No. 22-

IN THE

# Supreme Court of the United States

DAIMLER TRUCKS NORTH AMERICA LLC,

*Petitioner,*

*v.*

SUPERIOR COURT OF LOS ANGELES COUNTY, *et al.*,

*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOR THE SECOND APPELLATE DISTRICT, DIVISION FIVE**

## PETITION FOR A WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

The Due Process Clause permits a state court to exercise specific personal jurisdiction over a non-resident defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021).

The questions presented are:

1. Under the "relate to" prong, is specific jurisdiction limited to circumstances where a nonresident serves a market for a product in the forum *and* the product causes injury in the forum? Or, as the Court of Appeal held here, does the place of injury provide no territorial limit to the exercise of specific jurisdiction?

2. If specific jurisdiction "does not mean anything goes" and "incorporates real limits," as this Court held in *Ford*, what are those limits in California for nonresidents like Petitioner who are sued for a plaintiff's accident and injury that occurs thousands of miles away in another state where they used a product that was also designed, manufactured, and sold in other states far outside of California?

3. Because specific jurisdiction is based on the defendant's contacts with the forum, is it proper for courts to consider a plaintiff's residency in the forum, the availability of a passive website that can be accessed by anyone inside and outside the forum, or activity by an independent local third-party such as a dealer, distributor or repair facility?

## PARTIES TO THE PROCEEDING

Daimler Trucks North America LLC, petitioner on review, was the petitioner below and a defendant in the trial court.

The Superior Court of Los Angeles County and the Honorable Curtis A. Kin, respondents on review, were the nominal respondents below.

Yongquan Hu and Jinghua Ren, respondents on review, were the real parties in interest below and the plaintiffs in the trial court.

## RULE 29.6 DISCLOSURE STATEMENT

Petitioner Daimler Trucks North America LLC, whose name is now Daimler Truck North America LLC ("DTNA"), is a Delaware limited liability company. Its sole member is Daimler Trucks & Buses US Holding, Inc., which is a Delaware limited liability company in Oregon.

Daimler Trucks & Buses US Holding, LLC is a wholly-owned subsidiary of Daimler Truck AG, which is a corporation organized and existing under the laws of the Federal Republic of Germany.

The above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the part if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves.

Petitioner's counsel hereby certifies that they are not currently aware of any other entities or persons who must be listed under rule 29.6.

## RELATED PROCEEDINGS

California Supreme Court:

*Daimler Trucks North America v. Superior Court (HU)*, No. S275992. Order entered October 12, 2022.

California Court of Appeal:

*Daimler Trucks North America LLC v. Superior Court of Los Angeles County*, No. B316199. Judgment entered July 7, 2022, and modified without a change in the judgment on July 22, 2022.

Superior Court of Los Angeles County:

*Yongquan Hu, et al. v. Daimler Trucks North America LLC, et al.*, No. 21STCV07830. Order entered on October 28, 2021.

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## PETITION FOR A WRIT OF CERTIORARI

Daimler Trucks North America LLC ("DTNA") respectfully petitions for a writ of certiorari to review the published decision of the California Court of Appeal in this case.

## OPINIONS BELOW

The California Supreme Court denied review of the Court of Appeal's decision in *Daimler Trucks North America LLC v. Superior Court of Los Angeles County* (Yongquan Hu et al., Real Parties in Interest) ("Hu"). (Pet.App. 31a-32a.) That order is unreported. The Court of Appeal denied DTNA's petition for writ of mandate in a published opinion (Pet.App. 1a-24a) that is reported at 80 Cal.App.5th 946 (2022).

The California Superior Court's order denying Daimler's motion to quash service of the summons is unreported. (Pet.App. 25a-30a.)

## JURISDICTION

The Supreme Court of California denied review on October 12, 2022. This Petition has been timely filed within 90 days thereafter, pursuant to Supreme Court Rule 13. This Court's jurisdiction rests on 28 U.S.C. § 1257(a). See *Madruga v. Super. Ct.*, 346 U.S. 556, 557 n.1 (1954) (the California Supreme Court's disposition of a writ petition is a final judgment under 28 U.S.C. § 1257(a)); *Burnham v. Super. Ct.*, 495 U.S. 604, 608 (1990) (reviewing California appellate court's personal-jurisdiction holding after denying writ petition).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

California *Code of Civil Procedure* §410.10 provides:

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

## INTRODUCTION AND SUMMARY OF REASONS TO GRANT REVIEW

The California Supreme Court denied review, leaving as the controlling rule of law,[1] the Court of Appeal's decision holding Petitioner Daimler Trucks North America LLC ("DTNA") is subject to specific or "case-linked" personal jurisdiction for an accident in Oklahoma where Plaintiff Mr. Hu was a passenger in a vehicle that DTNA designed in Oregon, built in Mexico, sold to a Nebraska company, and shipped to Georgia. This Petition involves the "relate to" requirement for specific jurisdiction, which the California Court of Appeal here and other courts around the country have stated requires guidance because it has been "left rather undefined." (See Pet.App. 15a; and cases discussed in Section I.C.)

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1. *See Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 ("Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction.")

California has again joined the minority of courts that are not following this Court's directives, applying an expansive form of relatedness that subjects corporate defendants to personal jurisdiction wherever they market a product and someone can access the company's passive website, regardless of where the injury occurred. As held in *Bristol-Myers Squibb Co. v. Superior Court of California,* 137 S. Ct. 1773, 1780-81 (2017), specific jurisdiction cannot be exercised in such a broad manner that it effectively swallows up general jurisdiction and violates the sovereignty of each state. But that is what occurred here by subjecting DTNA to jurisdiction in California for an accident that occurred 1500 miles away in Oklahoma involving a truck designed, manufactured, built, sold, and shipped outside of California. This violated the territorial limitations and federalism concerns at the core of personal jurisdiction jurisprudence. "As we have put it, restrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.' (citing *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).) '[T]he States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State ... implie[s] a limitation on the sovereignty of all its sister States.'" *Bristol Myers*, 137 S. Ct. at 1780.

As this Court is well-aware from *Bristol-Myers*, California courts have unfortunately created distinct and expansive personal jurisdiction rules that subject product manufacturers to specific jurisdiction for accidents or injuries that can occur in any of the 50 states. That is wrong and violates the due process rights of Petitioner

and many nonresidents who are subject to personal jurisdiction for accidents in Oklahoma (as here) and any other state where a product is used. As discussed *infra,* citing the concurring opinions by Justices Alito, Gorsuch and Thomas in *Ford,* 141 S.Ct. at 1033-1039, many courts have stated they need further guidance from this Court on the proper limits to specific jurisdiction.

This case presents an opportunity to provide the necessary guidance on the "relate to" prong limits. One guidepost suggested in the Court's precedents is that the product must have caused injury in the forum. Here, the claims not only lack a causal connection and thus do not "arise out of" the defendant's forum activities, but the product was being used many states away and did not result in injury in the forum. Intermediate courts across the country are deciding this issue in disparate ways, and here, strain the concept of relatedness beyond any reasonable application to personal jurisdiction.

In denying review of the published Court of Appeal's opinion in *Hu*, the California Supreme Court gave its imprimatur to the opinion's application of the "relate to" test, addressed most recently by this Court in *Ford. Hu* is out of step with *Ford,* other state high courts, and federal appellate courts that have addressed this issue. It fails to heed this Court's admonition that "the phrase 'relate to' incorporates real limits" and "does not mean anything goes." *Ford*, 141 S.Ct. at 1026.

The California courts here were undaunted by the fact the vehicle was not designed, manufactured, or sold by DTNA in California, nor that the accident occurred in a different state. The conduct of third parties was

even wrongly imputed to DTNA, contrary to *Walden v. Fiore,* 571 U.S. 277, 284 (2014). The Court of Appeal's opinion improperly stretches the concept of "related to" beyond the confines of the jurisdictional principle that, in product liability actions, nonresident defendants must have engaged in acts in the forum that "serves a market for a product" *and* the action must be "'based on' products causing injury there." *Ford*, 141 S. Ct. at 1027. When properly limited, this means a "California court would exercise specific jurisdiction 'if a California plaintiff [is] injured in a California accident." *Id.* at 1028. But California courts instead apply specific jurisdiction without any territorial limit.

It matters that California is out of step with the rest of the country because its early trial dates and large damage awards, among other things, create a haven for cases to be funneled there. This fact is illustrated by *Bristol-Myers,* 137 S.Ct. at 1777, where hundreds of nonresident plaintiffs sued in California. And while plaintiffs in *Hu* live in California, their residence does not justify haling nonresident defendants into the forum for an accident, injury, and conduct that did not occur there. That is because personal jurisdiction must be based on the defendant's contacts (not others), and proper limits must be set to ensure their due process rights are protected after plaintiffs choose the forum. *Walden*, 571 U.S. at 284-85 *Atchley v. AstraZeneca UK Ltd.,* 22 F.4th 204, 234 (D.C.Cir. 2022) (Citing *Ford,* the Court stated "the phrase 'relate to'" must be applied to "adequately protect defendants foreign to a forum.")

In its zeal to find relatedness between the lawsuit and DTNA's forum contacts, the *Hu* Court also focused on (1)

the mobility of the product (which opens a Pandora's Box of problems since virtually all products are capable of being moved across state lines), (2) the maintenance of a website, and (3) the conduct of third parties (dealers and repairers). The *Hu* Court made specific findings on these issues after plaintiffs conducted jurisdictional discovery, which makes this case an excellent vehicle to provide guidance to lower courts that have reached different results. A circuit split has also developed on whether maintenance of a website, which can be accessed by anyone anywhere, can support the exercise of specific jurisdiction. (See discussion in Section III.C.)

Unless this Petition is granted, the expansive application of the "relate to" prong applied here and by other courts will swallow up general jurisdiction, turning the marketing and sales of a product in a state like California into a sufficient nexus for specific jurisdiction. Thus, by doing business in the state, a defendant will be deemed to have consented to personal jurisdiction. These are issues currently pending before this Court. See *HANWJH v. NBA Properties, Inc., et al.*, No. 22-467 (maintenance of interactive website and unrelated sale in the forum); and *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168 [Arg: 11.8.2022] (consent to personal jurisdiction by registering to do business in the state). Indeed, to subject companies to personal jurisdiction everywhere they do business and market products is a far more expansive form of personal jurisdiction than in *Mallory* where companies register and thereby purportedly consent.

By subjecting DTNA to jurisdiction in California for an Oklahoma accident, *Hu* effectively eradicated any

territorial limit to personal jurisdiction, contravening this Court's decision in *Daimler AG v. Bauman*, 571 U.S. 117, 119 (2014) ("If Daimler's California activities sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be available in every other State in which MBUSA's sales are sizable. No decision of this Court sanctions a view of general jurisdiction so grasping.") Likewise, by creating an exception that distinguishes *Bristol-Myers* and *Ford* on the ground plaintiff is a resident of California circumvents the necessary limits this Court has placed on exercising specific jurisdiction. If plaintiffs here did not reside in the forum, DTNA would be in the same position as the defendant in *Bristol-Myers* (except with far fewer products sold in California) and should not have been subject to personal jurisdiction. This Court should clarify that specific jurisdiction cannot be based on plaintiff's residence, a website, third party conduct, and accidents that occur in any state where products are used.

This Court should grant this Petition, rule that specific jurisdiction requires, at a minimum, that the product cause injury in the forum, and reverse the decision below.

## STATEMENT OF THE CASE

1. Petitioner DTNA is a defendant in a lawsuit brought by real parties in interest, California residents Yongquan Hu and Jinghua Ren (collectively, Hu). (Pet.App. 1a-2a.)

