No. 25-436

IN THE

Supreme Court of the United States

VOLKSWAGEN AKTIENGESELLSCHAFT,

Petitioner,

v.

BLANCA HERNANDEZ, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DENYSE F. CLANCY
Counsel of Record
JOSEPH D. SATTERLEY
MICHAEL T. STEWART
KAZAN, MCCLAIN, SATTERLEY & GREENWOOD
A PROFESSIONAL LAW CORPORATION
55 Harrison Street, Suite 400
Oakland, CA 94607
(510) 302-1000
dclancy@kazanlaw.com
jsatterley@kazanlaw.com
mstewart@kazanlaw.com

Counsel for Respondents

120832

COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether a state court violates due process by exercising specific personal jurisdiction against a foreign manufacturer, based on the manufacturer's contractual requirements that its wholly owned American distributor promote, market, and sell the manufacturer's products in the forum state.

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INTRODUCTION

This petition is not remotely cert-worthy. It seeks review of a fact-bound, unpublished and therefore non-precedential state-court decision that faithfully applies the very test—personal-jurisdiction under the *Asahi* O'Connor "stream-of-commerce plus"[1]—that Petitioner argues is the correct rule of law in the first instance.

Volkswagen Aktiengesellschaft ("VWAG" or "Volkswagen AG") designs and manufactures its vehicles and replacement parts in Germany for sale to the United States, including California. To sell its vehicles and replacement parts in the United States, Volkswagen AG created a wholly-owned American subsidiary ("VWoA"). Volkswagen AG *contractually requires* its American subsidiary to sell Volkswagen AG's vehicles to all fifty states, including California. It if the Volkswagen AG distributor does not adequately promote Volkswagen AG's vehicles in any given state, including California, Volkswagen AG can remove that state from the distributor's territory. Volkswagen AG further requires its distributor to advertise in each state with the Volkswagen AG logo, distribute the Volkswagen AG manual to all customers, implement Volkswagen AG criteria for all dealerships and sales personnel in every state, and establish Volkswagen AG approved repair facilities in every state. It is undisputed that Volkswagen AG's vehicles regularly flow with great volume to the state of California, and that Volkswagen AG obtains significant profit from the California market. Volkswagen's targeting

1. *Asahi Metal v. Superior Court of California* (1987) 480 U.S. 102, 112 (O'Connor, J., concurring)

of the lucrative California market is thus the "paradigm case of specific jurisdiction." *Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.*, 592 U.S. 351, 364 (2021)

In this case, Plaintiff Raul Hernandez developed asbestos cancer mesothelioma, and sued Volkswagen AG for, *inter alia*, exposing him to asbestos while he worked as a mechanic in California on Volkswagen AG manufactured-vehicles. Because Volkswagen AG designed the asbestos-containing vehicles to which the Plaintiff was exposed, and is uniquely responsible for the specifications and decisions leading to Plaintiff Hernandez's asbestos exposure, Volkswagen AG's absence from the litigation would exclude the most culpable party. Not only that, Volkswagen AG uses its status as a non-party and German entity to prevent discovery as to the critical documents demonstrating Volkswagen's design decisions despite the known hazards of asbestos.

Petitioner's arguments that this case should be the tag-along to the *L.W. v. Audi* petition (25-349) fail at the starting gate. Petitioner's central premise—that the decision below implicates a choice between the "regular flow of commerce alone" versus the "stream-of-commerce plus" test—is demonstrably false. The Court of Appeal below explicitly applied the stricter "stream-of-commerce plus" test articulated by Justice O'Connor in her concurrence in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 112 (1987) to a robust factual record. Under that approach, the Court of Appeal below held that Volkswagen AG purposefully availed itself of California, because Volkswagen AG itself—through contractual mandates—intentionally served the California market.

Thus, while Petitioner attempts to shoehorn this case into an "exceptionally important question" [Pet. 2] as to the doctrinal debate between "stream-of-commerce" versus "stream-of-commerce-plus" (Pet. 4), that question was never debated by the Court of Appeal below.

Second, in an apparent acknowledgment that the doctrinal "stream-of-commerce" debate was not implicated by this case, the petition sets forth an issue presented that is solely a fact-based determination and not a rule of law: the Petition asks this Court to set forth the factual parameters as to when specific jurisdiction exists over a "product liability claim against a foreign manufacturer based on the manufacturer's sales of its products abroad to an independent American distributor, which then marketed and sold the products in the forum state." Pet. I. This is not a question of law, nor is it an outcome determinative question presented to this Court. At best, this question presented asks this Court to resolve a "misapplication of a properly stated rule of law," which is not a matter that this Court reviews. S. Ct. R. 10. A dispute over how to apply a legal standard to the facts of a particular case is not cert-worthy. *Id.* ("A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); Stephen M. Shapiro et al., *Supreme Court Practice* § 512(c)(3) (11th ed. 2019) (nothing that "error correction . . . is outside the mainstream of the Court's functions and . . . not among the 'compelling reasons' . . . that govern the grant of certiorari.). Indeed, the cases that Petitioner cites show how applying the "stream-of-commerce plus" rule of law to disparate factual scenarios results in different outcomes:

using the ***same "stream-of-commerce plus" test***, there are different case ***outcomes*** as to whether a state has specific jurisdiction over a foreign manufacturer using a distributor to sell its products based on intensive factual analyses. For these cases, and the case below, there is no outcome determinative question presented for this Court to resolve.

The petition also suffers from vehicle problems that independently foreclose review. The jurisdictional question here is not abstract; it is rooted in decades-old contracts and fact-specific evidence about Volkswagen AG's conduct. Additionally, as the respondents in *Audi AG v. L.W.* explained in their Brief in Opposition, cases involving international automakers distributing products nationwide are "paradigm cases of specific jurisdiction." Audi BIO 3, citing *Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351, 364 (2021). This case is no exception. Far from presenting a clean vehicle for resolving any doctrinal issue, it presents a dense factual record that would require the Court to do exactly what Rule 10 forbids: reweigh evidence and resolve factual disagreements.

