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

After Decision By the Court of Appeal, First Appellate District, Division Two, No. A140035; On Appeal from the Superior Court of the State of California, County of San Francisco, Honorable John E. Munter, J.C.C.P. No. 4748

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ISSUES PRESENTED

In granting review, this Court directed the parties "to address: (1) whether after *Daimler AG v. Bauman* (2014) 571 U.S. ——, 134 S.Ct. 746, 187 L.Ed.2d 624, general jurisdiction exists; and (2) whether specific jurisdiction exists."

As for Bristol-Myers Squibb's additional inclusion of an argumentative interpretation of the Courts' issues to be addressed, in the apparent guise of a related sub-issue, it is not only inappropriate, but is based upon the flawed premise that the products liability claims at issue here involve wholly out-of-state events unrelated to Defendant's business activities in California.

INTRODUCTION

Bristol-Myers Squibb Company ("BMS") asks this Court to find that the Court of Appeal wrongly decided that California has personal jurisdiction over it, a non-resident corporate defendant, as to the claims made by non-resident plaintiffs, Real Parties in Interest ("RPI") here, in a coordinated proceeding which includes California resident co-plaintiffs. This litigation arises from alleged defects in Plavix®, a drug BMS manufactures and sells throughout the country that Plaintiffs' contend caused personal injuries and deaths to consumers.

The Court of Appeal correctly concluded that specific jurisdiction exists over BMS because 1) BMS's contacts with this forum satisfy the minimum contacts requirement for specific jurisdiction, 2) there is a substantial connection between BMS's substantial, purposeful activities in California and the RPI claims, and 3) BMS did not demonstrate that the exercise of jurisdiction would be unreasonable. (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316, 66 S.Ct. 154 (*International Shoe*)

In arguing error by the Court of Appeal, BMS does not dispute the court's finding that BMS's contacts with California satisfy the minimum contacts required for specific jurisdiction, which BMS conceded below. Indeed, the record shows that BMS has engaged in substantial, continuous economic activity in California, including the sale of more than a billion dollars of Plavix® to Californians, the operation of five offices and facilities here, the employment of hundreds of California-based employees and sales representatives, and the long-time maintenance of an in-state agent for service of process, as well as engaging in a commercial relationship to design, develop, manufacture, market and sell Plavix® with the California corporation, McKesson Corporation ("McKesson"), who is a co-defendant in this litigation.

BMS does assert error by the Court of Appeal in finding that BMS' California activity is substantially connected to Plaintiffs' claims so as to support a finding of specific jurisdiction. In this regard, BMS repeatedly asserts that there is "no connection" between Plaintiffs' claims and BMS' in-state activities. The gravamen of BMS's argument is that no connections exist because Plaintiffs do not reside in California, the Plavix® at issue was not purchased or taken in California, and their injuries occurred outside California. The relatedness prong of a specific jurisdiction analysis, however, is not so limited.

As the Court of Appeal properly recognized, BMS' California activity, including the sale of Plavix® through deliberate exploitation of the relevant market in California for many years, is substantially connected to Plaintiffs' claims, which are based on the same alleged wrongs as those alleged by the California resident plaintiffs, so that the assertion of specific jurisdiction satisfies the traditional conception of fair play and substantial justice. Further supporting its relatedness finding, the court found that a necessary incident of BMS' California business activities is the foreseeable

circumstance of causing injury to persons in distant forums and that Plaintiffs' allege and the record supports that BMS sold Plavix® to both resident plaintiffs and RPI in the course of a common distribution effort.

In holding that the RPI sustained their burden of showing BMS' undisputed minimum contacts with California are substantially connected to the RPI claims, the Court of Appeal followed applicable California and United States Supreme Court precedent and did not "eviscerate" the relatedness requirement. Rather, the court correctly applied the law to the facts before it.

The record in this case belies BMS' contention that Plaintiffs are forum shopping. Plaintiffs properly chose California as the forum for one reason: California has jurisdiction over both responsible Defendants and thus, is where Plaintiffs can obtain justice against each and every Defendant who directly caused their injuries.

This Court should affirm the Opinion of the Court of Appeal with regard to its finding that specific jurisdiction exists as to BMS.

Though BMS does not seek review of the Opinion as it pertains to the Court of Appeal's general jurisdiction finding, BMS's contention that corporations are now subject to general jurisdiction *only* in those states where they are incorporated or have their principal place of business, relying upon *Daimler AG v. Bauman* (2014) 571 U.S. ——, 134 S.Ct. 746, (*Daimler*), is without merit. No such bright-line test was announced in *Diamler* nor does the Opinion confirm such a test. Because the record reflects that BMS is at home in California, general jurisdiction exists over it as well.

BMS's brief, replete with inaccurate factual claims and misconstrued legal claims, fails to warrant reversal of the Opinion which affirmed the finding of personal jurisdiction over BMS.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In March 2012, Plaintiffs/RPI filed their complaints for serious personal injuries sustained by their ingestion of the prescription antiplatelet drug, Plavix® in the San Francisco Superior Court. RPI named the manufacturer of Plavix®, BMS, and McKesson, the main distributor of Plavix®, as defendants. Pet. Ex. 16-270; 454; 456-59. Each of the 659 RPIs, consisting of at least 84 and perhaps as many as 251 California residents and 575 non-residents, alleged the same twelve causes of actions arising from the same operative facts including that Plavix® is a defective and dangerous product and that that RPIs (or their spouses) were directly injured by the way Plavix® was negligently and /or knowingly, falsely and deceitfully marketed, advertised and sold by defendants as "providing greater cardiovascular benefits, while being safer and easier on a person's stomach than aspirin." Opinion at p. 3; 31; *see also* Petitioner's Exhibits 16-270.

RPI claims that BMS has sold its product to both resident plaintiffs and the non-resident RPIs in the course of common effort between McKesson and BMS and as part of the distribution of Plavix® in many states. Pet. Ex. 452 ¶3; 454; 456; 458; *see also* Opinion at p. 31. The crux of all of Plaintiffs/RPI's allegations focus on the concerted conduct of BMS and McKesson within the State of California. Pet. Ex. 16-270; *see also* Opinion at p. 32. In other words, RPI claim harm by BMS' California business activities in selling and promoting Plavix® in California because BMS used California physician interests and patient sales, among other factors, to produce a national interest in Plavix® which in turn facilitated use of Plavix® by the RPI plaintiffs or their decedents. RPI also claim harm through BMS' use of California resident defendant McKesson's distribution network and connections with California.

