No. _____

In the Supreme Court of the United States

FARAZ FADAVI AKHAVAN BONAB,

Petitioner,

v.

SAMUEL GINN,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal of California, Sixth Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Under the Due Process Clause of the Fourteenth Amendment, a state court may exercise specific jurisdiction when the plaintiff's claims arise out of or relate to the defendant's purposeful contacts with the forum state.

The Question Presented is:

Whether this requirement is met when the defendant forms a business relationship with the plaintiff in the forum state, where both reside, the parties travel pursuant to that relationship to another state, where the defendant causes injury to the plaintiff, and both subsequently return to the forum state.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Faraz Fadavi Akhavan Bonab

Respondent and Defendant-Appellee below

- Samuel Ginn

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Bonab is an individual and no corporate entity is a party to this litigation.

LIST OF PROCEEDINGS

California Supreme Court

No. S277570 (Cal. Sup. Ct.)

Faraz Fadavi Akhavan Bonab, *Plaintiff and Appellant*, v. Samuel Ginn, *Defendant and Respondent*.

Petition for Review Denied: February 15, 2023

California Court of Appeals, Sixth Appellate District

No. H048837 (Cal. Ct. App.)

Faraz Fadavi Akhavan Bonab, *Plaintiff and Appellant*, v. Samuel Ginn, *Defendant and Respondent*.

Affirming trial court for lack of personal jurisdiction: October 25, 2022

California Superior Court, County of Santa Clara

20CV366892 (Cal. Sup. Ct.)

Faraz Fadavi Akhavan Bonab, *Plaintiff*, v. Samuel Ginn, *Defendant*.

Trial court order dismissing for lack of personal jurisdiction: January 6, 2021

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PETITION FOR A WRIT OF CERTIORARI

Faraz Bonab respectfully petitions for a writ of certiorari to review the judgment of the California Court of Appeal, Sixth Appellate District in this case.

OPINIONS BELOW

The California Court of Appeal's decision, dated October 25, 2022, can be found at 2022 Cal. App. Unpub. LEXIS 6443 and is included at App.2a. The order of the Superior Court of California, Santa Clara granting a motion to quash service and dismissing for lack of personal jurisdiction is included at App.13a. These decisions were not designated for publication

JURISDICTION

The California Court of Appeal entered judgment on October 25, 2022 (App.2a), and the California Supreme Court denied Petitioner's Petition for Review on February 15, 2023 (App.1a). This Court's jurisdiction rests on 28 U.S.C. § 1257(a). The California Court of Appeal's judgment is final on the federal issue of whether the Due Process Clause permits the exercise of jurisdiction over Respondent, and the issue is not subject to further review in the state courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. XIV § 1

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CCP § 410.10

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

Because California's "long-arm statute," California Civil Code Section 410.10, extends to the limits of the Fourteenth Amendment, there is no state-law question presented in this case.

INTRODUCTION

The California courts' decisions in this case are inconsistent with this Court's clearly established law of specific personal jurisdiction. The decisions in the lower court amount to a conclusion that there cannot be specific jurisdiction over a non-domiciliary defendant when the specific action that causes the plaintiff's injury occurs outside the forum state—even when the sole reason the parties were present in the state where the injury occurred was in support of the parties' forum-state activities. In this case, the lower courts concluded that when two California residents created a business relationship in California, traveled to Indiana in support of that business, had a car accident there, and then returned to California, the plaintiff could not sue in California. Respectfully, there is no reason—whether based on unfair surprise, geographic inconvenience, or interstate federalism—that California should not have the power to hear this case. In sum, the courts' decisions therefore fundamentally misread this Court's specific-jurisdiction jurisprudence, and impermissibly narrowed the scope of the state-court jurisdiction.

As this Court's recent jurisprudence has made clear, the Due Process Clause requires that the defendant "have purposefully availed itself of the privilege of conducting activities within the forum State" and that the plaintiff's claim "arise out of or relate to the defendant's forum conduct." *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S.Ct. 1773, 1785-86 (2017). So long as the defendant does not demonstrate that jurisdiction would be unreasonable [*Asahi Metal Industry Co., Ltd. v. Superior Court of California*, 480

U.S. 102, 116 (1987)], which the defendant does not suggest here, even when the defendant is not domiciled in the forum state, the forum state has jurisdiction if the defendant purposefully avails himself of the benefits of acting in the forum state and a tort arises from his activities there. If these requirements are met, it is not relevant that the plaintiff is harmed outside the forum state. *Burger King v. Rudzewicz* 471 U.S. 462 (1985); *Calder v. Jones* 465 U.S. 783, 790 (1984). None of this Court's recent cases cast doubt on this fundamental proposition, and the Court should take this opportunity to clarify any such confusion.