Fourth, as the opinion below explains, California law has long required the "stream-of-commerce plus" test, in line with half-a-century old Supreme Court precedent. Petitioner does not demonstrate how this consistent application of the very test that Petitioner seeks has disturbed international comity, or hindered foreign companies from targeting California's lucrative markets. And the Court of Appeal below, applying this test, was correct. Based on the contracts requiring that Volkswagen AG's American distributor promote

Volkswagen AG vehicles in California—or else—the Court of Appeal unanimously held that Justice O'Connor's "stream-of-commerce" plus "something more" test was met.

Finally, petitioner's plea to hold this case pending *Audi AG*—is equally meritless. As the Audi BIO explains, this case provided a far fuller factual picture than *L.W. v. Audi AG* (25-349), including "terms in the importer agreements between the entities [that] helped paint a complex and multifaceted collaboration between Volkswagen and VWGoA." Audi BIO 20. The disposition of *L.W. v. Audi AG* cannot change any of the independent factual findings that support jurisdiction here, and holding a petition simply to await resolution of a different factual record would be inconsistent with this Court's docket-management principles. Where, as here, a petition lacks merit and presents substantial vehicle defects, the only appropriate course is denial.

The petition should be denied outright.

I. Factual Background.

A. Mr. Hernandez lived and worked in California and was exposed to asbestos in California from 1969 to 1977 from vehicles designed, manufactured, and sold by Volkswagen AG.

Raul Hernandez was a lifelong California resident who worked as an automotive mechanic at Volkswagen dealerships and repair shops in California from 1969 to 1977. 1AA112:12-113:22. During this period, he was exposed to asbestos-containing dust released from

Volkswagen AG brakes, clutches, gaskets, and other components. *Id.* Exposure came both from his own work and from sweeping and handling dust created by other mechanics. *Id.*

B. The United States was Volkswagen AG's "main export market," and California was a core part of that market.

Volkswagen AG's own historical publications confirm its California-targeted conduct. Volkswagen AG created its American subsidiary to be its exclusive sales arm for vehicles to the lucrative American market, including California.

Volkswagen AG entered the U.S. market in the mid-1950's, with the Beetle. 1AA196. In order to service the "strategically important" U.S. market, Volkswagen AG established its own sales network. *Id.* In 1955, Volkswagen AG founded Volkswagen of America, Inc. ("VWoA") VWoA "assume the functions of a sales organization." 1AA199. In the 1960's, Volkswagen AG, "the world's largest car exporter[,]" sold about 60 percent of its production to European markets and to the USA, where the Beetle's popularity was as great as back home. Exports to the USA rose to almost 330,000 vehicles in 1964. 1AA201.

The U.S. was Volkswagen AG's "main export market." 1AA202. At Emden, Germany, Volkswagen AG's plant was "designed with exports for the North American market in mind. . . . Over 500 vehicles roll off the assembly line each day. They are shipped from the company's own port directly to the USA and Canada." 1AA203. By 1966, Volkswagen AG sold hundreds of thousands of its

vehicles per year to the United States, which was "by far [Volkswagen AG's] largest foreign market." 1AA216, 223. Volkswagen AG boasted as to its U.S. sales: "To date, nearly 3 million Volkswagens have been sold in the United States of America. As part of the continuous expansion of our dealer organization in the U.S.A., the one-thousandth dealership was opened in October, 1967." 1AA224.

In 1973, Volkswagen AG and VWoA acquired "the two Californian distributors, [and] the two new subsidiaries [were] merged into Volkswagen of America, Inc." 1AA206.

Internal bulletins depict Volkswagen ships delivering cars to the ports of San Francisco and Los Angeles. Volkswagen AG published pictures of its shipments to California ports in its internal sales Bulletin "Quick Roundup," showing Volkswagen ships discharging cargo in San Francisco and Los Angeles ports:

Maiden Voyage to San Francisco

gb - BREMEN

■ It only took 24 hours for the world's newest and largest car transporter, the 24,000 ton Norwegian motor ship "Norse Transporter", to discharge its cargo at the Ports of Los Angeles and San Francisco.

■ It had only taken 16 hours for the 1,780 Volkswagens to be taken on board this large ship at the Port of Bremen at the beginning of March before she embarked on her maiden voyage.

5AA1205.

That fleet carried cars on "behalf" of the "Volkswagen factory and its subsidiaries." 5AA1208.

To dictate and direct the sales of its Volkswagen AG vehicles through its wholly owned subsidiary American subsidiary, Volkswagen AG and its wholly-owned American subsidiary entered into importer agreements. 2AA397:22-407:25, 2AA408:22-409:10, 2AA410:9-21, 2AA421-460, 2AA461-490, and 2AA491-521; 4AA897-1045.

These agreements drafted by Volkswagen AG ***required*** its wholly-owned U.S. distributor VWGoA to promote, advertise, market, and service Volkswagen AG vehicles throughout the United States—including California. The agreements obligated VWGoA to establish dealer networks approved by Volkswagen AG, pass down repair instructions verbatim, display Volkswagen AG-mandated signage, deliver Volkswagen AG owner's manuals, and maintain service and training standards specified by Volkswagen AG.

Petitioner thus misstates the record in arguing that "[t]he court below did not require that petitioner itself have any contacts of its own with California to justify the exercise of specific jurisdiction." Pet. 6. On the contract, the appellate court held that Volkswagen AG's contracts with its exclusive U.S. importer VWoA required that Volkswagen AG's vehicles be marketed and promoted in California. App. 8a.

The facts in this record meet each of the "stream-of-commerce" plus "something more" factors. which include: "designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State." *Asahi*, 480 U.S. at 112.

1. "Marketing the product through a distributor who has agreed to serve as the sales agent in the forum state" *Asahi*, 480 U.S. at 112:

• "The contracts ***required VWoA to promote and sell Volkswagen products, and to arrange for customer service, in California***. VWoA's territory was 'the States of Alaska and Hawaii" and "the continental United States' — hence the contiguous States, including California. (Contracts, Art. 2(1)-(2).)" App. 16a; 4AA1008 (emphasis added). If VWoA did not "sufficiently promote, or is not able to sufficiently promote, the sale of VW[AG] Products" in the entire continental United States and the States of Alaska and Hawaii, then Volkswagen AG had the right

to remove the states for which VWoA was not sufficiently promoting the Volkswagen AG vehicles. 4AA1008.

