No. 25-

IN THE

Supreme Court of the United States

INCOMM FINANCIAL SERVICES, INC.,

Petitioner,

v.

SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The "relatedness" requirement of specific personal jurisdiction, last addressed by this Court in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021), demands that the plaintiff's claim "arise out of or relate to" the defendant's forum-directed conduct. The question presented is:

Whether a plaintiff's claim "relates to" a defendant's forum-directed conduct merely by alleging defects in a product the defendant sold in the forum, in the absence of any in-forum injury or other incident involving the product in the forum.

PARTIES TO THE PROCEEDING

InComm Financial Services, Inc., petitioner on review, was the petitioner below and a defendant in the trial court.

The Superior Court of the City and County of San Francisco, respondent on review, was a nominal respondent below.

The People of the State of California, respondent on review, is the real party in interest and the plaintiff in the trial court.

RULE 29.6 DISCLOSURE STATEMENT

InComm Financial Services, Inc. is a wholly owned subsidiary of PRE Holdings, Inc., which is a wholly owned subsidiary of HI Technology Corp. HI Technology Corp. has no parent corporation, and no corporation owns ten percent or more of its stock.

RELATED PROCEEDINGS

Supreme Court of California:

InComm Financial Services, Inc. v. Superior Court of the City and County of San Francisco, et al., No. S292572 (Cal. Oct. 29, 2025) (denying InComm Financial Services, Inc.'s petition for review of the denial of InComm's petition for a writ of mandate)

Court of Appeal of the State of California, First Appellate District:

InComm Financial Services et al. v. Superior Court of the City and County of San Francisco, No. A173146 (Cal. Ct. App. Aug. 13, 2025) (denying InComm Financial Services, Inc.'s petition for a writ of mandate)

Superior Court of California, County of San Francisco:

People of the State of California v. InComm Financial Services, Inc., et al., No. CGC-23-610333 (Cal. Sup. Ct. Apr. 22, 2025) (denying InComm Financial Services, Inc.'s motion to quash service of the summons for lack of personal jurisdiction)

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PETITION FOR A WRIT OF CERTIORARI

InComm Financial Services, Inc. ("InComm") respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of California in this case.

OPINIONS BELOW

The California Supreme Court's decision denying InComm's petition for review is not reported. Pet. App. 1a. The California Court of Appeal's decision denying InComm's petition for a writ of mandate is not reported. *Id.* at 2a–3a. The California Superior Court's opinion denying InComm's motion to quash service of the summons for lack of personal jurisdiction is not reported. *Id.* at 4a–26a.

JURISDICTION

The California Supreme Court entered judgment on October 29, 2025. This Court's jurisdiction rests on 28 U.S.C. § 1257(a). *See Madruga v. Superior Ct. of Cal.*, 346 U.S. 556, 557 n.1 (1954) (explaining that the California Supreme Court's disposition of a writ petition is a final judgment under 28 U.S.C. § 1257(a)); *Burnham v. Superior Ct. of Cal.*, 495 U.S. 604, 608 (1990) (reviewing a California appellate court's personal jurisdiction holding following the court's denial of a writ of prohibition).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

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

Section 410.10 of the California Code of Civil Procedure provides:

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

INTRODUCTION

In the decision below, the California Supreme Court allowed a California trial court to subject a Georgia company to a lawsuit brought by the San Francisco City Attorney's Office (the "City Attorney") for alleged conduct that occurred entirely outside of California and caused no injury there. That decision was the latest manifestation of lower courts' persistent confusion about the proper construction of the "relatedness" requirement of specific personal jurisdiction in the wake of this Court's decision in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021).

The City Attorney's suit, purportedly brought on behalf of the People of the State of California, alleges that InComm Financial Services, Inc. ("InComm"), a Georgia-based financial technology company, inadequately secured its flagship prepaid product, Vanilla Gift Cards, from package-tampering fraud. The suit

also accuses InComm of failing to reimburse consumers whose gift card balances were stolen due to fraud. The City Attorney claims that InComm's practices with regard to securing, marketing, and servicing the cards violated California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, which prohibits any "unlawful, unfair or fraudulent business act or practice."

Unlike many cases involving alleged product defects, the City Attorney's suit does not center upon an incident or incidents of alleged consumer injury. Indeed, the Complaint did not even allege any such occurrence of injury with specificity. Nor did the City Attorney adduce evidence of any such occurrence after a lengthy period of jurisdictional discovery. In fact, the City Attorney expressly disclaimed any obligation to premise its claims upon in-state injury, whether to individual consumers, to San Francisco as a municipal entity, or to the State of California. *See, e.g.*, Mot. to Remand at 17 n.3, *People of the State of Cal. v. InComm Fin. Servs., Inc.*, No. 3:23-cv-06456-WHO (N.D. Cal. Jan. 30, 2024), ECF No 28 [hereinafter Mot. to Remand]; Reply ISO Mot. to Remand at 15–16, *People of the State of Cal. v. InComm Fin. Servs., Inc.*, No. 3:23-cv-06456-WHO (N.D. Cal. Feb. 23, 2024), ECF No. 33 [hereinafter Reply ISO Mot. to Remand]; Answer to InComm's Pet. for Review at 20–22, *InComm Fin. Servs., Inc. v. Superior Ct. of the City and Cnty. of San Francisco*, No. S292572 (Cal. Sept. 10, 2025) [hereinafter Answer to Pet. for Review]. Rather, the City Attorney asserted "sovereign enforcement authority" to redress and enjoin allegedly unlawful behavior by an out-of-state company regardless of where the behavior occurred or whether it wrought any California consequences, so long as the defendant makes substantial

sales of an allegedly defective product in California. *See, e.g.*, Mot. to Remand at 10. In the exercise of such purported authority, the City Attorney took broad aim at the Georgia-based business practices of InComm, whose prepaid products are available for sale in all fifty states.

InComm moved to quash the City Attorney's complaint for lack of personal jurisdiction. Pet. App. 101a–130a. InComm conceded that its direction of Vanilla Gift Card sales to California constituted "purposeful availment" of the forum, which is the first requirement of specific personal jurisdiction imposed by the Due Process Clause. *See id.* at 10a. But InComm disputed that the City Attorney's claims "arose out of or related to" InComm's in-forum activities, which is the second requirement. *Id.* at 123a–127a. Although the City Attorney's claims challenge InComm's conduct with respect to securing, promoting, and servicing Vanilla Gift Cards, InComm demonstrated that none of those activities takes place in California, nor was the suit premised on any injury those activities caused in that State. Thus, the City Attorney's claims do not arise from any injury or other "occurrence" in California. By its own admission, the City Attorney was merely projecting its police power upon the ongoing business activities of a Georgia resident.

The Superior Court nevertheless denied the motion to quash. *Id.* at 4a–26a. According to the court, it was sufficient for personal jurisdiction that InComm engaged in "substantial and purposeful" sales of Vanilla Gift Cards in California, and that the City Attorney's claims identified alleged defects in Vanilla Gift Cards. *Id.* at 15a. As the court put it, "[t]he People's allegations of InComm's unfair business practices related to

InComm's directed sales in California support the Court's exercise of jurisdiction." *Id.* at 18a. The Superior Court dismissed InComm's argument that the City Attorney had failed to tether its claims to any in-state injury, declaring it "unhelpful" for InComm even to raise that point. *Id.* at 11a n.3. The California Court of Appeal affirmed, and the California Supreme Court declined to review InComm's appeal. *Id.* at 1a–2a.

The Superior Court's analysis offered an unprecedented answer to the following question: When are the in-forum product sales of a nationally operating company sufficiently "related to" the plaintiff's claims to confer jurisdiction? Since this Court's decision in *Ford*, the federal Courts of Appeals and state courts of last resort have divided on that question. Some courts have adopted an approach in which a defendant's non-consumer sales of a product in the forum are sufficiently related to claims premised on in-state consumer injury, even if the defendant never directed the product to consumers in the forum. Other courts have held that only *consumer-directed* sales within the forum may be deemed "related" to claims of consumer injury from use of the product within the forum. And still others have concluded that a defendant's consumer-directed sales of a product within the forum and an in-state consumer injury from the product are insufficient to confer personal jurisdiction.

From this din of confusion surrounding the parameters of relatedness, the California courts have now emerged with the most expansive interpretation yet, contorting the relatedness requirement beyond recognition. The Superior Court dispensed entirely with the

requirement of a relationship between InComm's California-directed sales and any California-based consequences alleged in the City Attorney's suit. Nor did the Superior Court require any allegation or showing that the misconduct alleged had occurred in California.

Instead, the Superior Court held that because InComm directs sales of Vanilla Gift Cards to California, InComm is subject to jurisdiction there for any "unfair business practices" that "relate to" Vanilla Gift Cards—even if the practices neither occur nor cause injury in California. Rather than examining the relatedness between InComm's forum contacts (*i.e.*, its California-directed sales) and the City Attorney's *claims*, the Superior Court considered only whether InComm's "unfair business practices [in Georgia] related to InComm's directed sales in California." *Id.* at 18a. The answer was yes, the court concluded, because both sets of activities pertained to the same product, Vanilla Gift Cards. Therefore, InComm was subject to suit in California for its non-California-related "business practices."

The problem with the Superior Court's reasoning is that it effectively cast aside the requirement of a "link between the defendant's forum contacts and the plaintiff's suit." *Ford*, 592 U.S. at 371. InComm's "forum contacts" were its California-directed sales. The "plaintiff's suit" had nothing to do with those sales or with any injury they allegedly caused in California. The necessary "link" to establish specific jurisdiction was therefore absent. Yet the Superior Court, in essence, counted InComm's Georgia-based activities as "forum contacts" because they "related to" the same

product that InComm sold in California. This approach, if permitted, would transform every act by every nationally operating company into a "forum contact," rendering the relatedness requirement meaningless. Under this paradigm, any such company would be subject to suit in California for "claims involving no in-state injury and no injury to residents of the forum State," and for which "all the [relevant conduct] occurred elsewhere." *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., San Francisco Cnty.*, 582 U.S. 255, 266 (2017). This Court has repeatedly declined to adopt such an unrestrained conception of specific jurisdiction.

Though the Superior Court's unbounded conception of relatedness was unprecedented, its confusion over the contours of the relatedness requirement was not. Federal and state appellate courts across the United States have adopted divergent approaches to that requirement in cases that, like this one, involve consumer products sold nationwide. This Court should resolve that discord before it yields even more erroneous applications and unconstitutional exercises of jurisdiction.

STATEMENT

1. InComm is a financial technology company incorporated in South Dakota with its principal place of business in Georgia. All of InComm's relevant operations, including those involving its package security for Vanilla Gift Cards and its disbursement of refunds to consumers, occur in Georgia. InComm directs sales of Vanilla Gift Cards to consumers in all fifty states, primarily through third-party retailers. Like many companies with a nationwide reach, InComm directs

significant sales of Vanilla Gift Cards to California, the nation's largest State.

2. The San Francisco City Attorney's Office is a municipal law office purportedly suing on behalf of the People of the State of California under California's UCL, which authorizes certain city attorneys to sue on behalf of all Californians. *See* Cal. Bus. & Prof. Code § 17204.

The City Attorney's initial complaint, the operative complaint for purposes of personal jurisdiction proceedings, alleges that InComm violated the UCL in three ways. *First*, the City Attorney alleges that InComm packages its Vanilla Gift Cards in a manner that fails to adequately secure the cards from fraud. *See* Compl. ¶ 61, *People v. InComm Fin. Servs., Inc.*, No. CGC-23-610333 (Cal. Sup. Ct. Nov. 9, 2023). The City Attorney alleges that third-party criminals exploit InComm's purported packaging deficiencies, such as its use of "thin cardboard" packages, to access the card data of individual Vanilla Gift Cards before they are purchased, then use that information to steal card balances after purchase. *See id.* ¶¶ 51, 61. *Second*, the City Attorney alleges that InComm violated the UCL by declining to refund consumers affected by package-tampering fraud. *See id.* ¶¶ 74–93. *Third*, the City Attorney alleges that InComm misleads consumers about the security of Vanilla Gift Cards and InComm's refund process. *See id.* ¶¶ 94–103.

The City Attorney does not, however, claim that any aspect of these alleged business practices occurred in California. Nor does the City Attorney seek redress for any particular injury in California resulting from InComm's distribution of cards in that State. The City Attorney has repeatedly disavowed the need to claim

any such in-state injury. *See* Mot. to Remand at 17 n.3; Reply ISO Mot. to Remand at 15–16. Accordingly, the City Attorney does not even identify an injury to a specified California consumer, or to any other California resident, in its complaint. Even after ten months of jurisdictional discovery, the City Attorney did not identify, much less premise its claim on, any injury in California caused by InComm's allegedly wrongful conduct. Rather, the City Attorney's claims are premised on general critiques of the way in which InComm, a citizen of Georgia and South Dakota, conducts its nationwide business.

3. InComm moved to quash the City Attorney's complaint for lack of personal jurisdiction. Pet. App. 101a–130a. At the hearing on the motion to quash, InComm conceded that it had purposefully availed itself of the California market by directing sales of Vanilla Gift Cards there. *Id.* at 10a. But InComm contended that the City Attorney's claims were not sufficiently "related to" InComm's California contacts (*i.e.*, its sales) to support the exercise of specific personal jurisdiction. *Id.* at 123a–127a. The City Attorney opposed InComm's motion.

4. The Superior Court in San Francisco County denied InComm's motion to quash, concluding that the City Attorney had satisfied the "relatedness" requirement. *Id.* at 4a–26a. In doing so, the court largely merged the distinct purposeful availment and relatedness requirements of specific personal jurisdiction. In a single section of the court's opinion, titled "InComm Purposefully Directed the Marketing, Sale & Distribution of Vanilla Cards at California and California Consumers," the court held that InComm's purposeful availment of the California market "establish[ed] the

minimum contacts necessary to subject InComm to specific jurisdiction." *Id.* at 14a.

To the extent the Superior Court engaged in any analysis of the separate relatedness requirement, it woefully misinterpreted that requirement. In a summary paragraph at the end of the above-described section, the court held that "[t]he People's allegations of InComm's unfair business practices related to InComm's directed sales in California support the exercise of jurisdiction," since both generally pertained to Vanilla Gift Cards. *Id.* at 18a.

In this approach to the relatedness requirement, the Superior Court asked the wrong question. Under this Court's precedents, the Superior Court should have asked whether InComm's forum contacts—its California-directed sales of Vanilla Gift Cards—"related to" the plaintiff's claims. Instead, the trial court considered only whether InComm's sales of a product in the forum "related to" InComm's purportedly unlawful out-of-state business practices, without considering whether the plaintiff's claims arose from anything InComm had done, or any injury it had caused, in California.

Under this approach, the Superior Court found it insignificant that the alleged "unfair business practices" at issue had occurred outside of California. The court was likewise unmoved by InComm's observation that the City Attorney had failed to tether its claims to any injury that InComm's California-directed sales caused in California. Indeed, the Superior Court declared InComm's argument on that point "unhelpful," noting that "[a] pleader has no burden of proving the

truth of the allegations constituting the causes of action in order to justify the exercise of jurisdiction over nonresident parties." *Id.* at 11a n.3.

5. InComm petitioned the California Court of Appeal for a writ of mandate, arguing that the Superior Court erred in holding that the City Attorney had satisfied the relatedness requirement. *Id.* at 63a–100a. The California Court of Appeal affirmed the Superior Court's relatedness finding in one sentence, stating that the City Attorney "sufficiently demonstrated that [InComm's] California contacts are related to the claims raised in the underlying litigation." *Id.* at 2a–3a.

6. InComm appealed the California Court of Appeal's holding to the California Supreme Court, emphasizing the City Attorney's failure to satisfy the relatedness requirement. *Id.* at 27a–62a. On October 29, 2025, the California Supreme Court summarily declined to review InComm's appeal. *Id.* at 1a.

7. On December 12, 2025, the City Attorney amended its complaint, adding conclusory statements that "[n]umerous" unnamed California consumers have "reported" to unnamed sources that they have experienced package tampering and have had difficulty obtaining refunds. *See, e.g.*, Am. Compl. ¶¶ 55, 82–83, No. CGC-23-610333 (Cal. Sup. Ct. Dec. 12, 2025).