2. DTNA is a Delaware limited liability company with its principal place of business in Portland, Oregon, and owns the Freightliner brand. (Pet.App. 3a.)

3. Hu filed a lawsuit in California seeking to recover for injuries stemming from a truck accident in Oklahoma, over 1,500 miles from California. (Pet.App. 2a, 4a-5a.) A single-vehicle accident occurred on Interstate 40 in Oklahoma City, Oklahoma, and Mr. Hu was seriously injured. (Pet.App. 2a.)

4. The 2016 Freightliner Cascadia truck in which Hu was riding was designed by DTNA in Oregon, built in Mexico, sold to a Nebraska company (Werner Enterprises), and shipped to Georgia.[2] (Pet.App. 2a.)

5. DTNA does not manufacture or assemble vehicles in California. (Pet.App. 3a.)

6. DTNA does not own or operate any sales or service operations in California.[3] It also has no parts distribution centers in California.[4]

7. DTNA does not engage in service or repair activities and has no such facilities in California.[5]

8. The *Hu* Court highlighted the following facts concerning the resident status and conduct of third parties in its opinion, including "authorized dealers" that are "independent" from DTNA:[6]

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2. See also (1AE 36-37, paras. 6, 39, 118:23-119:8), which are references to the four-volume appellate appendix ("AE").

3. See (1AE 37, para. 8, 224:14-18.)

4. See (1AE 228:1-3.)

5. See (1AE 226:12-227:6.)

6. See (1AE 224:14-18.)

a. Mr. Hu and his wife are both California residents. (Pet.App. 17a.)

b. Werner Enterprises, which purchased the Cascadia truck from DTNA in Nebraska, also has a hub in Fontana, California, where it sells used trucks. (Pet.App. 3a.)

c. In 2019, Mr. Hu's employer, a California corporation, bought the subject Freightliner Cascadia as a used vehicle from Werner Enterprises. (Pet.App. 3a.)

d. There are 32 third-party dealerships in California that sell Freightliners. Customers can order the vehicles at these dealerships; DTNA then assembles the specified vehicles and delivers them to the dealership. Between 4,000 to 5,000 trucks were sold in California each year from 2014 to 2020. (Pet.App. 3a.)

e. The third-party dealerships advertise Freightliner trucks, and DTNA provides the dealerships with information for display advertising purposes. DTNA also sells and ships truck parts to 27 of these authorized California dealerships. The dealerships offer a variety of maintenance and repair services. 23 of these dealerships service Freightliner trucks. (Pet.App. 3a-4a.)

9. The *Hu* Court also highlighted facts concerning the mobility of the product, including:

a. Cascadias are intended to be used for journeys across multiple state lines. (Pet.App. 2a, 8a, 15a.)

b. Mr. Hu was a truck driver whose trip to the east coast began in California, and his intended final destination was California. (Pet.App. 2a, 15a.)

10. The *Hu* Court noted several of DTNA's California contacts, although it did not find plaintiff's claims "arose out of" those contacts, including that:

a. DTNA advertises Freightliner trucks such as the Cascadia across national and regional media that is also directed to California, and DTNA conducts considerable business in the State. (Pet.App. 3a, 12a, 18a.)

b. Third-party service centers include 11 truck "Elite Support" locations in California that offer customers the services of mechanics who receive "continual training from the experts at Freightliner" and must meet specific criteria. Nine "ServicePoint" locations in California offer 24/7 service, repairs, parts, inspections, and trailer maintenance. Seven "Body Shop" locations in California provide Freightliner crash repair and other repair services not often available in a typical dealership. Hundreds of these service shops are located in the United States. (Pet.App. 4a, 12a, 18a.)

c. DTNA provides telephone and online support that is available in California. DTNA also provides a passive website that includes a 24/7 helpline number to provide technological support, roadside assistance, towing, and referral to service locations. (Pet.App. 4a.)

11. DTNA's California contacts were unrelated to Mr. Hu's claim given that:

a. Mr. Hu's employer did not have its trucks serviced at an authorized dealer in California.[7]

7. See (4AE 873:3-18.)

b. Mr. Hu's employer has no record it ever purchased parts for the truck involved in the Oklahoma accident from any authorized dealer.[8]

c. There is no evidence Mr. Hu or his employer ever accessed, read or relied upon any DTNA website, advertising or telephone support—not in California or anywhere—because they did not purchase the truck from DTNA and never had it repaired or serviced by DTNA.

12. DTNA filed a motion to quash for lack of personal jurisdiction, which the trial court denied. (Pet.App. 5a.) DTNA then petitioned for a writ of mandate to the California Court of Appeal, arguing the motion should have been granted because the operative facts do not establish it is subject to jurisdiction in California. (Pet. App. 2a.)

13. The California Court of Appeal denied the petition for writ of mandate in a published opinion. (Pet.App. 2a.) The opinion focused on the "relate to" requirement for exercising specific jurisdiction and did "not address general jurisdiction." (Pet.App. 5a, 13a-18a.)[9]

14. In *Hu*, the appellate court purported to distinguish this Court's decision in *Bristol-Myers* based on the fact plaintiffs are California residents, stating: "That Mr. Hu and his wife are both California residents weighs in favor of specific jurisdiction." (Pet.App. 17a.)

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8. See (4AE 879:15-23.)

9. General jurisdiction was inapplicable because DTNA is a Delaware corporation headquartered in Oregon. (*Daimler AG v. Bauman,* 571 U.S. 117, 122, 139 (2014).)

15.The *Hu* Court also relied on the fact DTNA has "systematically served [the California] market" by advertising, selling, and servicing Freightliner trucks (including Cascadias) in California. (Pet.App. 18a.)

16.The appellate record includes abundant evidence submitted with DTNA's motion to quash *and* jurisdictional discovery plaintiffs performed. Thus, this case presents an excellent vehicle to address the issues presented because it has a robust, developed record.[10]

This petition follows.

## REASONS FOR GRANTING THE PETITION

### I. REVIEW IS REQUIRED TO RESOLVE CONFLICTS AND PROVIDE NECESSARY GUIDANCE ON THE RELATEDNESS REQUIREMENT AND THE PROPER LIMITS TO EXERCISE SPECIFIC JURISDICTION

"The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant." (*World-Wide Volkswagen Corp v. Woodson*, 444 U.S. 286, 291 (1980).) California courts may not exercise personal jurisdiction in a manner that is "inconsistent" with the state and federal Constitutions. (*Code Civ. Proc.*

10. This includes DTNA's response to interrogatories (3AE 655-710); declarations and depositions from a DTNA witness (1AE 35-37, 115-119, 222-228; 2AE 310-352), and Mr. Hu's employer (3AE 612-618, 4AE 865-880); and documents regarding DTNA, the truck and dealerships. (1AE 39-55, 121-138; 2AE 367-3AE 585; 3AE 606-610; 647-654.)

§ 410.10.) Thus, the inquiry is whether exercising personal jurisdiction "comports with the limits imposed by federal due process." (*Daimler AG*, 571 U.S. at 125.)

The *Hu* decision, subjecting DTNA to personal jurisdiction in California for an accident in Oklahoma, conflicts with the territorial limits set forth by this Court in *Ford, Bristol-Myers,* and other cases. The "Fourteenth Amendment's Due Process Clause does not permit a State to hale an out-of-state corporation before its courts when the corporation is not 'at home' in the State ***and the episode-in-suit occurred elsewhere***." (*BNSF Ry. Co. v. Tyrrell,* 581 U.S. 402, 137 S. Ct. 1549, 1554 (2017) (emphasis added), citing *Daimler,* 571 U.S. at 127.)

### A. *Hu* Creates Conflicts and Confusion by Misapplying *Ford* and *Bristol-Myers*.

Specific jurisdiction is often referred to as "case-linked" jurisdiction. (*Bristol-Myers,* 137 S.Ct. at 1780.) It cannot be exercised unless each of the three following elements is established: (1) "the defendant purposefully avails itself of the privilege of conducting activities with the forum State, thus invoking the benefits and productions of its laws;" (2) the "alleged injury arises out of or relates to" the forum directed conduct; and (3) "the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" (*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 463, 473, 475-476 (1985).)

When analyzing specific jurisdiction, courts acknowledge "the second element is crucial." *Matlin v. Spin Mater Corp.,* 921 F.3d 801, 705-06 (7th Cir. 2019). As here, the "nub of the dispute" often "centers" on

the relatedness prong. *Atchley,* 22 F.4th at 234. As *Hu* discussed, the "arising out of" prong requires a "causal showing"—which was *not* met here. (Pet.App. 13a.) That is why *Hu* focused on the "relate to" requirement, which it believed was "left rather undefined" by *Ford*. (Pet.App. 15a-16a.) In doing so, however, it applied an expansive approach sanctioning the exercise of specific jurisdiction without any territorial limit. Respectfully, that does not faithfully apply *Bristol-Myers* and *Ford*.

In *Bristol-Myers,* 137 S.Ct. at 1781-82, this Court held personal jurisdiction could not be exercised against a nonresident drug company (BMS). As here, plaintiffs were injured in other States where they used the drug Plavix that BMS manufactured. Plaintiffs did not use the drug and were not injured in California (*Id*. at 1778, 1782.) Thus, "California courts cannot claim specific jurisdiction" over BMS. (*Id*. at 1782.)

To support specific jurisdiction, plaintiffs in *Bristol-Myers* argued BMS had significant California contacts from selling 187,000,000 Plavix pills in California from 2006-2012; operating an advocacy office and five research facilities there; and employing hundreds of people there. (*Id.* at 1778.) However, this Court found these contacts were unrelated and legally insufficient because specific jurisdiction requires "an affiliation between the forum and the underlying controversy, principally, ***[an] activity or an occurrence that takes place in the forum State*** and is therefore subject to the State's regulation.'" (*Id*. at 1780; emphasis added.) This is not met when an injury occurs from using a product outside California. (*Id*. at 1778, 1782.) Thus, "[w]hen there is no such connection, specific jurisdiction is lacking regardless of the extent of

a defendant's unconnected activities in the State." (*Id.* at 1781, citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 930 fn. 6 (2011).)

Although *Hu* believes *Bristol-Myers* is distinguishable because plaintiffs there were not California residents (Pet.App. 17a), this only further supports certiorari. A plaintiff's residence cannot support specific jurisdiction—which must instead be based on *defendant's* forum contacts. (*See e.g., Walden,* 571 U.S. at 284-85; *Wallace v. Yamaha Motors Corp,* 2022 WL 61430, at *4-5 (4th Cir. 2022) and discussion *infra* in Section III.A.)

*Hu*'s reliance on unrelated sales—which had nothing to do with Mr. Hu's Oklahoma accident while traveling in a truck designed, built and sold in other States—also conflicts with the rule in *Bristol-Myers,* 137 S.Ct. at 1781, that "regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales."

The reliance on services and repairs by "independent" third-party dealerships (1AE 224:14-18; Pet.App. 3a-4a, 18a) also conflicts with *Bristol-Myers,* 137 S.Ct. at 1781 and other cases that hold relationships with third-parties are "an insufficient basis for jurisdiction."

In *Ford*, 141 S.Ct. at 1017, this Court again focused on the relatedness requirement when addressing whether Montana and Minnesota could properly exercise specific jurisdiction in plaintiff's product-liability suits for an "in-state injury" from car accidents in those States. (*Id.* at 1023-24.) After instructing "the phrase 'relate to' incorporates real limits" and "does not mean anything

goes" (*Id.* at 1026), *Ford* held specific jurisdiction requires that a company "serves a market for a product in the forum State ***and the product malfunctions there."*** (*Id.* at 1027; emphasis added.)