This Court has gone to great lengths over the last decade to better define the law of personal jurisdiction. Its work in defining the boundaries of general and specific jurisdiction and explaining the prerequisites for specific jurisdiction has fostered a clarity, both in terms of the doctrine and its underlying purposes, that has not existed in decades. But the California courts have persisted in sowing unnecessary confusion. In this case, this Court should grant the writ and rule that the connection between the defendant's purposeful forum-state activity and the plaintiff's claims does not require that the tort occur in the forum state.

STATEMENT OF THE CASE

1. Petitioner Faraz Bonab is a domiciliary of California. At the time of the auto accident from which his claims arise, he was a student at Stanford University in Palo Alto, California, where he met Respondent Samuel Ginn in 2016. At Stanford, the parties bonded over their mutual interest in starting their own company and becoming Silicon Valley entrepreneurs. In April 2017, the two undergraduates approached one of their professors, who was also a partner at the law firm Morrison & Foerster, about starting a business. In May 2017, with the firm's assistance, they did so, incorporating FGSpire, Inc.—a Delaware corporation with its principal place of business in California. At all times, Respondent Ginn was CEO and President of the firm. Petitioner Bonab was a founding director. FGSpire held bank accounts at Silicon Valley Bank and instituted a stock-incentive plan for its directors, employees, and consultants, governed by California law.

2. FGSpire was created to sell software to veterinarians, and Respondent eagerly attempted to leverage the company's connections to both Stanford and Silicon Valley. Its website contained an open solicitation for investment and sales that contained a reference to Stanford. FGSpire also made several proposals to academic institutions throughout the country, including Michigan State University and North Carolina State College of Veterinary Medicine, that claimed the company as "Silicon Valley's" commitment to veterinary medicine.

3. After sending a written proposal to sell its artificial-intelligence-based software to the Purdue University School of Veterinary Medicine, Respondent Ginn and Petitioner Bonab received an invitation to make an in-person presentation there in West Lafayette, Indiana. Both parties subsequently made arrangements to travel there from Palo Alto. On June 13, 2018, they flew to Chicago, where they stayed overnight with Respondent Ginn's mother. Using her car, they traveled the next day to Purdue, where they made a series of presentations to explain the benefits of their software. After their presentations concluded, Respondent began to drive the pair back to their nearby hotel, but he lost control of the car and crashed into a stand of trees, causing serious injuries to Petitioner, and eventually this lawsuit.

4. After the accident, the parties returned to California, where Petitioner sought additional treatment for his injuries, which continues to this day. The parties also continued their education and operating FGSpire, until, shortly thereafter, Respondent fired Petitioner from the company. Respondent continued to operate the company from California until his graduation from Stanford, at which point he returned to his prior home in Illinois. There, he continues to operate FGSpire, albeit with the assistance of California-based lawyers, banks, and accountants. Respondent continues to solicit new employees, trumpeting his connections to Stanford's artificial-intelligence laboratory and Silicon Valley more generally.

5. On June 5, 2020, Petitioner Bonab filed this lawsuit against Respondent Ginn in the Superior Court of California at Santa Clara County. Respondent subsequently filed a motion to quash service of

process for lack of personal jurisdiction. In so doing, Respondent did not contend that he had not made purposeful contacts with California or that jurisdiction would be unreasonable under the factors outlined in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). Instead, he relied exclusively on the argument that Bonab's lawsuit did not "arise out of or relate to" Ginn's California activities; in other words, there was not a sufficient "nexus" between Ginn's California contacts and Bonab's lawsuit. The Superior Court granted the motion on the grounds that (1) Respondent's conduct while driving the car was "directed toward Indiana," not California; (2) "the accident arose out of Defendant's driving of his mother's car, an activity which is not the essential basis of Defendant's contacts with California"; and (3) "Defendant's wrongful conduct–negligently driving his mother's car in Indiana–bears only a tenuous and tangential connection to California." (App.24a).