Like the initial complaint, the amended complaint fails to allege injury to any California consumer or entity, and takes issue with business practices that InComm undisputedly conducted outside of California.

REASONS FOR GRANTING THE PETITION

I. APPELLATE COURTS HAVE DIVIDED REGARDING THE PROPER STANDARD FOR RELATEDNESS.

For due process to be satisfied in an exercise of specific jurisdiction, there must be a relationship between (1) the conduct the defendant directs at the forum and (2) the plaintiff's claim. In *Ford*, the Court clarified that there need not be a strict causal relationship between the defendant's forum-directed conduct and the events precipitating the plaintiff's claim. Rather, it is at least sometimes sufficient for the conduct to "relate to" that claim. *See* 592 U.S. at 361–62. To satisfy this "relatedness" requirement, a plaintiff must demonstrate an "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State." *See id.* at 359–60.

Ford did not define what it means for the plaintiff's suit to be "relate[d] to" the defendant's forum-directed conduct. This Court emphasized that the absence of a strict causation requirement "does not mean anything goes" and that relatedness "incorporates real limits." *Id.* at 362. But the Court did not expound on what *does* go or what the "real limits" of relatedness are. *See id.* at 373–74 (Alito, J., concurring in the judgment); *id.* at 376 (Gorsuch, J., concurring in the judgment); *Baskin v. Pierce & Allred Constr., Inc.*, 676 S.W.3d 554, 576 (Tenn. 2023) (noting that *Ford* "did not identify with particularity the nature and quality of forum activities that sufficiently 'relate to' a claim to allow for the exercise of specific jurisdiction"); *Adams v. Aircraft Spruce & Specialty Co.*, 284 A.3d 600, 616 (Conn. 2022)

(explaining that *Ford* "definitively answered the question of whether specific jurisdiction always requires a causal connection between the defendant's forum contacts and the underlying controversy but left many other questions in its wake").

These unanswered questions about the "real limits" of the relatedness requirement have resulted in a range of conflicting interpretations by federal and state appellate courts. These courts have required different degrees of connection between the defendant's forum-directed conduct and the in-forum occurrence giving rise to the plaintiff's claim. This discord is particularly evident in cases that, like *Ford* and *Bristol-Myers Squibb Co. v. Superior Court of California*, involved injuries allegedly caused by a nationally distributed product or service. In such cases, *Ford* teaches, relatedness may be satisfied by a showing that the defendant "systematically served a market in [the forum state] for the very [products] that the plaintiffs allege malfunctioned and injured them [in those States]." 592 U.S. at 365.

Yet courts applying *Ford* have diverged on what constitutes "systematically serv[ing] a market," and on the degree of connection required between that activity and the malfunction that leads to the plaintiff's injury. Some courts have concluded that a defendant's sales of a product in the forum are sufficiently related to claims of consumer injury from that product, even if those sales were not targeted at a consumer market. In another, more demanding approach, courts have required a showing that the defendant actively directed the injurious product to consumers in the forum. In yet another group of cases, consumer sales of a product to the forum and an in-state consumer injury from the

product are insufficient to confer personal jurisdiction. These discordant approaches reflect an ongoing confusion about the contours of the relatedness requirement as applied to nationally operating companies.

This confusion set the scene for the Superior Court's novel approach in this case. The Superior Court—applying an even more permissive standard than any of the three described above—found relatedness in the absence of *any* connection between the defendant's sales in the forum and the plaintiff's claim. The Superior Court seized on *Ford's* reference to serving a market for "the very product" that caused injury in the forum State. From there, the court somehow drew the conclusion that, once a defendant "systematically serves" a product market within the forum, *any* suit related to that product is automatically related to the defendant's forum contacts for purposes of due process.

Though this interpretation was a notable outlier, demanding even less of the plaintiff than the most permissive approach outlined above, it reflected the same confusion about the contours of the relatedness requirement. Absent a clear consensus on that subject, the Superior Court reimagined the relatedness requirement entirely, and effectively neutered it. This Court should take this opportunity to resolve the discord among appellate courts before it gives rise to even more outlandish interpretations and unjust results.

A. Approach 1: Relatedness is satisfied by forum-directed sales even when the defendant does not direct sales of the injurious product to consumers in the forum.

In the most permissive interpretation of the relatedness requirement (aside from the Superior Court's here), some appellate courts have held that when a defendant engages in forum-directed sales of a product—even if those sales do not serve a consumer market—and the product causes consumer injury in the forum, the sales are sufficiently related to the injury to subject the defendant to personal jurisdiction.

Take, for example, *Sullivan v. LG Chem, Ltd.*, 79 F.4th 651 (6th Cir. 2023). There, LG Chem, a South Korean company, sold lithium-ion batteries—referred to by their model number, "18650"—as "industrial component products" to companies, but not to individual consumers, in Michigan. *Id.* at 657. The plaintiff purchased a battery at a Michigan vape shop and the battery exploded in his pocket in Michigan. *Id.* The Sixth Circuit concluded that although LG Chem did not serve the consumer market in Michigan, the defendant was subject to jurisdiction because LG Chem sold the same batteries for commercial purposes in the forum State as the battery that caused injury to a consumer there. *Id.* at 672. The relatedness requirement was met even though the defendant never directed sales of the injurious product to consumers in the forum.

At least two States' high courts have followed this reasoning. In *LG Chem America, Inc. v. Morgan*, 670 S.W.3d 341 (Tex. 2023), the Texas Supreme Court

found relatedness where LG Chem sold its 18650 batteries to Texas companies, but not to Texas consumers, and a battery installed in an e-cigarette exploded and injured a Texas consumer. *Id.* at 343–44, 348. The court found irrelevant to the relatedness inquiry LG Chem's "intent to serve the industrial versus the individual-consumer market segment." *Id.* at 351. Similarly, in *Dilworth v. LG Chem, Ltd.*, 355 So.3d 201 (Miss. 2022), the Mississippi Supreme Court found relatedness where LG Chem sold its 18650 batteries through the stream of commerce to Mississippi businesses, but not to consumers, and an exploding battery injured a Mississippi consumer. *Id.* at 204, 207. It did not matter that LG Chem's batteries were manufactured for "sophisticated companies" rather than for individual Mississippians like the plaintiff. *Id.* at 205, 208. In both cases, as in *Sullivan*, a defendant was subject to personal jurisdiction despite not having directed sales of the allegedly defective product to consumers in the forum.

B. Approach 2: Relatedness requires that the defendant direct sales of the injurious product to consumers in the forum.

Other appellate courts have come out the opposite way when presented with nearly identical facts. These courts have held that, to be subject to suit for injuries caused by consumer use of a product in the forum, a defendant must be engaged in the purposeful sale of the product to *consumers* in that forum.

For example, in *B.D. ex rel. Myers v. Samsung SDI Co.*, 143 F.4th 757 (7th Cir. 2025), Samsung, a South Korean company, sold 18650 batteries to companies for use in consumer products. *Id.* at 763. The plain-

tiff's relative purchased an 18650 battery at an e-cigarette store in Indiana, the battery exploded in the plaintiff's pocket in Indiana, and the plaintiff sued Samsung in Indiana. *Id.* at 763–64. The Seventh Circuit held that there was no personal jurisdiction, reasoning that there was a "disconnect between Samsung['s] purposeful in-state contacts, through an *end-product stream of commerce*, and [the plaintiff's] lawsuit, which stem[med] from a *consumer* purchase of an individual battery." *Id.* at 771 (emphases added).

Other appellate courts have followed *Myers*. In *Ethridge v. Samsung SDI Co.*, --- F.4th ---, 2025 WL 3628210 (5th Cir. Dec. 15, 2025), months after first holding that a Texas district court had personal jurisdiction over Samsung, the Fifth Circuit reheard the appeal and reversed itself. *Id.* at *1. The court relied on evidence, similar to evidence presented in *Myers*, showing that Samsung had made substantial efforts to prevent individual consumers from obtaining 18650 batteries. *Id.* at *2. Because Samsung had "affirmatively limited its contacts to approved manufacturers in Texas" and the plaintiff "ha[d] not shown that his injuries [were] related to those contacts," there was no personal jurisdiction. *Id.*

In a nearly identical dispute, the Nebraska Supreme Court also held that there was no personal jurisdiction. *Franceschi v. LG Chem, Ltd.*, 580 P.3d 1279, 1286 (Neb. 2025). Relying on *Myers*, the court found that although the plaintiff had shown that LG Chem was involved in an "end-product stream of commerce . . . to produce 18650 battery packs that would be incorporated into end products," it did not provide evidence that LG Chem served a "consumer market."

Id. at 1285. Thus, as in *Myers*, the plaintiff's injuries did not relate to the defendant's forum contacts.

The Ninth Circuit reached a similar conclusion in *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496 (9th Cir. 2023). There, LG Chem shipped 18650 batteries "to and through the port of Honolulu" and sold residential solar batteries in Hawaii. *Id.* at 504. The plaintiff purchased an 18650 battery to power an e-cigarette, the battery exploded in his mouth, and the plaintiff sued LG Chem in Hawaii. *Id.* at 501–02. The Ninth Circuit held that there was no personal jurisdiction, reasoning that "[t]here is little reason to believe that either the firm's port contacts or [LG Chem's] solar contacts have anything to do with Hawaii residents' acquisition of 18650 lithium-ion batteries." *Id.* at 506–07.

Under this second approach—followed by at least three circuits and one state supreme court—relatedness requires a defendant to direct sales of the allegedly injurious product to the consumer market in the forum; it is insufficient for a defendant to have sold the product in a commercial, non-consumer market and for a consumer to be injured by the product in the forum. This is a more stringent standard than the approach, described above, of the Sixth Circuit and the Texas and Mississippi Supreme Courts.

C. Approach 3: Relatedness is not satisfied even when the defendant directs consumer sales to the forum and a consumer is injured there.

Meanwhile, under the most stringent interpretation of relatedness, appellate courts have sometimes required even more than a defendant's consumer-directed sales of a product to the forum in which it alleg-

edly causes injury. For example, in *Alexander v. Anheuser-Busch, L.L.C.*, No. 19-30993, 2021 WL 3439131 (5th Cir. Aug. 5, 2021), Anheuser-Busch, a Missouri company, sold beer in Louisiana. *Id.* at *3. The plaintiff sued Anheuser-Busch in Louisiana, alleging that the company conspired with his adversary to poison his beer there. *Id.* at *1. Although Anheuser-Busch's sales of beer in Louisiana and the alleged poisoning of the plaintiff's beer in Louisiana involved the same product, the Fifth Circuit, in an unpublished opinion, held that Anheuser-Busch's sales and the plaintiff's allegations were not related. *Id.* at *3. The court explained that "selling beer and poisoning beer are unrelated activities." *Id.* Sales of the beer to consumers in the forum, plus an alleged consumer injury in the forum connected to the beer, were insufficient to confer personal jurisdiction where the defendant had not directed wrongful conduct to the forum State.

Consumer sales and an in-state injury were also deemed insufficient in *Johnson v. UBS AG*, 860 F. App'x 531 (9th Cir. 2021). There, UBS, a Swiss bank that generated millions of dollars of revenue from California, allegedly "indirectly solicited" a California investor to wire a $4 million investment to UBS in Switzerland. *Id.* at 531–33. The investor wired the solicited funds but did not receive a return on or an accounting of the funds, so the investor's children sued UBS in California. *Id.* at 531. In an unpublished opinion, the Ninth Circuit held that the plaintiffs failed to show how UBS's "receipt of [the investor's] transfer from California [was] sufficiently related to [UBS's] regular and continuous business contacts with California." *Id.* at 533. That is, although UBS solicited an investment from a Californian who was injured by that

same investment, the court found no personal jurisdiction.

These conclusions are irreconcilable with the first two approaches described above. Under those approaches, a defendant's sales of a product—either directly to consumers (Approach 2) or even just to manufacturers that use the product as an input (Approach 1)—are sufficient to confer personal jurisdiction over a claim premised on an injury the product causes in the forum State. Not so in *Alexander* and *Johnson*, where something more was required. In *Alexander*, the defendant was required to have sold beer to consumers *and* to have poisoned the plaintiff's beer there. 2021 WL 3439131, at *3. And in *Johnson*, the court required a stronger connection between UBS's "receipt of [the investor's] transfer from California" and UBS's "regular and continuous business contacts with California." 860 F. App'x at 533. *Alexander* and *Johnson* represent yet another, and even more stringent, approach to relatedness after *Ford*.

D. Approach 4: Relatedness is satisfied when there is no connection between the defendant's sales and the plaintiff's claim.

These varied approaches illustrate the persistent lack of consensus among lower courts about the requisite connection between a defendant's forum contacts and a plaintiff's claim. Without further guidance from this Court as to what "real limits" are imposed by the relatedness requirement, *Ford*, 592 U.S. at 362, courts will continue to apply that requirement in unpredictable and contradictory ways.

This case is a stark example. As discussed below, rather than follow any of the approaches outlined

above, the Superior Court found the exercise of personal jurisdiction proper in the absence of *any* connection between InComm's sales in California and the City Attorney's claim. The Superior Court's decision represents the most expansive, and the most obviously incorrect, approach to the relatedness requirement in *Ford*'s wake.

II. THE DECISION BELOW IS WRONG.

The widespread confusion among appellate courts about the proper standard for relatedness is not the only reason this Court should grant certiorari. This case also presents an opportunity to correct the Superior Court's egregious errors, now upheld by the California appellate courts, while clarifying the law.

The Superior Court adopted an untenably permissive approach to relatedness. This error was manifest in several aspects of its opinion. *First*, in a single section of its opinion—titled "InComm Purposefully Directed the Marketing, Sale & Distribution of Vanilla Cards at California and California Consumers"—the court improperly conflated the purposeful availment and relatedness requirements of specific personal jurisdiction, merging them into one "minimum contacts" inquiry. The court reasoned that InComm's purposeful availment of the California market through its sales of Vanilla Gift Cards "establish[ed] the minimum contacts necessary to subject InComm to specific jurisdiction." Pet. App. 14a. Having found that InComm's "minimum contacts" were sufficient to establish purposeful availment, the court declared in the concluding paragraph of the same section that "the People's allegations of InComm's unfair business practices related to InComm's directed sales in California." *Id.* at 18a.

Thus, the court treated InComm's purposeful availment—its sales of Vanilla Gift Cards directed to California—as the beginning and end of the jurisdictional analysis. It barely acknowledged the second requirement of relatedness between the defendant's purposeful availment and the plaintiff's claims.

Second, the court's fleeting discussion of the relatedness requirement reflected a misunderstanding of the requirement. The court tested the connection between InComm's *allegedly wrongful, out-of-state conduct* and InComm's forum-directed conduct, rather than between the *plaintiff's claim* and InComm's forum-directed conduct. As the trial court explained, InComm's allegedly wrongful conduct included the following: that InComm's Vanilla Gift Cards "can be drained of value by unauthorized third parties before the recipient or . . . cardholder uses the card"; that InComm "could protect the unique information necessary to use the card—the sixteen-digit card number, expiration date, CVV PINs and bar codes—by using secure, tamper-evident packaging or applying scratch-off labels to prevent unauthorized use," but does not do so; and that InComm "do[es] not have an adequate process to handle disputed transactions and do[es] not make refunds for funds stolen from drained cards." *Id.* at 6a. It is undisputed that none of these allegedly wrongful actions and omissions occurred in California, because all of the relevant business operations are in Georgia. It is also undisputed that the City Attorney did not premise its claims on any alleged injury caused by InComm's products in California. The court nevertheless found that the relatedness requirement was met because those actions and omissions related to a *product* that InComm sells in California. *See id.* at 18a.

That is not how relatedness works. The required connection is between the "plaintiff's claims" and the "defendant's contacts" with the forum, not between the defendant's wrongful, out-of-state conduct and the defendant's contacts with the forum. *Ford*, 592 U.S. at 359. That is why, under each of the three conflicting approaches discussed above, the courts have consistently examined the connection between the defendant's purposeful availment and the injury giving rise to the plaintiff's claims. Here, too, the Superior Court should have examined the relationship between the plaintiff's claims and InComm's conduct, rather than the relationship between InComm's conduct and InComm's conduct.