To "illustrate specific jurisdiction's province," *Ford* cited *Daimler*, *World-Wide Volkswagen* and *Goodyear* to instruct: "A California court would exercise specific jurisdiction ***"if a California plaintiff, injured in a California accident*** involving a Daimler-manufactured vehicle, sued Daimler [in that court] alleging that the vehicle was defectively designed." (*Id.* at 1028; emphasis added.)

Many times in *Ford*, this Court emphasized that specific jurisdiction requires an ***"in-state accident"*** ; the accident and injury must occur ***"there"*** "in the State" where suit is filed; the product must have "malfunctioned ***in the forum States"*** ;and there must be a ***"California accident"*** to subject a nonresident defendant to jurisdiction there. (*Id.* at 1022, 1026-28, 1030-32 (emphasis added).

*As Ford* further discussed, specific jurisdiction was improperly exercised in *Bristol-Myers* because plaintiffs "had not ingested Plavix in California" and "not sustained their injuries in California." (141 S.Ct. at 1031.) That was contrasted with *Ford's* in-state accidents where plaintiffs ***"used the allegedly defective products in the forum State" and "suffered injuries when those products malfunctioned in the forum States***." (*Id.*; emphasis added.) Thus, as *Ford* concluded, "each of the plaintiffs brought suit in the most natural State—based on an 'affiliation between the forum and the underlying controversy, principally, ***[an] activity or an occurrence***

***that t[ook] place' there***." (*Id.*, citing *Bristol-Myers*, 137 S.Ct. at 1779-80, 1780-81.) That was in line with the "paradigm" example of "how specific jurisdiction works," which is where "a California plaintiff, injured in a California accident involving a Daimler-manufactured vehicle" files suit there. (*Ford*, 141 S.Ct. at 1028.) That is *not* this case.

As in *Bristol-Myers* where this Court held the California courts were improperly exercising specific jurisdiction, and unlike *Ford* where plaintiffs sued for in-state injuries, Mr. Hu's accident and injuries occurred over a thousand miles outside California. Thus, *Hu* improvidently expands specific jurisdiction in California by subjecting DTNA to a lawsuit there without any geographic or territorial limit.

Under *Ford* and *Bristol-Myers*, where an accident and injury occur matters. But *Hu* treats that as inconsequential. Certiorari is required because *Hu* wrongly eviscerates the territorial limits required to protect due process rights by restricting "specific jurisdiction's province" to an "in-state accident" where a plaintiff" is "injured in a California accident." (*Ford*, 141 S.Ct. at 1028.)

### B. California Is Out of Step With Other Jurisdictions and Certiorari Should Be Granted To Ensure Specific Jurisdiction Is Not Improperly Exercised Against Manufacturers for Out-of-State Accidents.

Illustrating the importance of the issues in this Petition, since *Ford* was decided, the high courts in eight

states—Rhode Island, Oregon, Texas, New York, Ohio, Connecticut, Mississippi, and Oklahoma—reviewed intermediate appellate court decisions to ensure they do not misapply *Ford* (as *Hu* does) to improperly exercise specific jurisdiction. *See Martins v. Bridgestone Americas Tire Operations, LLC*, 266 A.3d 753, 760–61 (R.I. 2022); *Cox v. HP Inc.,* 492 P.3d 1245, 1247 (Ore. 2021); *Luciano v. SprayFoam Polymers.com, LLC,* 625 S.W.3d 1, 6 (Tex. 2021); *Aybar v. Aybar*, 177 N.E.3d 1257, 1259-1260 (N.Y. 2021); *LG Chem, Ltd. v. Goulding,* 194 N.E.3d 355, ¶¶ 13, 22 (Ohio 2022); *Adams v. Aircraft Spruce & Specialty Co.*, 345 Conn. 312, 316 (2022); *Dilworth v. LG Chem, Ltd.*, 2022 WL 7274532, at *5 (Miss. Oct. 13, 2022); *Galier v. Murco Wall Prod., Inc.*, 2022 OK 85, ¶ 23. Two other state high courts, Nevada and North Carolina, have reviewed the issue in non-product liability cases. *See Chavez v. Bennett*, 489 P.3d 912 (Nev. 2021); *Toshiba Glob. Com. Sols., Inc. v. Smart & Final Stores LLC*, 873 S.E.2d 542, 545, ¶ 2, 381 N.C. 692, 693 (N.C. 2022).

In conflict with *Hu*, the Connecticut Supreme Court held in *Adams* that Plaintiff's residence in the forum "does not establish the required case linkage" to satisfy the "relate to" prong. (345 Conn. at 343.) However, like *Hu*, *Adams* held "we do not interpret *Bristol-Myers* and *Ford Motor C*o. to mean that the activity or occurrence will be sufficiently related and material only when the injury occurs in the forum state." (*Id.* at 346.) There, a Connecticut resident was killed in an airplane crash that occurred in New York. (*Id.* at 317-318.) *Adams* expressed disagreement with courts in other jurisdictions that interpret *Ford* as "limit[ing] personal jurisdiction in a product liability action to the locus of the accident when there is no causal connection to the defendant's forum

contacts." (*Id.* at 347, n.19, citing *Bibbs v. Molson Coors Beverage Co. USA, LLC*, 2022 WL 2900275, *5 (N.D. Tex. July 22, 2022); *Barber v. DePuy Synthes Products, Inc.*, 2021 WL 3076933, *2 n.1 (D.N.J. July 21, 2021); and *Martins,* 266 A.3d at 761.) In *Adams*, however, the Court nevertheless held the action lacked a sufficient link to the defendant's contacts with Connecticut to support specific jurisdiction. (*Id.* at 354.)

The United States Courts of Appeal for the First, Fourth, and Ninth Circuits also recently reviewed orders granting motions challenging personal jurisdiction in product liability actions like this one. *See Vapotherm, Inc. v. Santiago,* 38 F.4th 252, 261 (1st Cir. 2022); *Wallace,* 2022 WL 61430, at *4-5; *LNS Enterprises LLC v. Cont'l Motors, Inc.,* 22 F.4th 852, 863-64 (9th Cir. 2022). These cases demonstrate certiorari is necessary because California is a haven for products liability litigation—starkly illustrated by the hundreds of nonresident plaintiffs who chose to file suit there in *Bristol-Myers*. The *Hu* decision permits plaintiffs to circumvent this Court's precedents, and if followed by other courts, will create a number of personal jurisdiction sanctuaries where "anything goes" to subject nonresidents to suit there as long as some contrived "relatedness" between the lawsuit and the forum contacts can be articulated, even though the accident or injury did not occur in the forum. Each of the cases above, unlike *Hu*, recognized that the location of injury matters.

The cases above therefore confirm the Court of Appeal here misapplied *Ford* and *Bristol-Myers* in multiple ways by: (1) subjecting DTNA to specific jurisdiction for an out-of-state accident; (2) using a plaintiff's residence to support jurisdiction against the defendant; (3) considering

activities of third-party dealers; and (4) considering unrelated contacts such as a passive website, and service and repair facilities that never worked on the product involved in the accident.

The conflict regarding how to define and apply the proper limits for exercising specific jurisdiction, including how a defendant's website factors into the analysis (see Section III.C.), is a "substantial reason for granting certiorari." *Yee v. City of Escondido*, 503 U.S. 519, 537–38 (1992). This is particularly true when "California, the State with the largest population," allows for the broad exercise of specific jurisdiction because then "forum shopping is thus of particular concern." (*Id.* at 538.)

Consistent with this Court's subsequent decision, the California Supreme Court's dissent in *Bristol-Myers Squibb Co. v. Superior Court*, 1 Cal.5th 783, 836 (2016) discussed this concern when concluding California's "aggressive assertion of personal jurisdiction is inconsistent with the limits set by due process." It cautioned against using a defendant's marketing activity or sales in California as a decisive factor for the relatedness prong because California's dominance in the nation's economy would result in almost every sizeable corporation being subject to personal jurisdiction there, stating: "As California holds a substantial portion of the United States population, any company selling a product or service nationwide, regardless of where it is incorporated or headquartered, is likely to do a substantial part of its business in California." (*Id.* at 835–36.)[11] This is still true

11. Certiorari was also granted in *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) to ensure California's outsized role in the nation's

today, as California's economy is the nation's largest and will soon be the *world's* fourth largest.[12]

The need for this Court's review is critical. California courts are again unfortunately engaging in an "aggressive assertion of personal jurisdiction" that is "inconsistent with the limits set by due process." (*Bristol-Myers,* 1 Cal.5th at 836.) Without this Court's intervention and guidance, the due process rights of DTNA and many other nonresident defendants will be violated. They will all be subject to specific jurisdiction regardless of where an accident or injury occurred.

### C. Several Courts Have Commented on the Need for Further Guidance By This Court.

In denying DTNA's motion to quash, the trial judge repeatedly stated the issue of whether DTNA is subject to specific jurisdiction was a "close call" and "I'm not going to pretend that this is an easy call at all."[13] Despite issuing a published opinion that all trial courts in California are required to follow (*Auto Equity Sales,* 57 Cal.2d at 455), the Court of Appeal also stressed the need for clarity and guidance, stating: "As observed by *Ford*'s concurring

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economy does not warp jurisdiction rules. ("[I]f a 'corporation may be deemed a citizen of California on th[e] basis' of 'activities [that] roughly reflect California's larger population" then "nearly every national retailer—no matter how far flung its operations—will be deemed a citizen of California for diversity purposes.")

12. See www.gov.ca.gov/2022/10/24/icymi-california-poised-to-become-worlds-4th-biggest-economy.

13. See the reporter's transcript of the hearing on the motion to quash. (RT 27:12-28.)

justices, ***what would suffice for a claim to 'relate to' a defendant's forum contacts was left rather undefined,*** with the majority simply stating 'relate to' 'does not mean anything goes, and incorporates real limits.'" (Pet.App. 15a-16a; emphasis added.)

Likewise, in *Cohen v. Cont'l Motors, Inc.*, 279 N.C. App. 123, 145, ¶ 48, review denied, 868 S.E.2d 859 (N.C. 2022), the North Carolina Court of Appeals stated: "The majority's opinion in *Ford* ***does not articulate any guardrails or outer limits for lower courts to follow*** when evaluating whether due process concerns prevent a court from establishing specific personal jurisdiction over a non-forum defendant." (*Id.* at 145; emphasis added.) The District Court for the Southern District of Florida stated: "***Further guidance*** on what exact 'limits' the phrase 'relate to' incorporates ***was not provided***, ***leaving lower courts to determine how and when to limit the phrase*** in the interests of Due Process." *In re: Zantac (Ranitidine) Prod. Liab. Litig.*, 546 F. Supp. 3d 1192, 1206 (S.D. Fla. 2021) (emphasis added.) In *Schrier v. Qatar Islamic Bank*, 2022 WL 4598630 (S.D. Fla. Sept. 30, 2022), the District Court observed: "Unfortunately, while we now know what the standard *isn't* (but-for causation), ***it's a little unclear what the right standard is.***" *Id.* at *18, n.17 (emphasis added.) In *Beemac, Inc. v. Republic Steel*, 2021 WL 2018681 (W.D. Pa. May 20, 2021), the District Court referenced the "real limits" noted in the majority opinion and stated: "***What these limits are is left to the imagination*** because the Court does not define or offer any limiting principles." *Id.* at *7. Other courts have cited the concurring opinions in *Ford* to similarly state "***this new articulation of 'arise from or relate to' is not clearly defined***" (*Sullivan v. LG Chem, Ltd.*, 585 F.Supp.3d 992,

1005 (E.D. Mich. 2022) (emphasis added); and "***Where this leaves us is far from clear.***" (*Bartlett v. Estate of Burke*, 877 S.E.2d 432, 440 (N.C.App. 2022) (emphasis added.)