6. Petitioner timely appealed, and the California Court of Appeal affirmed. In its opinion, the court concluded: "The bare fact that each party's work for FGSpire placed him with the other in the state where it became convenient for the parties to share a ride is too attenuated a connection to Ginn's contacts with California to comport with notions of 'fair play and substantial justice.'" (App.11a). Petitioner subsequently sought a Petition for Review in the California Supreme Court, which was denied on February 15, 2023.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW FOSTERS CONFUSION ABOUT THIS COURT'S SPECIFIC JURISDICTION JURISPRUDENCE

Since 2011, this Court has heard eight cases involving the limits on state-court personal jurisdiction under the Fourteenth Amendment's Due Process Clause, four of which clarified the law of specific jurisdiction. The decisions in those cases, none of which overruled the Court's earlier jurisprudence in this area since *International Shoe Co. v. Washington,* 326 U.S. 310 (1945), have made pellucidly clear that so long as the defendant has purposefully made contacts with the forum state, and the case arises out of those contacts, the injury to the plaintiff need not occur in the forum state. Indeed, as this Court noted in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985), "the state has 'a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." Indeed, the need for specific jurisdiction is based on the necessity (which the U.S. Supreme Court has understood well since it overruled *Pennoyer v. Neff* in *International Shoe Co. v. Washington, supra*) for a state to assert jurisdiction over *non-domiciliaries* and *non-residents*. *Shaffer v. Heitner* (Scalia, J.), 495 U.S. 604, 618 (1990) ("Subsequent cases have derived from the *International Shoe* standard the general rule that a State may dispense with in-forum personal service on nonresident defendants in suits arising out of their activities in the State."). Any suggestion that Petitioner is engaged in forum shopping of any kind is belied by the fact that

the center of gravity of the parties' relationship is, and always has been, California—regardless of the fact that Respondent moved back in with his parents in Illinois after his graduation from Stanford. Bonab, moreover, is suing in his home state, where he continues to seek treatment for his injuries—no allegation of litigation tourism on his part survives even the barest scrutiny. *See Ford Motor Co. v. Mont. Eighth Judicial Dist. Court,* 141 S.Ct. 1017 (2021).

Moreover, this court has also explained the reasons for constitutional limits on personal jurisdiction: fairness to the defendant and interstate federalism. With respect to the former, the operative question is whether the defendant's activities created "fair warning" that he might be sued in the forum state. With respect to the latter, the touchstone is to ensure that States with 'little legitimate interest' in a suit do not encroach on States more affected by the controversy." *Ford*, *supra*, 141 S.Ct. at 1025 (quoting *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S.Ct. 1773, 1780 (2017)). Neither concern exists on the facts of this case. Respondent intentionally came to California to seek and subsequently capitalize on his connections to the state —as part of that effort he formed a relationship with plaintiff. But for that relationship, Petitioner would never have traveled to Indiana, or gotten injured due to Respondent's negligence. In short, the center of gravity of this relationship was in California—and it therefore could not come as a surprise to Respondent that he would be sued there. Nor would that lawsuit usurp the sovereign interests of any other state.

The courts below made several fundamental errors, but that the lower courts erred is not alone a

sufficient ground for granting the petition. Rather, the Court should grant the petition to ensure that these errors do not proliferate, thereby frustrating this Court's extensive project in defining the law of state-court jurisdiction. The lower courts were hobbled by several misconceptions in this case. This court should eradicate them before they spread by making clear that:

- If an accident occurs outside the forum state, the forum state retains jurisdiction so long as the defendant has made purposeful contacts there and the lawsuit arises out of or relates to those contacts.
- Just because the state where the injury occurred does have jurisdiction does not mean that the state where the parties resided at the time of the accident does not, as well.
- If a defendant changes his domicile from the forum state to another state between the tort and the filing of the lawsuit, it does not deprive the forum state of jurisdiction.

In sum, this Court has expended—and continues to expend—significant energy clarifying the meaning of "minimum contacts" under *International Shoe*, but it has not done so in order for the states to simply ignore the relevant doctrinal tests, or the straightforward application of seminal cases like *Burger King*. The Court should take the next step to ensure that the errors in the court below do not metastasize throughout the country.

