No. S221038
(Court of Appeal No. A140035)
(San Francisco County Super. Ct. J.C.C.P. No. 4748)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

APPLICATION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AND PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA FOR PERMISSION TO FILE BRIEF OF *AMICI CURIAE* AND BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONER

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Attorneys for Amici Curiae Chamber of Commerce of The United States of America, California Chamber of Commerce, and Pharmaceutical Research and Manufacturers 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: June 10, 2015

Respectfully submitted.

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

The Chamber of Commerce of the United States of America (the "Chamber"), California Chamber of Commerce ("CalChamber"), and Pharmaceutical Research and Manufacturers of America ("PhRMA") respectfully apply for leave to file a brief as *amici curiae* in this matter in support of petitioner Bristol-Myers Squibb Co.*

The U.S. Chamber represents 300,000 direct members and indirectly represents the interests of more than three million businesses, state and local chambers of commerce, and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber represents the interests of thousands of California businesses. For that reason, the Chamber and its members have a significant interest in the administration of civil justice in the California courts. 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 *Daimler* cases that provide the legal rules that govern the disposition of the some of the issues here. (See *Daimler AG v. Bauman* (2014) 134 S.Ct 746; *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 131 S.Ct. 2846.) In fulfilling that role, the Chamber has appeared many times before this Court, both at the petition stage and on the merits.

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* No party or counsel for a party in this matter 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.

CalChamber is a voluntary, non-profit, California-wide business association with more than 13,000 members, both individual and corporate, who represent virtually every economic interest in the state. For more than a century, CalChamber has been the voice of California business. While CalChamber represents several of the largest corporations in California, seventy-five percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing businesses on a broad range of legislative, regulatory, and legal issues. CalChamber often advocates before the courts by filing *amicus curiae* briefs in cases involving issues of paramount concern to the business community. The issue presented here is one such case.

PhRMA is a voluntary, nonprofit association representing the nation's leading research-based pharmaceutical and biotechnology companies. PhRMA's member companies are dedicated to discovering medicines that enable patients to lead longer, healthier, and more productive lives. During 2014 alone, PhRMA members invested an estimated $51.2 billion in efforts to research and develop new medicines. PhRMA's mission is to advocate public policies that encourage the discovery of life-saving and life-enhancing medicines. PhRMA closely monitors legal issues that impact the pharmaceutical industry and frequently participates as amicus in cases raising matters of significance to its members.

The issues presented in this case are 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 Court of Appeal understood and applied those limitations, yet plaintiffs ask this Court to depart from recent U.S. Supreme Court precedent and instead apply a legal rule that is indistinguishable from the rules rejected in *Daimler* and *Goodyear*.

Although the Court of Appeal refused to flout *Daimler*'s limitations on general jurisdiction explicitly, the court achieved nearly the same result by dramatically altering the jurisprudence of specific jurisdiction. Under the decision below, a company may not always be subject to general jurisdiction merely because it continuously does business in California. But the very same activities may subject it to specific jurisdiction over claims by nonresident plaintiffs claiming out-of-state injuries based solely on the corporation's out-of-state conduct. In particular, if any of the corporation's California customers sues it here, California would have specific jurisdiction to adjudicate any lawsuit involving the same or similar products or the same or similar theories. Thus, the Court of Appeal insisted that California had specific 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. Bristol-Myers' limited operations in California have nothing to do with those plaintiffs or their claims.

The *amici* have a strong interest in the correct and uniform resolution of questions of general and specific jurisdiction. Many of their members offer products and services in most or all of the 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 subject to jurisdiction in every state for actions arising from conduct in any other state, merely because similar sales or other conduct in the forum state has led to the filing of similar lawsuits by its citizens. That could permit

nationwide forum-shopping by any plaintiff in any action. The *amici*'s members seek to foreclose that unwise and unconstitutional result.

CONCLUSION

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

Dated: June 10, 2015

Respectfully submitted.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

Other Authorities

TABLE OF AUTHORITIES
(continued)

Page(s)

INTERESTS OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America ("U.S. Chamber") is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million businesses, state and local chambers of commerce, and professional organizations of every size, in every industry sector, and from every region of the country. The U.S. Chamber represents the interests of thousands of California businesses. For that reason, the U.S. Chamber and its members have a significant interest in the administration of civil justice in the California courts. The U.S. 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 some of the issues here. (See *Daimler AG v. Bauman* (2014) 134 S.Ct 746; *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 131 S.Ct. 2846.) In fulfilling that role, the U.S. Chamber has appeared many times before this Court, both at the petition stage and on the merits.