By applying the wrong test, the Superior Court contravened this Court's holding in *Bristol-Myers*. There, the drug manufacturer Bristol-Myers Squibb ("BMS") sold the prescription drug Plavix in California; had five research and laboratory facilities, 160 employees, 250 sales representatives, and a lobbying office in California; and contracted with a California distributor to sell Plavix nationally. 582 U.S. at 258–59, 268. Accordingly, BMS—like InComm in this case—conceded the "purposeful availment" requirement of specific jurisdiction. The nonresident plaintiffs "alleg[ed] that Plavix had damaged their health" and brought claims for, among other things, "products liability, negligent misrepresentation, and misleading advertising." *Id.* at 259.

Applying a "sliding scale approach" to jurisdiction, the California Supreme Court concluded that the magnitude of BMS's Plavix-related California business activities supported a finding of relatedness, despite their merely tangential connection to the plaintiffs'

claims. *Id.* at 260–61. This Court rejected that "sliding scale approach," describing it as a "loose and spurious form of general jurisdiction." *Id.* at 264. The Court explained that personal jurisdiction requires an "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* (quoting *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011)). In applying this requirement, the Court emphasized that BMS "did not develop Plavix in California, did not create a marketing strategy for Plavix in California, and did not manufacture, label, package, or work on the regulatory approval of the product in California." *Id.* at 259. The Court thus concluded that the requisite connection between the forum and the plaintiffs' claims was missing because "all the conduct giving rise to the nonresidents' claims occurred elsewhere." *Id.* at 265.

The Superior Court in this case ignored the lessons of *Bristol-Myers*. InComm's allegedly wrongful conduct, like BMS's, occurred entirely outside of California. Just as there was no connection between BMS's California contacts (including its California sales) and the *Bristol-Myers* plaintiffs' claims, there is no connection between InComm's California contacts (its California sales) and the City Attorney's claims. By granting dispositive weight to InComm's California contacts merely because they related to the same product as InComm's allegedly wrongful, Georgia-based conduct, the Superior Court resurrected precisely the kind of "loose and spurious form of general jurisdiction" that this Court rejected in *Bristol-Myers*.

The Superior Court's approach to the relatedness requirement renders the requirement meaningless. Under such an approach, InComm would be subject to personal jurisdiction in California in any case involving Vanilla Gift Cards, even if nothing it did in California related to the plaintiff's claims, and Vanilla Gift Cards caused no injury in California. What is more, any company that sells a product nationwide would be subject to jurisdiction in any state where a municipal attorney found fault with the defendant's manufacturing, promotion, or sale of that product. Such a result is irreconcilable with the limits of due process that this Court has applied for decades.

Third, and relatedly, the Superior Court erred by assuming that the absence of in-state injury was irrelevant to the personal jurisdiction analysis. InComm has repeatedly emphasized that the City Attorney did not offer any well-pleaded allegations or produce any evidence that a single Californian was injured by InComm's purported wrongful conduct. *See* Pet. App. 125a–127a; Reply ISO Mot. to Quash at 5–7, *People v. InComm Fin. Servs., Inc.*, No. CGC-23-610333 (Cal. Sup. Ct. Mar. 28, 2025). The Superior Court brushed aside that argument, calling it "unhelpful" because "[a] pleader has no burden of proving the truth of the allegations . . . in order to justify the exercise of jurisdiction over nonresident parties." Pet. App. 11a n.3.

The Superior Court's reasoning missed the point. The issue was not that the City Attorney failed to "prov[e] the truth" of its allegations; rather, the issue was that, after ten months of jurisdictional discovery, the City Attorney had not tied its claims to a single instance of in-state injury relating to InComm's con-

duct—despite its burden to do so, *see In re Auto. Antitrust Cases I & II*, 135 Cal. App. 4th 100, 110 (Cal. Ct. App. 2005)—and had not alleged that a single Californian was injured. Indeed, the City Attorney expressly disavowed any need to produce such evidence or make such an allegation before haling a foreign entity into a California state court to answer for the City Attorney's criticisms of its products. See Mot. to Remand at 17 n.3; Reply ISO Mot. to Remand at 15–16; Answer to Pet. for Review at 20–22.

Far from being "unhelpful," the lack of in-state injury in this case is dispositive. In *Ford*, the plaintiffs' claims arose entirely from injuries they suffered in Minnesota and Montana when their vehicles malfunctioned there. 592 U.S. at 356. In several statements, the *Ford* Court repeatedly explained that those in-state injuries were essential to its finding of jurisdiction over Ford in the forum states:

- "When a company like Ford serves a market for a product in a State *and that product causes injury in the State* to one of its residents, the State's courts may entertain the resulting suit." 592 U.S. at 355 (emphasis added).
- The Court affirmed that where Ford's conduct "encourage[d] Montana residents to drive Ford vehicles" and "that driving *cause[d] in-state injury*, the ensuing claims ha[d] enough of a tie to Ford's Montana activities to support jurisdiction." *Id.* at 357 (emphasis added) (internal quotation marks omitted).
- "[W]hen a corporation has continuously and deliberately exploited [a State's] market, it must reasonably anticipate being haled into [that

State's] court[s] to *defend actions based on products causing injury there*." *Id.* at 364 (emphasis added) (internal quotation marks omitted).

- Ford "systematically served a market in Montana and Minnesota *for the very vehicles that the plaintiffs alleged malfunctioned and injured them in those States*." *Id.* at 365 (emphasis added) (internal quotation marks omitted).

The fact that the *Ford* plaintiffs were injured in the forum States was an indispensable part of the Court's holding. Yet the decision below failed even to consider the absence of in-state injury before declaring that In-Comm—a Georgia-based company whose relevant conduct occurred entirely outside California—could be haled into a California court.

III. THIS CASE IS AN IDEAL VEHICLE TO ANSWER AN IMPORTANT AND RECURRING CONSTITUTIONAL QUESTION.

This case presents an ideal opportunity for the Court to resolve the pervasive confusion in the lower courts about the proper construction of the relatedness requirement. The question of what connection due process requires between a plaintiff's claim and the defendant's forum contacts is undeniably important—indeed, in recent years, this Court has granted certiorari three times to address that very question. *See Ford*, 592 U.S. at 358; *Bristol-Myers*, 582 U.S. at 261; *Walden v. Fiore*, 571 U.S. 277, 284 (2014). Yet despite the Court's guidance, the disagreement among lower courts has not only persisted, but grown worse. *See supra* Section I. This confusion risks depriving corporate defendants of the predictability that the Due Process Clause is supposed to provide. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297

(1980) (explaining that, to comport with due process, jurisdictional requirements must provide corporate defendants "with some minimum assurance as to where [their] conduct will and will not render them liable to suit").

That risk is especially acute in California, which has the largest economy of any U.S. State and the fourth largest economy in the world. *See* Jireh Deng, *California economy becomes the fourth largest in the world*, Business Insider (Apr. 29, 2025), https://tinyurl.com/3x22zsxh (citing International Monetary Fund data). Virtually every company that sells a product or service nationwide will have "substantial and purposeful" contacts with California, which the courts below found sufficient to hale InComm into a California court. Pet. App. 15a; *cf. Bristol-Myers Squibb Co. v. Superior Ct. of San Francisco Cnty.*, 1 Cal.5th 783, 835–36 (2016) (Werdegar, J., dissenting) ("As California holds a substantial portion of the United States population, any company selling a product or service nationwide, regardless of where it is incorporated or headquartered, is likely to do a substantial part of its business in California."), *rev.*, 582 U.S. 255 (2017).

Because of its outsized role in the U.S. economy, the need for an appropriately cabined standard is the *most* urgent in California—yet, historically, California courts have attempted to adopt some of the loosest jurisdictional standards in the country. Time and again, this Court has stepped in to "protect the liberty of the nonresident defendant," *Walden*, 571 U.S. at 284, when California courts stretched those standards beyond their constitutional limits. *See, e.g.*, *Asahi Metal Indus. Co. v. Superior Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 111 (1987) (rejecting California Superior

Court's attempt to assert personal jurisdiction over corporate defendant based on its mere "awareness that its valves would be sold in California" via the stream of commerce); *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (rejecting proposition that a corporate defendant should be deemed a citizen of California merely because its retail sales in the State "roughly reflect[ed] California's larger population," as such a test would render "nearly every national retailer" a California citizen, "no matter how far flung its operations"); *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014) (reversing the Ninth Circuit's holding that California courts could exercise "all-purpose jurisdiction" over any corporate defendant across the globe, so long as that defendant had engaged in "continuous and systematic" business in the State); *Bristol-Myers*, 582 U.S. at 264 (rejecting California's "sliding scale approach" to specific jurisdiction as a "loose and spurious form of general jurisdiction").

This case is the latest chapter in California courts' long history of jurisdictional overreach. And the risks of that overreach are even more profound here in light of the statutory scheme that gave rise to this suit. The San Francisco City Attorney's Office brought this action pursuant to Section 17204 of California's UCL, which empowers municipal attorneys from cities of fewer than 1 million people to file suits on behalf of the entire state of California. *See* Cal. Bus. & Prof. Code § 17204 (permitting city attorneys in any California city with a "population in excess of 750,000" to bring suit "in the name of the people of the State of California upon their own complaint").

The City Attorney, an official elected to his role with fewer than 250,000 votes, has already leveraged

that authority to bring a sprawling array of suits against corporate defendants engaged in all manner of commercial activities nationwide. *See* Heather Elliott, *Associations and Cities As (Forbidden) Pure Private Attorneys General,* 61 Wm. & Mary L. Rev. 1329, 1370 (2020) (noting that the San Francisco City Attorney's affirmative litigation program "operates like a non-profit public interest law firm within the City Attorney's Office and has litigated a wide variety of prominent issues"). Most recently, the City Attorney invoked the same set of statutes at issue here in an attempt to punish purveyors of so-called "ultra-processed foods." *See* Press Release, City Att'y of San Francisco, San Francisco City Attorney Chiu sues largest manufacturers of ultra-processed foods (Dec. 2, 2025), https://tinyurl.com/yvb23555. And the City Attorney is not alone. Courts in recent years have witnessed a dramatic rise in lawsuits brought by State Attorneys General against national companies in connection with myriad products and services sold nationwide. *See, e.g.*, Press Release, Att'y Gen. of Texas, Attorney General Ken Paxton Takes Action Against General Mills as Part of Investigation into the Company for Violations of Texas Law (May 13, 2025), https://tinyurl.com/3r6yrjc9; Press Release, Mich. Dep't of Att'y Gen., AG Nessel Files Lawsuit Against Roku for Allegedly Violating Children's Data Privacy Laws (Apr. 29, 2025), https://tinyurl.com/32wcp353; Press Release, Cal. Dep't of Justice, Attorney General Bonta Announces Lawsuit Against Oil and Gas Companies for Misleading Public About Climate Change (Sept. 16, 2023), https://tinyurl.com/yc4z6t5x.

The proliferation of such far-reaching suits underscores the dangers posed by the California courts' reasoning in this case and by the continued confusion in

the lower courts about the "real limits" of the relatedness requirement. The decision below would enable the City Attorney, or any other state or local agency, to assert general police power to regulate the business practices of any company that sells products or services nationwide—regardless of whether that agency's claims relate to an in-state injury—so long as the defendant's alleged out-of-state misconduct related in some way to the products it sells into the forum. That is exactly what happened here: the Superior Court asserted specific personal jurisdiction over InComm, a Georgia company, in connection with alleged misconduct that occurred entirely outside California and caused no injury there. That result is a plain violation of the Due Process Clause.

This case is an excellent vehicle to provide much-needed clarity about the contours of the relatedness requirement. The question presented is purely legal. InComm does not dispute for purposes of this petition any fact on which the court below relied, nor does it dispute that it purposefully availed itself of California's laws. Rather, the question presented is whether such purposeful availment alone is sufficient to confer specific personal jurisdiction over an out-of-state corporate defendant in the absence of any evidence or claim of in-forum injury. The resolution of that question is outcome-determinative here. This case thus offers an opportunity for the Court to resolve the growing divide in the lower courts about the relatedness requirement and clarify a critically important and recurring constitutional question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JANUARY 2026

APPENDIX

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APPENDIX A – ORDER DENYING PETITION FOR REVIEW ENTERED BY THE SUPREME COURT OF CALIFORNIA ON OCTOBER 29, 2025

COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION ONE - NO. A173146

S292572

IN THE SUPREME COURT OF CALIFORNIA

En Banc

INCOMM FINANCIAL SERVICES *et al.*,

Petitioners,

v.

SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO,

Respondent;

THE PEOPLE, Real Party in Interest.

The applications to appear as counsel pro hac vice are granted. (Cal. Rules of Court, rule 9.40(a).)

The petition for review is denied.

GUERRERO
Chief Justice

APPENDIX B – ORDER DENYING PETITION FOR WRIT OF MANDATE ENTERED BY THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, ON AUGUST 13, 2025

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

A173146

(San Francisco City & County Superior Ct.
No. CGC23610333)

INCOMM FINANCIAL SERVICES *et al.*,

Petitioners,

v.

THE SUPERIOR COURT OF THE CITY
AND COUNTY OF SAN FRANCISCO,

Respondent;

PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

THE COURT:

The petition for writ of mandate is denied. Real parties in interest sufficiently demonstrated that petitioner's California contacts are related to the claims raised in

the underlying litigation. (See *SK Trading International Co. Ltd. v. Superior Court* (2022) 77 Cal.App.5th 378, 390 [relatedness shown where "the People's claims arise from SK Trading's involvement in the decisionmaking that was undisputedly directed towards the California market," "[SK Trading's] officers were directly involved in the formulation of the policies that the complaint alleges constituted an anticompetitive scheme," and SK Trading participated in hiring agent as trader in spot market].)

Petitioner has forfeited the argument that the exercise of personal jurisdiction would offend traditional notions of fair play and substantial justice. The argument was not raised until petitioner's reply to the opposition to petitioner's motion to quash. (Petr's Exh., Vol. I, pp. 148-149.) Real parties in interest therefore had no opportunity to respond to it in writing. (See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783 [consideration of argument first made in reply to opposition to discovery motion prejudiced petitioner by "precluding St. Mary from addressing such claims in her opposition."]; see also *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 786 ["[I]ssues not addressed as error in a party's opening brief with legal analysis and citation to authority are forfeited."].) Moreover, this was an issue on which petitioner bore the burden of proof (*L.W. v. Audi AG* (2025) 108 Cal.App.5th 95, 108), but it failed to present any evidence to support this claim in the court below.

Date: 08/13/2025 **Humes** P. J.
Before: Humes P.J., & Langhorne Wilson & Smiley JJ.

APPENDIX C – ORDER DENYING MOTION TO QUASH SERVICE OF THE SUMMONS ENTERED BY THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO, ON APRIL 22, 2025

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Case No. CGC-23-610333

PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH SAN FRANCISCO CITY ATTORNEY DAVID CHIU,

Plaintiff,

v.

INCOMM FINANCIAL SERVICES, INC.; TBBK CARD SERVICES, INC.; SUTTON BANK; PATHWARD, N.A.; AND DOES 1-10,

Defendants.

ORDER DENYING MOTIONS (3) TO QUASH SERVICE OF SUMMONS

INTRODUCTION

This is an unfair competition lawsuit brought by David Chiu, the City Attorney of San Francisco, on behalf of the People of the State of California (the People) against defendants InComm Financial Services, Inc. (InComm) and defendants TBBK Card Services, Inc. (TBBK),

Sutton Bank, and Pathward, N.A. (collectively the Banks) based on their marketing and distribution of prepaid gift cards, known as "Vanilla cards," throughout California. Before the court are three motions to quash service of the summons on the ground the court lacks personal jurisdiction, one by InComm, one by TBBK and Sutton Bank jointly, and one by Pathward. The motions came on for hearing on April 11, 2025, at 10:00 a.m. in Department 606, the Honorable Jeffrey S. Ross presiding.[1] John George and Nancy Harris (San Francisco City Attorney's Office) appeared for the People. Colleen Anderson and Jane Metcalf (Patterson Belknap Webb & Tyler LLP) appeared for InComm. Christina Chen (Morgan, Lewis & Bockius LLP) appeared for TBBK and Sutton Bank. Daniel Rockey (Bryan Cave Leighton Paisner LLP) appeared for Pathward.