The interstate character of BMS' business, and in particular its sales of Plavix®, are of the utmost significance. Importantly, the record shows, and BMS does not deny, that it has conducted business and sold its products, including Plavix®, within the bounds of California as a registered California business since 1936 and that is maintain an agent for service of process within California. Pet. Ex. 509. Specifically, BMS has five (5) facilities within California, one of which BMS owns rather than leases, has more than four hundred California employees—164 office employees and approximately 250 sales representatives. Opinion at pp. 5-6; *see also* Pet. Ex. 428 ¶3. Despite numerous competitors in a saturated market, during 2006-2012, BMS sold just under two million pills of Plavix® within California, making just under one billion dollars in profit from its sales in just California. Pet. Ex. 452 ¶3; 454. From July 2011 until July 2012, and despite Plavix®'s patent expiration in May of 2012, BMS' California sales of Plavix® still accounted for an astonishing 1.1% of all U.S. Plavix® sales. Pet. Ex. 432 ¶4.

As the Court of Appeal correctly concluded, "BMS's extensive, longstanding business activities in California, including in particular its sale of 196 million Plavix® pills between 1998 and 2006 and nearly $1 billion worth of Plavix® in California between 2006 and 2012, five offices and facilities, hundreds of California-based employees and sales representatives and long-time maintaining of an in-state agent for service of process is not "random, fortuitous, and attenuated." Opinion at p. 30. Indeed, BMS does not dispute that it purposely avails itself of California's jurisdiction.

In spite of its extensive contacts with the State of California and its admission that its contacts with California satisfy the minimum contacts requirement (Opinion at p. 30), BMS challenged jurisdiction in a motion to quash, arguing that California could not, in keeping with the notions of fair play and substantial justice, exercise personal jurisdiction over it. The

Superior Court disagreed. In response, BMS filed a Petition for Writ of Mandate with the Court of Appeal. The Court of Appeal summarily denied the writ petition. However, this Court granted BMS' Petition for Review, transferring the case back to the Court of Appeal, where the Court of Appeal affirmed the Superior Court's denial of BMS' Motion to Quash, finding that the Superior Court was correct in finding that California could validly exercise personal jurisdiction over BMS.

BMS now appeals the Court of Appeal's decision, in part, on its finding that California courts may exercise specific jurisdiction over BMS. Despite BMS' futile attempts to misconstrue the facts and relevant law giving rise to jurisdiction in California, the salient facts of this case remain unchanged and California can, and should, validly exercise jurisdiction over BMS.

ARGUMENT

A California court may exercise jurisdiction on any basis that is not inconsistent with the Constitution of the State of California or of the United States. (Code Civ. Proc. §410.10; *see also Cornelision v. Chaney* (1976) 16 Cal.3d 143.) California Code of Civil Procedure Section 410.10 is commonly referred to as California's "long-arm" statute. (*Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 106 (*Asahi*); *see also Magnecomp Corp. v. Athene Co.* (1989) 209 Cal.App.3d 526, 535.) This is because the statute, with respect to personal jurisdiction, manifests an intent to confer on California courts the **broadest possible jurisdiction, limited only by constitutional considerations.** (*Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445 (emphasis added)).

"The canonical opinion in this area remains *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (*International Shoe*), in which [the United States Supreme Court] held that

a State may authorize its courts to exercise personal jurisdiction over an out-of-state defendant if the defendant has 'certain minimum contacts with [the State] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." ' [Citation.]" (*Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) —— U.S. ——, 131 S.Ct. 2846, 2853 (*Goodyear*); accord *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1061 (*Snowney*).) "*International Shoe's* conception of 'fair play and substantial justice' presaged the development of two categories of personal jurisdiction": specific and general. (*Daimler, supra,* 134 S.Ct. at 754.)

General jurisdiction may be asserted by a court over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so "continuous and systematic" as to render them essentially at home in the forum State.' " (*Daimler, supra*, 134 S.Ct. at p. 754.)

With respect to a corporation, while the place of incorporation and principal place of business are "'paradig[m] ... bases for general jurisdiction.' " (*Id.* at p. 760), the high court clarified that it has not held that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business" (*ibid.* [emphasis in original]). Rather, the Court stated that where a corporation's operations in a forum other than its formal place of incorporation or principal place of business as so substantial and of such a nature as to render the corporation at home in that State, general jurisdiction may be asserted. (*Id.* at p. 762, fn. 19.)

Factors leading to the conclusion that a defendant's contacts in the forum are continuous and systematic so as to render it at home include the maintenance of an office, presence of employees, the use of bank accounts, and ***the marketing or selling or products in the forum state.*** (*Helicopteros*

Nacionales de Colombia v. Hall (1984) 466 U.S. 408, 415 (*Helicopteros*)). Because the "minimum contacts" test is not susceptible of mechanical application (*Kulko v. California Superior Court* (1978) 436 U.S. 84, 92) these listed factors are not exhaustive; they provide guidance as to the type and degree of contacts the defendant must have in order to justify the exercise of general jurisdiction.

Specific jurisdiction over a defendant may be asserted when, the defendant has "'purposefully directed'" its activities at the forum state (*Keeton v. Hustler Magazine, Inc.* (1984) 465 U.S. 770, 774 (*Keeton*); the plaintiff's claims are related to or arise out of these forum-directed activities (*Helicopteros, supra,* 466 U.S. at p. 414); and, the exercise of jurisdiction is reasonable. (*Asahi, supra,* 480 U.S. at 113).

I. CALIFORNIA MAY EXERCISE GENERAL JURISDICTION OVER BMS

A. The U.S. Supreme Court's Decision in *Daimler* Does Not Change The Circumstances Regarding The State Of California Exercising General Jurisdiction Over BMS.

BMS offers no rational or plausible argument as to how or why *Daimler* changes the legal landscape of personal jurisdiction in regards to the case at bar. *Daimler* does not change the circumstances herein and has little to no bearing as to whether the State of California can exercise general jurisdiction over BMS. Rather, *Daimler* is merely an application of the concept of general jurisdiction already established in *Goodyear, supra.* Simply put, *Daimler* is not a clarification or expansion of *Goodyear*, but rather an application of the concept embedded within *Goodyear* to a case whose facts are fundamentally different than the facts in the instant action.