II. THE DECISION BELOW WAS WRONG

Pursuant to California's long-arm statute, "A Court of this state may exercise jurisdiction not inconsistent with the Constitution of this state or the United States." Cal. Civ. Code 410.10. Jurisdiction is consistent with the due process clause of the Fourteenth Amendment so long as the defendant has "sufficient minimum contacts" with the forum state, from which the complaint arises, such that the exercise of jurisdiction "will not offend traditional notions of fair play and substantial justice. . . . " *International Shoe*, *supra*, 326 U.S. at 310. There are two discrete categories of personal jurisdiction: general and specific. General jurisdiction is appropriate over a defendant where he is "essentially at home." *Goodyear Dunlop Tires Ops. v. Brown,* 564 U.S. 915 (2011). Here, Respondent is domiciled in Illinois—but at the time of the accident, like the Petitioner, he resided in California. Although his residence in California at the time of the accident does not create general jurisdiction over Respondent, it is relevant to the question of whether California may exercise *specific* jurisdiction.

Specific jurisdiction "covers defendants less intimately connected with a State, but only as to a narrower set of claims." *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S.Ct. 1017, 1024 (2021). In order for a state to have specific jurisdiction over a defendant, the defendant must "take 'some act by which it purposefully avails itself of the privilege of conducting activities within the forum State.'" *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). And "the plaintiff's claims . . . must arise out of or relate to the defendant's contacts with the forum." *Id.* at 1025 (internal quotation marks and citations omitted).

As this Court has explained, "[a] state may exercise specific jurisdiction over a nonresident who purposefully avails himself or herself of forum benefits, because the state has 'a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.'" *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 448 (1996) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). The Court continues: "where individuals purposefully derive benefit from interstate activities it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from those activities." *Id.* Once the plaintiff has successfully demonstrated that the defendant has created the requisite minimum contacts, the burden shifts to the defendant to demonstrate that jurisdiction is nevertheless unreasonable. *Id.*

A. It Is Undisputed That the Defendant Purposefully Created Contacts with the State of California.

The first step of the specific-jurisdiction test requires that the defendant establish purposeful contacts with California; that is, the defendant's *own* actions must connect him to the forum state. *Walden v. Fiore*, 571 U.S. 277, 284 (2014). In other words, "[t]he contacts must be the defendant's own choice and not 'random, isolated, or fortuitous.'" *Ford*, 141 S.Ct. at 1025 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). As *Burger King* explains, when a defendant "deliberately engages in significant activities" or creates "continuing obligations between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there." 471 U.S. at 475-76 (internal citations and quotation

marks omitted). Moreover, "because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." *Id*. at 476. So long as "the defendant 'deliberately reached out beyond' its home—by, for example, 'exploiting a market' in the forum State" jurisdiction is appropriate. *Ford*, 141 S.Ct. at 1025 (quoting *Walden*, 571 U.S. at 285).

The Court of Appeal did not dispute that the defendant had purposefully established myriad contacts with California. The defendant: "attended university in California at Stanford, where he partnered with Bonab in forming FGSpire, consulted with Stanford faculty and local counsel in the formation of the startup, agreed to be governed by California law in his personal transactions with FGSpire, and can as chief executive officer be presumed to have consented to FGSpire's choice of California law in its transactions with other entities." (App.7a). Based on this conclusion, the Court of Appeal concluded that because Ginn had "availed himself of California law and California-based resources, it should come as no surprise that he could potentially be subject to suit in California." (App.7a).

We agree. Not only did Ginn's many purposeful contacts give him fair warning that he might be sued here, the fact that Ginn's activities were aimed to achieve the benefits and protections of his association with California creates a reciprocal legitimate interest in holding him to account in California's courts. *See Ford*, 141 S.Ct. at 1025 (holding that when "the defendant 'deliberately reached out beyond' its home—by, for example, 'exploiting a market' in the forum

State" jurisdiction is appropriate if the lawsuit relates to that business"); *Burger King*, 471 U.S. at 475-76 (noting that when the defendant's "activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well"). To allow Ginn to scamper away to Illinois to avoid the jurisdiction is an unfair bargain for California.

B. This Controversy Arises Out of and Relates to the Defendant's California Contacts.

Although the Court of Appeal had no problem finding that Ginn has purposefully established minimum contacts with California, it concluded that Bonab's claims do not arise out or relate to Ginn's California contacts. As the U.S. Supreme Court noted in 2021, the California contacts need not be the proximate cause of the plaintiff's claims; it is sufficient for the claims to "relate" to the defendant's contacts with the forum State. *Ford*, 141 S.Ct. at 1026. The required "nexus" between Ginn's California contacts and Bonab's claim is straightforward. Ginn's California activities included forming a business relationship with Bonab. That relationship—and *only* that relationship—was the reason the parties traveled to Indiana, held a business meeting at Purdue University, and after leaving that meeting Ginn drove the car off the road. Yes, it was an Indiana road. But that the accident occurred out of the state is no bar to California's jurisdiction.