IT IS HEREBY ORDERED that InComm's motion is **DENIED,** the motion by TBBK and Sutton Bank is **DENIED,** and the motion by Pathward is **DENIED.**

BACKGROUND

The People commenced this action for injunctive relief and civil penalties under Business and Professions Code section 17200 (the UCL) on November 9, 2023. The People promptly served InComm, TBBK, Sutton Bank, and Pathward within a week of filing the complaint as

1. The parties also seek to seal portions of the briefing and evidence submitted in connection with these motions. The court addresses the sealing motions by separate concurrent order.

reflected in the proofs of service filed on November 29, 2023. The People allege InComm is a "major provider of prepaid nonreloadable debit cards" that is sells as "Vanilla cards" in stores such as Safeway and Target throughout California and the United States. (Compl., ¶¶ 2, 20-32.) Due to insufficient security measures, the Vanilla cards can be drained of value by unauthorized third parties before the recipient or Vanilla cardholder uses the card. (Compl., ¶¶ 2-3, 33-40.) Many consumers have reported that they have presented the Vanilla card for payment for the very first time only to find that the balance of the card is $0. (Compl., ¶¶ 2, 41- 42.) The People allege that InComm has long known about this issue but failed to remedy this problem. The People argue that, instead, InComm could protect the unique information necessary to use the card—the sixteen-digit card number, expiration date, CVV PINs and bar codes—by using secure, tamper-evident packaging or applying scratch-off or peel-off labels to prevent unauthorized use. (Compl., ¶¶ 43-73.) The People also allege that InComm and the Banks do not have an adequate process to handle disputed transactions and do not make refunds for funds stolen from drained cards. (Compl., ¶¶ 74-93, 98-100.) The People assert two causes of action for unfair competition based on unlawful, unfair, and fraudulent business practices, one against InComm and one against the Banks. The People seek to enjoin the defendants' unlawful, unfair, and fraudulent business practices, order the defendants to pay restitution to California consumers, and impose penalties of $2,500 for each violation.

Appendix C

LEGAL STANDARD

"Personal jurisdiction over a nonresident defendant depends upon the existence of essentially two criteria: first, a *basis* for jurisdiction must exist due to defendant's minimum contacts with the forum state; second, given that basis for jurisdiction, jurisdiction must be *acquired* by service of process in strict compliance with the requirements of our service statutes. ([Code Civ. Proc.,] §§ 412.10-417.40.)" (*Ziller Electronics Lab GmbH v. Super. Ct.* (1988) 206 Cal.App.3d 1222, 1229, original italics.) Under Code of Civil Procedure section 418.10, a defendant may move to quash service of summons on the ground the court lacks personal jurisdiction over him or her. "Upon challenge by a specially appearing nonresident defendant pursuant to section 418.10, a plaintiff must establish that both criteria are met." (*Ziller, supra,* 206 Cal.App.3d at p. 1229.) "A plaintiff opposing a motion to quash service of process for lack of personal jurisdiction has the initial burden to demonstrate facts establishing a basis for personal jurisdiction." (*HealthMarkets, Inc. v. Super. Ct.* (2009) 171 Cal.App.4th 1160, 1167-68.) "If the plaintiff satisfies that burden, the burden shifts to the defendant to show that the exercise of jurisdiction would be unreasonable." (*Id.* at p. 1168.)

A motion to quash is an evidentiary motion. The plaintiff tasked with establishing the existence of jurisdiction must meet this burden with "competent evidence in affidavits and authenticated documentary evidence. An unverified complaint may not be considered as an affidavit supplying necessary facts." (*Ziller, supra,*

206 Cal.App.3d at p. 1233.) And declarations should contain "specific evidentiary facts" that allow "a court to form an independent conclusion on the issue" rather than "vague assertions of ultimate facts ...." (*Ibid.;* accord *Jewish Defense Organization, Inc. v. Super. Ct.* (1999) 72 Cal.App.4th 1045, 1055.)

DISCUSSION

"California courts may exercise personal jurisdiction on any basis consistent with the Constitutions of California and the United States. (Code Civ. Proc.,§ 410.10.)" (*Pavlovich v. Super. Ct.* (2002) 29 Cal.4th 262, 268.) "A state court's assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process clause of the federal Constitution if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate '"traditional notions of fair play and substantial justice."' (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.)" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444-45.)

"Personal jurisdiction may be either general or specific." (*Vons, supra,* 14 Cal.4th at p. 445.) "A nonresident defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are 'substantial ... continuous and systematic.' [Citations.]" (*Ibid.*) "If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still

may be subject to the *specific* jurisdiction of the forum, if the defendant has purposefully availed himself or herself of forum benefits [citation] and the 'controversy is related to or "arises out of" a defendant's contact with the forum.' [Citations.]" (*Vons, supra,* 14 Cal.4th at p. 446, original italics.)

It is undisputed that InComm, TBBK, Sutton Bank, and Pathward are not at "home" in California or subject to general jurisdiction in this forum. The issue is whether they had sufficient, controversy-related minimum contacts with California to support the exercise of personal jurisdiction. The court finds that the People have presented ample evidence—evidence that is largely undisputed—of InComm's minimum contacts with California and rebutted the argument that the exercise of jurisdiction would be unreasonable. Additionally, as to TBBK, Sutton Bank, and Pathward (the Banks), the People make a sufficient showing, and these banks fail to demonstrate the exercise of personal jurisdiction would be unreasonable. To the extent TBBK, Sutton Bank, and Pathward join in InComm's motion, their motion lacks merit for the same reasons articulated in connection with InComm below. (See Sutton/TBBK Mem. of Pts. & Auth. at pp. 7:25-8:2; Pathward Mem. of Pts. & Auth. at p. 3:12-15.) Rather than introducing evidence, InComm and the Banks attack the complaint's allegations.[2] For example,

2. While federal cases often discuss the threshold question of the plaintiff's obligation to plead jurisdictional facts, a motion to quash in California is *an evidentiary motion* and does not merely test the legal sufficiency of the pleading for purposes of determining whether jurisdictional discovery should be allowed.

InComm inaccurately claims the complaint identifies "no" California business practices whatsoever that could support the exercise of personal jurisdiction. (InComm Mem. of Pts. & Auth. at p. 1.) On reply, they ignore or try to recast the evidence and its legal significance, without success and in lieu of making their own evidentiary showing. Likewise, their efforts to distinguish the People's authority fails. None of the defendants adequately address the issue of reasonableness, which is their burden on these motions.

I. InComm Is Subject to Personal Jurisdiction in California

The People's overwhelming evidence of InComm's minimum California contacts refutes InComm's argument that it lacks minimum contacts sufficient to support the exercise of personal jurisdiction. Recognizing that reality for the reasons discussed below, at the hearing, InComm affirmatively conceded its purposeful availment. The court disagrees with InComm' s contention that its contacts lack

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Consequently, InComm's continued focus—both in its motion and on reply—on the allegations in the pleading is inapposite. The complaint and its allegations are material "in that it defines the cause of action, the nature of which has some bearing upon the decision whether it is fair and reasonable to require the nonresident parties to appear and defend in this state." (*Lundgren v. Super. Ct.* (1980) 111 Cal.App.3d 477,485; accord *Mihlon v. Super. Ct.* (1985) 169 Cal.App.3d 703, 710.) But the motion does not test the legal sufficiency of the pleading or the sufficiency of the jurisdictional allegations as distinct from the *evidence* presented by the People in opposition to the motion.

a sufficient nexus to this dispute. Ultimately, InComm did not establish that the exercise of jurisdiction would be unreasonable, a point that remained unaddressed at the hearing. InComm's motion, thus, fails.[3]

A. InComm Purposefully Directed the Marketing, Sale & Distribution of Vanilla Cards at California and California Consumers

"The United States Supreme Court has explained that placing goods in the stream of commerce with the expectation that they will be purchased by consumers in the forum state indicates an intention to serve that market and constitutes purposeful availment, as long as the conduct creates a 'substantial connection' with the forum state—for example, if the income earned by a manufacturer or distributor from the sale or use of its goods in the forum state is 'substantial.' (*Bridgestone Corp. v. Super. Ct.* (2002) 99 Cal.App.4th 767, 774-75, 777.)" (*People ex rel. Harris v. Native Wholesale Supply*

3. InComm devotes the first half of its motion and portions of its reply to refuting the merits and veracity of the People's allegations. Such arguments are unhelpful and do not advance the proper analysis for purposes of this motion, namely whether InComm had sufficient controversy-specific minimum contacts. "[T]he pleader has no burden of proving the truth of the allegations constituting the causes of action in order to justify the exercise of jurisdiction over nonresident parties." (*Lundgren, supra,* 111 Cal.App.3d at p. 485.) Additionally, the contention that the People have not shown there are any California victims of card draining due to InComm's alleged insufficient security and fraud prevention practices is contrary to the evidence presented. (Louk Decl., Exs. M, O.)

Co. (Native Wholesale) (2011) 196 Cal.App.4th 357,361 [compiling cases].) "Purposeful availment does not arise where a nonresident manufacturer or distributor merely foresees that its product will enter the forum state." (*Native Wholesale,* 196 Cal.App.4th at p. 361.) "But purposeful availment is shown where the sale or distribution of a product '"arises from the efforts of the manufacturer or distributor to serve, directly *or indirectly,* the [forum state's] market for its product...."' [Citations.]" (*Id.* at pp. 361-62.)

The People establish InComm's purposeful availment by introducing evidence of the California sales volume of Vanilla cards; InComm's control of California sales and distribution; and its direct commercial activity in California. It is undisputed that in 2023 alone, InComm sold six million Vanilla cards with face values ranging from $20 to $500 in California and that it derives $20 million in annual revenue from the sale of Vanilla cards in California. (Louk Decl., Exs. D-E [Stipulated Facts].) From January 2019 through June 2024, InComm sold millions of Vanilla cards totaling hundreds of millions of dollars at California Albertsons stores alone. (Louk Decl., Ex. F.) InComm also distributes Vanilla cards at other retailers in California, including Walmart, Walgreens, Save Mart, Sam's Club, 7 Eleven, CVS Pharmacy, DOLLAR TREE, Game Stop, gas stations, pharmacies and local retailers. (Louk Decl., Ex. G.) It is undisputed that, in 2023, InComm made direct sales to consumers and shipped more than 250,000 Vanilla cards, with face value of no less than $6 million, to California addresses. (Louk Decl., Ex. H.) InComm's substantial volume of sales and widespread sales of

Vanilla cards in California, including direct sales and sales through retailers, establish that it did not merely put products into the stream of commerce that arrived in California; it intentionally directed its activities to the forum to serve the California market. (See, e.g., *Jayone Foods, Inc. v. Aekyung Industrial Company Ltd.* (2019) 31 Cal.App.5th 543, 556-57.)

The People's additional evidence about InComm's direct involvement in and control over the sales, marketing, and distribution of Vanilla cards in California buttresses this conclusion. As evidenced by its distribution agreements, InComm has ongoing business relationships with many California retailers that distribute Vanilla cards. (Louk Decl., Exs. G, I.) These agreements unquestionably demonstrate that InComm is actively, intricately, and purposefully involved in the sales, marketing, and distribution of its products *in California.* (See Louk Decl., Ex. I at§§ 1.6 [InComm required marketing materials], 2.1 & 2.3-2.4 [InComm manufacturing, delivery, and installation of store displays], 2.8 [dedicated InComm employee representative and salary reimbursement], 2.11 [prohibiting customer changes to InComm products offered]; accord Louk Decl., Ex. L [agreement with 7 eleven].) For example, Albertsons does not purchase gift cards and then resell them to customers; instead, as stated in the declaration of Albertsons national manager of commissions and gift cards, Daisy Dederick, it hosts displays as directed by InComm and stocked with cards shipped directly from InComm's warehouses to the stores. (Dederick Decl., ¶¶ 5-7.) At Albertsons and other stores, InComm sells directly to California consumers, not to

distributors, intermediaries or the retailers. InComm leases shelf space to place the Vanilla cards in displays that it manufactures, installs, and controls. Pursuant to the master distribution agreements, at Albertsons and other California stores, InComm agents and representatives provide merchandising services and direct the placement, stocking, and organization of Vanilla cards in the displays that InComm maintains. (Dederick Decl., ¶¶ 10-11.) Adam Brault's declaration about the variety of InComm's retailer relationships (Brault Decl., ¶¶ 12-13) does not overcome the People's undisputed evidence that InComm's commercial activities in California are not incidental contacts but rather purposeful activities that establish the minimum contacts necessary to subject InComm to specific jurisdiction.

InComm's reliance on cases that are distinguishable based on factors such as the legal standard applied or the substantially different record presented in those cases is unavailing. For example, *Cole-Parmer Instrument Co. LLC v. Pro. Labs., Inc.* (N.D. Cal. July 20, 2021, No. 20-CV-08493-LHK) 2021 WL 3053201 at *8 is not analogous based on the facts presented, because the district court primarily relied on another trial court decision rather than binding California precedent, and because the court applied a distinct federal standard to assess whether the factual allegations were sufficient. Here, unlike in *Cole-Parmer Instrument Co.,* the People have presented ample evidence to support their theory of personal jurisdiction. Similarly, cases like *Martin Brothers Electric Co. v. Superior Court* (1953) 121 Cal. App.2d 790, 792 are unhelpful as such cases are based

on an opposite scenario to the evidence presented here. Unlike in *Martin Brothers,* the evidence clearly shows that InComm sells products, sends employees, and controls the commercial distribution of its products in California. This is not a case where a consumer was incidentally injured in California by an out-of-state product sold to an out-of-state distributor that happened to make its way to California. Thus, cases like *Martin Brothers,* including *Holland American Line, Inc. v. Wartsila North America, Inc.* (9th Cir. 2007) 485 F.3d 450, 459, do not support InComm's position. And *Martin Brothers* acknowledges that courts *have* found sufficient minimum contacts where, as is the case here, the defendant engaged in its own sales promotion activities and controlled distribution activities in California. (*Martin Brothers, supra,* 121 Cal.App.2d at p. 793, citing *Kneeland v. Ethicon Suture Laboratories, Inc.* (1953) 118 Cal.App.2d 211, *Fielding v. Super. Ct.* (1952) 111 Cal.App.2d 490.) For similar reasons, cases like *Ford Motor Co. v. Montana Eighth Judicial District Court* (2021) 592 U.S. 351, 364-67, which InComm attempts to distinguish, are persuasive and support the court's conclusion here. The People's evidence establishes that, by virtue of its marketing, sale, and distribution of its products, including in the California locations of retailers like Albertsons (to name just one), InComm' s substantial and purposeful commercial activities in the forum support personal jurisdiction. The cases on which InComm relies, on this record, provide further support for the People's position and the court's conclusion that InComm is subject to jurisdiction in California.

InComm's correspondence with California customers, responses to their complaints, and its geofencing activities

provide further grounds for personal jurisdiction. InComm's correspondence with California customers and responses to their complaints are further evidence of the scope and substantial nature of its California activities. In response to the card draining at the heart of this case, InComm communicated with California consumers—a necessary corollary to selling Vanilla cards in California. (See, e.g., Louk Decl., M-O.) Because InComm purposefully and directly sells Vanilla cards in California on behalf of the issuing banks, to service those cards it must and did respond to California customers' complaints about card draining in this forum—the conduct at the heart of this case. (Louk Decl., Exs. P-R.) InComm's geofencing of Vanilla cards further corroborates its direct involvement in and control of the marketing, sales, and distribution of Vanilla cards in California stores. (Louk Decl., Ex. C [evidence about InComm's control over individual cards at particular stores and use of geofencing-type practices].)