The intermediate appellate courts have not been helpful according to the district court in *Evergreen Marine Corp Taiwain Ltd. v. Master Int'l Logistics China Co.*, 2021 WL 3914052, at *5 (C.D. Cal. May 26, 2021) ("the decisions of other federal circuit courts provide little guidance.") As the Connecticut Supreme Court stated in *Adams v. Aircraft Spruce & Specialty Co.*, 345 Conn. 312, 316 (2022), although "*Ford Motor Co.* definitively answered the question of whether specific jurisdiction always requires a causal connection between the defendant's forum contacts and the underlying controversy," it "***left many other questions in its wake***." (Emphasis added.)

## II. THE *HU* OPINION IMPROPERLY EXPANDS THE TERRITORIAL REACH OF CALIFORNIA, SUBJECTING NONRESIDENTS TO SPECIFIC JURISDICTION FOR ACCIDENTS IN ANY STATE, WHICH CREATES UNDUE BURDENS ON NONRESIDENTS AND THE COURTS

*Hu* jettisons territorial limits, unreasonably expanding California's reach to allow Plaintiffs to file suit there for countless accidents in any other State. That is no limit, let alone a reasonable one.

No court has sanctioned such a "grasping" reach for general jurisdiction (*Daimler,* 571 U.S. at 119); and specific jurisdiction is intended to apply to a "narrower class of claims." (*Ford,* 141 S.Ct. at 1024.) *Hu* effectively turns specific jurisdiction in California into a "loose

and spurious form of general jurisdiction." (*Bristol-Myers,* 137 S.Ct. at 1781.)

Subjecting manufacturers of mobile products to specific jurisdiction for accidents in any state effectively swallows up general jurisdiction. This case presents the ideal "vehicle" to address the issue, as it involves an "automobile," a "ubiquitous machine in our modern society." (*Coffey v. Dowley Mfg., Inc.,* 187 F.Supp.2d 958, 972 (M.D. Tenn. 2002), *aff'd,* 89 F.App'x 927 (6th Cir. 2003). As the supply-chain problems caused by the pandemic highlighted, society is reliant on the utility of trucks like the Cascadia involved in this case. Trucks are needed to transport consumer products, medical supplies, building materials, food, and many other goods and products that millions of people use for their home, work, recreation, and daily lives. At any Costco, Walmart and Target, it is easy to spot thousands of products that are transported across state-lines. Automobiles, busses, trains, and ships also carry and incorporate innumerable products. (*See Mack v. Gen. Elec. Co.,* 896 F.Supp.2d 333, 345 (E.D. Pa. 2012) [there are "thousands (if not tens of thousands) of products" on some ships].) We do not need case-law to tell us this, just common sense, practical experience, and our own two eyes.

Yes, it is known that trucks, cars, and thousands of products we encounter are mobile, portable, and cross state-lines. (Pet.App. 2a-3a, 8a, 14a-15a.) For work, commuting and other travel, these products are transported daily in vehicles, purses, suitcases, backpacks or otherwise carried and worn by people. But that does not—and cannot—mean manufacturers are subject to personal jurisdiction in a forum simply because the

product was brought there (or because similar products are sold in the forum), regardless of whether the injury occurred in some other State. As observed in *Daimler,* 134 S.Ct. at 750, that would mean "the same global reach would presumably be available in every other State in which [a manufacturer's] sales are sizable." This is the real and dangerous consequence of the decision here subjecting DTNA to specific jurisdiction in California for an accident 1500 miles away.

## III. CERTIORARI IS NECESSARY TO ENSURE "REAL LIMITS" ARE APPLIED TO SPECIFIC JURISDICTION AS REQUIRED BY THIS COURT'S PRECEDENTS

As *Hu* acknowledges, the "relate to" requirement cannot mean "anything goes" and there must be "real limits." (Pet.App. 15a-16a.) However, because it was "left rather undefined"[14] and this Court has not yet provided further clarity or guidance after *Ford*, the Court of Appeal here filled-in the gaps by relying on a variety of factors without explaining how they actually "relate to" the claim here for Mr. Hu's injuries in the Oklahoma accident. As shown next, this provides additional reasons that support the need to grant this Petition because the factors relied on by *Hu* inject further confusion, conflict, and doubt.

Respectfully, in many ways *Hu* and courts applying similar reasoning effectively circumvent and gut the Court's precedents in *Daimler*, *Ford*, *Bristol-Myers*, and *Walden*.

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14. *Hu* referenced "*Ford's* concurring justices" on this point. See Pet.App. 15a-16a; *Ford*, 141 S.Ct at 1033-39.

In *Ford*, 141 S.Ct. at 1026-1028, 1031, this Court said the accident must happen in the forum, referring many times to the requirement of an "in-state" accident. But California rejected that notion, finding jurisdiction could be imposed even though the accident happened in Oklahoma, over 1500 miles away. (Pet.App. 2a.)

In *Walden*, 571 U.S. at 284, this Court held jurisdiction could not be based on the conduct of third parties. But California rejected that notion, finding the conduct of third-party dealers and repair facilities supports jurisdiction. (Pet.App. 3a-4a, 7a, 12a, 18a.)

In *Bristol-Myers*, 137 S.Ct. at 1781, this Court held that unrelated sales can't form the basis of personal jurisdiction. Contracting with a California distributor is also "not enough to establish personal jurisdiction in the State." (*Id.* at 1783.) But California rejected both notions, finding the sales of other vehicles and repair services by independent local companies which were unrelated to the vehicle in question support jurisdiction. (Pet.App. 3a-4a, 7a, 12a, 18a.)

In *Ford*, 141 S.Ct. at 1024, this Court held specific jurisdiction should be more narrow than general jurisdiction; and in *Daimler,* 571 U.S. at 132, 138, it reaffirmed that specific jurisdiction is "case-specific," and must not be applied so broadly as to swallow general jurisdiction, thereby turning into "all-purpose jurisdiction." But California rejected these notions too, permitting personal jurisdiction for an accident that occurred in another state, based on *plaintiff's* contact with the state (residence and trips in and out of the state), the conduct of *third parties*, and defendant's maintenance of a passive website. (Pet.App. 5a-7a, 17a-18a.)

### A. Plaintiffs' Residence?

*Hu* states: "That Mr. Hu and his wife are both California residents weighs in favor of specific jurisdiction." (Pet.App. 17a.) This pronouncement in a published decision that all trial courts in California are required to follow will undoubtedly be used by California-resident Plaintiffs to subject nonresidents to specific jurisdiction in *all types of cases*.

*Hu* is wrong and conflicts with the following rules discussed in *Walden:* (1) "For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." (571 U.S. at 284); (2) Personal jurisdiction "must arise out of contacts that the defendant *himself* creates with the forum State." (*Id.*); and (3) "We have consistently rejected attempts to satisfy the defendant-focused…inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." (*Id.*)

Plaintiffs file lawsuits where they believe it is most advantageous. Personal jurisdiction is therefore a necessary check and balance that "protects the defendant," so their due process rights are not violated. (*World-Wide Volkswagen*, 444 U.S. at 292; *Walden,* 571 U.S. at 284; *Atchley*, 22 F.4th at 234.) Thus, it is incongruous to base personal jurisdiction on a plaintiff's residence.

*Hu's* cite to *Ford* on this point also omits the context of its earlier discussion that plaintiff's claim "'must arise out of or relate to the defendant's contacts with the forum'" (141 S.Ct. at 1025); and "contacts must be the defendant's own choice." (*Id.*) Far from holding a plaintiff's residence

supports jurisdiction, *Ford* stated that, when assessing whether a defendant's contacts are related, "so what if (as *Walden* held), the place of a plaintiff's injury and residence cannot create a defendant's contact with the forum State?" (*Id*. at 1031.) It then stated a plaintiff's residence and place of injury may only be considered "in assessing the link between the defendant's forum contacts" and "assertions of who was injured where." (*Id*. at 1031-32.) Confusion and conflict are created by *Hu's* twist to now create a rule that plaintiff's residence is an independent and affirmative factor that supports the exercise of specific jurisdiction.

### B. Third Parties' Conduct?

Because a defendant's contacts with the forum State is the necessary focus—not someone else's—it is wrong to exercise specific jurisdiction against a manufacturer such as DTNA based on any activities, conduct or contacts by third parties such as companies who service or repair vehicles as part of *their* business. (*Walden,* 571 U.S. at 284 (The "activity of another party or a third person is not an appropriate consideration"); *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 417, (1984) ("[The] unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.") This was reaffirmed in *Bristol-Myers*, 137 S.Ct. at 1781, 1783, which cited *Walden* and other cases to reject plaintiff's argument that a drug manufacturer was subject to specific jurisdiction because of its contracts with local California distributors.

Furthermore, a contact "can have no jurisdictional significance" if it would result in jurisdiction "in all 50

States." *Rush v. Savchuk*, 444 U.S. 320, 330 (1980). Under *Hu's* approach, however, the allegation that DTNA does business and markets its products nationally would subject it and countless nonresidents to specific jurisdiction not just in California, but in every state. This Court has sensibly forbidden such an expansive and grasping form of personal jurisdiction. It is wrong for general jurisdiction (*Daimler,* 571 U.S. at 119) and wrong for specific jurisdiction—particularly since it applies to a "narrower class of claims." (*Ford*, 141 S.Ct. at 1024.) Why would anybody ever need general jurisdiction if specific jurisdiction could be exercised so expansively as it was here?

### C. Websites?

Although the Court of Appeal references DTNA's website and on-line support (Pet.App. 3a-4a), there is likewise no evidence in the record to demonstrate they were ever accessed or relied on by Mr. Hu, his employer, the Nebraska company (Werner) that originally purchased the truck, nor any specific person or company in California.

*In Ford*, 141 S.Ct. at 1028 fn. 4, this Court noted it was not addressing the issue of how websites or "internet transactions" factor into the specific jurisdiction analysis. For two reasons, this issue further supports granting certiorari here. First, it is unquestionably important and recurring because virtually every business today operates a website that can be accessed by anyone inside and outside the forum. Second, there is a circuit split that requires resolution by this Court.

The Fifth, Seventh, Tenth and D.C. Circuits hold specific jurisdiction cannot be based on a website that can be accessed by anyone, anywhere. *See Admar Int'l, Inc. v. Eastrock, L.L.C.,* 18 F.4th 783, 787–88 (5th Cir. 2021); *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.,* 751 F.3d 796, 801–03 (7th Cir. 2014); *Shrader v. Biddinger,* 633 F.3d 1235, 1241 (10th Cir. 2014); *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000).

As discussed in *Admar,* 18 F.4th at 788, because of the ubiquity of the internet, operating a website could subject every business to personal jurisdiction in "all 50 states," which "would be too much." While the internet is "premised on the lack of territorial limits," "[p]ersonal jurisdiction works just the opposite." (*Id.*)

As similarly observed in *Advanced Tactical,* using websites to support personal jurisdiction could create "*de facto* universal jurisdiction," which "runs counter to the approach [this] Court has followed since *International Shoe*." (751 F.3d at 801-02.) Even "having an "interactive website" (which hardly rules out anything [today]) should not open a defendant up to personal jurisdiction in every spot on the planet where that interactive website is accessible. To hold otherwise would offend 'traditional notions of fair play and substantial justice.'" (*Id.* at 803.)