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The *amici* and their members have a strong interest in further review because the decision below distorts the jurisprudence of *specific* jurisdiction in a way that significantly erodes the limits on *general* jurisdiction that the Supreme Court of the United States reaffirmed in *Daimler Corp. v. Bauman* (2014) 134 S. Ct. 746. Moreover, as a practical matter the decision below compels California trial courts to assert jurisdiction over thousands of factually complex claims with no ties to this state apart from the existence of other similar claims that do involve parties or conduct in California. The exacerbated delay that inevitably will result from this influx of claims into already-congested courts will injure all of *amici*'s members who rely on the California courts to resolve disputes that are there legitimately—not only those members who are forced to adjudicate claims in California that lack any factual nexus to the State

ARGUMENT

This case requires the Court to determine whether California may constitutionally exercise personal jurisdiction over claims by nonresident

plaintiffs against a nonresident corporation based on conduct that occurred entirely outside this State. Under the familiar formulation, a State that has general jurisdiction over a defendant may adjudicate claims that have "no connection whatever to the forum State." (*Daimler AG v. Bauman* (2014) 134 S.Ct 746, 761 fn. 19.) Specific jurisdiction, in contrast, is limited to claims that are related to the defendant's forum contacts.

Under the compulsion of *Daimler*, which limits general jurisdiction to a forum where the corporation may be "fairly regarded as at home" (*id.* at 760), the Court of Appeal correctly held that California lacks general jurisdiction in the circumstances here. A corporation is not "at home" in California when its principal place of business and state of incorporation are elsewhere, even though the corporation makes sales and maintains facilities and employees within the State. To that extent, the decision below should be affirmed.

But the Court of Appeal also held that specific jurisdiction could be based on the very same contacts with California that were insufficient to support general jurisdiction, even though the nonresident plaintiffs' claims had nothing to do with those California contacts. In the view of the court below, the existence of claims by California plaintiffs that did arise from the corporation's California contacts sufficed to confer specific jurisdiction over any claim in the country that involved the same product—whether or not those claims had any nexus with California other than their filing in the California courts. That holding, and the judgment, should be reversed.

I. California Cannot Constitutionally Assert General Jurisdiction Over A Nonresident Corporation Incorporated Elsewhere Based Solely On The Existence of In-State Sales And Facilities.

The U.S. Supreme Court recently explained that an exercise of general jurisdiction over a nonresident corporation comports with due process only if the corporation "is fairly regarded as at home" in the forum

state. (*Daimler AG v. Bauman* (2014) 134 S.Ct. 746, 760; see also *Goodyear Dunlop Tires Operations SA v. Brown* (2011) 131 S.Ct. 2846, 2853-54.) The Court reaffirmed that "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." (*Daimler*, 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.*)

Plaintiffs contend that the Court of Appeal was wrong to recognize that California cannot assert general jurisdiction over a corporation whose place of incorporation and principal place of business are in other states. Rather, plaintiffs insist, Bristol-Myers Squibb's "wide-ranging, systematic, and continuous activities in California" (ABM, p.12) are sufficient to confer general jurisdiction. Yet the *Daimler* Court held that a formulation permitting "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 insisting that *Daimler* did not limit general jurisdiction to the "exemplar" forums of the place of incorporation and principal place of business (134 S.Ct. at 760), plaintiffs emphasize that 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.) Plaintiffs want that tentatively recognized exception to swallow the decision's forthright rule.

On the contrary, any exception that might exist is narrow, and involves a stand-in for the nominal principal place of business rather than the recognition of a multiplicity of additional corporate "homes." The sole example of an "exceptional case" cited in *Daimler* (134 S.Ct. at 761 fn. 19)

is *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 *Daimler*, 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].)

That is, the "exceptional case" would arise only when a corporation could be said to have a third "home" in addition to its states of incorporation and principal place of business. Indeed, as the *Perkins* example suggests, a corporation would have an additional home only when its nominal principal place of business was somehow compromised, so that the actual "center of the corporation's ... activities" during the relevant period was somewhere else. (134 S.Ct. at 756 fn.8.) Like the two paradigmatic forums identified in *Daimler*, an additional "home" of that kind—the "center" of the corporation's business—also would "have the virtue of being unique ... as well as easily ascertainable." (*Id.* at 760.)