As for these additional bases for specific jurisdiction, InComm's authorities are, again, inapposite. Rather than citing California precedent, InComm relies on two federal trial court decisions, which are neither binding nor persuasive, to argue that its responses to customer complaints do not suffice as contacts with the forum. *Resolution Trust Corp. v. First of America Bank* (C.D. Cal. 1992) 796 F.Supp.1333 does not support the proposition that an entity like InComm that is itself conducting business, directly selling merchandise, and staffing employees at California stores, is not subject to personal jurisdiction because the People are not relying on a one-way customer contact with InComm—without

more—to establish personal jurisdiction. The court in *Resolution Trust Corp.* was determining whether an out-of-state bank that otherwise had no California contacts could be subject to personal jurisdiction based solely on one wire transfer. Such facts are entirely distinguishable from the facts presented here. For similar reasons, *Revise v. SFG Equipment Leasing Corp.* (E.D.Cal., June 19, 2007, CV-F-07-0311LJO DLB) 2007 WL 1792313 does not serve as analogous or persuasive authority in light of the facts presented here.

InComm's activities in the forum—the manner in which it packages, displays, and sells Vanilla cards, monitors or inadequately monitors cards (such as through geofencing), and then responds (or fails to adequately respond) to California customers' complaints about card draining—are related to the controversy; they *are* the alleged injury producing activities. InComm is not simply passively hosting a web platform used by third parties and without a sufficient nexus as in the *since-vacated* opinion in *Briskin v. Shopify, Inc.* (9th Cir. 2023) 87 F.4th 404, vacated and rhg. granted (9th Cir. 2024) 101 F.4th 706. And the facts of *Rivelli v. Hemm* (2021) 67 Cal.App.5th 380, a case involving alleged fraud and conflicts of interest in the acquisition of a company's shares by a distributor, is far afield of the facts here such that it does not serve as a helpful analogy. InComm's reply argument disputing the nexus between its forum contacts and the controversy because the People have not prematurely proven the merits of their allegations at this juncture is not only contrary to California jurisprudence but misguided since, as InComm knows, discovery was limited to jurisdiction

and not the merits. "[T]he pleader has no burden of proving the truth of the allegations constituting the causes of action in order to justify the exercise of jurisdiction over nonresident parties." (*Lundgren, supra,* 111 Cal.App.3d at p. 485.) The People's allegations of InComm's unfair business practices related to InComm's directed sales in California support the court's exercise of jurisdiction. The minimum contacts established by the People undoubtedly have a sufficient nexus to the controversy.

B. The Exercise of Personal Jurisdiction Over InComm Is Reasonable

"A determination of reasonableness rests upon a balancing of interests: the relative inconvenience to defendant of having to defend an action in a foreign state, the interest of plaintiff in suing locally, and the interrelated interest the state has in assuming jurisdiction." (*Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 591.) "The factors involved in the balancing process include the following: 'the relative availability of evidence and the burden of defense and prosecution in one place rather than another; the interest of a state in providing a forum for its residents or regulating the business involved; the ease of access to an alternative forum; the avoidance of a multiplicity of suits and conflicting adjudications; and the extent to which the cause of action arose out of defendant's local activities.' [Citations.]" (*Ibid.*)

InComm introduces no evidence of why the exercise of jurisdiction is unreasonable and, therefore, fails to carry *its burden.* Analysis of the factors above, which InComm

neglects, supports the exercise of jurisdiction. First, the limited jurisdiction-focused discovery has disclosed evidence of InComm's substantial sales in California, its handling of California consumer complaints, and ongoing relationships with retailers operating and selling Vanilla cards in California. Nor would InComm be burdened by appearing to defend itself given its active involvement in the sale, marketing, distribution, and monitoring of Vanilla cards in California stores. InComm has made no showing that there is an equivalent or a more accessible alternative forum. Indeed, the case is brought by the People of the State of California who, by definition, have a substantial interest that the forum for the allegedly unfair business practices affecting its residents and consumers be litigated is California.[4] The court finds overwhelming support for its conclusion that it is reasonable for California to exercise jurisdiction over InComm.

II. TBBK and Sutton Bank Are Subject to Personal Jurisdiction in California

TBBK and Sutton Bank's joint motion is devoid of evidence and, instead, challenges the sufficiency of the People's allegations to support the exercise of general jurisdiction—not the theory on which the People rely. Their few sentences about specific jurisdiction misfocus

4. The United States District Court for the Northern District of California remanded this case to state court on March 26, 2024. The federal court's remand order supports the court's conclusions about the reasonableness of the exercise of jurisdiction and undercuts InComm's oral arguments about federalism.

on pleading allegations[5] rather than anticipating the People's evidentiary showing or presenting their own rebuttal evidence and offer no analysis on the issue for which they carry the burden, namely reasonableness.[6] The court concludes that TBBK and Sutton Bank are subject to specific personal jurisdiction.

A. TBBK and Sutton Bank Have Controversy-Specific Minimum Contacts with California

The People establish that TBBK and Sutton Bank, in issuing the Vanilla cards distributed by InComm, purposefully directed their commercial activities at the forum, were highly involved in and had control over the marketing, sales, and distribution of Vanilla cards in California, and are additionally subject to personal

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5. TBBK and Sutton Bank's characterization of the allegations is inaccurate. Thus, even overlooking their failure to discuss what the evidence might show or to present their own evidence sufficient to create a dispute, their argument lacks merit on its face because it fails to address the allegations actually pleaded about all of the defendants' activities in California.

6. The fact that the People bear the initial burden of production is not an excuse for saving all meaningful arguments and evidence for the reply, thereby depriving the People of an opportunity to respond. This is particularly true where the parties have been working on jurisdictional discovery for months and where the People's opposition arguments come as no surprise. Put differently, while Sutton Bank and TBBK do not bear an initial burden of conclusively and affirmatively disproving jurisdiction at the first step of the analysis, the principle that one must not save new arguments and evidence for the reply still applies.

jurisdiction based on the minimum contacts of their agent, InComm, which can be imputed to these banks.[7] (See *Ballard v. Savage* (9th Cir. 1995) 65 F.3d 1495, 1498 [bank that had ongoing agreements with forum residents, mailed account statements, and solicited new business from residents subject to jurisdiction]; *Magnecomp Corp. v. Athene Co.* (1989) 209 Cal.App.3d 526, 537-38 imputing agent's contacts to principal for purposes of personal jurisdiction].) The Banks issue the Vanilla cards, which are described as part of "various prepaid card programs" "developed" by these banks in the Program Management and Processing Services Agreements entered into with InComm (Servicing Agreements). (Louk Decl., Exs. P-Q [Servicing Agreements].) The Banks hired InComm "to provide certain program management services ... including, without limitation, the exclusive marketing and distribution" of Vanilla cards along with "certain processing services." (Louk Decl., Exs. P-Q.) The servicing agreements dictate InComm's marketing, distribution, and processing responsibilities as program manager for Vanilla cards. Indisputably, the Banks retained substantial control over the marketing, sale, and distribution of Vanilla cards, including in California, as relevant to their own minimum contacts and imputation of InComm's minimum contacts based on the servicing agreements, including the "Notice and

7. At the hearing, TBBK and Sutton Bank conceded that jurisdiction *could* be established based on an agency theory but disputed whether the People established they were agents. The court finds the People's showing is sufficient to allow imputation of minimum contacts in addition to these banks' own contacts with the forum.

Approval Obligations" in Article IV that obligated these banks to perform tasks such as reviewing and approving designs and packaging for Vanilla cards (designs that could have impacted the ability of third parties to tamper with and drain the cards) and the terms of the cardholder agreements. (Louk Decl., Exs. P-Q, Y-BB [advertisement and packaging evidence].) Additionally, upon the purchase of a Vanilla card in California, the cardholder enters directly into an agreement with each of the Banks. (Louk Decl., Exs. S-U.) InComm's contracts with Sutton Bank and TBBK specifically address the relationship among InComm, the Banks, the California purchasers of Vanilla cards, and this forum evidencing their collective purposeful involvement in California and compelling the conclusion that they are subject to personal jurisdiction based on their own minimum contacts and the contacts of InComm.[8] (Louk Decl., Exs. P-Q.)

Sutton Bank and TBBK's conclusory and circular reply does not overcome the People's sufficient showing of controversy-specific minimum contacts. They present no conflicting evidence but, rather, attempt unsuccessfully to recharacterize the record.[9] While they cite to improper

8. As with InComm's similar argument, the court rejects Sutton Bank's and TBBK's reliance on cases where a defendant that merely placed products in the stream of commerce was not subject to personal jurisdiction. The Banks' roles are not so limited, and the cases are inapposite.

9. As set forth in the People's opposition, it is the evidence about the nature of the relationship between a principal and agent—not the use of the term "agent" or the parties' characterization of their relationship that controls. Thus, the banks' assertion to the contrary in note 4 of their reply is unpersuasive.

and unhelpful discovery responses that are larded with boilerplate objections in connection with the issue of general jurisdiction—a matter that is not in controversy for purposes of this motion—they do not cite any new or conflicting evidence to refute specific jurisdiction. Nor do they persuasively distinguish the People's cases or offer apposite contrary authority.

The Banks' assertion that minimum contacts can only be imputed to a subsidiary or to a subsidiary that meets the strict requirements for alter ego liability misstates California law.[10] In actuality, "'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 acts 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 Internat. Co. v. Super. Ct.* (2022) 77 Cal.App.5th 378, 388-89, quoting *Anglo Irish Bank Corp. v. Super. Ct.* (2008) 165 Cal.App.4th 969, 983.) Thus, the court finds their argument unpersuasive.

10. The court does not address successor liability as the People are not relying on such a theory of jurisdiction.

Ultimately, Sutton Bank's and TBBK's bald assertions of the absence of a nexus between their minimum contacts and the People's claims are contradicted by the evidence. Their responsibility for the approval of packaging and designs for Vanilla cards is inherent in the conduct that supports the People's claims. The People's claims and the Banks' minimum contacts are clearly related. The burden, thus, shifts to Sutton Bank and TBBK to demonstrate the exercise of jurisdiction is unreasonable.

B. The Exercise of Personal Jurisdiction Over TBBK and Sutton Bank Is Reasonable

In the face of abundant evidence of the banks' controversy-related minimum contacts, TBBK and Sutton Bank provide no support for their objection that jurisdiction would be unreasonable. Their terse unsupported concerns about the inconvenience of this forum are insufficient and were not buttressed at the hearing on the motion. Consequently, TBBK and Sutton Bank are subject to personal jurisdiction.

III. Pathward is Subject to Personal Jurisdiction

The court's conclusions about TBBK and Sutton Bank are equally applicable to Pathward, who joined InComm's arguments and whose motion does not advance any distinct evidence that is not otherwise addressed in the People's collective opposition. Consequently, for the reasons set forth above, Pathward's even shorter motion—also misfocused on the allegations in the pleading and based on an inaccurate characterization of those allegations—yields the same result.

Appendix C

In its belated reply—filed a week after the deadline—Pathward argues that the People cannot rely on an agency theory. The court disagrees with Pathward's reading of the law and characterization of the People's arguments, nor does the record support Pathward's analogizing federal cases. For example, *Williams v. Yamaha Motor Company* (9th Cir. 2017) 851 F.2d 1015 did not actually hold that, as a matter of law, an agency theory cannot be relied upon for purposes of specific jurisdiction. Pathward's suggestion to the contrary is erroneous. Significantly, *Williams* was decided based on the distinct federal standard for evaluating a motion to quash—assessing the allegations before looking to the evidence—and made a jurisdictional decision based on the absence of evidence in the record about the defendant's control. (*Williams, supra,* 851 F.3d at p. 1025.) The record here evidences Pathward's intimate involvement in the sale, marketing, and distribution of Vanilla cards, including in California. Additionally, Pathward's characterization and interpretation of *Anglo Irish Bank Corp, supra,* 165 Cal.App.4th 969 is flawed and turns the statement of law and holding of *Anglo Irish Bank* on its head. *Anglo Irish Bank,* in fact, supports the People's position and establishes that minimum contacts *may* be imputed even without a strict application of the substantive standard for agency or alter ego liability. The record supports such an approach to jurisdiction here.

In sum, Pathward's own active role as the bank issuing Vanilla cards and maintaining ongoing contractual relationships with cardholders in California establishes a basis to exercise specific jurisdiction. In addition, InComm contacts can be imputed to Pathward based on the parties'

servicing agreement. (Louk Decl., Ex. R.) Pathward's reply is devoid of any basis for finding that the exercise of jurisdiction would be unreasonable. Therefore, the court finds Pathward is subject to specific personal jurisdiction.

CONCLUSION

The People present sufficient evidence to support the exercise of personal jurisdiction over InComm, TBBK, Sutton Bank, and Pathward. In response, the moving defendants fail to carry their burden of demonstrating the exercise of jurisdiction would be unreasonable. Consequently, all three motions to quash service of summons, as to all four defendants, for lack of personal jurisdiction are **DENIED.**

Dated: April 21, 2025

/s/_____
JEFFREY S. ROSS
Judge of the Superior Court

APPENDIX D – PETITION FOR REVIEW IN THE SUPREME COURT OF CALIFORNIA, FILED AUGUST 22, 2025

S_____

S292572

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

INCOMM FINANCIAL SERVICES, INC.,

Petitioner,

v.

THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO,

Respondent,

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

CALIFORNIA COURT OF APPEAL · FIRST APPELLATE DISTRICT · NO. A173146 SUPERIOR COURT OF SAN FRANCISCO · HON. JEFFREY S. ROSS · NO. CGC-23-610333

SERVICE ON ATTORNEY GENERAL REQUIRED PURSUANT TO BUSINESS AND PROFESSIONS CODE § 17209

Appendix D

PETITION FOR REVIEW

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[TABLES INTENTIONALLY OMITTED]

Defendant-Petitioner InComm Financial Services, Inc. ("InComm") respectfully petitions this Court for review of the August 13, 2025 decision of the First Appellate District (the "First District" or "Court of Appeal") denying InComm's petition for a writ of mandate directing the Superior Court of California, County of San Francisco (the "Superior Court"), to reverse its April 22, 2025 order denying InComm's motion to quash service of the summons for lack of personal jurisdiction.

Appendix D

ISSUES PRESENTED

The issues presented are:

1. Where a plaintiff provides no evidence of (i) case-related conduct in California by an out-of-state defendant or (ii) an injury in California caused by the out-of-state defendant's conduct, may a California court exercise specific personal jurisdiction over the defendant under the Due Process Clause of the Fourteenth Amendment?

2. Does the "relatedness" prong of the specific personal jurisdiction analysis require more than a loose conceptual connection between the subject of the suit and the out-of-state defendant's nationwide commercial activities that include sales to California?

INTRODUCTION

This petition seeks resolution of an issue of great importance to litigants both in California and across the country: When are a plaintiff's claims sufficiently "related" to the defendant's California contacts to confer personal jurisdiction on the California courts? This inquiry constitutes the second of the three criteria for specific personal jurisdiction, which are that (1) the defendant must have "purposefully availed" itself of the forum; (2) the plaintiff's claims must "arise[] out of or relate[] to" the defendant's forum-directed activity; and (3) exercising personal jurisdiction must comport with "traditional notions of fair play and substantial justice." (*Pavlovich v. Super. Ct.* (2002) 29 Cal.4th 262, 268, 285 [citations omitted].)

Appendix D

The U.S. Supreme Court has provided guidance on this "relatedness" requirement twice in the past decade: first, in *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.* (2017) 582 U.S. 255, and second, in *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.* (2021) 592 U.S. 351. Since those decisions, lower courts in California have acknowledged confusion about the proper application of the relatedness requirement and have applied the requirement in divergent ways. Some courts require a relatively rigorous and specific connection between the claims in the suit and the defendant's California-related conduct. Other courts—like the Superior Court and the Court of Appeals in this case—have held that any defendant whose nationwide business includes "systematic" sales of a product in California may be haled into California court for any claim that involves that product, and even some claims that do not. This expansive interpretation allows for jurisdiction even when, as here, the claim arises from alleged misconduct that neither occurred in California nor caused any injury in the State.

The disparate approaches to the "relatedness" requirement demonstrate widespread confusion among lower courts and yield unpredictable results for litigants. The confusion has also given way to patently erroneous interpretations, including the one applied here. In *Bristol-Myers*, the U.S. Supreme Court unequivocally rejected the theory that a defendant's "marketing and sales" of an allegedly defective product in California, even if "extensive," confers automatic specific jurisdiction over any complaint involving the allegedly defective product. (582 U.S. at 260–261.) Rather, to satisfy the "relatedness"

requirement the plaintiff must also connect the "specific claims" to the forum by showing that "the conduct giving rise to the [] claims occurred" there, or at least caused the plaintiff to "suffer[] harm in th[e] State." (*Id.* at 265.)