• "The contracts state that '[VWoA] assumes the responsibility within the [continental United States and the States of Alaska and Hawaii] for the promotion and sale of VW Products, as well as the supply of VW Parts and the customer's service for VW Products, and shall concentrate its efforts primarily in the territory.' (Art. 2(3); see also Art. 6(1) [requiring VWoA to arrange for 'excellent customer's service' for all Volkswagen car owners in its territory].)." App. 17a; 4AA1008; 4AA1014.

• "The importer agreements also required VWoA to establish a dealership network for customer solicitation, which VWAG essentially conceded in briefing below: 'For its part, VWAG wanted to ensure that VWoA, to whom VWAG granted an exclusive license in the United States under the contract, would make efforts to maximize sales of the Volkswagen vehicles it purchased from VWAG in Germany, which included VWoA establishing a dealer network.' The contracts state that VWoA 'will appoint at locations to be approved by VW[AG] such number of dealers as may correspond to the requests of VW[AG,]' and VWoA's contracts with dealers 'will impose' duties and obligations corresponding to those assumed by VWoA in the importer agreements. (Art. 3(4).) To the extent that VWoA's sales structure included distributors or authorized shops 'in addition to dealers,' the provisions of the importer agreements applicable to dealers and to their relationship with VWoA were to be applied 'according to their essential meaning' to those distributors and shops, as well as to the relationship between distributors and

the dealers they appointed. (Art. 21.) VWoA was further obligated to employ the number of office employees and business fieldmen 'sufficient in the opinion of VW[AG]' to secure the solicitation by dealers 'of all potential customers for VW Products in the territory.' (Art. 5(3).)" App. 18a; 4AA7; 4AA1034.

2. "Advertising in the forum State" *Asahi*, 480 U.S. at 112.

• "VWoA had to 'arrange for the efficient promotion of VW Products,' and safeguard and promote 'in every possible way' VWAG's interests. (Art. 3(3).) VWoA was required to 'give due consideration to all reasonable directives and suggestions of VW[AG]' relating its promotion and sale of Volkswagen products. (Art. 3(3).) And VWAG reserved the right 'at any time' to change and subtract from VWoA's territory if, for example, VWoA was not, 'in the opinion of VW[AG],' sufficiently promoting the sale of Volkswagen products or the customer's service. (Art. 2(2).)" App 17a; 4AA1008-1009.

• The contracts state that '[VWoA] assumes the responsibility within the [continental United States and the States of Alaska and Hawaii] for the promotion and sale of VW Products, as well as the supply of VW Parts and the customer's service for VW Products, and shall concentrate its efforts primarily in the territory.' (Art. 2(3); see also Art. 6(1) [requiring VWoA to arrange for 'excellent customer's service' for all Volkswagen car owners in its territory].) VWoA had to 'arrange for the efficient promotion of VW Products,' and safeguard and promote 'in every possible way' VWAG's interests. (Art.

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• "Next, VWoA assumed many obligations with respect to structuring the dealership network, including the obligation to pass down VWAG directives. VWoA had to ensure that Volkswagen dealers maintain a salesroom, a repair shop, and an inventory of VW parts. (Arts. 3(4), 6(2), 21.) VWoA had to see to it that dealers 'will be subject to and will duly perform duties corresponding to the duties of [VWoA] pursuant to [Article 5(2)]' — ***which included the duties to display a sufficient number of Volkswagen signs in accordance with VWAG's directives and to use VWAG's requested stationery and business forms***. (Arts. 5(4), (2), & 21.) And VWoA had to relay to dealers 'all directives and suggestions of VW[AG] to the extent that they may concern dealers, without making any changes in substance' and to 'see to it that the dealers ... give due consideration to the said directives and suggestions.' (Arts. 3(4), 21.) App. 18a (emphasis added); 4AA1014; 4AA1034-1035.

3. "Establishing channels for providing regular advice to customers in the forum State" *Asahi*, 480 U.S. at 112:

• "VWoA also had to make sure that its personnel and that of Volkswagen dealers would be 'thoroughly trained' and 'thoroughly instructed about all new suggestions of VW[AG] for the servicing and repair of VW products.' (Arts. 6(2), 21.) And in the dealers' operation of the repair shops, the importer agreements required that 'due consideration ... be given to the directives and suggestions which may from time to time be issued by VW[AG]' with respect to: the size and installation of repair shops; the sufficient advertising of 'the location of the repair shop through Volkswagen customer's service signs prescribed by VW[AG]'; the procurement and maintenance of special Volkswagen tools and equipment and 'at least one complete set of Volkswagen customer's service literature per repair shop'; the employment and training of qualified personnel; and the correct execution of repair work. (Arts. 6(3), 21.) VWoA also had to ensure that dealers delivered an owner's manual to the purchaser of all Volkswagen products for which a manual was issued, and, per VWAG's directive, the first maintenance service on a Volkswagen vehicle had to be free for the customer. (Art. 6(4) & (5), 21.) App. 18a-19a; 4AA1034; 4AA1014-1016.

Volkswagen AG did not dispute any of the factual findings of Court of Appeal with respect to the contracts between itself and Volkswagen of America.

4. Volkswagen AG "design[ed] the product for the market in the forum State." [*Asahi*, 480 U.S. at 112].

Volkswagen AG had to pass muster with the California Air Resources Board ("CARB") in order to sell its vehicles in California. To do this, Volkswagen AG designed its vehicles specifically to comply with CARB emissions requirements.

In 1968, Volkswagen AG itself, and ***not*** its American subsidiary, dictated the "tactics" to be taken by Volkswagen AG and its American subsidiary in response to the CARB requirements specific to sales of cars in California. 5AA1227-1230. And when CARB issued its final test procedures, CARB directly corresponded with Volkswagen AG on this topic. 4AA856-857.

CARB executive orders from 1973 to 1978 show CARB's certification of Volkswagen AG's engines for its passenger cars and other light-duty vehicles that were sold in California. 1AA186:27-188:13, 3AA528-642. CARB approved the applications, with conditions that required Volkswagen AG to perform specific tasks and modifications of its vehicles in order to continue to sell its cars in California. For example, CARB required that "this certification is contingent upon Volkswagenwerk AG affixing a permanent catalyst overheat warning label on the driver's sun-visor of all catalyst-equipped vehicles. This label must be certified by the Executive Officer. . . ." *See* 3AA588.