Much of the discussion in the lower courts turned on a California case, *Cornelison v. Chaney*, 16 Cal.3d 143 (1976), which was good law when it was decided

and remains good law today. In *Cornelison*, the plaintiff was a California resident whose husband was killed in an auto accident with the defendant's truck in Nevada. The defendant was a domiciliary of Nebraska whose long-haul trucking business took him to California around 20 times a year. Ultimately, as in our case, the question facing the court was whether there was specific jurisdiction over a resident's claim against a non-resident arising from a car accident that took place outside of California. The court said there was. As the Court noted: "The crucial inquiry concerns the character of defendant's activity in the forum, whether the cause of action arises out of or has a substantial connection with that activity, and upon the balancing of the convenience of the parties and the interests of the state in assuming jurisdiction." *Id.* at 148.

In *Cornelison*, the Court concluded that there was "a substantial nexus between plaintiff's cause of action and defendant's activities in California." *Id.* at 149. The Court's conclusion was prompted by the defendants "continuous course of conduct that brought him into the state" regularly, that the accident was not far from the California border, that defendant was "bound" for the state and intended to receive merchandise in California for delivery elsewhere. Because the "accident arose out of the driving of the truck, the very activity which was the essential basis of defendant's contacts with the state," the Court concluded that the case was sufficiently related to the defendant's purposeful California contacts. *Id.*

Although this case is not on all fours with *Cornelison*, the result should be the same. Like the *Cornelison* defendant, Ginn engaged in a continuous course of conduct in California. Indeed, he continues

to engage in that conduct since his company remains headquartered in California and he has had to return here since graduating from Stanford. Moreover, like *Cornelison*, the accident arose out of his business, "the very activity which was the essential basis of defendant's contacts with the state." 16 Cal.3d at 149. It is a stretch to conclude that Ginn, who moved away after the tort was committed and continues to benefit from his business's home base in California, may nevertheless avoid jurisdiction here for a claim that directly arose from his California activities. Moreover, that the *Cornelison* plaintiff was a California resident who suffered damages in California weighed strongly in favor of its conclusion that California was an appropriate forum. *Id.* at 151 ("California has an interest in providing a forum since plaintiff is a California resident."). In *Ford*, this Court reaffirmed that "States have significant interests. . . [in] providing [their] residents with a convenient forum for redressing injuries inflicted by out-of-state actors." 141 S.Ct. at 1030.

The Court of Appeal, however, thought *Cornelison* was distinguishable, but its reasons are remarkably unpersuasive. First, the lower court stated that the parties' activity was not related to "the essential basis of the defendant's contacts with the state" because "[a]lthough the parties had gone to Indiana for FGSpire purposes, the underlying controversy was a car accident which related to FGSpire's business only incidentally in that it occurred in the hours following the Purdue marketing meeting." (App.47a). Respectfully, this conclusion is wrong. The parties' presence in Indiana arose directly from Ginn's California contacts —no one disputes that the parties would not have

been in Indiana but for their California business relationship. These were not two California college kids attending a fraternity party at Purdue on a lark—they were there in furtherance of the business they developed and marketed based on its Silicon Valley origins and under the protections of California law. Moreover, the conclusion that the car accident was unrelated to the parties' California business because it was "in the hours following" the business meeting is misplaced. Surely, the Court of Appeal's conclusion cannot be that if the parties were driving *to* the meeting there would be jurisdiction, but because they were heading back to where they intended to sleep was not.

In addition, the lower court's emphasis on the "activity forming the essential basis" of the defendant's contacts misreads *Cornelison*. In *Cornelison*, it was important that the Nebraska defendant's negligence arose out of his trucking business because that was the defendant's *only* contact with California. As a result, it was important that the plaintiff's claim arise out of that single contact. Here, the defendant had myriad contacts with California—the cause of action need only arise out of one such contact to support jurisdiction. Although we contend that by the time of the accident FGSpire *was* the activity forming the essential basis of Ginn's contacts with California, Ginn's contacts were so substantial that the claim need not arise out of *all* of them. The simple fact of this case is that Ginn created a business relationship with Bonab in California. That relationship took them to Indiana where the tort occurred. That is the necessary nexus.