Here, Respondent and Real Party in Interest, the City Attorney of San Francisco on behalf of the People of California ("Plaintiff") did not attempt, and the Superior Court did not demand, either of these showings. InComm, a Georgia-based company, distributes and services prepaid Vanilla Gift Cards and makes substantial and purposeful sales of the products in all fifty States. Plaintiff's Complaint accuses InComm of negligent acts in the packaging, marketing, and servicing of Vanilla Gift Cards, and on that basis asserts violations of California consumer protection law. But Plaintiff does not and cannot argue that InComm performs any of these alleged wrongful acts in California. Nor has Plaintiff adduced one shred of evidence that InComm's alleged misdeeds caused "harm" in this State; on the contrary, Plaintiff expressly disclaimed any obligation to offer such evidence in support of jurisdiction. Instead, Plaintiff and the Superior Court premised jurisdiction ***entirely*** on Petitioner's California-directed "sales and marketing" of "the very product" that the Complaint claims is defective. That is exactly the standard for "relatedness" that *Bristol-Myers* rejected.

This Court has not had occasion to weigh in on the "relatedness" requirement after *Bristol-Myers* and *Ford*. But its guidance is urgently needed. As this Petition will show, courts of this State have expressed uncertainty about the contours of the "relatedness" requirement and

have applied it in wildly inconsistent ways. In some cases, they have arguably been too strict, depriving plaintiffs of their chosen forum. In other instances, as here, they have reverted to the same overbroad "relatedness" standard that the U.S. Supreme Court rejected less than a decade ago in *Bristol-Myers*. This Petition presents the Court with an opportunity to provide desperately needed clarity on the "relatedness" requirement, resolve the mounting confusion, and promote uniformity and predictability.

The stakes are high. The "relatedness" requirement is imposed by the Due Process Clause of the U.S. Constitution. The requirement "derive[s] from and reflect[s] two sets of values—treating defendants fairly and protecting interstate federalism"—that is, "ensur[ing] that States with little legitimate interest in a suit do not encroach on States more affected by the controversy." (*Ford*, 592 U.S. at 360 [citations and internal quotation marks omitted].) This Court's guidance on the requirement is necessary to protect those values in a reliable and consistent manner. It is also necessary to promote the rule of law. This Court should grant the Petition, clarify the "relatedness" requirement, and avert lower courts' continued application of inconsistent and erroneous standards.

SUMMARY OF FACTS AND PROCEEDINGS

InComm is a South Dakota corporation headquartered in Georgia. This lawsuit concerns prepaid Vanilla Gift Cards, a popular product InComm services and distributes that is available for purchase in retail locations nationwide. (1 EX 8, 74.) Plaintiff sued InComm in California, alleging

that InComm does too little to prevent and remediate third-party fraud, thereby violating the Business and Professions Code section 17200 *et seq.* (the "UCL"). (1 EX 9–10.) InComm moved the Superior Court to quash service of the summons for lack of personal jurisdiction. The Superior Court denied the motion and the First District denied InComm's petition for a writ of mandate.

A. InComm's Gift Card Business

InComm is a financial-technology company headquartered in Georgia and incorporated in South Dakota. (1 EX 9–10.) InComm partners with several issuing banks, including Defendants Pathward, Sutton Bank, and TBBK (collectively, the "Bank Defendants"), to issue the Vanilla Gift Cards. (*Id.*) None of these banks is headquartered or incorporated in California.

InComm does not operate any brick-and-mortar stores and has no physical presence in California. Instead, InComm partners with retailers across the United States that sell Vanilla Gift Cards in their stores. (1 EX 74–75.) Many of those retailers, such as CVS and Walgreens, operate store locations nationwide, including in California. (*Id.*) Sales made through InComm's retail partners are significant (a fact InComm has never disputed) and are made to consumers across the United States. (1 EX 142.) However, the decision where to open and operate individual stores—and, ultimately, where to sell Vanilla cards—belongs exclusively to retailers, not InComm. (1 EX 74–75, 142–143.)

Consumers who believe their cards have been affected by fraud may reach out to InComm's customer-service team, which initiates an investigation of the suspected fraud and, where appropriate, provides the consumer with a replacement card. (*See* 1 EX 60-61.) The InComm teams responsible for developing and implementing security measures and for providing customer service are located in Georgia, not California. (1 EX 74–75.)

B. Plaintiff's Complaint

On November 9, 2023, Plaintiff sued InComm and the Bank Defendants for alleged violations of California's Unfair Competition Law in connection with Vanilla Gift Cards. The Complaint pins the blame for gift card fraud on InComm, rather than on the criminals who perpetrate it. (1 EX 8.) It alleges that InComm has done three things wrong: (i) maintained "lax security features," rather than "sufficiently improv[ing] the cards' packaging or implement[ing] other changes to prevent" fraud; (ii) "denie[d] refunds on unlawful and implausible grounds" to consumers who complain about losing money to fraud, or else failed to respond to such consumers altogether; and (iii) "made numerous misleading statements about the value and security of" Vanilla Gift Cards. (1 EX 8–9; 2 EX 307–308) (listing these three categories of alleged wrongful conduct at issue in the Complaint).

InComm denies all three transgressions. But more importantly for present purposes, the Complaint does not and cannot allege that InComm undertook any of these alleged acts in California. Nor has Plaintiff tried

to adduce evidence that any of the purported misconduct took place in California at any point since commencing the suit. In fact, the unrebutted evidence shows that each of the relevant activities—InComm's card security, fraud and dispute resolution, and marketing functions—takes place in InComm's home state of Georgia.

The Complaint hints vaguely at some "harm" that InComm's conduct has supposedly caused to some "consumers." (1 EX 8–9, 39.) But it declines to say anything further about that subject. The Complaint does not say who these consumers are, how they have been harmed, or when or where the harm occurred. Indeed, the Complaint does not even allege that the unspecified "harm" befell California consumers, as opposed to consumers elsewhere in the nation. If Plaintiff has obtained a single factual account of "harm" from a single California consumer, the Complaint makes no mention of it.

What the Complaint does reveal is that Plaintiff has read some unflattering stories about Vanilla Gift Cards on the internet, on anonymous review platforms, and in local news items from localities across the United States. These second- and third-hand internet anecdotes supply the entire factual basis for Plaintiff's claims about InComm's purported failings. The Complaint's singular focus on recounting materials Plaintiff read on the internet underscores the absence of any California occurrence or activity underlying Plaintiff's claims.

C. InComm's Motion to Quash

In support of its motion to quash, InComm submitted unrebutted evidence that it has no physical presence in California, makes no decisions about where retailers choose to sell Vanilla Gift Cards, and conducts its security-related and customer-service functions entirely outside of California. (1 EX 74–76.) InComm also emphasized that the Complaint did not demonstrate any in-state injury to consumers in California, or otherwise establish any connection between the forum and Plaintiff's claims. (1 EX 58–61.)

Plaintiff did not immediately oppose InComm's motion, but instead requested a 10-month period to take jurisdictional discovery, to which InComm did not object. This provided Plaintiff with ample opportunity to marshal the facts of "consumer harm" in California that were absent from the Complaint. But that did not happen. Plaintiff's Opposition to InComm's motion to quash cited no evidence whatsoever that any California resident had ever been injured by InComm's alleged misconduct. Plaintiff's Opposition, like its Complaint, made vague reference to "redress for in-state harms that flow" from InComm's alleged misdeeds in the area of security and customer service, and urged the court to find jurisdiction on that basis. (2 EX 316.) But once again Plaintiff offered no facts about what these "in-state harms" were or who suffered them. Indeed, the only consumer-related documents Plaintiff submitted were the defendants' internal communications about refund requests, which uniformly indicated that consumers who complained about

fraud—wherever those consumers were located—***did*** receive refunds from InComm. (*See* 1 EX 145–146.)

As for InComm's purported "failures" of security and customer service, Plaintiff likewise did not offer any evidence to rebut InComm's showing that if those failures happened at all, they happened in Georgia, where InComm is headquartered and its relevant operations are located. (1 EX 147–148.) Plaintiff did not argue that InComm conducts its security, customer service, or marketing functions in California.

Instead, Plaintiff argued that its claims were "related" to InComm's forum contacts because InComm "systematically served" the California market for prepaid gift cards by marketing and distributing the cards. (2 EX 316.) That fact is undisputed, but as InComm argued on reply, it is also plainly insufficient to satisfy the "relatedness" requirement for specific jurisdiction.

D. The Superior Court's Hearing and Decision

The Superior Court held a hearing on InComm's motion to quash. At the hearing, InComm conceded that it "purposefully availed" itself of the California market (the first prong of the specific jurisdiction analysis) but emphasized that Plaintiff had offered ***no evidence of "relatedness"*** (the second prong). Challenged by InComm to "point[] to anything [in the evidentiary record] about an activity or occurrence that took place in the forum state related to their claims," (1 EX 224), Plaintiff again asserted only that InComm had "[s]ystematically serv[ed]

a market for the same products at issue in the complaint," resulting in a substantial volume of Vanilla Gift Card sales in the State. (1 EX 217, 224.)

The Superior Court denied the motion to quash on April 22, 2025. (Ex. A, Super. Ct. Order Denying Mot. to Quash at 1–2.) The court agreed with Plaintiff's theory that servicing a product market in the forum state is sufficient ***on its own*** to establish specific personal jurisdiction, even if there was no injury or other "activity or occurrence" in the forum state. This was apparent from both the structure and substance of the Superior Court's order. The section headings in the order skipped from "purposeful direct[ion]" to "fair play and substantial justice"—omitting the second, independent "relatedness" requirement of personal jurisdiction. (*Id.* at 5, 9.) The order also focused intently on evidence cited by Plaintiff as illustrative of InComm's "minimum contacts," declaring that "InComm is actively, intricately, and purposefully involved in the sales, marketing and distribution of its products in California," and that these "purposeful activities" "establish[ed] the minimum contacts necessary to subject InComm to specific jurisdiction." (*Id.* at 6–7; *see also id.* at 8 ["InComm's substantial and purposeful commercial activities in the forum support personal jurisdiction."].)

As to the "relatedness" requirement, the Superior Court had much less to say, but appeared to find it adequate that (1) InComm purposefully serves the California market for Vanilla Gift Cards and (2) Plaintiff's Complaint alleges there are defects in those products. The

Superior Court held: "The People's evidence establishes that, ***by virtue of its marketing, sales, and distribution*** of its products, including in the California locations of [nationwide retailers], InComm's substantial and purposeful commercial activities in the forum support personal jurisdiction." (Ex. A at 8.) Thus, Plaintiff argued, and the Superior Court accepted, that "marketing, sales, and distribution" of a product in California was per se sufficient to establish the "relatedness" requirement for any complaint alleging defects in that product. (*Id.*)

The Superior Court was untroubled by the fact that Plaintiff could not allege, much less give evidence of, even one example of an in-state occurrence—such as an injured consumer—related to those defects. In fact, the Superior Court declared it "unhelpful" for InComm to have raised this deficiency, which, in the Superior Court's view, was too closely related to the merits to be properly considered in the jurisdictional analysis. (Ex. A at 5.) Yet at the same time, much like Plaintiff's Complaint, the Superior Court's order alluded to diffuse "injury producing activities" in California as a basis for jurisdiction. (*Id.* at 9.) In other words, the Superior Court credited Plaintiff's allusions to in-state injury as a basis for jurisdiction but refused to demand any factual support for them.

E. Writ of Mandate Proceedings

InComm petitioned the First District for a writ of mandate reversing the Superior Court's order. InComm argued that, as shown above, the Superior Court had failed to demand any connection between the forum and

the claims other than InComm's California-directed "marketing, sales and distribution" of the product at issue. This, InComm argued, was a clear violation of the rule announced in *Bristol-Myers*.

Plaintiff filed an opposition, in which it did not contest InComm's characterization of the standard the Superior Court had applied. According to Plaintiff, the Superior Court correctly found it sufficient that InComm had "systematically served the California market for the very Vanilla cards the People allege have been misleadingly marketed; inadequately packaged and secured; and that are subject to unlawful and woeful customer service, reimbursement, and refund policies." (Opp'n of Real Party in Interest at 29, No. A173146 (Cal. Ct. App. May 27, 2025) ("RPI Opp'n").) Plaintiff did not claim to have adduced evidence of any in-state occurrence connecting the forum to the claims. Thus, Plaintiff's opposition brought the Superior Court's erroneous rule into sharp relief: If InComm "systematically served" the California market for a product and the Complaint alleged defects in that product, the "relatedness" requirement is automatically satisfied.

As in previous filings, Plaintiff repeatedly invoked the specter of "in-state harm" to consumers, but declined to provide any description, much less evidence, of such harm. Indeed, Plaintiff affirmatively disclaimed the obligation to offer "pro[of] that any specific individuals were injured . . . in California" due to InComm's alleged misconduct. (RPI Opp'n at 30.) By pressing for such evidence, Plaintiff argued, InComm had improperly "attempt[ed]

to conflate jurisdictional requirements with the merits." (*Id.*) Yet Plaintiff persisted in supporting its jurisdictional arguments with allusions to the unknown "in-state harms" the Complaint sought to "redress," arguing that these supported the exercise of personal jurisdiction. In this way, Plaintiff endorsed the same catch-22 imposed by the Superior Court: Plaintiff could rely on the *idea* of "in-state consumer harm" as a basis for jurisdiction, but need not supply any evidence of or facts about that harm.

In one conclusory sentence, the Court of Appeal declared that Plaintiff "sufficiently demonstrated that [InComm's] California contacts are related to the claims raised in the underlying litigation." (Ex. B, Order Denying InComm's Pet. for Writ of Mandate, at 1.) For this proposition, the Court of Appeal cited no record evidence and no reasoning by the Superior Court. It cited only *SK Trading Int'l Co. v. Super. Ct.* (2022) 77 Cal.App.5th 378, a case where the defendants had allegedly conspired to manipulate the reported prices of a market for gasoline that exists only in California.

The second paragraph of the Court of Appeal's order concluded that InComm "failed to present any evidence to support [its] claim" on whether subjecting InComm to personal jurisdiction in California would comport with "fair play and substantial justice." (Ex. B at 2.) The Court of Appeal, however, said nothing about ***Plaintiff's*** failure to present any evidence supporting ***its*** relatedness assertion, on which ***it*** had the burden of proof. (*See Ziller Elecs. Lab GmbH v. Super. Ct.*, (1988) 206 Cal.App.3d 1222, 1232–1233 [when personal jurisdiction

challenged, "burden shifts to the plaintiff to demonstrate by a preponderance of the evidence that all necessary jurisdictional criteria are met"].)

InComm now seeks this Court's review of the Court of Appeal's order.

REASONS FOR GRANTING REVIEW

A party may file in this Court a petition for review of "any decision of the Court of Appeal, including any interlocutory order." (Cal. Rule of Court 8.500(a)(1).) This Court will grant review "[w]hen necessary to secure uniformity of decision or to settle an important question of law." (*Id.* 8.500(b)(1).)

InComm seeks this Court's review of the First District's August 13, 2025 order denying InComm's petition for a writ of mandate (Ex. B) both to secure uniformity of lower courts' decisions regarding the "relatedness" requirement for specific personal jurisdiction and to settle an important question of law by articulating the contours of that requirement. Review of these issues is urgently needed not just to correct a violation of InComm's due process rights, but to establish consistency and predictability in the application of personal jurisdiction doctrine to out-of-state business entities.

Appendix D

A. California courts are divided on the proper application of the "relatedness" requirement for specific personal jurisdiction.