C. The regular stream of commerce of Volkswagen AG's vehicles to California was undisputed.

As the Court of Appeal held, it was undisputed that there was a regular stream of commerce of Volkswagen AG's ("WVAG") vehicles to California: "In VWAG's own words, 'Plaintiffs' evidence shows considerable availment by VWoA to the California market in particular.'" App. 19a.

II. Procedural history.

Mr. Hernandez was diagnosed with malignant mesothelioma and died on January 28, 2022. 1AA110:3-4. His surviving heirs—also California residents—filed suit in California, asserting negligence, strict liability, and fraud against Volkswagen AG and its wholly-owned American subsidiary. for selling vehicles that contained asbestos-containing parts. 1AA148:25-149:22; 1AA149:23-151:20; 1AA151:23-155:11.

Volkswagen AG moved to quash service of summons, asserting that California lacked specific jurisdiction because only its U.S. distributor—Volkswagen Group of America (VWGoA)—conducted business in California. Its evidentiary showing consisted almost entirely of a declaration from an employee, Silke Katharina Reinhold, claiming Volkswagen AG had no presence in California. 1AA160-161. Volkswagen AG stated that it was headquartered in Germany, and that it did not purposefully avail itself of the California market. Volkswagen AG argued that only its U.S. distributor VWGoA did so, and that only VWGoA is properly subject to personal jurisdiction here. 1AA90:13-22.

The trial court granted Volkswagen AG's Motion to Quash, and made limited findings of fact based on (i) the Bulletins showing shipments to California (holding they did not establish "control" of day to day activities [5AA1317]); (ii) Volkswagen's modification of its vehicles to comply with California's CARB requirements (holding that they did not sufficiently "relate" to the Complaint) 5AA1319. Plaintiffs requested further jurisdictional discovery, which the trial court denied. 5AA1320.

Applying *de novo* review, the Court of Appeal held that Plaintiffs had established purposeful availment under the "stream-of-commerce plus" test. Relying exclusively on the undisputed language in the importer agreements as between Volkswagen AG and its wholly-owned American subsidiary, the unanimous panel held that Volkswagen AG had purposefully availed itself of California's forum for sale of its vehicles. In so holding, the Court of Appeal held not just that there was a "regular stream of commerce" of Volkswagen AG's vehicles to California, but that the "something more" test as set forth by Justice O'Connor's concurring opinion in Asahi was met: "On this record, we reject VWAG's contention that it merely placed its product into the stream of commerce with awareness that the product would reach California. '[S]omething more" exists here.' (*Asahi, supra*, 480 U.S. at pp. 111–112 (opinion of O'Connor, J.).)]." App. 19a-20a.

The California Supreme Court denied Volkswagen AG's Petition for Review. App. 36a.

ARGUMENT

I. THE PETITION DOES NOT PRESENT ANY QUESTION WARRANTING CERTIORARI.

The Petition, like the *L.W. v. Audi* Petition for which Petitioner asks that this case be the held, attempts to make this case cert-worthy by contending that this case and the *L.W. v. Audi* case are "ideal" vehicles for this Court to produce a majority opinion resolving whether the Due Process Clause requires (i) "the stream-of-commerce-plus" test (Asahi, supra, 480 U.S. at 112 (opinion of O'Connor, J.) or (ii) the "stream-of-commerce" test. *Id*. at 117 (Brennan, J., concurring in part and concurring in the judgment); *see, e.g.*, Pet. 4. But neither this case nor the *L.W. v. Audi* case debated this question. On the contrary, both cases applied the strictest "stream-of-commerce-plus" test. Thus, the resolution of this case does not turn on resolution of the split that Petitioner describes.

This explains why Petitioner does not even make this doctrinal debate the actual issue presented. The actual issue presented—in both the Petition in this case and the Petition in *L.W. v. Audi*, asks this Court to wade into the fact-bound question as to when a state has specific jurisdiction "over a product-liability claim against a foreign manufacturer based on the manufacturer's sales of its products abroad to an independent American distributor, which then marketed and sold the products in the foreign state." Pet. i; see also Audi Pet. (I). This fact-bound question results in different outcomes even applying the same rule of law. There can be no one rule as to when a foreign manufacturer is properly haled before a

state court by virtue of its availment of the state's markets, as is demonstrated by the highly fact-bound contractual analysis giving rise to the outcome in this case. Thus Petitioner is either improperly asking for error correction based on a properly applied rule of law, or for this Court to engage in the impossible task of setting forth different factual criteria (of many thousands of variables) that would give rise to jurisdiction over a foreign manufacturer working through its wholly owned subsidiary to promote its goods in a state's market.

For these reasons, there is no question presented that warrants certiorari.

A. This case does not present the question of "stream of commerce" versus "stream-of-commerce plus:" the appellate court applied the strictest standard, as required by California law.

This case does not remotely satisfy the standards of Supreme Court Rule 10. The decision below expressly declined to choose among competing formulations of the stream-of-commerce theory. Petitioner's claimed "conflict" presented by this case evaporates upon inspection. The California Court of Appeal applied the stream of commerce plus "something more" test as set forth by Justice O'Connor's concurrence in Asahi. [*Asahi*, 480 U.S. at 112].

> On this record, we reject VWAG's contention that it merely placed its product into the stream

> of commerce with awareness that the product would reach California. "[S]omething more" exists here. (Asahi, supra, 480 U.S. at pp. 111–112 (opinion of O'Connor, J.).) VWAG intentionally entered into contracts that required VWoA to market and sell the products, and to arrange for dealers and customer service, in California; VWAG created the structure of the distribution network at issue where VWoA served as the exclusive sales agent for Volkswagen products in California; VWAG employed the distribution network to sell its products; it created and used a channel to the California dealers that interfaced with consumers; and VWAG issued repair directives through that channel. The evidence likewise shows a regular course of sales in California. (Id. at p. 117 (Brennan, J., concurring in part and concurring in judgment) [jurisdiction should lie where a sale in a State is part of "the regular and anticipated flow" of commerce].)

App. 19a-20a.