Specifically, BMS erroneously interprets *Daimler's* holding to mean that in order to exercise general jurisdiction over a defendant, the defendant must essentially be "at home" in the forum state and that a defendant

cannot be established to be "at home" by showing that the corporation engages in substantial, continuous or systematic business in the forum. Rather, BMS suggests that under *Daimler*, the only test to assess where a corporation is at home is to look at the place where it is incorporated or has its principal place of business. *See* BMS' Opening Brief on the Merits at pg. 8.

BMS' analysis of *Daimler* overlooks critical portions of the Court's opinion. Contrary to BMS' arguments, while *Daimler* did hold that the "place of incorporation and principal place of business are 'paradig[m]...bases for general jurisdiction," it *did not* hold that those are the ***only*** bases for jurisdiction. (*Daimler, supra*, 134 S.Ct at 769.)

Accordingly, the Supreme Court explained that "the inquiry under *Goodyear* is... whether that corporation's affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." (*Id.* at 761.) This was the exact legal standard that existed at the time RPIs filed their complaint and it remains the legal standard today. The Supreme Court long ago recognized in *International Shoe* that general jurisdiction exists where a foreign corporation's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on a cause of action arising from dealings distinct from those activities." (*International Shoe, supra*, 326 U.S. at 318.)

Ultimately, the Supreme Court reiterated in *Daimler* that "the inquiry under *Goodyear* is not whether a foreign corporation's in-forum contacts can be said to be in some sense continuous and systematic,' it is whether that corporation's *affiliations with the State are so 'continuous and systematic' as to render it essentially at home in the forum State."* (*Daimler, supra*, 134 S.Ct at 761.) Throughout their Opening Brief, BMS contends that *Daimler* created a bright line test concluding that there is only one—at the most two—jurisdictions where a defendant can be deemed to

be "at home" and subject to general jurisdiction. This is patently false and BMS' interpretation, if accepted by this Court, would only serve to place severe limits on a state's sovereign right over their court's ability to hold responsible a defendant who committed tortious acts within its boundaries.

Not only would adopting BMS' interpretation of *Daimler* impede a state's sovereignty over their court's jurisdiction, it would create a gross injustice that would allow bigger, multinational corporations to evade general jurisdiction while forcing smaller corporations located within a state to always be subject to that forum's general jurisdiction—an imbalance that would not only defeat the traditional notions of fair play and justice, but would create a benefit to large corporate wrongdoers at the expense of those the corporation has injured.

Rather, *Daimler* held that the relevant inquiry for general jurisdiction does *not* end at whether the foreign corporation is incorporated in the forum state or if it has a principal place of business in the state, but that the analysis continues on to determine whether the foreign corporation has affiliations with the forum that are so continuous and systematic that it is still considered at home in the forum. Further, *Daimler* did not create or institute a bright line test in determining where a corporate defendant is deemed to be "at home"—instead, *Daimler* provided factors a court may apply in determining whether a forum can exercise general jurisdiction over a corporate defendant; specifically: 1) the state of incorporation of the corporate defendant; 2) the location of the corporate defendant's principal place of business; and 3) whether the corporate defendant has continuous and systematic affiliations with the forum state.

B. BMS' Affiliations With California Are So Substantial And Of Such A Nature As To Render It "At Home" In California.

BMS has substantial contacts within the State of California. It is indisputable that since 1936, BMS has been registered with the California Secretary of State to conduct business here and has maintained an agent for service in the State of California (Pet. Ex. 509); employs more than 400 people within California, approximately 250 of those being sales representatives (Pet. Ex. 428 ¶ 3); owns and/or occupies five buildings in the State (Pet. Ex. 428 ¶ 3). As stated above, BMS avails itself of McKesson's contacts with the State of California to distribute its drug within the state, thereby selling approximately $1,533,640,480.44 dollars' worth of Plavix® alone within California

Despite these extensive and fundamentally significant contacts and that McKesson is headquartered in San Francisco, BMS still contends that it has insufficient contacts in the State of California. It is disingenuous for BMS to assert that their contacts with the State of California are so diminutive that BMS cannot properly be haled into a California court.

Neither *Goodyear* nor *Daimler* made the suggestion that the only states that can exercise jurisdiction over a corporation are its state of incorporation and the corporation's principal place of business. Rather, the Court in *Daimler* still turned to an analysis of whether a corporation's contacts within a forum were sufficient. Indeed, the Supreme Court cautioned that there is no particular quantum of local activity that marks the applicable threshold. (*Daimler, supra* at p. 762, fn. 20.)

BMS' contacts with California are more than substantial and undoubtedly are pointed towards the State. Contrary to BMS' arguments, BMS has availed itself of the laws of California in such a sustained manner that it is clearly subject to jurisdiction in the State of California. *Daimler*

has not changed these facts, and this case has not, despite BMS' arguments, overruled the previous precedent, such as *International Shoe* and *Hesse v. Best Western International*, (1995) 32 Cal.App.4th 404.

Moreover, BMS' continued reliance on *Goodyear* is drastically misplaced. The case at bar is entirely distinguishable from the *Goodyear* case, in that the foreign defendant in *Goodyear* had absolutely ***no*** contacts with North Carolina, the forum at issue. Specifically, the *Goodyear* defendant ***did not*** sell products in North Carolina, ***did not*** advertise its products in North Carolina, it ***did not*** solicit business in North Carolina, it ***did not*** ship products to North Carolina, and the product at issue ***was not*** distributed in North Carolina. *Id.* at 2852. Simply put, the *Goodyear* defendant never "took any affirmative action to cause tires which they had manufactured to be shipped to North Carolina." *Id.*

Furthermore, the instant matter is distinguishable from *BNSF Railway Company v. Superior Court for the County of Los Angeles* (2015) —— Cal.Rptr.3d. ——, 2015 Westlaw 140454. In addressing the issue of whether general jurisdiction over the railway defendant could be exercised, the *BNSF Railway* court held that the fact that it owed 1,149 miles of track, employed 3,520 people, and generated 6 percent of its overall revenue in California was not so continuous and systematic as to render it "essentially at home" in California. These are not the facts in the instant matter.