There are two forms of personal jurisdiction that courts can exercise consistent with the Due Process Clause of the Fourteenth Amendment: general jurisdiction and specific jurisdiction. When a court has general jurisdiction, it can adjudicate any case against the defendant, regardless of any relationship between the claim and the forum state. But general jurisdiction is present only when the defendant's ties to the forum "are so continuous and systematic as to render them essentially at home" there, and, therefore is effectively limited to the states where a corporate entity is incorporated or headquartered. (*Daimler AG v. Bauman*, (2014) 571 U.S. 117, 127 [internal quotations omitted].) It is undisputed that InComm, a South Dakota corporation headquartered in Georgia, is not subject to general jurisdiction in California.

At issue here is specific jurisdiction, which is "very different." (*Bristol-Myers*, 582 U.S. at 262.) Unlike general jurisdiction, specific jurisdiction "is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." (*Id.*) (internal quotation marks omitted). When, as here, a court lacks general jurisdiction over the defendant, it can adjudicate a case only if there is "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State." (*Id.* [internal quotation marks omitted].) Without such a linkage, "specific jurisdiction is lacking regardless

of the extent of a defendant's unconnected activities in the State." (*Id.* at 264.) Three criteria must be satisfied before a court may exercise specific personal jurisdiction over an out-of-state defendant: (1) the defendant must have "purposefully availed" itself of the forum; (2) the plaintiff's claims must "arise[] out of or relate[] to" the defendant's forum-directed activity; and (3) exercising personal jurisdiction must comport with "traditional notions of fair play and substantial justice." (*Pavlovich*, 29 Cal. 4th at 268 [citations omitted].)

This Petition concerns the second requirement: the "relatedness" of the defendant's forum activities and the claims at issue. As discussed below, the U.S. Supreme Court's decisions in *Bristol-Myers* and *Ford* supply the framework for assessing such "relatedness." But courts of this State have struggled to apply that framework in a consistent manner, and have reached disparate and sometimes patently erroneous results. This Court's guidance on the nature of the required "affiliation" is sorely needed.

1. Recent U.S. Supreme Court precedent on the "relatedness" requirement.

The "relatedness" requirement is satisfied only where "the connection between the plaintiff's claims and [the defendant's] activities in th[e] State[]" is "close enough to support specific jurisdiction." (*Ford*, 592 U.S. at 371.) Relatedness demands "an affiliation between the forum and the underlying controversy, principally, [an] ***activity or an occurrence that takes place in the forum State***."

(*Id.* at 359–360 [emphasis added] (quoting *Bristol-Myers*, 582 U.S. at 256).)

Two U.S. Supreme Court cases in the past several years have discussed this requirement, particularly as it relates to suits against corporate defendants engaged in nationwide product sales. In broad terms, these cases establish that (1) national distribution of a product does not subject a defendant to de facto general jurisdiction for all suits relating to that product; but (2) a defendant who purposefully sells a product nationwide may be held to account in any state for injuries caused by that product in that state. Beyond these principles, the cases do not announce a comprehensive benchmark for determining "relatedness" in all settings. Given the infinite variety of factual scenarios in which "relatedness" questions may arise, the absence of a clear rule has generated confusion and inconsistency among lower courts.

a. *Bristol-Myers*

In *Bristol-Myers*, a nationwide class of consumers brought a product-liability lawsuit in California against the drug manufacturer Bristol-Myers Squibb ("BMS"), alleging injuries caused by BMS's prescription drug Plavix. (582 U.S. at 259.) BMS sold Plavix in California and had a robust sales and distribution operation in the State, including 160 employees, 250 sales representatives, and a lobbying office. (*Id.* at 258—259.) BMS also contracted with a California-based company to facilitate the distribution of Plavix in all fifty states. (*Id.* at 268.) There was accordingly no dispute that BMS actively distributed

and sold Plavix in California; indeed, BMS (like InComm) had conceded that these activities satisfied "purposeful availment," the first requirement of specific jurisdiction.

The "relatedness" requirement was a different story. The plaintiffs alleged that Plavix had damaged their health and asserted claims against BMS for "products liability, negligent misrepresentation, and misleading advertising." (*Id.* at 259.) BMS's alleged wrongful acts had occurred elsewhere: "BMS did not develop Plavix in California, did not create a marketing strategy for Plavix in California, and did not manufacture, label, package, or work on the regulatory approval of the product in California." (*Id.*) And for some plaintiffs, who resided outside California, the alleged harm from Plavix had also occurred elsewhere. These plaintiffs "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." (*Id.* at 264.) BMS moved to quash for lack of personal jurisdiction, arguing that the "relatedness" requirement was not satisfied as to those nonresident plaintiffs. (*Id.* at 259.)

This Court concluded that the California courts had specific jurisdiction over BMS, even as to those claims that did not involve injury in California. (*Id.* at 260.) This Court applied a "sliding scale approach to specific jurisdiction," under which "the more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim." (*Id.*) Accordingly, this Court concluded that "BMS's extensive contacts with California' permitted the exercise of specific jurisdiction

'based on a less direct connection between BMS's forum activities and plaintiffs' claims than might otherwise be required." (*Id.* [internal quotations omitted].)

The U.S. Supreme Court reversed, holding that the California courts lacked personal jurisdiction. (*Id.* at 265.) It concluded that the "sliding scale approach" was "difficult to square with [U.S. Supreme Court] precedents" and "resemble[d] a loose and spurious form of general jurisdiction." (*Id.* at 264.) The Court noted that, "[f]or specific jurisdiction, a defendant's general connections with the forum are not enough." (*Id.*) In other words, the Court explained, "[a] corporation's continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." (*Id.*)

The court reiterated that there must be some "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." (*Id.* at 262 [internal quotation marks omitted].) It concluded that "a connection between the forum and the specific claims at issue" is "missing" when neither the alleged misconduct nor any resulting injuries occurred in the forum state. In one illustrative passage, the court explained:

> The relevant plaintiffs are not California residents and do not claim to have suffered harm in that State. In addition, as in *Walden*, all the conduct giving rise to the nonresidents' claims occurred elsewhere. It follows that the California courts cannot claim specific jurisdiction.

(*Id.* at 265.) As Justice Sotomayor noted in dissent, the *Bristol-Myers* ruling effectively precluded the possibility of "subjecting a massive corporation to suit in a State for a nationwide course of conduct that injures both forum residents and nonresidents alike." (*Id.* at 269 [Sotomayor, J., dissenting].) The majority, acknowledging and approving that result, noted that corporations may nonetheless be held accountable for their nationwide course of conduct "in the States that have general jurisdiction" over them. (*Id.* at 268.)

b. *Ford*

Four years later, the U.S. Supreme Court decided *Ford*, a case about two car accidents—one in Montana leading to a death of a Montana resident, the other in Minnesota leading to serious injuries to a Minnesota resident. (592 U.S. at 356.) The plaintiffs sued Ford in their respective states. (*Id.*) Ford, which had originally sold the specific cars involved in the accidents outside of the forum states, moved to dismiss for lack of personal jurisdiction, arguing that its Minnesota and Montana sales of the same model had not caused these plaintiffs' injuries in those states. (*Id.*)

The U.S. Supreme Court disagreed, concluding that the Montana and Minnesota courts had specific personal jurisdiction. Although the court emphasized Ford's "systematic serving" of the market for the vehicles at issue in the forum states, this "systematic serving" alone did not mean that Ford was subject to suit there for any claims involving those vehicles. The Court's holding that

the courts had specific personal jurisdiction also depended on the facts that the plaintiffs "used the allegedly defective products in the forum States," and "suffered injuries when those products malfunctioned in the forum States." (*Id.* at 370–371.) As the *Ford* court explained:

> Because Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States, there is a strong relationship among the defendant, the forum, and the litigation—the essential foundation of specific jurisdiction.

(*Id.* at 352–353 [internal quotation marks omitted].) The court noted that this holding was entirely consistent with *Bristol-Myers*, where the dismissed claims had "involve[d] no in-state injury and no injury to residents of the forum State." (*Id.* at 370.) Because *Ford*, by contrast, did involve such injury, the "relatedness" requirement was satisfied.

Though the *Ford* court rejected the defendant's proposed "causation-only" approach, under which jurisdiction would lie only if Ford had sold the specific cars at issue in the forum states, it did not articulate a comprehensive framework for determining "relatedness" in all scenarios. (*Id.* at 361.) The court explained that "some relationships will support jurisdiction without a causal showing," as was the case in *Ford*. (*Id.* at 362.) The court emphasized, however, that that "does not mean anything goes" and that the relatedness inquiry must nevertheless "incorporate[] real limits." (*Id.*)

Justice Alito concurred in the judgment but warned that permitting personal jurisdiction when claims "sufficiently 'relate to' [the defendant's contacts] in some undefined way" would "risk[] needless complications." (*Id.* at 373–374 [Alito, J., concurring in the judgment].) "Applying that phrase according to its terms," he warned, is "a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else." (*Id.* at 374.) He "doubt[ed]" that courts would find "terribly helpful" the Court's observation that relatedness "incorporates real limits." (*Id.*)

In another concurring opinion, Justice Gorsuch similarly highlighted the lack of clarity in the majority opinion: "For a case to 'relate to' the defendant's forum contacts, the majority says, it is enough if an 'affiliation' or 'relationship' or 'connection' exists between them. But what does this assortment of nouns *mean*? Loosed from any causation standard, we are left to guess. The majority promises that its new test 'does not mean anything goes,' but that hardly tells us what does." (*Id.* at 376 [Gorsuch, J., concurring in the judgment].)

2. Divergent applications of the relatedness requirement by lower courts in California.

Justices Alito and Gorsuch were right: California courts have not found the U.S. Supreme Court's guidance on relatedness "terribly helpful." The Second District even lamented recently that, "[a]s observed by *Ford*'s concurring justices, what would suffice for a claim to 'relate to' a defendant's forum contacts was left rather

undefined, with the majority simply stating 'relate to' 'does not mean anything goes,' and 'incorporates real limits.'" (*Daimler Trucks N. Am. LLC v. Super. Ct.* (2022) 80 Cal. App.5th 946, 957.)

No wonder, then, that lower courts in this State have applied the relatedness requirement in different, unpredictable, and irreconcilable ways. Some courts have applied a relatively rigorous conception of "relatedness," requiring the kind of "connection between the forum and the *specific* claims at issue" contemplated in *Bristol-Myers*. (582 U.S. at 265 [emphasis added].) But others—like the Superior Court here—have applied such an expansive concept of "relatedness" when a defendant's products are sold in California that they have effectively revived the "sliding scale" approach that *Bristol-Myers* rejected.

a. Rigorous Interpretations

A decision exemplifying the more rigorous approach is *Rivelli v. Hemm* (2021) 67 Cal.App.5th 380. There, shareholders in a California company (Rodo) sued an out-of-state company (Straumann) and a Straumann officer for, among other things, fraud and breach of fiduciary duty. (*Id.* at 389.) The defendants' California contacts consisted of their negotiations and entry into a transaction with Rodo.. (*Id.*) The plaintiffs' claims were that, in connection with that transaction, the defendants made "a 'series of misrepresentations and/or omissions' based on information presented to Rodo's shareholders to induce their approval of the transaction" with Rodo. (*Id.* at 401.)

Thus, the defendants' California contacts consisted of their entry into a transaction with the plaintiff California entity. The plaintiffs' claims, meanwhile, centered upon allegedly fraudulent statements to induce that very transaction. The question: were the defendants' contacts and the plaintiffs' claims sufficiently "related" to support specific jurisdiction? The Court of Appeal said they were not. According to the court, the standard was not satisfied because the plaintiffs' claims did not "relate to the transaction as it transpired between Straumann and Rodo," but rather "relate[d] to the alleged misrepresentations to Rodo's shareholders . . . and to Straumann having enabled [its officer's] fiduciary breach of duty in his role as a Rodo director," which were not directed towards California or any California citizen. (*Id.*) In other words, because the misrepresentations themselves had not been California-focused, the court concluded that the claims did not relate sufficiently to the defendants' California contacts. This is a highly demanding articulation of the relatedness requirement.

Other cases have similarly required a close connection between the claims and contacts at issue. In *Preciado v. Freightliner Custom Chassis Corp.* (2023) 87 Cal.App.5th 964, for example, the plaintiff established that the defendant "systematically served" the California market for bus chassis, and that the plaintiff had suffered injury in California from one of the defendant's chassis. That is, the defendant "systematically served" a California market for car parts, and—unlike here—the plaintiff's claims were based on in-state injury from one such car part. But the court was not satisfied that this fulfilled

the "relatedness" requirement. The evidence established that the defendant had not manufactured or sold the specific chassis at issue in California. The court thus went a step further, requiring the plaintiff to produce evidence that the model of chassis the defendant *did* sell in California had a defect like the defect in the model involved in the plaintiff's accident. (*Id.* at 983.) Similarly, in *Halyard Health, Inc. v. Kimberly-Clark Corp.* (2019) 43 Cal.App.5th 1062, the court held that an indemnification dispute lacked a sufficient connection to California, even though the judgment for which the plaintiff sought indemnification was rendered in California and related to sales of products in California. (*Id.* at 1075.)

b. Expansive Interpretations

On the other end of the spectrum, courts that apply a looser conception of the relatedness requirement—not unlike the "curbstone philosopher" invoked by Justice Alito—treat as sufficient *any* conceptual connection between the general subject matter of the suit and the defendant's ties to California. Take, for example, *Thurston v. Fairfield Collectibles of Ga., LLC* (2020) 53 Cal.App.5th 1231. There, the nonresident defendant operated a website through which it sold diecast models nationwide, including to people in California. The plaintiff never purchased a model from the defendant and had no complaint about the products. Instead, she sued the defendant because its website, operated from outside California, was insufficiently accessible by the blind. (*Id.* at 1234.)

Appendix D

The Court of Appeal found that specific jurisdiction was present. Regarding the first prong of the analysis, the majority opinion reasoned at length that the defendant had purposefully availed itself of the California market by making "substantial sales" to California residents. (*Id.* at 1237–1241.) Regarding the "relatedness" prong, the Court of Appeal offered only a few sentences, repeating once more that the defendant had made "substantial sales" of its products to Californians—and had done so through its website. (*Id.* at 1241.) For the majority, it was enough that the suit concerned some aspect of that *website*, even though it had nothing to do with the *products* (which the Plaintiff never purchased). (*See id.*) In effect, the majority applied the "sliding scale" approach, pursuant to which the extensiveness of a defendant's California contacts lessens the rigor with which a court analyzes the affiliation between those contacts and the claims in the suit.

Judge Menetrez dissented, rejecting the notion that the magnitude of a defendant's sales in California can satisfy both the purposeful availment requirement *and* the "relatedness" requirement. Judge Menetrez reasoned that "even if a very large proportion of [the defendant's] sales (say 50 percent) were to California residents, that would not change the fact that [the defendant] cannot be subjected to specific jurisdiction in California for the website defects alleged in this case. Similarly, a large proportion of sales in California would not mean that [the defendant] could be subjected to specific jurisdiction in California in a suit for wage and hour or workplace safety violations at its headquarters in Georgia." (*Id.* at 1244 [Menetrez, J., dissenting].) In other words, Judge

Menetrez asserted, "[p]laintiffs' claims about the flaws in Fairfield's website are not related to and do not arise out of [the defendant's] sales to California residents, no matter how voluminous those sales are." (*Id.*)

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These cases reveal disparate and irreconcilable understandings among California courts of what limit, if any, the relatedness requirement imposes on the exercise of specific jurisdiction. A defendant who sells products in California may be sued in California by a plaintiff who has never bought those products or been injured by them, but has found deficiencies with the defendant's website. By contrast, a defendant who makes misrepresentations to induce a transaction with a California company cannot be sued in California over those misstatements. There is no way to harmonize these holdings. It is therefore impossible for any non-California company that does business nationwide to read these cases and come away with anything close to a clear understanding of the risk that it will be haled into court in California simply by selling its products there.

B. This Court should clarify the "relatedness" requirement to promote uniformity in lower-court decisions on an issue of constitutional importance.

This Court should provide guidance on the question with which lower courts have been struggling.