And not only that, the Court of Appeal below held that California law ***requires*** "something more" than entering the stream of commerce to find specific jurisdiction: "After *J. McIntyre*, California courts have recognized that '[a]n inquiry into a foreign defendant's purposeful availment of the forum state's benefits must find more than merely entering a product into the stream of commerce with knowledge the product might enter the forum state.' (*Bombardier Recreational Products, Inc. v.*

Dow Chemical Canada ULC (2013) 216 Cal.App.4th 591, 602*; see Dow Chemical Canada ULC v. Superior Court* (2011) 202 Cal.App.4th 170, 179.)." App. 14a. And so does the Ninth Circuit, as Petitioner concedes in its Petition in the *L.W. v. Audi* case. Pet. 19, citing *LNS Enterprises LLC v. Continental Motors, Inc.*, 22 F. 4th 852, 860 (2022).

And as is set forth *supra* at Section I.A.-C, the Court of Appeal meticulously set forth the very contractual arrangements by which Volkswagen AG targeted California by means of its wholly owned subsidiary, created for the express purpose of selling Volkswagen AG's products into the United States, and requiring it to sell in California, all of which mirror Justice O'Connor's examples of "something more".

The Court of Appeal's Opinion accords with the holding in *L.W. v. Audi*, which also found that under the O'Connor "something more" test the foreign manufacturer—Audi AG—had established sufficient minimum contacts with California through its exclusive sales agent Volkswagen of America: "The assertion of specific jurisdiction over Audi is also proper under the stricter steam-of-commerce plus approach articulated by Justice O'Connor in Asahi. (See Asahi, supra, 480 U.S. at pp. 112–113, (plur. opn. of O'Connor, J.) [marketing a product through a distributor who has agreed to serve as the sales agent in the forum state is the type of 'additional conduct' necessary to establish specific jurisdiction under the stream-of-commerce plus approach].)]" *L.W. v. Audi AG*, 108 Cal.App.5th at 114. Additionally, the Washington Court of Appeal held last year in *Sorrentino*, 32 Wash.

App.2d 1025; 2024 WL 4224272 that Volkswagen AG was subject to personal jurisdiction in Washington based upon the same importer agreements that are in the record here. *Sorrentino* affirmed the trial court's determination that "VWAG sold a significant number of vehicles 'through' VWoA with the intent that some would be sold in Washington." *Id.* at *14.

The Opinion thus below adopts the well-settled precedent requiring a regular flow of commerce plus "something more" *Asahi*, 480 U.S. at 111-112. App. 14a-16a, 19a. This alone forecloses review. This Court does not grant certiorari to resolve a split that has no bearing on the judgment.

B. The petition asks this Court to decide the exclusively fact-bound matter as to under what circumstances a state may have jurisdiction over a foreign defendant who uses a wholly owned distributor to sell its goods in the forum state.

Looking at the actual "Question Presented," the petition asks this Court to set forth the factual parameters as to when specific jurisdiction exists over a "product liability claim against a foreign manufacturer based on the manufacturer's sales of its products abroad to an independent American distributor, which then marketed and sold the products in the forum state." Pet. I. This is not a question of law, nor is it an outcome determinative question presented to this Court. At best, this question presented asks this Court to resolve a "misapplication of

a properly stated rule of law," which is not a matter that this Court reviews. S. Ct. R. 10.

The fact that Petitioner's urged rule of law would not be outcome determinative is exemplified by the authority upon which Petitioner relies. Applying the very rule of law that Petitioner requests – the *Asahi* O'Connor concurrence "something more" test—does not result in an outcome determinative result when analyzing if there is jurisdiction over a foreign manufacturer who sells its products in the United States through a domestic distributor. On the contrary, the cases that apply the stream of commerce plus "something more" test have different outcomes depending on the facts of the case.

All of these cases below involve an out-of-state manufacturer who sells products through a third party into a state—and all of them apply the same "stream-of-commerce plus" test—but they have different results based on different factual scenarios.

Case	Stream-of-Commerce Plus	Outcome
Bridgeport Music, Inc. v. Still N The Water Pub., 327 F.3d 472 (6th Cir. 2003) Audi Pet. 20	"[I]nstead of undertaking the time-consuming task of analyzing the facts under all three approaches, and then being left to select an approach based upon the end result, we make clear today our preference for Justice O'Connor's stream of commerce "plus" approach, for the reasons set forth in that opinion, and conduct the remainder of our analysis accordingly." *Id.* at 479–80.	***Purposeful Availment Found; Remanded to Determine Whether Action Arose from Forum Activities**

BRP-Rotax GmbH & Co. KG v. Shaik, 716 S.W.3d 98 (Tex. 2025) Audi Pet. 20, 28.	"'[S]tream-of-commerce jurisdiction requires a stream, not a dribble." *Michiana*, 168 S.W.3d at 786. All the evidence in this case demonstrates that Rotax's engine came to Texas by the unilateral actions of third parties—and certainly not from any "stream" engineered, controlled, or manipulated by Rotax." *Id.* at 111.	**No Personal Jurisdiction.**

Hyundam Indus. Co., Ltd. v. Swacina, 716 S.W.3d 167 (Tex. 2025). Audi Pet. 20.	"Designing a product for a region that includes Texas makes it foreseeable that the product will end up in Texas. But the fact that Hyundam designed the fuel pump for North America and knew that it as sold in Texas does not, by itself, constitute additional conduct targeting Texas. It is the defendant's purposeful contacts with Texas—not a larger region in which Texas sits—that are relevant to our personal-jurisdiction inquiry." *Id.* at 173–74.	**No Personal Jurisdiction.**

Lesnick v. Hollingsworth & Vose Co., 35 F.3d 939 (4th Cir. 1994). Audi Pet. 20.	"While the result might be different if Hollingsworth & Vose had changed production to comply with Maryland regulations or if it had set up a customer relations network there, see *Asahi*, 480 U.S. at 112, 107 S.Ct. at 1032 (O'Connor, J.), on the record in this case, we can discover no affirmative action by Hollingsworth & Vose rising to the level of purposeful availment. *Id.* at 947.	**No Personal Jurisdiction**
LNS Enters. LLC v. Cont'l Motors, Inc., 22 F.4th 852 (9th Cir. 2022). Audi Pet. 19.	"The Supreme Court provided additional examples of "something more" in *Asahi* . . ." *Id.* at 861.	**No Personal Jurisdiction**