Initially, unlike in *BNSF Railway*, BMS concedes that its contacts with California meet the minimum contacts requirement. Moreover, BMS' wide-ranging, systematic, and continuous activities in California, as detailed above, are far more extensive than BNSF Railway's. Indeed, BMS' conduct is comparable to a domestic enterprise in this State. (*Daimler* at p. 758, fn. 11.) As BMS' forum contact reflects far more than the fact that BMS is "doing business" in California, the exercise of general jurisdiction over it is well-supported.

Importantly, BMS intentionally chose to enter into a commercial and contractual relationship with California resident defendant McKesson Corporation to have its prescription drugs, including the Plavix® in question, be advertised, sold, marketed and distributed within California. Pet. Ex. 454; 456; 458. BMS purposefully entered into this contractual and commercial relationship with McKesson because of the ties and contacts McKesson has with California, specifically, the ability for BMS to make a substantial profit within California through McKesson's California contacts. Pet. Ex. 452 ¶3, 454.

Significantly, despite numerous competitors in an already saturated market, during 2006-2012, BMS sold just under two million pills of Plavix® within California, making just under one billion dollars in profit from its sales in just California—a significant and substantial profit directly resulting from its contractual and commercial relationship with McKesson. Pet. Ex. 452 ¶3, 454. From July 2011 until July 2012, and despite Plavix®'s patent expiration in May of 2012, BMS' California sales of Plavix® still accounted for an astonishing 1.1% of all U.S. Plavix® sales. Pet. Ex. 432 ¶4.

Unlike in the defendants in *Goodyear*, BMS is qualified, licensed, and authorized to do business in California; it does maintain offices in California; it does have employees and agents working for it in California; it has appointed an agent for service of process in California; it does conduct advertising or solicitation activities in California; it does operate and facilitate sales or service network in California; and it possess California real estate. As an ongoing business employing California residents, earning profits from its pharmaceutical sales in California, and owning property in California, BMS' payment of California taxes is reasonably inferred as well. (Compare *Goodyear, supra,* 131 S.Ct. at p.

2852.) Considering these factors, it is at home in California and should be subjected to its jurisdiction.

II. BMS' CALIFORNIA ACTIVITIES ARE SUBSTANTIALLY CONNECTED TO THE RPI CLAIMS TO SUPPORT SPECIFIC JURISDICTION

The inquiry as to whether a forum state may assert specific jurisdiction over a nonresident defendant "focuses on 'the relationship among the defendant, the forum, and the litigation.'" *Keeton, supra*, 465 U.S. at 775 (quoting *Shaffer v. Heitner* (1977) 433 U.S. 186, 204). In this appeal, BMS' takes issue with Court of Appeal's' application of California law as it pertains to the "relatedness prong" of its specific jurisdiction analysis. Specifically, BMS attacks the Court of Appeal's' application of the "substantial connection" test articulated in *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal. 4th 434, 452 (*Vons*) and *Snowney, supra,* 35 Cal. 4th 1054, 1068.

A. The "Substantial Connection" Test.

Vons arose out of the injuries suffered nationwide by Jack–in–the–Box customers from exposure to the E. coli bacteria. Jack–in–the–Box franchisees sued Vons, a meat supplier, and Vons sought to cross-complain against the franchisees, including two Washington state corporations, alleging that the customer injuries would have been avoided if the meat had been properly cooked. (*Vons, supra*, at 440-441.)

The appeal focused on the motions by the two Washington franchisees to quash service of the summons regarding Vons's cross complaint for lack of personal jurisdiction, which were granted and affirmed on appeal. Before reversing, the Court extensively reviewed pertinent California and federal cases concerning the proper test for specific jurisdiction. The *Vons* court stated " 'The crucial inquiry concerns the

character of defendant's activity in the forum, whether the cause of action arises out of or has a substantial connection with that activity, and the balancing of the convenience of the parties and the interests of the state in assuming jurisdiction.' "(*Vons, supra*, 14 Cal.4th at pp. 452–453, , quoting *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 148 (*Cornelison*).)

In assessing the relatedness of the defendant's activity and the forum, the *Vons* court rejected several tests proffered by the parties, all of which BMS advocates on its appeal, holding that the so-called proximate cause test, is too narrow, the " 'but for' " test is too broad and amorphous, and the "substantive relevance test" has an "overly restrictive view of the interest of the state in providing a judicial forum and redress to its residents." (*Id.* at p. 475). In so rejecting these tests, the *Vons* court ultimately adopted the "substantial connection" test, under which the relatedness requirement is satisfied if "there is a substantial nexus or connection between the defendant's forum activities and the plaintiff's claim." (*Vons, supra*, 14th Cal.4th at p. 456) As the Court of Appeal Opinion in this a matter correctly points out, "The [*Vons*] court adopted this "substantial connection" test after a careful analysis, including of *International Shoe*. (*E.g., Vons, supra*, 14 Cal.4th at p. 474, [quoting *International Shoe* 's statement that an undue burden would not be imposed if a defendant were required to respond to suits regarding obligations that "arise out of *or are connected with* the activities within the state" (*International Shoe, supra*, 326 U.S. at p. 319, , italics added]). Opinion at 24, emphasis in original.[1]

[1] As further noted by the Court of Appeal's Opinion, other precedent the *Vons* court relied upon for the "substantial connection" test of relatedness included its earlier decision in *Cornelison, supra* 16 Cal.3d at page 148, *McGee v. International Life Ins. Co.* (1957) 355 U.S. 220, 223, and *Hanson v. Denckla* (1958) 357 U.S. 235, 250–253, "all of which discuss the

Having adopted the "substantial connection" test the *Vons* court analyzed what is needed to satisfy the relatedness requirement. In doing so, the court, again relying upon *International Shoe* and *Cornelison*, concluded that a defendant's contacts with the state and their connection to the claim at-issue were "inversely related." (*Vons, supra,* 14 Cal.4th at p. 452.)