Yet plaintiffs insist that the mere presence of sales and facilities in a state is "exceptional" enough to confer general jurisdiction, a prospect that would render the "exceptional" case routine for any significant interstate business. Plaintiffs repeatedly point to the dollar volume of Bristol-Myers Squibb's sales in California (*e.g.*, ABM, pp. 11, 13), but the *Daimler* Court rejected the assertion of general jurisdiction wherever the defendant corporation's "sales are sizable." (134 S.Ct. at 761.) Rather than support jurisdiction based on the magnitude of sales or activities alone, the Court insists on an examination of in-state activities in proportion to the "corporation's activities in their entirety, nationwide and worldwide." (*Id.* at 762 n.20.) Activities in a forum other than the state of incorporation or principal place of business could support the assertion of general

jurisdiction only when those activities were so dominant in proportion to the corporation's overall business that they justify assigning the corporation an additional "home."

The *Daimler* Court concluded that the substantial California sales and many California facilities of the defendant's U.S. subsidiary "plainly d[id] not approach that level." (134 S.Ct. at 761 fn. 19.) As Bristol-Myers Squibb (BMS) explains (RBM, pp. 4-5), BMS's connections with California are no more substantial than the multiple facilities and billions in sales of the nonresident defendant in *Daimler*, which the *Daimler* Court found to be "plainly" insufficient. (134 S.Ct. at 761 fn. 19.) A corporation'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.)

Remarkably, plaintiffs assert that general jurisdiction is justified because BMS contracted with a California distributor "to distribute its drug within the state." (ABM, p.11.) Yet this Court recognized long ago that "more contacts are required for the assumption of such extensive jurisdiction than sales and sales promotion within the state by independent nonexclusive sales representatives" (*Fisher Governor Co. v. Superior Court* (1959) 53 Cal.2d 222, 225.) Plaintiffs also suggest that a corporation submits to general jurisdiction if it appoints an agent for service of process within a state. Yet making the presence of an agent for service of process dispositive would turn a contact required by many states as a condition of doing business into a concession of general jurisdiction. As a practical matter, such a rule—like the suggestion that general jurisdiction arises from an agreement with an in-state distributor—would erase the holding of *Daimler* that corporations are not subject to general jurisdiction in every state where they do business. (See 134 S.Ct. at 762 fn. 20.)

Taking issue with the *Daimler* Court's own characterization of such theories as "unacceptably grasping" (134 S.Ct. at 761), plaintiffs maintain (ABM, pp. 8-11) that *Daimler* did not reject "the sprawling view of general jurisdiction" (134 S.Ct. at 760) based on a "substantial, continuous, and systematic course of business" (*id.* at 761) that was endorsed in *Hesse v. Best Western International* (1995) 32 Cal.App.4th 404, and by the Ninth Circuit in *Daimler* itself. As Judge Wood explained for the Seventh Circuit, however, *Daimler*, "it is fair to say, raised the bar for this type of jurisdiction." (*Kipp v. Ski Enterprise Corp. of Wisconsin* (7th Cir. 2015) 783 F.3d 695, 698; see also *Martinez v. Aero Caribbean* (9th Cir. 2014) 764 F.3d 1062, 1070 ["*Daimler* makes clear the demanding nature of the standard for general personal jurisdiction over a corporation"].)

The principal point of the Court's 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.

II. This Court Should Reject The Hybrid Mix Of General And Specific Jurisdiction Principles Invoked To Sustain Specific Jurisdiction Below.

Under the Court of Appeal's holding, every lawsuit alleging injury anywhere in the country from a defective product that was obtained or used anywhere in the country may be brought in the California state courts so long as it is associated with a similar action by California plaintiffs. Indeed, plaintiffs' argument suggests that an in-state plaintiff is not necessary so long as the defendant has made in-state sales of the same product at issue in nonresidents' lawsuits. That result—giving California the power to decide disputes where every relevant contact points to other states—violates due

process limits on the power of courts and flouts the most basic principles of federalism.

The U.S. Supreme Court not long ago took an appellate court in another state to task for "[c]onfusing or blending general and specific jurisdictional inquiries" in order to hold a defendant to answer in local courts. (*Goodyear*, 131 S. Ct. at 2851.) That is what happened here. In departing from this Court's specific-jurisdiction precedents, the decision below deputized specific-jurisdiction principles to create a substitute form of general jurisdiction over nearly any company that does business in California.