In *Johnson v. TheHuffingtonPost.com, Inc.,* 21 F.4th 314, 325 (5th Cir. 2021), the majority held "clicks, visits, and views from forum residents" is insufficient to even "show purposeful availment." To hold otherwise would be "[e]rasing the line between specific and general jurisdiction." (*Id.* 324.) The dissent, however, cited cases

that hold differently. (*Id.* at 330-31.) This includes the First and Ninth Circuits. *See Plixer Int'l, Inc. v. Scrutinizer GmbH*, 905 F.3d 1, 10 (1st Cir. 2018); *Ayla, LLC v. Alya Skin Pty. Ltd.,* 11 F.4th 972, 980 (9th Cir. 2021). Other Circuits adopt different approaches depending on whether a website is interactive or passive. *See Toys "R" Us, Inc. v. Step Two, S.A.,* 318 F.3d 446, 453 (3d Cir. 2003); *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 400–01 (4th Cir. 2003); *Neogen Corp. v. Neo Gen Screening, Inc.,* 282 F.3d 883, 890 (6th Cir. 2002).

The circuit split on how websites factor into the specific jurisdiction analysis is a "substantial reason for granting certiorari." *Yee,* 503 U.S. at 537–38 (1992). DTNA submits the applicable analysis should be similar to what the Court has consistently held with regard to any marketing — that such activity alone is not sufficient to subject a non-resident defendant to personal jurisdiction. (*Bristol-Myers,* 137 S. Ct. at 1781-82; *Daimler AG*, 571 U.S. at 761.) If the rule were otherwise, *Bristol-Myers* would have been decided differently. Due to the recurring nature of this issue, it is also pending before the Court in a petition for certiorari filed in *HANWJH, v. NBA Properties, Inc., et al.*, No. 22-467. Every company, from small to large, run by an individual or company, has a website. If this is going to be a basis for personal jurisdiction, there should be clear limits set by this Court.

### D. Mobility of the Product?

Among the stated reasons why *Hu* extended specific jurisdiction for Mr. Hu's Oklahoma accident is because the DTNA vehicle was "used for journeys across multiple state lines." (Pet.App. 2a, 8a.) But that is no limit at all. Rather,

it is an invitation for nonresidents to be sued in California for countless products used and/or transported every day across state lines for personal or business purposes.

Here, the product was a truck driven from New Jersey. In other cases, it may be a car, motorcycle, or bus. Or it may be any mobile product that can be carried or otherwise transported. This includes computers, toys, phones, cosmetics—anything that fits inside a purse, suitcase, or vehicle of any size. Because the list of potentially involved products is staggering, if not virtually limitless, this is another reason why *Hu's* widespread impact warrants certiorari. Under *Hu*, because *Bristol Myers* involved a drug that could be easily transported and is intended to be taken by people wherever they may be, the mobility of that product would have been sufficient to support the exercise of specific jurisdiction. Respectfully, that approach is wrong and illustrates why guidance is needed to ensure lower courts properly follow this Court's decisions and do not create loopholes that violate defendants' due process rights.

## IV. THE CORRECT APPROACH IS SET FORTH IN *MARTINS* AND *WALLACE*, WHICH CLARIFY AND PROPERLY APPLY THE PRINCIPLES IN *BRISTOL-MYERS* AND *FORD*

The governing rule should be that, in order for a defendant's forum contacts to "relate to" the claims at issue, at a minimum, the injury or accident must have occurred in the forum. Without that clarifying principle, a defendant can *always* be connected in some abstract way to a plaintiff's claims. That rule is spelled out in *Martins* and *Wallace*, which faithfully apply *Bristol-Myers* and *Ford*.

Just as this Petition presents, the issue reviewed by the Rhode Island Supreme Court was "the authority of the Superior Court to exercise jurisdiction over claims brought against foreign corporate defendants based on injury…to a Rhode Island resident following an accident that occurred outside of Rhode Island." (*Martins,* 266 A.3d at 755.) Plaintiffs' decedent, a Rhode Island resident, was driving a truck originally purchased by two Rhode Island Companies, and he intended to travel from Massachusetts to Rhode Island. (*Id.* at 756, 759.) While driving in Connecticut, the decedent crashed after the tread separated on a tire manufactured by Bridgestone. (*Id.* at 756.) Plaintiffs filed suit in Rhode Island against Bridgestone and others for the injuries sustained in the accident. (*Id.*) Bridgestone argued it was not subject to personal jurisdiction because it was incorporated and headquartered in other states; and the truck's tires were manufactured, sold, shipped, and installed in Tennessee. (*Id.* at 755-56.)

As here, plaintiffs argued specific jurisdiction could be exercised under *Ford* because Bridgestone engaged in extensive business in Rhode Island and its product injured a Rhode Island resident. (*Id.* at 759.) However, as *Hu* should have, the Rhode Island Supreme Court held plaintiffs "reliance on *Ford* is misplaced" because, even assuming purposeful availment was met, "plaintiff's claims do not 'relate to'" Bridgestone's contacts with Rhode Island. (*Id.*) The *Martins* Court rightly discussed that, pursuant to *Ford*, *Bristol-Myers*, *Goodyear*, and *World-Wide Volkswagen,* specific jurisdiction cannot be exercised against manufacturers unless they market the product in the forum state ***and the product causes an injury "there" "in the forum state.***" (*Id.* at 760; emphasis added.) "Although the decedent was a resident of Rhode

Island whose death ultimately occurred in Rhode Island, those facts alone are not enough; ***it was key in Ford that the injury also occurred in the forum state.***" (Id. at 760–61; emphasis added.) Thus, *Martins* held plaintiff's claims for injuries sustained in the out-of-state accident did not "arise out of" or "relate to" Bridgestone's Rhode Island contacts. (*Id.*)

In *Wallace,* 2022 WL 61430, at *1, a South Carolina resident sustained injuries riding a Yamaha motorcycle in Florida. Yamaha moved to dismiss for lack of personal jurisdiction, presenting evidence the motorcycle was designed and manufactured in Japan, and sold in Kansas. (*Id.*) Plaintiffs argued their product liability claims were related to Yamaha's South Carolina contacts where it "maintains 106 authorized dealerships," "sponsors product demonstrations," "markets and advertises," and "offers extended service contracts." (*Id.*) In holding Yamaha was not subject to specific jurisdiction for the out-of-state accident, the Fourth Circuit's reasoning included the following that demonstrates *Hu's* analysis conflicts with both *Ford* and *Bristol-Myers*:

> "But specific jurisdiction is not simply a lower standard for general jurisdiction, and Wallace offers no facts to connect her specific claims to Yamaha's actions in South Carolina. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021)…The motorcycle from the accident was designed elsewhere, manufactured elsewhere, distributed elsewhere, and sold elsewhere. The accident that resulted in Wallace's injuries took place elsewhere." (2022 WL 61430, at *4.)

* * *

> "As with the nonresident plaintiffs in *Bristol-Myers*, neither the injury in this case nor Yamaha's conduct related to the product that allegedly caused the injury took place in South Carolina, the forum state. … Wallace's residence does not dictate whether the South Carolina courts can properly exercise personal jurisdiction over Yamaha." (2022 WL 61430, at *4.)

## V. THE QUESTIONS PRESENTED ARE IMPORTANT AND THIS CASE IS AN IDEAL VEHICLE TO ANSWER THEM

The relatedness question is important. Leaving the *Hu* decision in place will result in California courts becoming even more of a destination for plaintiffs looking to shop suits to friendlier forums. It will also deprive corporate defendants of the predictability the Due Process Clause is supposed to provide. (*See Burger King*, 471 U.S. at 472; *World-Wide Volkswagen,* 444 U.S. at 297).

The fact that *Hu* is a California case and involves the "ubiquitous" product of an automobile that is used by virtually everyone in every state (*Coffey,* 187 F.Supp.2d at 972) alone makes it a good candidate for certiorari. The practical reality is that every sizable national company likely has significant California connections. *See Bristol-Myers,* 1 Cal.5th at 835-836 (Because California has the largest economy, many businesses transact substantial business there); *Daimler*, 134 S. Ct. at 752 (California accounted for 2.4% of Daimler's worldwide sales). That,

in turn, means that California courts will not require much if any connection between the company's California activities and a plaintiff's non-California claims to exercise specific jurisdiction.

This case is also an ideal vehicle to address the relatedness question because it raises issues the lower courts are struggling with through their requests for guidance (see Section I.C.), in which there are conflicts and circuit splits. This includes the issues concerning whether specific jurisdiction can be based on: (1) the maintenance of a website; (2) the mobility of a product; (3) plaintiff's residence; (4) conduct of third parties; (5) defendant's unrelated business in the forum; and (6) accidents that occur in other states.

Because this case involves a developed record, after Plaintiffs were allowed jurisdictional discovery, this Court also has the benefit of more evidence here than in most cases raising personal jurisdiction issues. This includes evidence demonstrating that the third-party repair and service companies referenced in the *Hu* opinion were independent from DTNA; the subject truck was never serviced or repaired by DTNA nor any dealership; and no witness ever claimed to have relied on any website DTNA maintained. All of these purported contacts should fall into the basket of unrelated. (*See LNS Enterprises,* 22 F.4th at 863; *Wallace,* 2022 WL 61430, at *1, 4.) Indeed, how can something that never happened be "related to" the specific claims at issue?

Thus, for these and the many reasons discussed in this Petition, DTNA submits this case is ideally suited for this Court to provide necessary clarity and guidance for

the proper limits on exercising specific jurisdiction, and what should be considered "related to" or "unrelated to" a plaintiff's claims.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JANUARY 2023

# APPENDIX

## TABLE OF APPENDICES

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**APPENDIX A — OPINION OF THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE, FILED JULY 7, 2022**

COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

DAIMLER TRUCKS NORTH AMERICA LLC,

*Petitioner,*

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

*Respondent;*

YONGQUAN HU *et al.*,

*Real Parties in Interest.*

July 7, 2022, Opinion Filed

B316199

(Los Angeles County
Super. Ct. No. 21STCV07830)

**INTRODUCTION**

Petitioner Daimler Trucks North America LLC (Daimler) is a defendant in a lawsuit brought by real parties

in interest Yongquan Hu and Jinghua Ren (collectively, Hu). Hu seeks to recover for injuries stemming from a truck accident that occurred in Oklahoma.[1] Daimler filed a motion to quash for lack of personal jurisdiction, which the trial court denied. In this petition for a writ of mandate, Daimler argues the motion to quash should have been granted because the operative facts do not establish Daimler is subject to jurisdiction in California. Daimler additionally challenges the trial court's rulings on its evidentiary objections. We deny the petition for writ of mandate.

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. The Long distance Tractor-trailer Accident

Sometime prior to March 21, 2020, Mr. Hu and Ran Gao, both California residents and long-distance tractor-trailer drivers, made their way from California to the East Coast. On March 21, 2020, they were on the return trip to California, transporting goods from New Jersey. While Gao was driving on Interstate 40 in Oklahoma City, Oklahoma, the tractor-trailer was involved in a single vehicle accident. Mr. Hu was seriously injured.[2]

The 2016 Freightliner Cascadia truck in which the two were riding was originally sold by Daimler. Per Daimler's person most knowledgeable, Cascadias are intended to be used for journeys across multiple state lines. Daimler's

1. Ren is Mr. Hu's wife and brought suit for loss of consortium.

2. Mr. Gao is not a party to this appeal.

website states the Cascadia is an "on-highway truck" with an interior designed for drivers who may spend more than 100 hours per week in the cab. In 2015, Daimler sold the Freightliner in which Mr. Hu was riding to Werner Enterprises and shipped the truck to Georgia. Werner Enterprises maintains a national truck fleet based in Nebraska. It has a hub in Fontana, California, where it sells used trucks. In 2019, Mr. Hu's employer, a California corporation, bought the subject Freightliner Cascadia from Werner Enterprises' Fontana hub.