Luciano v. SprayFoam Polymers.com, LLC, 625 S.W.3d 1 (Tex. 2021). Audi Pet. 20.	Requiring "additional conduct" evincing "an intent or purpose to serve the market in the forum state." *Id.* at 10.	**Personal Jurisdiction Found.**
Vermeulen v. Renault, U.S.A., Inc., 985 F.2d 1534 (11th Cir. 1993). Audi Pet. 16.	"Justice O'Connor stated in Asahi that 'the placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.'" *Id.* at 1548–49.	**Personal Jurisdiction Found.**

Just as in the cases set forth above, under California law, for which the stream of commerce plus "something more" test governs, different outcomes result based on the application of this ***uniform*** law to diverse facts. *Contrast Jayone Foods, Inc. v. Aekyung Indus. Co.*, 31 Cal. App. 5th 543, 554, 556-557 (2019) (holding that under California law, purposeful availment only occurs where nonresident defendant purposefully directs its activities at the forum such that it has "deliberately" engaged in significant activities within the forum, and finding California had specific jurisdiction over Korean manufacturer who sold

its goods in California through a domestic distributor) *with Bombardier Recreational Prods., Inc. v. Dow Chem. Canada ULC*, 216 Cal. App. 4th 591. 599, 603 (2013) (applying the stream of commerce plus something more test, and holding that the Canadian manufacturer of a fuel tank installed in a Sea-Doo personal watercraft in California "did not deliberately engage in any significant activities within California. Because of their lack of contacts with California, they could not reasonably expect to be subject to California's jurisdiction.").

In sum, Petitioner's actual Issue Presented improperly asks this Court to formulate the precise factual scenario that would establish specific jurisdiction over a foreign manufacturer selling through a distributor. This Court does not intervene where the supposed disagreement is simply that some manufacturers exercised greater control over their distributors, or engaged in more state-directed conduct, than others. That is not a split — it is the predictable result of different evidentiary records.

II. THIS CASE IS AN EXCEPTIONALLY POOR VEHICLE FOR ANY QUESTION PETITIONER IDENTIFIES.

Even if the Court sought to clarify aspects of the stream-of-commerce doctrine, this case is the archetype of a bad vehicle. The court below found that Volkswagen AG purposefully availed itself of California under the strictest test. A case is a terrible cert vehicle when the outcome is overdetermined. Here, the importer agreements alone — undisputed and drafted by Volkswagen AG — establish purposeful California targeting. And add to that the CARB correspondence and California-specific

design modifications, and there is no question but that Volkswagen AG sought to target the lucrative California market. No matter which legal standard applies, the answer is the same.

1. The first vehicle problem is imminently clear. The Court does not grant certiorari to resolve a legal issue that cannot affect the judgment. Here, the record is robust and undisputed: Volkswagen AG required its wholly owned subsidiary to promote, sell, advertise, service, support, and deliver Volkswagen vehicles in California, and to operate a dealer network that met Volkswagen AG's standards. Volkswagen AG corresponded directly with CARB and engineered California-specific modifications. It disseminated mandatory signage, literature, service directives, and customer-service instructions into the forum via a structured distribution system that it created and controlled. This is purposeful availment under any test. The Court of Appeal concluded that these undisputed materials satisfy even the strictest purposeful-availment standard. That fact-bound determination is not reviewable on certiorari.

2. Cases are poor vehicles for certiorari when the decision below rests on uncontested evidence that satisfies every potential legal test, and when factual findings—not legal doctrine—drive the outcome. As the Audi BIO notes, the manufacturer–distributor relationship is inherently complex and fact-intensive. Audi BIO 22-23. This Court's guidance would be unhelpful—or worse, misleading—if crafted in a case like this one, where Volkswagen AG's extensive California-targeting conduct is both unique and unmistakable. The appellate record here is far stronger than the one in Audi, making it impossible for

this Court to articulate meaningful principles applicable beyond the unusual facts of this case. Deciding a major due-process question here—where purposeful availment is overwhelming under any possible test—would risk the very advisory opinion this Court has long avoided. When the outcome would be the same regardless of what legal standard applies, certiorari is improper.

3. Petitioner also fails to identify any split of authority regarding the legal issue its case actually presents: When a foreign manufacturer structures, directs, and benefits from a distribution network deliberately designed to serve a forum State, may that manufacturer be subject to jurisdiction for injuries caused there? The answer has long been yes.

A manufacturer who directs its goods to a state is, as recently pointed out by this Court, the "paradigm case of specific jurisdiction." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 364 (2021). And it has been for decades. *See Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534, 1550–51 (11th Cir. 1993) (holding that Renault designed LeCar for the American "for the American market, advertised the LeCar in the United States, established channels for customers in the United States to seek advice about the LeCar, and maintained a distribution network by which LeCars were imported into the United States. These contacts are sufficiently related to appellant's cause of action to confer specific jurisdiction upon the United States," in accord with the Asahi "stream of commerce" plus "something more" test.).

Notably, Justice O'Connor's concurrence in *Asahi* cites with approval *Hicks v. Kawasaki Heavy Indus.* (M.D. Pa.

1987) 452 F.Supp. 130 as an example of the "something more" giving rise to personal jurisdiction. *Asahi*, 480 U.S. at 113 (O'Connor, J.). In *Hicks*, the federal district court held, under circumstances strikingly similar to this case, that where a Japanese motorcycle manufacturer whose 96% owned American subsidiary was the exclusive agent for the 55 Kawasaki retail dealers in Pennsylvania, Pennsylvania had specific jurisdiction over the Japanese motorcycle manufacturer: "Most significant is the fact that there are 55 Kawasaki retail dealers in Pennsylvania supplied by the exclusive sales agent. Although the motorcycles are sold f.o.b. Japan to Kawasaki Motors Corporation, U.S.A., it is inconceivable that Kawasaki Heavy Industries, Ltd. Is not aware that a significant number of its motorcycles reach Pennsylvania and that this activity would have consequences in the state." *Hicks,* 452 F.Supp. at 134. The court reasoned that "[a]ny other result would permit a foreign corporation to market its product in this state, profit from its sale here and yet retain immunity simply by structuring its business operations so as to avoid direct activity in the Commonwealth." *Id.*, *see also Hetrick v. Am. Honda Motor Co.* (D. Neb. 1976) 429 F. Supp. 116, 118-119 ("The Court must look to the economic and commercial realities of this case and it would be fundamentally unfair to allow a foreign manufacturer to insulate himself from the jurisdiction of the courts by use of an exclusive distributor. Any inconvenience to defendant in defending this lawsuit is outweighed by other considerations.").