The court further found that the "defendant's forum activities need not be directed at the plaintiff in order to give rise to specific jurisdiction." (*Id.* at p.457, citing *Keeton, supra*, 465 U.S. at 775. In *Keeton,* the Supreme Court found specific jurisdiction existed even though neither the plaintiff nor the defendant resided in the forum State and most of the plaintiff's injuries occurred elsewhere. In *Cornelison, supra*, jurisdiction was likewise found despite the defendant's business activities in California having not been directed at the accident. In *In re Oil Spill by Amoco Cadiz off the Coast of France on March 16, 1978* (1983) 699 F.2d 909, 917, French victims of an oil spill were permitted to bring a tort action against a Spanish shipbuilder in an Illinois court, as their claim 'could readily be said to arise from the negotiating and signing, in Illinois, of the [shipbuilding] contract' even though the negotiations obviously were not directed at the plaintiffs."

Additionally, the *Vons* court emphasized that a court determining specific jurisdiction should focus on the relationship between a nonresident's contacts with the State and the claim involved to ensure a nonresident defendant is not unfairly brought into court on the basis of random contacts. In so holding, the court found that that this does not require that the claim arise directly out of a defendant's contacts with California. To the contrary, the court determined, "[w]hen, as here, the defendants sought out and maintained a continuing commercial connection

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significance of such a connection. (*Vons, supra*, 14 Cal.4th at pp. 448, 452, 58 Cal.Rptr.2d 899, 926 P.2d 1085.)" Opinion at 25, fn.15.

with a California business [Foodmaker], it is not necessary that the claim arise directly from the defendant's contacts in the state." (*Vons, supra*, 14 Cal.4th at p. 453).

This Court reiterated its analysis of *Vons'* "substantial connections" test in *Snowney, supra*, echoing that " 'for the purpose of establishing jurisdiction the intensity of forum contacts and the connection of the claim to those contacts are inversely related.' [Citation] '[T]he more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim.' [Citation] Thus, '[a] claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction.' [Citation] Moreover, the 'forum contacts need not be directed at the plaintiff in order to warrant the exercise of specific jurisdiction.'" (*Snowney* at p. 1068, citing *Vons, supra.*)

Indeed, this Court has determined that "California, consistent with the due process clause of the United States Constitution, may assert jurisdiction over a nonresident individual whose essentially interstate business has a relationship to this state, but whose allegedly tortious acts occurred outside the state." (*Cornelison, supra*, 16 Cal.3d at p. 146) In *Cornelison*, a plaintiff sued the defendant, a Nebraska resident and a commercial trucker, in a California court for his negligence in causing an accident in Nevada that killed plaintiff's husband. The defendant was on his way to California when he was involved in the accident.

In assessing whether there was a substantial connection between the defendant's contacts with California and the plaintiff's claim in *Cornelison*, the court considered the "interstate character of defendant's business" as an important factor that when coupled with the facts the defendant had significant contacts with California, including coming into the state twice a month for seven years as a trucker under a California license and that the

accident occurred not far from the California border while defendant was bound for the state, gave rise to specific jurisdiction over the defendant. (*Id.* at p. 149-151) The court stated, "Defendant's operation, by its very nature, involves a high degree of interstate mobility and requires extensive multi-state activity. A necessary incident of that business was the foreseeable circumstance of causing injury to persons in distant forums. While the existence of an interstate business is not an independent basis of jurisdiction which, without more, allows a state to assert its jurisdiction, this element is relevant to considerations of fairness and reasonableness. The very nature of defendant's business balances in favor of requiring him to defend here." (*Ibid.)*

Contrary to BMS' position, the precedent of this Court on the issue of "relatedness" remains good law and does not need to be modified to "conform" to *Daimler* or *Goodyear.* (*Greenwell v. Auto-Owners Insurance Co.*, (2015) 233 Cal.App.4th 783, 796, fn. 2. (*Greenwell*).) In neither case did the United States Supreme Court announced any new holding pertaining to the "relatedness" test, nor did it disapprove of the "substantial connections" test of this court, or even render any opinion on how it is to be applied. To the contrary, as the Court of Appeal correctly observed, "[t]he Supreme Court's discussion in *Daimler* indicates that specific jurisdiction continues to 'flourish' as it has for many years." Opinion at p. 18, citing *Daimler, supra*, 134 S.Ct. at p. 758, fn. 10.

In reaching its holdings pertaining to specific jurisdiction, this Court has painstakingly considered long-standing Due Process limitations and its decisions reflect the Court's considered analysis of its application. BMS wrongly implies that this Court's decisions improperly extend California's jurisdiction past Constitutional limitations and that its prior decisions do not hold up to current scrutiny. While BMS would like to see specific jurisdiction applied to a non-resident defendant only when the

plaintiffs reside in California or their injuries occurred in California, this is simply not the law as both this Court and the United States Supreme Court have explained. (*Keeton, supra*, 465 U.S. at p. 780; accord, *Walden v. Fiore* (2014) —— U.S. ——, 134 S.Ct. 1115, 1121 (reaffirming that the inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant "focuses on 'the relationship among the defendant, the forum, and the litigation.'" quoting *Keeton* at 775.)

B. The "Substantial Connection" Test Is Met.

The Court of Appeal's' Opinion in this case properly acknowledges that this Court has addressed the issue of "relatedness" and correctly applied it to the record before it. In this regard, the Court of Appeal properly found that RPI satisfied the "relatedness test" by showing that BMS' California activities are substantially connected to the RPI claims. The record reflects that BMS has had undisputed that BMS has had substantial, continuous contact with California for many years, including regarding the sale of Plavix®. The evidence indicates that BMS has "deliberately exploited" the relevant market in the State (*Keeton, supra*, 465 U.S. at p. 781,) for many years, having sold over 196 million Plavix® pills in California between 1998 and 2006 and nearly $1 billion worth of Plavix® between 2006 and 2012. Plaintiffs' contend that BMS's Plavix® sales in California have led to injuries to California residents that are the same as those suffered by the RPI. To the extent that BMS is liable to any of the California plaintiffs because of proof which will be common for all plaintiffs, then those elements of each of the RPI's claims may also be established.

BMS does not dispute that it is in the business of selling prescription drugs in California. In fact, BMS employs hundreds of people and operates multiple offices throughout the State of California. All of this is done for the purposes of selling pharmaceutical drugs and related products/services

for enormous profits in California and the other state of the country. Indeed as the record reflects, the RPI injuries occurred in the course of a common effort by BMS in California through its distribution of Plavix® in many states. BMS intentionally chose to enter into a contractual and commercial relationship with California resident defendant McKesson Corporation to market, advertise, distribute and sell their prescription drugs, including Plavix®—a significant contact with California which directly gives rise to the RPI's claims. Pet. Ex. 454; 456; 458. BMS specifically sought out this contractual and commercial relationship with McKesson because of the ties McKesson has with California and the potential for BMS to derive substantial profit from California through McKesson's California contacts. Pet. Ex. 452 ¶3. In other words, the bulk of BMS's contacts with the State of California are part of BMS' enormous concerted effort to sell prescription drugs, including Plavix®, the very drug all RPI claim caused their injuries.