**2. Daimler's Freightliner Business**

Daimler is a Delaware limited liability company with its principal place of business in Portland, Oregon. Daimler owns the Freightliner brand. Although Daimler does not manufacture or assemble vehicles in California, it does conduct considerable business in the state.

Daimler advertises Freightliner trucks, including the Cascadia specifically, across national and regional multiple media that is also directed to California. Daimler has 32 authorized dealerships in California that sell Freightliners. Customers can order the vehicles at these dealerships; Daimler then assembles the specified vehicles and delivers them to the dealership. Between 4,000 to 5,000 trucks were sold in California each year from 2014 to 2020. Authorized dealerships advertise Freightliner trucks, and Daimler provides the dealerships with information for display advertising purposes. Daimler also sells and ships truck parts to 27 of these authorized California dealerships. The dealerships offer

a variety of specialized maintenance and repair services. Twenty-three of the authorized California dealerships service Freightliner trucks. There are 11 truck "Elite Support" locations in California. These service centers offer customers the services of mechanics who receive "continual training from the experts at Freightliner" and must meet specific criteria. Nine "ServicePoint" locations in California offer 24/7 service, repairs, parts, inspections, and trailer maintenance. Seven "Body Shop" locations in California provide Freightliner crash repair and other repair services not often available in a typical dealership. Hundreds of these service shops are located in the United States.

Daimler also provides telephone and online support that is available in California—its website claims that "no matter where you are, we've got you covered." This support includes a 24/7 helpline that provides technological support, roadside assistance, towing, and referral to service locations for Freightliners. The "Detroit Connect" service can monitor Freightliner trucks' driving performance. One feature of this service is that it transmits fault codes to Daimler. Daimler is then able to notify the truck's owner of the problem and refer them to an authorized service location for service.

**3. Lawsuit Against Daimler and the Motion To Quash**

In March 2021, Hu filed suit against Daimler and other (nonappealing) defendants, alleging products liability, negligence and loss of consortium claims against the company.

Daimler filed a motion to quash and asserted lack of personal jurisdiction. Daimler argued it was not subject to specific jurisdiction in California, primarily because the causes of action did not arise out of or relate to its forum-related activities.[3] Daimler did not engage in any activity dealing with the subject Freightliner Cascadia that took place in, or was directed at, California. According to Daimler, no activity in California caused the injuries.

Hu opposed the motion. He argued Daimler was subject to specific jurisdiction because it had purposefully availed itself of the privilege of doing business in California by marketing, selling, and servicing within the state the same model of Freightliner truck involved in the accident. The Cascadia was specifically designed for long hauls, and "was outfitted with a specially designed sleeping compartment for this purpose." And because Daimler had "systematically served a market in California for the very vehicle that the Plaintiffs allege was defective and injured them," Hu's claims related to Daimler's contacts with California. Other ties to California were that Mr. Hu and his wife are California residents, Mr. Hu was working for a California company and driving to California at the time of the accident, the subject vehicle was purchased in California, and the bulk of the damages for pain and suffering and medical expenses occurred and would continue to occur in California. Hu continued that, by marketing, selling, servicing and supporting their

3. Daimler also argued below that it was not subject to suit in California based on general jurisdiction. As will become apparent, we decide the case based on specific jurisdiction. Accordingly, we do not address general jurisdiction.

Freightliner trucks in California, Daimler had notice it could be subject to suit there. The fact the particular truck involved in this litigation came to California through an intermediary did not make jurisdiction unfair, especially because Daimler certainly understood that some of its trucks likely would be resold in California. That the injury occurred out of state did not defeat jurisdiction either. Daimler's extensive business operations in this state supported a finding of personal jurisdiction, as did the fact that it knew—and its marketing campaign promoted—that the Freightliner trucks would be used by its owners for cross-country transportation. According to Hu, a necessary incident of Daimler's business was the risk that its activities in any state could foreseeably cause injury to a person in a distant forum.

Hu asserted that jurisdiction also comported with notions of fair play and substantial justice. Daimler was an international corporation, while Mr. Hu and his wife were California residents. California had an interest in hearing the dispute because it involved Daimler's allegedly unsafe product that was regularly being sold in this state and which injured two California residents. Hearing the case in California would also promote judicial efficiency because California had jurisdiction over the other defendants.

**4. Ruling on the Motion To Quash**

The trial court denied the motion, finding that it could exercise specific jurisdiction over Daimler. The court began by assessing the three elements necessary for a

finding of specific jurisdiction: "'(1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of jurisdiction would comport with fair play and substantial justice.' (*Virtual Magic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 238–39 [121 Cal. Rptr. 2d 1], citing *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 526 [99 Cal. Rptr. 2d 824].)"

*The first element.* The trial court found the first element was satisfied by the extent of Daimler's business in California. The court identified Daimler's national advertising campaigns (that were directed to California) in magazines, radio, and digital media; Daimler's policy that allowed authorized dealerships to advertise the subject vehicle—32 of those dealerships sold the subject vehicle in California; Daimler's sales of between 4,000 to 5,000 trucks per year in California between 2014 and 2020; its program of servicing vehicles in California and shipping parts for the subject vehicle to 27 "authorized parts/sales locations" in California; Daimler's adoption of its "fault code" plan to enable it to monitor the performance of the Freightliner trucks; and, finally, Daimler's creation of a 24/7 helpline. "The advertising, selling, and servicing of a product in a forum state supports a finding that the manufacturer of that product purposefully availed itself of the benefits of the forum state."

*The second element.* The trial court found that the second prong was also met—the claims themselves were

sufficiently related to Daimler's "selling of Freightliner trucks in California." Mr. Hu and his wife were California residents, Mr. Hu was headed to California to deliver goods when the accident occurred, the subject vehicle was purchased in California, and Daimler intended the vehicle to be driven in interstate transport. That the accident occurred in Oklahoma on the way to California did not negate that the claims arose out of or had a substantial connection with a business relationship Daimler purposefully established with California. Where "Daimler knowingly promotes and directs to California residents the sale and servicing of its truck designed to transport goods across multiple states, and where a California resident is injured transporting goods across states lines to California while in one of those trucks (which had been sold in California to a California company), that resident's claims of injury are sufficiently related to Daimler's activities in California, even if the accident causing the injury happened to occur in another State while defendant's truck was en route to California."

*The third element.* For the third prong, the trial court concluded jurisdiction would comport with fair play and substantial justice. California has a strong interest in providing a local forum for its residents to redress injuries inflicted by out of state defendants. The other defendants are California residents, and litigating the claims in one forum would avoid a multiplicity of suits and conflicting adjudications. Finally, the intended interstate purpose of Daimler's trucks and the purposeful availment of the California market for the sale of those trucks supported the reasonableness of having Daimler defend against the claims in California.

**5. Writ Proceedings**

Daimler filed in this court a petition for writ of mandate, challenging the trial court order denying the motion to quash. On December 16, 2021, we issued an order to show cause why the relief sought in the petition should not be granted. Hu filed a return, and Daimler filed a reply.

**DISCUSSION**

In its writ petition, Daimler alleges the trial court principally erred because the court failed to identify the requisite direct causal connection or relationship between the injuries and Daimler's activities in California. Daimler also argues the order violated the traditional notions of fair play and substantial justice because California's interest in the dispute is secondary to that of Oklahoma, where the accident occurred. Finally, Daimler claims that the trial court improperly overruled its evidentiary objections to opposing counsel's declaration.

**1. Principles of Personal Jurisdiction**

California courts may exercise personal jurisdiction over a nonresident defendant on any basis not inconsistent with the Constitutions of this state or the United States. (Code Civ. Proc., § 410.10; *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444 [58 Cal. Rptr. 2d 899, 926 P.2d 1085] (*Vons Companies*).) "The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts. [Citation.] Although a nonresident's physical

presence within the territorial jurisdiction of the court is not required, the nonresident generally must have 'certain minimum contacts … such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."' *International Shoe Co.* v. *Washington*[ (1945)] 326 U.S. 310, 316 [90 L.Ed. 95, 66 S.Ct. 154] … (quoting *Milliken* v. *Meyer*[ (1940)] 311 U.S. 457, 463 [85 L.Ed. 278, 61 S.Ct. 339] …)." (*Walden v. Fiore* (2014) 571 U.S. 277, 283 [188 L.Ed.2d 12, 134 S.Ct. 1115].)

"When determining whether specific jurisdiction exists, courts consider the '"relationship among the defendant, the forum, and the litigation."' [Citation.] A court may exercise specific jurisdiction over a nonresident defendant only if: (1) 'the defendant has purposefully availed himself or herself of forum benefits' [citation]; (2) 'the "controversy is related to or 'arises out of' [the] defendant's contacts with the forum"' [citation]; and (3) '"the assertion of personal jurisdiction would comport with 'fair play and substantial justice'"' [citation]." (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269 [127 Cal. Rptr. 2d 329, 58 P.3d 2].)

On a motion to quash for lack of personal jurisdiction, the plaintiff has the initial burden to demonstrate facts justifying the exercise of jurisdiction. If the plaintiff does so, the burden shifts to the defendant to show that exercising jurisdiction would be unreasonable. If there are no evidentiary conflicts, the existence of jurisdiction is a legal question that calls for our independent review. (*Vons Companies, supra*, 14 Cal.4th at p. 449.)

**2. Daimler Has Purposefully Availed Itself of Forum Benefits**

The first of the three elements Hu must establish is that the defendant purposefully availed itself of forum benefits. The defendant must take "'some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.' *Hanson* v. *Denckla*[ (1958)] 357 U.S. 235, 253 [2 L. Ed. 2d 1283, 78 S. Ct. 1228] … . The contacts must be the defendant's own choice and not 'random, isolated, or fortuitous.' *Keeton* v. *Hustler Magazine, Inc.*[ (1984)] 465 U.S. 770, 774 [79 L. Ed. 2d 790, 104 S. Ct. 1473] … . They must show that the defendant deliberately 'reached out beyond' its home—by, for example, 'exploi[ting] a market' in the forum State or entering a contractual relationship centered there. *Walden* v. *Fiore*, 571 U.S. 277, 285 … ." (*Ford Motor Co. v. Montana Eighth Judicial Dist. Court* (2021) 592 U.S. ___ [209 L. Ed. 2d 225, 141 S.Ct. 1017, 1024–1025] (*Ford*).)

*Ford* is the United States Supreme Court's most recent pronouncement on personal jurisdiction. In *Ford*, the plaintiffs brought suit for injuries resulting from two unrelated accidents involving Ford vehicles, one in Montana and the other in Minnesota. As with the present case, the vehicles at issue had been designed, manufactured, and originally sold outside the forum states. Resales and customer relocations had brought the vehicles to the forum states. (*Ford, supra*, 592 U.S. at p. ___ [141 S.Ct. at pp. 1022–1023].) The company conceded purposeful availment, which the Supreme Court noted was a "[s]mall wonder": "By every means imaginable—among

them, billboards, TV and radio spots, print ads, and direct mail—Ford urges Montanans and Minnesotans to buy its vehicles, including (at all relevant times) Explorers and Crown Victorias. Ford cars—again including those two models—are available for sale, whether new or used, throughout the States, at 36 dealerships in Montana and 84 in Minnesota. And apart from sales, Ford works hard to foster ongoing connections to its cars' owners. The company's dealers in Montana and Minnesota (as elsewhere) regularly maintain and repair Ford cars, including those whose warranties have long since expired. And the company distributes replacement parts both to its own dealers and to independent auto shops in the two States. Those activities, too, make Ford money. And by making it easier to own a Ford, they encourage Montanans and Minnesotans to become lifelong Ford drivers." (*Id.* at p. ___ [141 S.Ct. at p. 1028].)