4. Finally, his case is an unpublished Opinion that may not be cited as precedent in California. Thus, its holding is non-precedential for California, and it may not be cited in California courts. Cal. Rules of Court, rule

8.115. And Courts of Appeal in California do not publish cases that are so fact-bound that they would not in turn apply a general rule of law to other cases. *See* Cal. Rules of Court, rule 8.115 (criteria for when California opinions should be published).

For these reasons, as in *L.W. v. Audi*, the Court should decline to review a case that presents profound vehicle defects and cannot clarify the law in any useful way.

III. PETITIONER'S POLICY CONCERNS ARE EXAGGERATED AND UNSUPPORTED.

Petitioner's warnings about international diplomacy and economic ruin are exaggerated and contradicted by decades of real-world experience. Foreign manufacturers have been subject to U.S. jurisdiction for nearly half a century without incident. Petitioner provides no evidence that affirming jurisdiction in California would disrupt international commerce. As the Audi BIO explains, these concerns are "exaggerated and unlikely." Audi BIO 23.

1. California law has ***already required for decades*** the very test that Petitioners urge this Court to adopt to prevent "significant consequences for the conduct of foreign affairs." Audi Pet. 29; *see also* App. 14a-16a, 19a (describing California precedent requiring the "stream-of-commerce" plus "something more" test). And yet Petitioner cites to no evidence that it has been "impossible for foreign manufacturers to make business decisions about whether to allow their products" to be sold in California. Audi Pet. 28.

On the contrary, Petitioner does not dispute that Volkswagen AG has profited enormously from the

California market. Its own publications boast that the United States was its "main export market," and California has been a central component of that market. It strains credulity to suggest that Volkswagen AG would withdraw from the "fourth-largest economy in the world" [Audi Pet. 26] simply because it might be held to answer for injuries caused by its products in the very place it ***required*** them to be sold.

2. Nor do Petitioner's comity arguments withstand scrutiny. The question is not whether Volkswagen AG can be sued anywhere in the United States; it is whether it may be sued in the State where its vehicles were designed for sale, sold in volume, serviced according to Volkswagen AG directives, and caused injury. Far from sparking an international incident, the answer is a straightforward application of the *Asahi* "stream-of-commerce" plus "something more test," and decades of decisions recognizing that manufacturers who deliberately serve a market may be sued there for harms their products cause.

3. Petitioner's argument also ignores reality: courts have applied these principles for nearly half a century without provoking the meltdown petitioner imagines. Foreign automakers—including Audi and Volkswagen—have been litigating in U.S. forums for decades. Petitioner cites no evidence that this has strained diplomatic relations or disrupted international commerce. As the Audi BIO notes, if such problems were imminent, "we would expect to see that those consequences have already materialized."Audi BIO 25.

There is no basis for this Court to intervene on policy grounds.

IV. THE DECISION BELOW IS CORRECT.

Even if this Court were inclined to overlook the petition's mischaracterizations, lack of a split, factual focus, and vehicle defects, review would still be unwarranted because the Court of Appeal's decision is correct. In asking for reversal, Petitioner improperly asks this Court to hold that a foreign manufacturer may design products for California, mandate advertising and service protocols in California, send technical directives into California, require its wholly owned subsidiary to sell in California, and then declare itself immune from suit in California.

1. The court below applied the strictest understanding of the stream-of-commerce-plus test. On Volkswagen AG's own importer agreements, the court found that Volkswagen AG:

• created and controlled the distribution network that delivered vehicles to California;

• required VWGoA to market, sell, service, promote, and support the vehicles in California;

• mandated dealer standards, signage, and customer-service levels in California;

• channeled its repair directives and service literature directly into California; and

• relied on California sales as part of a nationwide profit strategy.

App. 16a-19a.

These facts easily satisfy the "something more" test of Justice O'Connor's concurrence in *Asahi*. Indeed, the Supreme Court in *Ford* reaffirmed that when a manufacturer deliberately serves a market, designs products for it, advertises in it, or establishes channels for advice or repair in it, purposeful availment is readily met. *Ford*, 592, U.S. at 364-65 (deciding the question of relatedness, but commenting that "this Court has stated that specific jurisdiction attaches in cases itential to the ones here - when a company like Ford serves a market for a product in the forum State and the product malfunctions there.")

The Court of Appeal correctly recognized that this is the paradigm case of specific jurisdiction. As the Audi BIO emphasized, this Court has repeatedly identified international car manufacturers as exemplifying the very scenario in which personal jurisdiction is appropriate: a foreign manufacturer sells vehicles nationwide, a state resident buys one, and the plaintiff is injured in that state. Audi BIO 26. That is precisely what happened here.

2. Additionally, Petitioner's argument that an agency or alter-ego relationship is required to establish specific jurisdiction over a foreign manufacturer for sales by its wholly owned distributor is wrong. *See, e.*g, Audi Pet. 25. California law (and federal due process principles) do not require an agency relationship when jurisdiction is based on the foreign manufacturers own actions—conduct accomplished jointly with its distributor but attributable to the manufacturer itself. It is well-settled that it is unnecessary to find an agency or alter-ego relationship to establish specific jurisdiction, where the defendant has purposefully directed its activities at the forum state by

causing a separate person or entity to engage in forum contacts: "In our view, reliance on state substantive law of agency and alter ego to determine the constitutional limits of specific personal jurisdiction is unnecessary and is an imprecise substitute for the appropriate jurisdictional question. The proper jurisdictional question is not whether the defendant can be liable for the act of another person or entity under state substantive law, but whether the defendant has purposefully directed its activities at the forum state by causing a separate person or entity to engage in forum contacts. That constitutional question does not turn on the specific state law requirements of alter ego or agency, although the inquiry may be similar in some circumstances." *SK Trading*, 77 Cal.App.5th at 388-389 (parent and subsidiary together developed and implemented their plan to manipulate the California gas market); quoting A*nglo Irish Bank Corp., PLC v. Superior Court* (2008) 165 Cal.App.4th 969, 983 (defendant committed securities fraud directed toward California); see also *Empire Steel Corp. v. Superior Court* (1961) 56 Cal.2d 823, 835 (trial court need not decide whether the parent was the alter ego of the subsidiary where "jurisdiction over [parent] has been established on the basis of the acts of the parent itself.").