The interstate character of BMS's business, and in particular its sales of Plavix®, is significant and thus, while "not an independent basis of jurisdiction," it is relevant to a specific jurisdiction analysis. (*Cornelison, supra*, 16 Cal.3 at 151). As the Court of Appeal, observed it is in "magnitudes far greater than was true regarding the relatively modest enterprise of the defendant trucker in *Cornelison*." Opinion at p. 31. Thus, a "necessary incident" of BMS's business is "the foreseeable circumstance of causing injury to persons in distant forums." Opinion at p. 31 quoting, *Cornelison, supra*, 16 Cal.3d at p. 151.

Mindful that Defendant's contacts with California and their relatedness to the claims at hand are inversely related, these factors considered together, BMS's substantial, continual contacts with California, including its extensive sales of Plavix® here, the presence of a substantial number of resident plaintiffs who allege precisely the same wrongdoing by

BMS and McKesson (also a California resident) as is alleged by the RPI, as well as the interstate nature of BMS's business and its nationwide sales of Plavix®, were properly considered by the Court of Appeal in determining that the RPI's claims are sufficiently connected to BMS's California activity so that assertion of specific jurisdiction satisfies the traditional conception of fair play and substantial justice.

BMS argues that, the "relatedness test" has not been met. Contending that the RPI claims have no connection to BMS' California activities, BMS ignores the record and asserts that this matter is indistinguishable from *Boaz v. Boyle & Co.* (1995) 40 Cal.App.4th 700. *Boaz* is inapposite. Unlike here, in that case it was conceded that the alleged injuries of the only California resident plaintiff had nothing to do with the California-related activities of the defendant who challenged jurisdiction, none of the plaintiffs' claims had anything to do with that defendant's contacts with California, and defendant's contacts, which were limited to "targeted mailers to physicians and advertising, principally if not entirely in national medical or medically related publications" were modest in nature (*Id.* at p. 717.)

Fisher Governor Co. v. Superior Court (1959) 53 Cal.2d. 222, also relied upon by BMS, is also distinguishable. In *Fisher,* the plaintiffs in a wrongful death products liability action contended that a manufacturer's sales activities in this state were sufficient to subject it to the jurisdiction of California courts even if the causes of action are not related to those activities. (*Id.* at p. 224) The manufacturer's principal offices and manufacturing plants were in Iowa and it had no employees or property in California and had not appointed an agent to receive service of process California. The manufacturer's products and sales promotion within California were performed by independent, nonexclusive sales representatives. (*Id.)* Critical to the *Fisher* case, like in *Boaz*, the plaintiffs

conceded that their causes of action were not related to those activities. As such the court considered the issue of minimum contacts, which is not disputed here, and not the "relatedness" requirement. No such concession has been made here. In light of the distinguishable circumstances in the instant matter and this Court's later analyses and holdings in *Vons* and *Snowney,* these cases are not persuasive authority here.

BMS' reliance upon *Greenwell, supra*, which most recently addressed the issue of "relatedness", is also misplaced. Finding that the non-resident defendant, Auto-Owners an insurance company, purposefully availed itself of this state's benefits through the issuance of an insurance policy that covered certain risks, losses and damages that could arise in California, the *Greenwell* court considered whether there was a sufficient nexus between Greenwell's, the insured, breach of contract and bad faith claim arising from Auto-Owners' alleged failure to pay the full insurance proceeds stemming from two fires that damaged an Arkansas building and the insurer's contacts in California, to warrant the state's exercise of specific jurisdiction over the company.

In affirming the dismissal of the insurance company for lack of relatedness, the court sought guidance from *Vons* and *Snowney* (*Greenwell, supra*, 233 Cal.App.4th at 797.). The court noted the commercial property coverage policy from Auto-Owners that was at issue was for an Arkansas apartment building and that Auto-Owners has neither a business presence in California nor any agents licensed to sell policies in the state. The record also reflected that Greenwell purchased his policy trough an insurance agent in Arkansas and the policy's primary purpose was to cover potential risks and damages to the Arkansas property. The court also found that though the policy covered certain risks, losses and damages that could arise in California, Greenwell did not sue Auto-Owners for any California risk that came to fruition. (*Id.* at 796-780.) In assessing the

sufficiency of the connection between the claims made and the defendant's California business activities, which were essentially none, the court concluded *Vons*' relatedness test was not met.

Unlike *Greenwell*, RPI do not assert relatedness exists between their claims and BMS's California business activities based upon the language of a contract, let alone solely the language of a contract. As such, the insufficiency found in *Greenwell* is not factually comparable making the decision inapposite. Moreover, given BMS' more wide ranging forum contacts here, the more readily is shown a connection between the forum contacts and the RPI claims, a principle that work against the finding of relatedness in *Greenwell.* (*Snowney, supra,* 35 Cal.4th at p. 1068, 29 Cal.Rptr.3d 33 quoting *Vons, supra*, 14 Cal.4th at p. 455.)

BMS also incorrectly asserts that the Court of Appeal found relatedness solely based upon BMS' California sales of Plavix® to other people and the fact that California residents had filed similar lawsuits. Initially, BMS' contorts the record and the Opinion issued in this case in making such claim. Additionally, as the Opinion reflects, the court found support for its consideration of the identical nature of these claims as one among many factors, in precedent from this Court in *Vons, supra*, which noted that "the United States Supreme Court has rejected the use of 'talismanic jurisdictional formulas' (*Burger King* (1985) 471 U.S. 462, 485 [105 S.Ct. 2174])" and instructed that " ' "the facts of each case must [always] be weighed" in determining whether personal jurisdiction would comport with "fair play and substantial justice." ' (*Vons, supra*, 14 Cal.4th at p. 460, 58 Cal.Rptr.2d 899, 926 P.2d 1085.)" Opinion at p. 33 Thus, it was not error for the court to decide not to ignore the existence of the resident plaintiffs' claims while undertaking its relatedness analysis.