Like Ford, Daimler advertised across multiple media nationally and regionally, including in California, urging purchases of Cascadia vehicles as well as other Freightliner trucks. Daimler sells Freightliner models through 32 dealerships located in California. Thousands of trucks have been sold in California. Daimler also takes various measures to ensure those customers will continue to have relationships with Freightliner. Daimler sells and ships truck parts to 27 California dealerships. A number of those dealerships provide specialized maintenance and repair services for Freightliners. Some of the locations provide Freightliner-trained specialists. Daimler also furnishes technological support by which customers are directed to Freightliner service locations. It is not

seriously disputed that Daimler does substantial business in California and "actively seeks to serve the market for [Freightliner trucks] and related products" in that state. (*Ford, supra*, 592 U.S. at p. ___ [141 S.Ct. at p. 1026].)

We agree with the trial court that Hu satisfied the first of the three elements necessary for personal jurisdiction.[4]

**3. Hu's Claims "Relate to" Daimler's Forum Contacts**

In order for a plaintiff to establish personal jurisdiction, the claims "'must arise out of or relate to the defendant's contacts' with the forum. [Citations.] Or put just a bit differently, 'there must be "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation."' [Citation.]" (*Ford, supra*, 592 U.S. at p. ___ [141 S.Ct. at p. 1025].) The first half of the "'arise out of *or relate to*'" standard "asks about causation; but the back half, after the 'or,' contemplates that some relationships will support jurisdiction without a causal showing." (*Id.* at p. ___ [141 S.Ct. at p. 1026].) "[T]he phrase 'relate to' incorporates real limits, as it must … adequately protect defendants foreign to a forum. But again, we have never framed the specific jurisdiction inquiry as always requiring proof of

4. Although not explicitly conceding the point, Daimler does not raise much of any argument that Hu did not satisfy the first element: "Assuming *arguendo* that [p]laintiffs proved the first element of specific jurisdiction, the [r]espondent [c]ourt's ruling was erroneous because [p]laintiffs wholly failed to meet the second element."

causation—*i.e.*, proof that the plaintiff's claim came about because of the defendant's in-state conduct." (*Ibid.*)

The *Ford* court added a new layer to specific jurisdiction case law, figuratively putting in bold font the "or" in "'"must arise out of **or** relate to the defendant's contacts" … .'" Even the two concurring justices agreed that the court's majority opinion no longer treated the second element as a single, tethered standard and that it is now to be read in the disjunctive. (*Ford, supra*, 592 U.S. at p. ___ [141 S.Ct. at p. 1033] (conc. opn. of Alito, J.); *id.* at p. ___ [141 S.Ct. at p. 1034] (conc. opn. of Gorsuch, J.).) The concurring justices also agreed that "relate to" does not require causation. (*Id.* at p. ___ [141 S.Ct. at p. 1033] (conc. opn. of Alito, J.); *id.* at p. ___ [141 S.Ct. at p. 1034] (conc. opn. of Gorsuch, J.).)

Daimler argues that Hu's claims do not "relate to" Daimler's activities in California for two reasons: (1) Daimler "did not design, manufacture, assemble, or sell *the subject vehicle in California*" and (2) "the injuries and accident occurred in Oklahoma."

As for the claim that specific jurisdiction is lacking because Daimler did not design, manufacture, assemble, or sell the very Freightliner involved in California, that argument was squarely rejected by the high court in *Ford*. Much like the present case, Ford's forum-related activities with the two Ford vehicles involved in the Montana and Minnesota accidents was virtually nonexistent, as Ford had not designed, manufactured, or sold the subject vehicles in those states. (*Ford, supra*,

592 U.S. at p. ___ [141 S.Ct. at p. 1023].) The Supreme Court was unconvinced that jurisdiction could only exist if the company had designed, manufactured, or sold in the state the *particular* vehicle involved in the accident. "[T]hat argument merely restates Ford's demand for an exclusively causal test of connection—which we have already shown is inconsistent with our caselaw." (*Id.* at p. ___ [141 S.Ct. at p. 1029].) The systematic contacts in the forum states (including contacts as to the specific types of vehicles at issue) rendered Ford accountable for the in-state accidents despite the out-of-state sale, even if the contacts in the forum states did not directly cause the injuries. (*Ibid.*) This would remain the case even if, as Ford suggested, that without the company's Montana or Minnesota contacts, the plaintiffs' claims would be the same. (*Ibid.*) The fact remains that Daimler's Freightliner trucks were manufactured and marketed for precisely this type of intercontinental long haul trip. Daimler sold the California market on trips that emanate from California to other states and back, exactly the use present here.

As for Daimler's argument that jurisdiction was defeated because the accident did not occur in California, *Ford* deemed the place of injury as something that "may be relevant in assessing the link between the defendant's forum contacts and the plaintiff's suit," but did not hold that an in-state injury was a prerequisite for jurisdiction. (*Ford, supra*, 592 U.S. at p. ___ [141 S.Ct. at pp. 1031–1032].) As observed by *Ford*'s concurring justices, what would suffice for a claim to "relate to" a defendant's forum contacts was left rather undefined, with the majority simply stating "relate to" "does not mean anything goes,"

and "incorporates real limits." (*Id.* at p. ___ [141 S.Ct. at p. 1026].) To give an example of the absence of specific jurisdiction under the "relate to" standard, the court discussed this hypothetical: a California court hearing a claim against Ford brought by an Ohio plaintiff based on an accident occurring in Ohio involving a car purchased in Ohio. (*Id.* at p. ___, fn. 3 [141 S.Ct. at p. 1027, fn. 3].) The example matches neither the facts of *Ford* nor the present case. It does, however, bear some resemblance to *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.* (2017) 582 U.S. ___ [198 L. Ed. 2d 395, 137 S.Ct. 1773] (*Bristol-Myers*), a case Daimler argues negates jurisdiction over injuries arising from the Oklahoma accident.

In *Bristol-Myers*, the plaintiffs brought suit in California based on injuries they suffered after taking the prescription drug Plavix. The defendant was a pharmaceutical company incorporated in Delaware, headquartered in New York, with operations in New York and New Jersey. The company engaged in some research, sales, and government advocacy activities in California, none involving Plavix, although it sold the drug there. The company did not develop Plavix in California, create a marketing strategy for Plavix in California, or manufacture, label, package, or do business in California on the regulatory approval of the product. The plaintiffs included nonresidents who did not obtain Plavix through a California source, did not ingest Plavix in California, were not injured by Plavix in California, and were not treated for injuries in California. (*Bristol-Myers, supra*, 582 U.S. at p. ___ [137 S.Ct. at pp. 1778, 1781].) The court concluded California was not the appropriate forum for

those plaintiffs: "What is needed—and what is missing here—is a connection between the forum and the specific claims at issue." (*Id.* at p. ___ [137 S.Ct. at p. 1781].)

The *Ford* court reminded that jurisdiction was lacking in *Bristol-Myers* "because the forum State, and the defendant's activities there, lacked any connection to the plaintiffs' claims." (*Ford, supra*, 592 U.S. ___ [141 S.Ct. at p. 1031].) The *Bristol-Myers* plaintiffs were "engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State." (*Ibid.*)

The *Ford* court found important distinctions between its case and *Bristol-Myers*, distinctions that we find exist here. That Mr. Hu and his wife are both California residents weighs in favor of specific jurisdiction. A plaintiff's residence can "be relevant in assessing the link between the defendant's forum contacts and the plaintiff's suit." (*Ford, supra*, 592 U.S. at p. ___ [141 S.Ct. at pp. 1031–1032].) The *Ford* court found that the plaintiffs' residency in the forum states supported jurisdiction, and the plaintiffs' lack of forum residency weighed against personal jurisdiction in *Bristol-Myers*. (*Id.* at p. ___ [141 S.Ct. at p. 1031]; *Bristol-Myers, supra*, 582 U.S. at p. ___ [137 S.Ct. at p. 1782].) Mr. Hu also used the allegedly defective subject vehicle in California, as the outbound leg of his travel that resulted in his injuries began in California. *Ford* found that the subject vehicles' use in the forum states supported jurisdiction there, and stood in contrast to the fact that the *Bristol-Myers* plaintiffs did not ingest Plavix in California. (*Ford*, at p. ___ [141 S.Ct.

at p. 1031]; *Bristol-Myers*, at p. ___ [137 S.Ct. at p. 1781].) *Bristol-Myers* differs from the present case in another significant way, although one not discussed in *Ford*: In *Bristol-Myers*, the court observed that the nonresident plaintiffs did not seek treatment for their injuries in California and did not claim to have suffered harm in that state. (*Bristol-Myers*, at p. ___ [137 S.Ct. at pp. 1778, 1781, 1782].) In contrast, Hu seeks recovery of damages for, among other things, past and future medical expenses and loss of consortium. As Mr. Hu and his wife are California residents, medical expenses will have been incurred in California, and the harm due to the loss of consortium would have been suffered in California. Finally, as in *Ford* (but not *Bristol-Myers*), Daimler has "systematically served [the California] market" by advertising, selling, and servicing Freightliner trucks (including Cascadias) in California. (*Ford, supra*, at p. ___ [141 S.Ct. at p. 1028].)

We conclude that Daimler's activities supporting the sale and service of the Freightliner Cascadia in this state, and the other facts that we have discussed, demonstrate that Hu's claims "relate to" those very California activities.

**4. Assertion of Jurisdiction Comports with Fair Play and Substantial Justice**

"[T]he burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, [citation]; the plaintiff's interest in obtaining convenient and effective relief, [citation], at least when that interest is not

adequately protected by the plaintiff's power to choose the forum, [citation]; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies." (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292 [62 L. Ed. 2d 490, 100 S. Ct. 559].)

As the U.S. Supreme Court found in *Ford*, Daimler's business activities in California make it fair to allow jurisdiction here. "In conducting so much business in Montana and Minnesota, Ford 'enjoys the benefits and protection of [their] laws'—the enforcement of contracts, the defense of property, the resulting formation of effective markets. [Citation.] All that assistance to Ford's in-state business creates reciprocal obligations—most relevant here, that the car models Ford so extensively markets in Montana and Minnesota be safe for their citizens to use there. Thus our repeated conclusion: A state court's enforcement of that commitment, enmeshed as it is with Ford's government-protected in-state business, can 'hardly be said to be undue.' [Citations.]" (*Ford, supra*, 592 U.S. at p. ___ [141 S.Ct. at pp. 1029–1030].) "When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant." (*Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 114 [94 L. Ed. 2d 92, 107 S. Ct. 1026].)

The fairness of a California forum is bolstered by this state's significant interests at stake in this litigation—

providing residents with a convenient forum for redressing injuries inflicted by nonresident actors and enforcing its own safety regulations. (*Ford, supra*, 592 U.S. at p. ___ [141 S.Ct. at p. 1030].) These interests are not nullified by the location of the accident in another state.

While Daimler argues that "the fact that 7 other defendants can be sued in California has absolutely no bearing on the exercise of jurisdiction," and now suggests real parties could pursue a case in Oklahoma, we do not see it that way. That California has jurisdiction over the other defendants reinforces the notion that jurisdiction over Daimler comports with fair play. The rights of all the defendants can be adjudicated in one setting, not one part in California and another part in Oklahoma or Oregon or Delaware. A single suit is more economical, avoids the possibility of inconsistent judgments, and places postjudgment proceedings, including any enforcement efforts, in one locale.