Subjecting all claims against a corporation to the jurisdiction of the California courts, so long as some residents bring claims addressing similar in-state conduct, would make California the effective "home" of every company that does significant business here, in flat contradiction with *Daimler* and with the due process principles recognized in that case. *Daimler* reflects a view that, while it is fair to subject a nonresident company to jurisdiction over actions that are related to its in-forum activities, it is fundamentally unfair to treat business activities in the forum as sufficient to support jurisdiction over out-of-state claims that are based on the defendant's out-of-state conduct.

The Court of Appeal apparently believed that, by resting jurisdiction on a defendant's in-state conduct that was similar to the conduct at issue in a case, specific jurisdiction could expand into a substitute for the "exorbitant exercises of all-purpose jurisdiction" that *Daimler* rejected. (134 S.Ct. at 761.) But that is not so. A state may adjudicate "causes of action arising from dealings entirely distinct from [the defendant's in-state] activities" only if an assertion of general jurisdiction is justified. (*Daimler*, 134 S.Ct. at 754 [quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 318].)

Even before *Daimler*, the U.S. Supreme Court had made clear that due process permits the exercise of judicial power over a nonresident under principles of specific jurisdiction only "to the extent that power is exercised in connection with the defendant's activities touching on the State." (*J. McIntyre Machinery, Ltd. v. Nicastro* (2011) 131 S.Ct. 2780, 2788 [plurality opn. of Kennedy, J.].) The pivotal question is whether the "controversy is related to or 'arises out of' [the] defendant's contacts with the forum." (*Vons Companies v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 446 [quoting *Helicopteros Nacionales de Colombia, S.A.v. Hall* (1984) 466 U.S. 408, 414].)

This Court has rephrased the "related" element to require a "substantial nexus or connection between the defendant's forum activities and the plaintiff's claim." (*Id.* at 456.) And it is "the defendant's *suit-related* conduct [that] must create a substantial connection with the forum State" (*Walden v. Fiore* (2014) 134 S.Ct. 1115, 1121 [emphasis added]), not conduct that does not bear on the claim.

Lacking a substantial connection between the claims of the out-of-state plaintiffs here and Bristol-Myers Squibb's sale of pharmaceuticals to other individuals in California, the Court of Appeal strained (and failed) to identify any *nexus* at all. At best the court relied on *parallels* between the sale of a product to other people in other states and the sale of the same product here. If parallels were sufficient, any state with some resident plaintiffs could constitutionally exercise nationwide jurisdiction over all product liability cases involving the same product. But a parallel is the opposite of a nexus.

And the parallels that constitute the only relation between the out-of-state claims and the in-state contacts are abstract and conceptual, that is, *in*substantial. Similar claims addressing similar products are at issue, but no conduct in or affecting California had any concrete impact on the out-of-

state claims. Thus, where this Court has required a substantial nexus, the Court of Appeal and plaintiffs assert that an insubstantial parallel between in-state conduct and each plaintiff's claims is enough for specific jurisdiction. But that is not enough.

Nor can the assertion of specific jurisdiction be justified based on this Court's statements that, "for the purpose of establishing jurisdiction[,] the intensity of forum contacts and the connection of the claim to those contacts are inversely related." (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1068 [quoting *Vons*, 14 Cal.4th at 452].) Even if this Court is correct that the relation between forum contacts and plaintiff's claims may be less substantial if the contacts are sufficiently weighty, so that specific jurisdiction may be analyzed on a sliding scale, the analysis below slides the connection factor all the way off the scale.

It is crystal clear after *Daimler* that contacts that are insufficient to support general jurisdiction are equally insufficient to support specific jurisdiction over a claim that has no nexus or connection to the forum contacts. Due Process permits a state to assert specific jurisdiction over a nonresident only "to the extent that [jurisdiction] is exercised in connection with the defendant's activities touching on the State." (*Nicastro*, 131 S.Ct. at 2788 [plurality opn. of Kennedy, J.].) Indeed, in *Snowney* this Court merely recognized that a defendant's in-state conduct could subject it to specific jurisdiction if that conduct "caused an injury *to a California resident*" (35 Cal.4th at 1069 [emphasis added]). Nothing in *Snowney* suggests that specific jurisdiction may rest on a nonresident's in-state conduct when the litigation addresses *out*-of-state conduct alleged to have caused injury to an *out*-of-state resident. Under the approach in the decision below, however, the defendant's in-state conduct alone can sustain specific jurisdiction without any linkage to the claims at issue. That is an assertion of general jurisdiction disguised as specific jurisdiction.