From the foregoing, it is readily apparent that BMS' contacts with California, particularly with regard to its Plavix® product, are extensive.

Given that fact, under *Vons* and *Snowney* the connection between the present litigation and BMS' contacts with California may be proportionally less and less direct to justify the exercise of specific jurisdiction over BMS. Under the facts here, the Court of Appeal did not improperly conclude that the nexus between BMS' forum activities and the RPI claims is sufficiently substantial to support the exercise of jurisdiction over BMS in California in this action.

III. BMS SHOWS NO ERROR IN THE COURT OF APPEAL'S FINDING THAT IT FAILED TO SHOW HOW BEING HALED INTO COURT IN CALIFORNIA IS UNREASONABLE.

Where, as here, sufficient minimum contacts exist as to satisfy due process, the burden shifts to the defendant to present a "compelling case that the presence of some other considerations would render jurisdiction unreasonable." (*Integral Development Corp v. Weissenbach* (2002) 99 Cal.App.4th 576, 591; *see also Burger King Corp., supra*, 471 U.S. at 473, *Dole Food Co. v. Watts* (2002), 303 F.3d 1104 (noting that both domestic and foreign defendants bear a "heavy burden" in proving a compelling case of unreasonableness).) An otherwise valid exercise of jurisdiction is "presumed to be reasonable" unless the defendant can overcome this presumption. (*Integral Development Corp., supra*, 99 Cal.App.4th at 591; *Dole, supra,* 303 F.3d at 1117 (finding defendants failed to "overcome the strong presumption of reasonableness of the assertion of personal jurisdiction.") BMS woefully fails to meet this burden.

California courts have long held that it is fair to exercise jurisdiction over a foreign defendant, even where litigating the case in California presents burdens. (*Vons, supra,* 14 Cal.4th at 477. In *Vons*, for example, the court held that the out-of-state defendants failed to demonstrate that personal jurisdiction in California was not unreasonable where defendants

argued that many of their witnesses were not in California, a significant amount of evidence was not in California, and the conduct at issue occurred outside of California. (*Id.* at 476) Despite all of this, the Court of Appeal reasoned that it had an interest in protecting Vons, against an out-of-state tortfeasor. (*Id.* at 477.)

In *Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, the Supreme Court applied a five-factor test in determining whether "traditional notions of fair play" would permit the assertion of personal jurisdiction over a foreign (meaning out-of-state) defendant. The factors are: (1) What is the burden on the defendant? (2) What are the interests of the forum state in the litigation? (3) What is the interest of the plaintiff in litigating the matter in that state? (4) Does the allowance of jurisdiction serve interstate efficiency? (5) Does the allowance of jurisdiction serve interstate policy interests? (*Asahi, supra* 480 U.S. at 113.)

In *Asahi,* the Supreme Court concluded that the interests of the Taiwanese manufacturer and California were slight, for several reasons: the dispute involved only an indemnity claim between two foreign parties based on a transaction that took place in Taiwan; it would not be more convenient to litigate in California; California's interests were considerably diminished because the cross-complainant was not a California resident; and the state's interest in enforcing its safety standards was not at issue because the dispute concerned primarily indemnification and California law did not necessarily apply. (*Id.* at 114-115) The Court found that "[c]onsidering the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum State, the exercise of personal jurisdiction by a California court over Asahi in this instance would be unreasonable and unfair." (*Id.* at 116)

Simply put, *Asahi* and its progeny are not analogous to this case. Here, BMS is not incidentally connected to California through mere

awareness of the international distribution of its products, as was the case in *Asahi*. (*Id.* at 114-11) Rather, BMS maintains an agent for service in California, it makes billions of dollars selling Plavix® in the state, it employs a robust force of labor in California, occupies multiple buildings throughout the State, and injured numerous people within California. The argument that asserting jurisdiction over BMS in California would violate basic principles of fair play and substantial justice is simply not credible.

The Burden on Defendant: A defendant, such as BMS, who has purposefully directed its activities at forum residents "must present a compelling case" that the exercise of jurisdiction would be unreasonable. (*Burger King*, *supra*, 471 U.S. at p. 477.) In this case, the litigation arises out of the sale of Plavix® by BMS and McKesson. As indicated above, BMS has sold an average of $152,951,242.87 per year selling Plavix® in California alone for the last six years. This litigation arises out of RPIs' injuries caused by exposure to Plavix®, which was and continues to be manufactured, distributed and sold by BMS and McKesson. Accordingly, there is a direct relationship between the litigation and BMS' contacts with the State of California. Moreover, it is difficult to take seriously BMS' claim that it would offend "traditional notions of fair play and substantial justice" for it to defend the nonresident RPIs cases in California given that it is already agreed to litigate the claims of the 84 California residents.

Furthermore, Petitioner maintains an agent for service of process within the State of California. No case has ever suggested that service within the State is insufficient to exercise jurisdiction over a party.

Ultimately, "the essentials of due process are fully met, at least for the purposes of amenability to local process and jurisdiction, if a nonresident corporation maintains substantial contacts with a state through a course of regularly-established and systematic business activity, as distinguished from casual, isolated, or insubstantial contacts or

transactions." (*Jeter v. Austin Trailer Equipment Company* (1953) 122 Cal.App.2d 376, 388.)

In this case, based on the facts stated above, RPIs have demonstrated that BMS maintains substantial contacts with California through regularly-established and systemic business activities. Given such contacts, and the fact that there will be, at the very least, approximately 90 Plavix® cases proceeding in this State, BMS will not be unduly burdened by having to defend the non-resident cases in California.

Plaintiffs' Interests and the Interest of the Forum State: California has an interest in deterring improper conduct within its borders. (*See Hurtado* v. *Superior Court* (1974) 11 Cal.3d 574, 583-584; *Clothesrigger, Inc.* v. *GTE Corp.* (1987) 191 Cal.App.3d 605, 616 ("California's more favorable laws may properly apply to benefit nonresident plaintiffs..."); *Hemmelgarn* v. *Boeing Co.* (1980) 106 Cal.App.3d 576, 586 ("We must remember that courts do exist for the trial of cases and although the courts of this state are heavily burdened, hopefully they have not become an endangered species to deprive litigants who are properly here from the fair use of those resources.")