**5. The Court's Evidentiary Rulings, Even if Erroneous, Were Not Prejudicial**

"We apply the abuse of discretion standard when reviewing the trial court's rulings on evidentiary objections." (*Twenty-Nine Palms Enterprises Corp. v. Bardos* (2012) 210 Cal.App.4th 1435, 1447 [149 Cal. Rptr. 3d 52].) An "erroneous evidentiary ruling requires reversal only if 'there is a reasonable probability that a result more favorable to the appealing party would have been reached in the absence of the error.' [Citation.]" (*Id.* at p. 1449.)

Daimler raised multiple objections to a declaration filed by Hu's counsel in opposition to the motion to quash. We summarize the statements to which objections were made and ultimately overruled by the trial court: (1) At the time of the accident, Mr. Hu was transporting a load from New Jersey to California; (2) Mr. Hu's employer only purchases Freightliner trucks, and those trucks are serviced at "ServicePoint" locations; (3) Mr. Hu was sleeping in a sleeping bunk using a restraint at the time of the collision; he then moved laterally, struck his head, and was rendered quadriplegic; (4) Daimler is registered and licensed with the California Secretary of State, with a designated agent for service of process in California; (5) Daimler has 12 California employees for whom it pays employment tax and in 2020 paid around $110,000 in various state taxes; (6) Daimler markets the Cascadia on its website, which details its features as well as the parts, servicing, and support offered.

Any error in these rulings was harmless. The trial court did not rely on statements 2, 3, 4, 5, or 6 in reaching its decision, so admitting those statements had no effect on the correctness of the motion to quash ruling. Even if we were to disregard this evidence, we would affirm the trial court's decision. The trial court referenced statement 1—that at the time of the accident, Hu was transporting goods across state lines to California—as a fact supporting specific jurisdiction, but Daimler fails to demonstrate it is reasonably probable it would have received a more favorable result absent the statement's admission. Although we have referred to this evidence in our description of the proceedings below, we ignore it

for purposes of our analysis. Accordingly, any error was harmless. (*People v. Valencia* (2021) 11 Cal.5th 818, 840 [280 Cal. Rptr. 3d 581, 489 P.3d 700] [applying the harmless error standard under *People v. Watson* (1956) 46 Cal.2d 818 [299 P.2d 243] to alleged hearsay evidence]; *People v. Fuiava* (2012) 53 Cal.4th 622, 671 [137 Cal. Rptr. 3d 147, 269 P.3d 568] [applying the *Watson* standard to testimony alleged to be irrelevant and lacking foundation].)

**DISPOSITION**

The petition for writ of mandate is denied. Real parties in interest Yongquan Hu and Jinghua Ren shall recover their costs in this proceeding.

/s/_____
RUBIN, P. J.

WE CONCUR:

/s/_____
BAKER, J.

/s/_____
MOOR, J.

**APPENDIX B — ORDER OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE, FILED JULY 22, 2022**

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

B316199

(Los Angeles County Super. Ct. No. 21STCV07830)

DAIMLER TRUCKS NORTH AMERICA, LLC,

*Petitioner,*

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

*Respondent;*

YONGQUAN HU *et al.*,

*Real Parties in Interest.*

**ORDER MODIFYING OPINION**

[There is no change in judgment]

*Appendix B*

BY THE COURT:

It is ordered that the opinion filed herein on July 7, 2022, is modified as follows:

1. On page 10, second paragraph, delete the sentence that reads

   > As with the present case, the "vehicles were designed and manufactured elsewhere, and the company had originally sold the cars at issue outside the forum States. Only later resales and relocations by consumers had brought the vehicles to Montana and Minnesota [the forum states]." (Ford, supra, 141 S.Ct. at p. 1020.)

   and replace with:

   > As with the present case, the vehicles at issue had been designed, manufactured, and originally sold outside the forum states. Resales and customer relocations had brought the vehicles to the forum states. (*Ford, supra*, 141 S.Ct. at pp. 1022-1023.)

There is no change in judgment.

| /s/_____ | /s/ _____ | /s/ _____ |
|---|---|---|
| RUBIN, P. J. | BAKER, J. | MOOR, J. |

**APPENDIX C — ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, CIVIL DIVISION, FILED OCTOBER 28, 2021**

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division
Central District, Stanley Mosk Courthouse,
Department 72

October 28, 2021
10:30 AM

21STCV07830

YONGQUAN HU, *ET AL.* vs DAIMLER TRUCKS NORTH AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY, *ET AL.*

Judge: Honorable Curtis A. Kin
Judicial Assistant: M. Mort
Courtroom Assistant: C. Lam

CSR: K. Lowe, CSR 12529
ERM: None
Deputy Sheriff: None

NATURE OF PROCEEDINGS: Hearing on Motion to Quash Service of Summons; Case Management Conference

Counsel Philip R. Cosgrove, Kevin L. Henderson, and Carmen Selame present via LA CourtConnect all orally stipulate to the appointment of certified shorthand reporter as official Court reporter pro tempore.

*Appendix C*

Pursuant to Government Code sections 68086, 70044, California Rules of Court, rule 2.956, and the stipulation of appearing parties, Kimberly M. Lowe, CSR 12529, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matter is called for hearing.

The Court provides the following tentative ruling:
Defendant Daimler Trucks North America LLC's Motion to Dismiss and/or Quash Service of Summons for Lack of Personal Jurisdiction is DENIED.

Defendant Daimler Trucks North America LLC's ("Daimler") evidentiary objections are OVERRULED.

The Court finds that it may exercise specific jurisdiction over Daimler. "Specific jurisdiction results when the defendant's contacts with the forum state, though not enough to subject the defendant to the general jurisdiction of the forum, are sufficient to subject the defendant to suit in the forum on a cause of action related to or arising out of those contacts. Specific jurisdiction exists if: (1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of jurisdiction would comport with fair play and substantial justice." (Virtual Magic Asia, Inc. v. Fil-Cartoons, Inc. (2002) 99 Cal.App.4th 228, 238-39, citing Sonora Diamond Corp. v. Superior Court (2000) 83 Cal.App.4th 523, 526.)

With respect to the first prong concerning purposeful availment, Daimler does not deny that it advertises in California. Daimler conducts national advertising campaigns, which necessarily includes California, in magazines, radio, and digital media. (Lugo ¶ 14 & Ex. 9 at 185:1-186:14, 197:12-198:15, 199:22-200:1.) Daimler also allowed its authorized dealerships to use the Freightliner name in advertisements. (Id. at 47:2-48:15.)

Daimler does not deny that it sells vehicles in California. Daimler has 32 authorized dealerships selling Freightliners – the subject vehicle – in California. (Id. at 43:6-20, 45:5-10; Ex. 17 at 13-25.) Since 2014, Daimler has sold between 4,000 to 5,000 trucks. (Lugo Decl. ¶ 24 & Ex. 16 at No. 20.)

Daimler does not deny that it services vehicles in California. Daimler ships parts for the Freightliner to 27 "authorized parts/sales locations" in California. (Lugo Decl. ¶ 14 & Ex. 9 at 71:14-72:3, 126:19-127:4.) Daimler also offers the "Detroit Connect" service to California consumers of Freightliner vehicles, a service which allows consumers to monitor the performance of the vehicle using the Internet. (Id. at 115:17-117:7.) Daimler also offers the 24/7 Freightliner helpline for consumers to contact regarding problems with their Freightliners to California residents. (Id. at 121:19-122:5.)

The advertising, selling, and servicing of a product in a forum state supports a finding that the manufacturer of that product purposefully availed itself of the benefits of the forum state. (Ford Motor Company v. Montana Eighth Judicial District Court (2021) 141 S.Ct. 1017, 1028.)

With respect to the second prong to find specific jurisdiction, i.e., whether the controversy is related to or arises out of Daimler's contacts with California, the Court finds plaintiff Yongquan Hu's personal injury claims are sufficiently related to defendant's selling of Freightliner trucks in California. (Bristol-Myers Squibb Co. v. Superior Court (2017) 137 S.Ct. 1773, 1781 ["What is needed [for specific jurisdiction] . . . is a connection between the forum and the specific claims at issue"].) Plaintiffs Hu and Jinghua Ren are California residents. (Lugo Decl. ¶ 3.) Plaintiff Hu and defendant Ran Gao were headed to California from New Jersey. (Lugo Decl. ¶¶ 4, 5 & Exs. 1, 2 at 20.3.) Plaintiff Hu's employer purchased the subject vehicle from a business selling used trucks at the business' location in Fontana, California. (Lugo Decl. ¶¶ 16-18 & Exs. 10-12.) Daimler intended its Freightliner Cascadia trucks to be driven across multiple state lines. (Ex. 9 at 137:2-18, 149:2-25.)

Even though the subject collision occurred in Oklahoma, the goods plaintiff Hu was transporting were intended to be delivered in California, which supports the finding that plaintiffs' claims "arise[] out of or ha[ve] a substantial connection with a business relationship defendant has purposefully established with California." (Cornelison v. Chaney (1976) 16 Cal.3d 143, 149 [finding that California could exercise specific jurisdiction over Nebraska defendant, an interstate trucker whose business activities brought him to California twice a month for seven years, when defendant was bringing goods to a California manufacturer, even though vehicle collision occurred in Nevada].) In short, where Daimler knowingly

promotes and directs to California residents the sale and servicing of its truck designed to transport goods across multiple states, and where a California resident is injured transporting goods across states lines to California while in one of those trucks (which had been sold in California to a California company), that resident's claims of injury are sufficiently related to Daimler's activities in California, even if the accident causing the injury happened to occur in another State while defendant's truck was en route to California.

With respect to the third prong to find specific jurisdiction, i.e., whether jurisdiction would comport with fair play and substantial justice, plaintiffs have an interest in seeking redress for their injuries in a California court. (Integral Development Corp. v. Weissenbach (2002) 99 Cal.App.4th 576, 591 ["California has a manifest interest in providing a local forum for its residents to redress injuries inflicted by out-of-state defendants"].) Moreover, the other defendants in this action are California residents. (Lugo Decl. ¶¶ 6-12 & Exs. 3-8.) Accordingly, litigating plaintiffs' claims in one forum would lead to the "avoidance of a multiplicity of suits and conflicting adjudications." (Cornelison, 16 Cal.3d at 151.)

Further, the intended interstate purpose of its trucks and Daimler's purposeful availment of the California market supports the reasonableness of Daimler to defend against plaintiffs' claims in California. (Ibid. ["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 . . . . The very nature of defendant's business balances in favor of requiring him to defend here"].)

For the foregoing reasons, the Court finds that it may exercise specific jurisdiction over Daimler Trucks North America LLC. The motion is DENIED.

Ten (10) days to file a responsive pleading.

The matter is argued and becomes the order of the Court.

Defendant Daimler Trucks North America LLC's Motion to Dismiss and/or Quash Service of Summons for Lack of Personal Jurisdiction is DENIED.

On the Court's own motion, the Case Management Conference scheduled for 10/28/2021 is advanced to this date and continued to 01/28/2022 at 09:30 AM in Department 72 at Stanley Mosk Courthouse.

Counsel for plaintiff shall give notice.

**APPENDIX D — DENIAL OF PETITION FOR REVIEW OF THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FIVE, FILED OCTOBER 12, 2022**

COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION FIVE

No. B316199

S275992

IN THE SUPREME COURT OF CALIFORNIA

En Banc

DAIMLER TRUCKS NORTH AMERICA, LLC,

*Petitioner,*

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

*Respondent;*

YONGQUAN HU *et al.*,

*Real Parties in Interest.*

The petition for review is denied.

The request for an order directing depublication of the opinion is denied.

Corrigan, J., was absent and did not participate.

CANTIL-SAKAUYE
*Chief Justice*