 137 S.Ct. at 1780. Permitting specific personal jurisdiction over all the claims in such a case would, in effect, "reintroduce general jurisdiction by another name" and do so on a massive scale. *See* Linda J. Silberman, *The End of Another Era: Reflections on* Daimler *and Its Implications for Judicial Jurisdiction in the United States*, 19 Lewis & Clark L. Rev. 675, 687 (2015).

Just as with the expansive theories of general personal jurisdiction the Supreme Court has now eschewed, the exercise of specific personal jurisdiction under the theory espoused by Mr. Ruffing would be "unacceptably grasping." *Daimler*, 571 U.S. at 138-39. Among other things, that tail-wagging-the-dog approach has no limiting principle. Out-of-state plaintiffs

could outnumber in-state named plaintiffs by 500:1 or even 5,000:1 and could still rely on the specific personal jurisdiction claimed by a single named plaintiff. In *BMS*, the nonresident plaintiffs outnumbered the California plaintiffs 592:86. 137 S.Ct. at 1778. In FLSA collective actions, the ratio of out-of-state to in-state plaintiffs is often as great or greater. For example, in *Waters v. Day & Zimmermann NPS, Inc.*, No. 19-11585-NMG, 2020 WL 4754984 (D. Mass. Aug. 14, 2020), only three of 112 plaintiffs worked in the forum state. *Id.* at *2. In *Canaday*, fewer than 100 of 2,575 potential plaintiffs were employed in the forum state. *Canaday v. The Anthem Cos., Inc.*, 441 F. Supp.3d 644, 646-47 (W.D. Tenn. 2020).[6]

It takes little imagination to see the likelihood of abusive forum shopping were courts to accept Mr. Ruffing's approach. And that sort of forum shopping violates basic principles of federalism by allowing courts to decide claims based on conduct that occurred wholly in other states. That substantially infringes on the authority of those other states to control conduct that occurs within their borders.

Mr. Ruffing's approach would also be unfair to businesses named as defendants. As the Supreme Court has acknowledged, defendants should not have to submit to the "coercive power of a State" with "little legitimate in-

[6] As noted, the Sixth Circuit has decided *Canaday* in a way consistent with the Chamber's position. The First Circuit has held oral argument in *Waters*, and it has not yet announced its decision.

terest in the claims in question." *BMS*, 137 S.Ct. at 1780. Among other things, the due-process limitations on specific personal jurisdiction "give[] a degree of predictability to the legal system" so that potential defendants are able to "structure their primary conduct" by knowing where their conduct "will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297; *see also, J. McIntyre Mach. Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011) (plurality opinion). That "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp.*, 559 U.S. at 94.

Under existing standards for specific personal jurisdiction, a company "knows that ... its potential for suit [in a given state] will be limited to suits concerning the activities that it initiates in the state." Carol Rice Andrews, *The Personal Jurisdiction Problem Overlooked in the National Debate About "Class Action Fairness,"* 58 SMU L. Rev. 1313, 1346 (2005). Were the jurisprudence to shift such that a court need not have specific personal jurisdiction over the claims of all plaintiffs, a company could be forced into a state's courts where the overwhelming majority of claims are entirely unrelated to that state. Businesses that employ individuals in more than one state would have no way of avoiding nationwide collective actions in the courts of any of those states, no matter how far flung from the business's home. And they could be forced to litigate hundreds, thousands or even millions of claims in one state even though most or even virtually all of the claims arose from out-of-state conduct. *See World-Wide Volkswagen*, 444 U.S. at 292. Such an ap-

proach would damage the predictability and fairness guaranteed by the Due Process Clause.

Finally, those harmful consequences would not be limited to the businesses sued in states with no legitimate interest in the claims at issue. Businesses forced to litigate high-stakes collective actions in unexpected fora would surely incur higher litigation expenses, and at least some of those costs would be borne by consumers in the form of higher prices.

The Supreme Court's recent personal-jurisdiction jurisprudence, faithfully applied, avoids these harmful consequences. In *BMS*, the Court established a rule for specific personal jurisdiction that adheres to the Court's prior precedents and provides predictability and fairness to defendants. As demonstrated above and in Wipro's brief, the law compels the application of the *BMS* holding to FLSA collective actions. So, too, do considerations of public policy.

CONCLUSION

The district court correctly and faithfully followed the Supreme Court's most recent personal jurisdiction decisions.

Daimler eschewed nationwide general personal jurisdiction, working a sea change in the jurisprudence underlying this Court's decision in *Bane*. This Court should make explicit what *Daimler* made implicit: the Fourteenth Amendment does not tolerate treating corporations as having consented to general personal jurisdiction simply because they comply with state law by registering to do business.

BMS teaches that each plaintiff's claim in a collective action must have its own connection to the forum state for courts in that state—including federal courts—to exercise specific personal jurisdiction. Two federal appeals courts have followed that conclusion, and this Court should do so as well.

The Chamber respectfully urges the Court to affirm.

Respectfully submitted,

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CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that I am a member of the bar of this Court.

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I hereby certify that the attached brief as provided to the Court in electronic form includes the same text as the "hard copies" of the brief filed by overnight courier with the Court. I also certify that this electronic file has been scanned with Symantec Anti-Virus software.

/s/ David R. Fine

CERTIFICATION OF WORD COUNT

I certify that this brief includes 5,601 words as calculated with the word-counting feature of Microsoft Word and including the parts of the brief specified in Federal Rule of Appellate Procedure 32.

/s/ David R. Fine

CERTIFICATE OF SERVICE

I certify that, on December 16, 2021, I filed the attached brief with the Court's CM/ECF system such that all counsel will receive service automatically and that I served two copies on the following by U.S. Mail, postage-prepaid:

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