What matters far more is that, like *Cornelison*, the defendant had embarked on a business that required

travel outside California. And, as in *Cornelison*, "the existence of an interstate business is . . . relevant to considerations of fairness and reasonableness. The very nature of defendant's business balances in favor of requiring him to defend here." *Cornelison*, 16 Cal.3d at 151. It was Ginn's decision to travel outside California, with a fellow Californian, to pursue his interests in Indiana. He cannot now complain that he is subject to jurisdiction in California for injuries caused to his colleague.

C. California Jurisdiction Comports with Traditional Notions of Fair Play and Substantial Justice.

In *Bristol-Myers Squibb* and *Ford*, the Court made clear the bases for concluding that specific jurisdiction is appropriate. Specific-jurisdiction requirements "derive from and reflect two sets of values—treating defendants fairly and protecting 'interstate federalism.'" *Ford*, 141 S.Ct. at 1025 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)).

With respect to fairness to the defendant, the Court emphasized that a defendant who "exercises the privileges of conducting activities within a state, thus enjoying the benefits and protections of its laws" may be held to account by that state "for related misconduct." *Id.* (citing *Int'l Shoe*, 326 U.S. at 319). Indeed, the defendant's purposeful activities in the forum state constitute "fair warning" that it may be subject to that state's jurisdiction for related activities. Ginn's intentional acts to create a connection to California brought significant benefits—a corporation not only protected by California's laws but also enhanced

by its California identity, one that Ginn repeatedly boasted of to investors. Given the extent of his California contacts, there can be little doubt that he had sufficient "fair warning" that he could be sued in California in connection with his activities.

With respect to interstate federalism, "[t]he law of specific jurisdiction thus seeks to ensure that States with 'little legitimate interest' in a suit do not encroach on States more affected by the controversy." *Id.* (quoting *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S.Ct. 1773, 1780 (2017). Here, California has a legitimate interest in "'providing [its] resident[] with a convenient forum for redressing injuries inflicted by out-of-state actors.'" *Id.* at 1030 (quoting *Burger King*, 471 U.S. at 473); *see also Vons*, 14 Cal. 4th at 473 (describing the state's interest "in providing a judicial forum for its residents—so long as the goal of fairness to defendants is observed. . . . This interest cannot be served when the defendant has no minimum contacts with the state—but when the defendant does have such contacts it can be satisfied.").

The Court of Appeal asserted that *BMS* supports its conclusion that there is no jurisdiction over Ginn in this case, but that support is unwarranted. The distinction between *BMS* and this case is apparent: in *BMS* the Court held that there was no jurisdiction over *non-California* residents who were injured outside the state. Notably, Bristol-Myers did not challenge personal jurisdiction with respect to the claims brought by California residents.

Indeed, when describing *Bristol-Myers*, in its recent *Ford* opinion, the Court explained that "We found jurisdiction improper in *Bristol-Myers*, because the forum State, and the defendant's activities there,

lacked *any connection to the forum state*. . . . In short, the 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*." 141 S.Ct. at 1031 (emphasis added). Here, unlike the plaintiffs in *Bristol-Myers*, Bonab is suing in the state where he lives. He can hardly be tarred with the epithet of forum shopping for choosing to sue in the state he makes home, and where the parties' relationship was centered. California is a far more "natural forum" for this case than the defendant's current home in Illinois, or even Indiana, which the defendants only visited briefly. *See id.* (distinguishing *Ford* on the ground that "here, the plaintiffs are residents of the forum States").

In this case, however, there is no doubt both that Bonab was a California resident at the time of the tort and *remains so today*. Moreover, *Ginn* was a resident of California at the time of the accident and only left the jurisdiction after the fact. As a result, the Court's conclusion in *BMS* that non-Californians could not sue in California for injuries suffered elsewhere is irrelevant. Unlike *BMS*, as noted above, this is very much a case where a California forum was predictable and in which California has an interest in providing a convenient forum to its resident. California need not be self-abnegating to the point of consigning its own plaintiff to litigate thousands of miles away.

All told, Ginn can hardly claim to be a stranger to California, and California is no stranger to this litigation.