This interest, as the cited cases make clear, is to deter conduct; the likelihood of a substantial recovery against such a manufacturer strengthens the deterrent effect. (*See Ibid.*) BMS has used McKesson, whose principal place of business is in California, to distribute Plavix® in California thereby availing itself of McKesson's California contacts and furthering BMS' California presence. As such, much of the wrongful conduct that underlies RPIs core allegations occurred in and are based in California.

The interests of RPIs are simple; to have their cases adjudicated in a timely and just manner. Transfer of these cases will cause further undue delay, and require that each RPI bear the burden of engaging in general

liability discovery, duplicative discovery, thereby losing the efficiencies of coordinated actions. (*See Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 779).

Judicial Efficiency and Public Policy: There is little doubt that the interests of judicial efficiency would not be served by scattering hundreds of cases around the country. (*See Bridgestone Corp., supra,* 99 Cal.App.4th at 779 ("judicial efficiency is best served by litigating" all claims "in a single forum.").)

IV. DESPITE BMS' CONTENTIONS, JUDICIAL EFFICIENY IS A RELEVANT FACTOR THE COURT MUST ADDRESS

BMS claims that the Court of Appeal's consideration of judicial efficiency violated basic Due Process principles. BMS is wrong The Court of Appeal addressed the judicial efficiency of having the cases of the nonresident Plaintiffs litigated with the California resident Plaintiffs in the appropriate manner—with the desire of having similar outcomes in cases that arise from the same nucleus of operative facts and involve the same evidence.

Rather, BMS would prefer for RPIs due process rights to be violated. Specifically, BMS desires that this Court sever the cases of the resident and nonresident RPIs, effectively requiring the nonresident Plaintiffs to individually re-file each of their cases within their home states. Such a result would unequivocally violate each of the nonresident RPIs due process rights, as it has the utmost potential to result in incongruent rulings across the nation, and potentially cause undue hardship on numerous state courts (thirty-three courts to be exact) by having to litigate the individual cases, when in fact, all of the nonresident cases share the same facts and evidence. This would indisputably contravene the objective of preserving judicial efficiency across the nation.

As the Court of Appeal stated in its opinion, "[w]hile there will undoubtedly be an incremental burden on the superior court in managing the RPI cases along with those of the California resident plaintiffs, that burden pales in comparison with requiring judges in 33 states all to become involved in the discovery, motion, and trial practice that may be necessary to resolve these cases. Indeed, it pales in comparison with the incremental burden of asking the trial court just to coordinate its cases with those in multiple other jurisdictions so that, for example, the same discovery issues are not litigated and re-litigated time and again, such as because of protective orders regarding confidentiality adopted at BMS's request." Opinion at p. 38.

Furthermore, BMS itself stands to benefit from having both the resident and nonresident RPIs cases remain in California. BMS would not be forced to litigate the same issues in multiple forums across the nation, saving BMS both time and vast expense.

Central to this action is the fact that McKesson, a resident California defendant, did not join in on Petitioner's current position. If BMS is dismissed from this case, both the resident and nonresident RPIs would be forced to litigate against McKesson in California while also forcing the nonresident Plaintiffs to litigate the exact same cases arising from the exact same facts and the exact same evidence against BMS in a forum potentially on the opposite side of the country.[2]

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[2] Rather, BMS would prefer to have RPIs re-file their cases on an individual basis in each of RPIs home states so that BMS may then remove the cases to federal court for consolidation in the Multi District Litigation in the United States District Court of New Jersey ("MDL"). Crucially, having the cases transferred to the MDL would still be an exercise of improper jurisdiction for these matters, as the MDL has no personal jurisdiction over co-defendant McKesson. Thus, the current RPIs would be denied their day in court against Defendant McKesson, as McKesson is not a party to the MDL litigation.

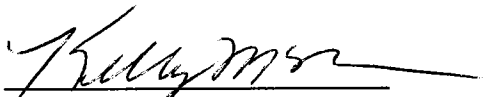
Because California will already be engaged in coordinating the litigation of dozens of plaintiffs with identical claims, judicial efficiency and public policy considerations all weigh heavily in favor of keeping the non-resident cases in California. Specifically, in accordance with the "traditional notions of fair play" established by the Supreme Court in *Asahi* and *International Shoe*, there is nothing fundamentally unfair about providing all of the parties, including BMS and Defendant McKesson, with a single forum in which the parties can litigate a large number of cases, all of which arise from the same common nucleus of operative fact and it is certainly not a aspect that the Court of Appeal was precluded from considering.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the Opinion finding that California may exercise specific jurisdiction over BMS. The appellate court's decision does not threaten to overturn a settled line of California precedent but, to the contrary, is consistent with the leading California cases. Moreover, the decision does not create discord with United States Supreme Court precedent. With regard to general jurisdiction, this Court should reject BMS's position that only corporations who are either incorporated or have their principle place of business in California are at home in the forum so as to permit the exercise of general jurisdiction and find personal jurisdiction exists over BMS on this basis as well.

DATED: April 20, 2015

Respectfully,



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CERTIFICATE OF COMPLIANCE PURSUANT TO

CAL. R. CT. 8.520(c)(1)

Pursuant to California Rule of Court 8.520(c)(1), and in reliance upon the word count feature of the software used to prepare this document, I certify that the foregoing **Answer Brief on the Merits** contains 9,065 words, exclusive of those materials not required to be counted under Rule 8.520(c)(3).

DATED: April 20, 2015

Kelly McMeekin

PROOF OF SERVICE

I, **Shayna E. Sacks,** declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at Napoli Bern Ripka Shkolnik, LLP.

On April 20, 2015, I served the attached:

ANSWER BRIEF ON THE MERITS

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

and served the named document in the manner indicated below and as set forth on the attached service list:

☒ **BY FEDERAL EXPRESS**: I caused true and correct copies of the above documents, to be placed and sealed in Federal Express envelope(s) for next business day delivery by Federal Express to the offices of the addressees as indicated on the Service List on this date to a facility regularly maintained by Federal Express.

☐ **BY PERSONAL SERVICE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) as indicated on the Service List and I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).

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I declare under penalty of perjury under the laws of the State of California and New York that the foregoing is true and correct.

Executed April 20, 2015 at New York, New York.

Shayna E. Sacks

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