Plaintiffs go still further in trying to base specific jurisdiction over BMS on the presence of a California co-defendant, McKesson, which itself has no connection to the claims of any nonresident plaintiffs (at least none that is identified in either party's briefs). But the use of a California distributor cannot confer or even bolster specific jurisdiction to adjudicate wholly out-of-state claims against a nonresident defendant unless that distributor's in-state conduct is connected to those claims. Indeed, this Court refused to base jurisdiction over a nonresident's claim against a nonresident corporation on the corporation's use of California "manufacturers' agents" to make sales that had nothing to do with the claims at issue. (See *Fisher Governor*, 53 Cal.2d at 224.)

Further weighing against the assertion of specific jurisdiction here are Due Process limits that reflect "the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends." (*State Farm Mutual Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408, 421 [quoting *New York Life Ins. Co. v. Head* (1914) 234 U.S. 149, 161].) Those barriers constrain "the power of a sovereign to resolve disputes through judicial process" just as much as "the power of a sovereign to prescribe rules of conduct for those within its sphere." (*Nicastro*, 131 S.Ct. at 2787-2788 [plurality opn. of Kennedy, J.].) Under our Constitution, a State cannot "punish[] a defendant for unlawful acts committed outside of the State's jurisdiction" (*State Farm*, 538 U.S. at 421), nor can it apply "a state statute to commerce that takes place wholly outside of the State's borders." (*Healy v. Beer Institute* (1989) 491 U.S. 324, 336 [ellipsis and internal quotation marks omitted].) This territorial limit on state conduct regulation are "so obviously the necessary result of the Constitution that it has rarely been called in question and hence authorities directly dealing with it do not abound." (*State Farm*, 538 U.S. at 421 [quoting *New York*

Life, 234 U.S. at 161].) Just as basic principles of federalism limit the authority of state legislatures to regulate extraterritorial conduct, those principles likewise constrain the authority of state courts limited to adjudicate entirely extraterritorial disputes. The Court of Appeal transgressed those limits here, and its judgment should be reversed.

III. Expanding Jurisdiction As Plaintiffs Propose Would Permit Out-of-State Actions To Flood The Overburdened California Courts And Cause Additional Harmful Consequences.

1. The practical effects of the Court of Appeal's unprecedented expansion of specific jurisdiction are significant and deleterious. Unconstitutionally "exorbitant exercises of all-purpose jurisdiction" (*Daimler*, 134 S.Ct. at 761) burden not only the business community, but California courts and citizens as well. For California courts 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. And when the influx of out-of-state plaintiffs with out-of-state cases overwhelms the California courts, the courts will become still less able to deliver justice—whether to plaintiffs with claims properly brought here or to defendants who never should have been sued here.

The Chief Justice has acknowledged the "harmful and astonishing delays in civil redress" that have resulted from California's court-funding crisis. (Chief Justice Tani G. Cantil-Sakauye, Address to a Joint Session of the California Legislature, *State of the Judiciary* (Mar. 17, 2014) available at http://www.courts.ca.gov/25437.htm.) "The [funding] reductions of the past have fallen hardest on civil cases because, as you know, the Constitution and statutes guarantee the precedence of criminal cases. As a result, the only place to absorb the reductions is in the processing of civil cases." (*Ibid.*) As the Chief Justice explained, "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 in California." (Chief Justice Tani G. Cantil-Sakauye, Address to a Joint Session of the California Legislature, *State of the Judiciary* (Mar. 11, 2013) available at http://www.courts.ca.gov/21268.htm.) This delay in the resolution of litigation specifically harms California businesses with cases in the California courts, as it subjects those companies to prolonged uncertainty that poses difficult financial and management challenges.