III. WHETHER OR NOT FGSPIRE IS LIABLE FOR PETITIONER'S INJURIES IS IRRELEVANT TO THE JURISDICTIONAL ANALYSIS

Throughout this litigation, both Respondent and the lower courts have appeared confounded by the question of whether because Respondent's activities might also be attributed to FGSpire might affect the jurisdictional analysis in this case. Respectfully, this question is irrelevant both to this petition and the question presented at this procedural posture. To begin, the courts below did not decide whether or not Respondent should be somehow shielded from a lawsuit in his personal capacity because his actions might also be attributable to FGSpire. This is a case brought *only* against Respondent as an individual, based on his personal contacts with California. That he decided to create a corporation with the Petitioner in California is such a contact—as is his decision to leave his home state to attend Stanford, where he began the relationship with Petitioner that led to this lawsuit.

It has invariably been Petitioner's contention since the beginning of this case that under relevant California law Respondent is not shielded from a lawsuit against him for that reason. This Court has "reject[ed] the suggestion that employees who act in their official capacity are somehow shielded from suit in their individual capacity." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984). Indeed, in *Calder v. Jones*, 465 U.S. 783, 790 (1984), this Court reiterated that defendants' "contacts with California are not to be judged according to their employer's activities there. On the other hand, their status as employees does not somehow insulate them from

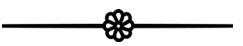
jurisdiction. Each defendant's contacts with the forum State must be assessed individually" (citing *Rush v. Savchuk*, 444 U.S. 320, 332 (1980). *See also Taylor-Rush v. Multitech Corp.*, 217 Cal. App.3d 103 (1990) (rejecting any notion of a "fiduciary shield doctrine" limiting California's personal jurisdiction over an individual because he was also acting on behalf of a company).

The courts below did not decide this state-law question, although their opinions suggest they were influenced by it. For instance, the Court of Appeal cited no case law for the proposition that "[w]hile Ginn's relationship with FGSpire does involve some California activity that is presumed to inure to his benefit, the accident that occasioned this lawsuit at best related to Bonab's connection with FGSpire, not Ginn's California activities in furtherance of his own." The Court added, "The bare fact that each party's work for FGSpire placed him with the other in the state where it became convenient for the parties to share a ride is too attenuated a connection to Ginn's contacts with California" for specific jurisdiction. Setting aside that this is a mischaracterization of the established facts—that the defendant's purposeful acts in California *caused* the parties to travel to Indiana *together*—the primary problem here is that it misinterprets Ginn's allegations, which assert that Ginn personally established myriad contacts with California, and this accident arises out of those intentional acts. Throughout Mr. Ginn's Answer, there is no answer (nor could there be) to the central fact of this case: that the trip to Indiana would never have occurred but for the parties' relationship, which began and was centered in California. Whether or not FGSpire might

also be liable is not relevant to the jurisdictional inquiry.

Respectfully, Petitioner continues to contend that whether the defendant is liable is a question for the merits stage of this litigation. California courts agree: the question of jurisdiction over a corporation's employee or official is separate from the question of whether that employee is personally liable. "An individual's status as an employee acting on behalf of his or her employer does not insulate the individual from personal jurisdiction based on his or her forum contacts." *See, e.g., Anglo-Irish Bank Corp., PLC v. Superior Court*, (2008) 165 Cal.App.4th 969, 980. The sole question at this stage is whether Respondent is subject to personal jurisdiction. He remains entirely free to argue at summary judgment that his involvement with FGSpire means that he is not liable and Petitioner sued the wrong defendant. But that is not relevant to the jurisdictional phase of this case.

Nor is addressing this state-law question necessary for this Court to decide this case. At this stage, the sole question is whether the plaintiff has made a prima facie case for jurisdiction. Charles Alan Wright et al., 4 Federal Practice & Procedure § 1067.6 (April 2023 update); *see also* Kevin M. Clermont, *Jurisdictional Fact*, 91 CORNELL L. REV. 973, 978-80 (2006) (collecting cases). Whether the defendant might succeed on the merits is a question for summary judgment or trial. This Court should simply address the question whether when a defendant has formed myriad contacts with the forum state, and those contacts lead to a tort committed against the plaintiff out of state, there is jurisdiction in the forum state to decide the case. No more need be done.



CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioner requests that the Petition for Writ of Certiorari be granted, reversing the Sixth District Court of Appeal and directing the case to proceed to trial.

Respectfully submitted,

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