Thus, where a foreign parent directs its U.S. subsidiary "towards California for the purpose of engaging in economic activity with California residents," this constitutes purposeful availment giving rise to specific personal jurisdiction, without the need to prove agency or alter ego. *See SK Trading*, 77 Cal.App.5th at 388 (Korean corporation subject to jurisdiction in California when it devised a plan that was enacted through its California subsidiary to inflate California gas prices).

"[I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others." *Jayone Foods v. Aekyung Ind.* (2019) 31 Cal.App.5th 543, 559 (because a Korean company manufactured a humidifier cleaning agent that it had the "expectation" would be sold in California, the Court of Appeal found that the plaintiffs had met the "purposeful availment" prong entitling California to specific jurisdiction), quoting *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297.

Indeed, this Court likewise recognizes that specific jurisdiction can be obtained over a foreign manufacturer without the need to show agency or alter ego. *See e.g. Asahi*, 480 U.S. at 113 (O'Connor, J.), citing with approval with approval *Hicks v. Kawasaki Heavy Indus.* (M.D. Pa. 1987) 452 F.Supp. 130 (holding that Pennsylvania had specific jurisdiction over Japanese manufacture sold motorcycles through its U.S. distributor); see also *Hetrick v. Am. Honda Motor Co.* (D. Neb. 1976) 429 F. Supp. 116, 118-119 ("The Court must look to the economic and commercial realities of this case and it would be fundamentally unfair to allow a foreign manufacturer to insulate himself from the jurisdiction of the courts by use of an exclusive distributor.").

The case law referenced by the Petition in support Volkswagen AG's "agency" argument have no bearing on this case. For example, in *Jazini v. Nissan Motor Co., Ltd.*

(2nd Cir. 1998) 148 F.3d 181 (Audi Pet. at 25), the Plaintiffs sued a Japanese car manufacturer in New York for an accident that occurred in Iran, and arising from a type of car that was never sold in the United States. The Plaintiffs' ***sole basis for jurisdiction*** in New York state is that Nissan Japan "maintains a presence" in New York through its subsidiary Nissan Motor Corporation in U.S.A. *Id*. at 183 (emphasis added). Under such a circumstance, not present here, either an agency or alter ego relationship must be shown: "Where, as here, the claim is that the foreign corporation is present in New York state because of the activities there of its subsidiary, the presence of the subsidiary alone does not establish the parent's presence in the state." *Id.* at 184.

Thus, the Court of Appeal below was correct to reject this agency or alter ego argument: "We find VWAG's citations inapposite given that general jurisdiction is not at issue here, and we do not believe the law requires VWAG to have had pervasive day-to-day control over VWoA to exercise specific jurisdiction over VWoA in the context of this case." App. 21a.

In sum, the decision below was correct under any test this Court has articulated. Petitioner's disagreement with the Court of Appeal's application of the very rule of law that Petitioner seeks—the very "stream-of-commerce plus" test— to an extensive factual record is not a basis for certiorari.

V. THE PETITION SHOULD NOT BE HELD PENDING *AUDI AG*.

Holding this case would waste the Court's time. The factual record in *Audi AG* differs dramatically from this one, because in Audi the record had not been developed due to lack of discovery. Audi BIO 6. And its disposition cannot alter the independently sufficient grounds for jurisdiction here. A request to "hold" a meritless petition is simply a concession that the petition cannot stand on its own. This Court should deny both the petition and the hold request.

As the Audi BIO notes, the record in this case is far more developed than the record in Audi. Audi BIO 2-3. Here, the importer agreements, CARB materials, distribution directives, dealership requirements, and nationwide sales evidence provide multiple, independent, and unchallenged grounds supporting the California Court of Appeal's judgment under any applicable standard. None of these facts are present in Audi. None will be resolved by Audi.

In order to manufacture an "exceptionally important question" Audi Pet. at 2, Volkswagen AG insists that the Court of Appeal in Audi "purported to find jurisdiction" under the stricter "stream-of-commerce plus" test, "in practice it applied only an expansive stream-of-commerce test." Audi Pet. 21. But Petitioner cannot make the same claim here, where Volkswagen AG contractually ***required*** its wholly owned American sales-arm to promote Volkswagen AG's vehicles in California.

Finally, petitioner's hold request tacitly admits what the petition avoids acknowledging directly: the petition lacks sufficient merit to stand on its own. The proper disposition is to deny certiorari—not to hold the case in limbo while awaiting a decision in a different, factually unrelated matter.

For all these reasons, the petition should not be held pending *Audi AG*.

CONCLUSION

For all the reasons set forth above—and as further demonstrated by the thorough analyses in both the *Hernandez* and *Audi AG* decisions—the petition for a writ of certiorari should be denied. Petitioner identifies no legal conflict presented by this case, and no legal error that would warrant this Court's review. The decision below faithfully applied this Court's precedents, including the *Asahi* "stream-of-commerce" plus "something more" test.

Petitioner's request for this Court to revisit purely factual determinations based on its actual issue presented underscores why certiorari is inappropriate. This Court does not serve as a forum for error correction, nor does it grant review when the outcome below would remain the same under any competing legal standard.

Equally untenable is petitioner's request that this case be held pending resolution of *Audi AG v. L.W.*, No. 25-349. The factual record here is significantly more developed, and the independently sufficient bases for jurisdiction in this case would remain unaffected by the disposition of Audi AG. A hold would waste judicial resources and contradict this Court's well-established practice.

The petition should therefore be denied in full, and the case should not be held.

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Respectfully submitted,

Denyse F. Clancy
Counsel of Record
Joseph D. Satterley
Michael T. Stewart
Kazan, McClain, Satterley & Greenwood
A Professional Law Corporation
55 Harrison Street, Suite 400
Oakland, CA 94607
(510) 302-1000
dclancy@kazanlaw.com
jsatterley@kazanlaw.com
mstewart@kazanlaw.com

Counsel for Respondents