Inviting product-liability plaintiffs throughout the United States to bring their cases to California civil courts for individualized and burdensome resolution will only exacerbate the situation. As the direct result of the decision below, hundreds of cases involving out-of-state plaintiffs complaining about out-of-state harms based on out-of-state sales will displace and delay hundreds of other disputes involving California parties or California events. That is the tip of the iceberg. This is not the only case using a relatively small contingent of California plaintiffs as a wedge to pry open California courthouse doors to let in a far greater number of out-of-state plaintiffs whose claims have no connection to this State. Similar cases in Los Angeles Superior Court alone include the *Paxil II Cases*, JCCP No. 4786; *Avandia Drug Cases*, JCCP No. 4578; *Crestor Product Liability Cases*, JCCP No. 4713; *In re Lipitor Cases*, JCCP No. 4761; *Actos Product Liability Cases*, JCCP No. 4696; and the *Nexium Cases* (*Brown v. AstraZeneca*, No. BC485295; *DePauw v. AstraZeneca*, No. BC485366; *Standberry v. AstraZeneca*, No. BC485367; *Velasco v. AstraZeneca*, No. BC485296; *Henning v. AstraZeneca*, No. BC510554). (See also *GlaxoSmithKline LLC v. Superior Court*, review denied Sept. 18, 2013, S212493.)

That technique of manipulating personal jurisdiction will proliferate if this Court affirms the decision below. To take just one example, if the

existence of some California plaintiffs is all it takes to assert specific jurisdiction over all tort cases nationwide that involve the same product or conduct, every plaintiff in the country claiming injury from asbestos could flock to the California courts. Many of the defendants in those cases marketed and sold their products in California, and there certainly are some asbestos plaintiffs who live or were injured here. Under the rationale of the decision below, plaintiffs who now bring their cases in their home jurisdictions could now bring their cases in the California courts. At most, the nationwide plaintiffs' firms that drive the litigation would have to bring cases from other states in clusters around one or two plaintiffs whose claims legitimately belong in the California courts. The same goes for all manner of product-liability plaintiffs, whether the challenged product is a foodstuff, an appliance, or an automobile.

What is more, the hybrid theory of specific jurisdiction approved in the decision below channels the most burdensome out-of-state cases to the California courts. Cases with many plaintiffs whose claims may be resolved through predominantly common proof will be brought as class actions and will be filed in (or removed to) federal court under the Class Action Fairness Act of 2005, Pub. L. No. 109–2 (codified in 28 U.S.C. §§ 1132(d), 1453, 1711-1715). Remaining in state court will be those cases that must undergo discovery and other pretrial processes—and perhaps trial as well—one by one because of intensely individualized issues (such as personal injuries with individual issues of exposure, causation, and medical, economic, and noneconomic damages). That is, the increased case volume is not offset by any genuine efficiencies in litigation. For each case brought by one of these nonresident plaintiffs, California plaintiffs and defendants alike must wait longer to receive a court's attention. That consequence underscores the importance of correctly resolving the jurisdictional issues presented here.

2. An assertion of general jurisdiction that disregards the limits imposed in *Daimler* would have even more pernicious effects. 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. After *Daimler*, moreover, 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.)

The only way a company could stave off the risk of general jurisdiction would be 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. If that investment, along with in-state sales, suffices to subject a company to suit in California for any claim based on conduct anywhere in the world, any rational corporation would have little choice but to reconsider the benefits of investing in California—and California jobs—when balanced against substantial litigation risk covering all claims worldwide. Nonresident companies already operating within California would have to reexamine their operations and sales to ensure that such conduct does not subject them to general jurisdiction. Nonresident companies planning new investment in California would have to reconsider those plans in light of their jurisdictional implications. Indeed, the Court in *Daimler* articulated the general 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).

3. Put simply, an exercise of jurisdiction over BMS based on its unrelated operations and sales in California would declare 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 those operations, the likeliest consequence would be the flight of jobs and capital away from California while new business investment in the State is deferred.

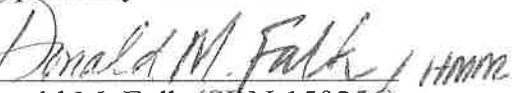
This Court can forestall that consequence by simply enforcing the recognized due process limits on jurisdiction.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Dated: June 10, 2015

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 4,718 words, and therefore complies with the 14,000-word limit contained in Rule 8.520(c)(1).

Dated: June 10, 2015

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 June 10, 2015, I served the foregoing document(s) described as:

APPLICATION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AND PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA FOR PERMISSION TO FILE BRIEF OF *AMICI CURIAE* AND BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONER

☐ 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 am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

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

Executed on June 10, 2015, at Palo Alto, California.

Kristine Neale