First, the meaning of the "relatedness" prong of the specific-jurisdiction analysis is an "important question of law." (Cal. Rule of Court 8.500(b)(1).) Most critically, the rules governing when out-of-state defendants can be sued in California affects those defendants' due process rights and their ability to order their commercial affairs. Personal jurisdiction doctrine is meant to "provide[] defendants with fair warning—knowledge that a particular activity may subject [it] to the jurisdiction of a foreign sovereign"; they accordingly allow defendants to "structure [their] primary conduct" to "lessen or avoid" litigation exposure in a given state by "procuring insurance, passing the expected costs on to customers, or, if the risks are [still] too great, severing its connection with the State." (*Ford*, 592 U.S. at 360, 363–364 [internal quotation marks omitted].) Furthermore, the relatedness requirement vindicates key principles of federalism, interstate comity, and state sovereignty, "ensur[ing] that States with little legitimate interest in a suit do not encroach on States more affected by the controversy." (*Id.* at 360 [citations and internal quotation marks omitted].)

Second, this Court should provide guidance on the "relatedness" requirement to "secure uniformity of decision[s]" applying it. (Cal. Rule of Court 8.500(b)(1).) The lack of clarity on this issue has led to inconsistent and unpredictable applications of the "relatedness" requirement by California's trial courts and intermediate appellate courts. This Court's reasoned judgment would result in a more coherent body of case law and serve as a guide to plaintiffs and defendants across the country who are anticipating litigation in California—or who

want to know whether they *should* anticipate litigation in California.

This case is a particularly apt vehicle for addressing these issues because it presents an undisputed and stark set of facts: Plaintiff has sued a nonresident company that sells and distributes products nationwide. The parties agree that the conduct underlying the claims took place entirely outside of California. It is also undisputed that Plaintiff has identified no injury to any "specific individuals" in California connected to an act or occurrence taking place in the state, much less adduced evidence of such an injury. Indeed, Plaintiff maintains there was no need for it to do so. Instead, jurisdiction was premised entirely on the fact that InComm "systematically serves" the California market for Vanilla Gift Cards, and that Plaintiff's claims are about Vanilla Gift Cards.

If this Court does not provide clarity that these circumstances cannot support specific jurisdiction, mistakes like this will persist in lower courts, and defendants like InComm will continue to have their due process rights abrogated under a "loose and spurious form of general jurisdiction" that the Supreme Court has found unconstitutional. (*Bristol-Myers*, 582 U.S. at 264.)

C. The lower courts' decisions in this case were contrary to U.S. Supreme Court precedent.

Confusion about how to apply the relatedness requirement was on display in the lower courts' decisions in this case and ultimately led to a decision that was clearly

incorrect. The Superior Court, similar to the majority opinion in *Thurston*, conflated the purposeful availment and relatedness prongs by relying on the extent of Vanilla Gift Card sales to satisfy both. (*See* Ex. A at 9; *see id.* at 8 ("InComm's substantial and purposeful commercial activities in the forum support personal jurisdiction").) Indeed, the section headings of the Superior Court Decision jumped immediately from "purposeful direct[ion]" to "fair play and substantial justice," skipping the independent relatedness requirement altogether. (*Id.* at 5, 9.) The Court of Appeal followed suit, stating without analysis or citation to any record evidence that Plaintiff "sufficiently demonstrated that [InComm's] contacts are related to the claims raised in the underlying litigation." (Ex. B at 1.)

Neither court addressed the undisputed facts (1) that *all* of InComm's alleged misconduct occurred, if at all, in Georgia, and (2) that after 10 months of jurisdictional discovery, the Plaintiff had adduced no evidence that any injury related to that conduct occurred in California. These facts should have been dispositive. In *Bristol-Myers*, the Supreme Court concluded that the plaintiffs had not demonstrated "a connection between the forum and the specific claims at issue" where "all the conduct giving rise to the . . . claims occurred elsewhere" and the plaintiffs "d[id] not claim to have suffered harm in [California]." (582 U.S. at 265.) That was true even though BMS, like InComm, engaged in purposeful sales and distribution of the product at issue in California. There is no daylight between that case and this one. The lower courts' improper preoccupation with the volume of Vanilla

Gift Card Sales in California repeated the "sliding scale approach" rejected in *Bristol-Myers*.

Particularly troubling is Plaintiff's refusal to supply, and the lower courts' refusal to require, any facts establishing "in-state injury"—a factor that was central to the analysis in both *Bristol-Myers* and *Ford*. The Superior Court found that InComm's forum-directed "marketing, sale, and distribution activities" were comparable to those at issue in *Ford*, and found "relatedness" entirely on that basis. (Ex. A at 8.) Plaintiff, defending the Superior Court's standard, claimed that *Ford* controls because, as there, InComm "systematically served the California market for the very Vanilla cards the People allege have been misleadingly marketed; inadequately packaged and secured; and that are subject to unlawful and woeful customer service." (RPI Opp'n at 29.)

This is a misinterpretation of *Ford*. In point of fact, the *Ford* court's reasoning was that "Ford [] systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned ***and injured them in those States***," triggering their claims. (*Ford*, 592 U.S. at 365 [emphasis added].) The Superior Court, and now the Court of Appeal, have written that key factor out of existence. The Superior Court found that considering the presence or absence of an in-state injury is not just unnecessary, but improper: It rejected InComm's arguments regarding instate injury as "unhelpful," asserting InComm was prematurely litigating the merits. Plaintiff has even disclaimed any obligation to identify "specific individuals" who have suffered harm in

California, as opposed to presuming that such individuals exist. That is nonsensical, unfair, and contrary to binding precedent in *Bristol-Myers* and *Ford*.

Similarly, the Court of Appeal neither followed nor cited the precedent of the U.S. Supreme Court. And its choice to cite one highly distinguishable case, *SK Trading International Co. Ltd.*, demonstrates a lack of understanding as to how the relatedness analysis works. (77 Cal. App. 5th 378.) In *SK Trading*, the foreign defendant engaged in a scheme with its California subsidiary to fix prices in a California-specific gasoline "spot market." (*See id.* at 383–384.) The plaintiff's complaint arose entirely from this price-fixing scheme, which was directed to a market that exists only in California. The plaintiff adduced evidence, when opposing a motion to quash, that the foreign defendant had actively participated in that California-focused scheme.

Citing *SK Trading*, the Court of Appeals here highlighted facts that supported a finding of relatedness in that case: (1) that plaintiff's claims arose from "SK Trading's involvement in the decision making that was undisputedly directed towards the California market"; (2) that SK Trading's "officers were directly involved in the formulation of the policies that the complaint alleges constituted an anticompetitive scheme" to manipulate prices in the California gas market; and (3) that SK Trading participated in hiring an agent as a trader in that market. (Ex. B at 1 [citing *SK Trading*, 77 Cal.App.5th at 390].) These facts provide a perfect illustration of exactly what is missing from this case. Here, Plaintiff complains

of conduct that InComm undisputedly performs in Georgia and not in California (*i.e.*, product packaging, security, and customer-service functions). And after almost a year of jurisdictional discovery, Plaintiff failed to present any evidence that this conduct was designed to affect California or did, in fact, have any effect on any consumer in California. *SK Trading* therefore does not support a finding of relatedness here. Indeed, the *SK Trading* court distinguished *Bristol-Myers*, finding that the claims in *SK Trading* were "brought on behalf of California consumers for injuries relating to SK Trading's involvement in activity directed at and conducted solely in California." (77 Cal.App.5th at 391.) Thus, "SK Trading's activities directed at the California market ha[d] a direct nexus with the anticompetitive conduct alleged in the complaint." (*Id.* at 392.) The same cannot be said of InComm's Georgia-based activities, which have not been shown to cause any harm in, or to have any other connection to, California.

The Court of Appeal's discussion of the "fair play and substantial justice" prong further underscores the confusion that exists on the jurisdictional analysis. (Ex. B at 2.) As InComm asserted in the lower courts, (*see*, *e.g.*, InComm's Pet. for Writ of Mandate at 33-35, No. A173146 (Cal. Ct. App., May 7, 2025) ("InComm's Pet.")), the exercise of jurisdiction over InComm in this case would be patently unreasonable and "offend traditional notions of fair play and substantial justice" because Plaintiff failed to meet its burden as to the relatedness requirement. (*See Ford*, 592 U.S. at 358 [quoting *Int'l Shoe Co. v. Washington* (1945) 326 U.S. 310, 316–317].) While it is true that InComm bore the burden on the fair

play and substantial justice prong, the burden shifts to InComm ***only if*** Plaintiff meets ***its*** burden to establish both purposeful availment and relatedness. (*See L. W. v. Audi AG* (2025) 108 Cal.App.5th 95, 108.) But Plaintiff did not do so, and the Court of Appeal did not point to any facts (for there were none) that Plaintiff presented to satisfy its burden.

CONCLUSION

InComm respectfully requests that the Court grant its petition for review and decide the issues presented.

August 22, 2025

Respectfully submitted,

LAFAYETTE & KUMAGAI LLP

By: /s/ *Brian Chun*
Brian Chun

Attorney for Defendant-Petitioner
InComm Financial Services, Inc.

[CERTIFICATE INTENTIONALLY OMITTED]

[PROOF OF SERVICE AND EXHIBITS INTENTIONALLY OMITTED]

APPENDIX E – PETITION FOR WRIT OF MANDATE IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, FILED MAY 7, 2025

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION _____

CASE #: A173146, Div: 1
A_____
(Related Pending Appeal: A173112)

INCOMM FINANCIAL SERVICES, INC.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA FOR THE
COUNTY OF SAN FRANCISCO,

Respondent,

PEOPLE OF THE STATE OF CALIFORNIA,
ACTING BY AND THROUGH SAN FRANCISCO
CITY ATTORNEY DAVID CHIU,

Real Party in Interest.

Filed May 7, 2025

Appendix E

PETITION FROM THE SUPERIOR COURT OF SAN FRANCISCO COUNTY, DEPARTMENT 606 HON. JEFFREY S. ROSS · PHONE NO. (415) 551-3831 · NO. CGC-23-610333

PETITION FOR WRIT OF MANDATE, PROHIBITION AND/OR OTHER APPROPRIATE RELIEF

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RELATED APPEAL: *InComm Financial Services, Inc. v. The Superior Court of the State of California for the County of San Francisco*, No. A173112, San Francisco Superior Court No. CGC-23-610333.

Appendix E

Petitioner InComm Financial Services, Inc. ("InComm") respectfully petitions this Court for a Writ of Mandamus (i) vacating the order entered by the Respondent Superior Court of California, County of San Francisco (the "Superior Court"), which denied InComm's motion to quash, for lack of personal jurisdiction, service of the Summons filed by Plaintiff/Real Party in Interest the People of California, by and through San Francisco City Attorney David Chiu ("Plaintiff") and (ii) directing the Superior Court to enter a new and different order granting said motion to quash.

I. INTRODUCTION

This petition seeks review and reversal of the Superior Court's order asserting personal jurisdiction over InComm, a corporate citizen of Georgia and South Dakota. In that order, the Superior Court committed two fundamental errors of law.

First, the Superior Court disregarded one of the three essential criteria for establishing specific personal jurisdiction. Under principles of federal due process, the proponent of specific personal jurisdiction must show (i) that the defendant "purposefully avail[ed] itself of the privilege of conducting activities in the forum State"; (ii) a "connection between the forum [State] and the specific claims at issue"; and (iii) that the exercise of jurisdiction would accord with "traditional notions of fair play and substantial justice." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, (202 1) 592 U.S. 351, 358–59, 369. Here, the Superior Court effectively dispensed with

the second requirement, which, if applied, would have defeated jurisdiction. The undisputed evidence showed (and Plaintiff did not contest) that the conduct at issue in Plaintiff's Complaint—InComm's security and customer-service activities—took place in Georgia, where InComm is located. What is more, Plaintiff offered no evidence whatsoever that InComm's disputed conduct caused injury in California. After ten months of jurisdictional discovery, Plaintiff could not find one consumer, retailer, or law-enforcement officer in California to attest to any harms that InComm's supposed misconduct had wrought in the state.

These glaring omissions should have precluded jurisdiction, as InComm urged. But the Superior Court failed to apply the crucial requirement of a connection between the specific claims and InComm's California activities. Instead, the Superior Court premised jurisdiction on California contacts wholly unrelated to Plaintiff's claims, such as InComm's alleged direction of "substantial" gift card sales toward California. This was error. Those contacts are relevant (if at all) only to "purposeful availment"—which InComm did not dispute below and does not dispute here—and do not satisfy the separate requirement of a connection between the forum and claims. By conflating these two criteria for personal jurisdiction, and effectively relieving Plaintiff of the second criterion, the Superior Court committed an error of law. Then, to compound the error, it wrongly held that Plaintiff was altogether excused from showing a connection between the claims and the forum, simply because that showing might overlap with the merits of Plaintiff's claims.

Second, the Superior Court erred by concluding that the exercise of personal jurisdiction over InComm would comport with traditional notions of fair play and substantial justice. Here, too, the Superior Court began and ended its analysis with the finding that InComm purposefully availed itself of California. It neglected to consider the utter lack of any connection between the Complaint and the State of California, which renders the exercise of jurisdiction an overreach of state sovereignty.

II. ISSUES PRESENTED

1. May a California court exercise jurisdiction over an out-of-state defendant where the plaintiff has failed to adduce evidence that its claims arise from or relate to the defendant's contacts with California?

2. When a plaintiff has failed to demonstrate a nexus between its claims and a foreign defendant's California-related activities, and has failed to show any in-state injury resulting from the alleged out-of-state misconduct, does the exercise of jurisdiction comport with traditional notions of fair play and substantial justice?

III. PETITION FOR PEREMPTORY WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF

A. The Parties

1. InComm is a South Dakota corporation with its headquarters in Georgia and is a defendant in the action

below, San Francisco Superior Court Case No. CGC-23-610333.

2. TBBK Card Services, Inc. ("TBBK") is a defendant in the action below.

3. Sutton Bank is a defendant in the action below.

4. Pathward N.A. ("Pathward") is a defendant in the action below.

5. The People of the State of California, by and through San Francisco City Attorney David Chiu, are the plaintiff and real party in interest in the action below.

B. InComm's Vanilla Gift Card Products

6. InComm is a financial-technology company whose product portfolio includes Vanilla-brand prepaid gift cards ("Vanilla Gift Cards"). (1 EX 58.) Vanilla Gift Cards are "open-loop" gift cards, which means they can generally be used to make purchases from any merchant that accepts the payment network identified on the card, such as Visa or Mastercard. (*Id.*) The Vanilla Gift Cards at issue are "non-reloadable," which means that they are loaded with a certain amount of funds at the time of purchase, and cannot be reloaded with additional funds. (*Id.*) Vanilla Gift Cards operate similarly to debit cards, but a Vanilla Gift Card is not associated with a specific individual or bank account. (*Id.*) This "anonymity" is part of Vanilla Gift Cards' appeal, as it allows the cards to be easily transferred as gifts. (1 EX 74.)

7. InComm partners with several issuing banks—including Defendants Pathward, Sutton Bank, and TBBK (collectively, the "Bank Defendants")—to issue the Vanilla Gift Cards. (*Id.*)

8. InComm does not operate its own brick-and-mortar stores, but rather partners with retailers across the United States that sell Vanilla Gift Cards in their stores. (1 EX 60.) Many of those retailers—such as CVS and Walgreens—have store locations nationwide, including in California. (*Id.*)

9. Like all payment products, Vanilla Gift Cards are sometimes the target of third-party fraud by criminal actors who use fraudulent means to access and spend the card balances. (1 EX 59.) InComm warns consumers about the risk of fraud on its product packaging. (*E.g.*, 1 EX 15 (picture of packaging stating, "IF TAMPER EVIDENT DO NOT PURCHASE").)

10. Consumers in any state who believe they have been affected by fraud may reach out to InComm's customer-service team, which will initiate an investigation of the suspected fraud and, where appropriate, provide the consumer with a replacement card. (*See* 1 EX 61; 1 EX 74.)

C. Plaintiff's Lawsuit against InComm and Bank Defendants

11. On November 9, 2023, Plaintiff—the City Attorney of San Francisco, on behalf of the People of the State of California—abruptly sued InComm, a

citizen of Georgia and South Dakota, as well as the Bank Defendants, for alleged consumer protection violations. The Complaint pinned the blame for gift card fraud (which it calls "card draining") on InComm's purportedly "lax security," particularly with respect to card packaging. (1 EX 8.) It accused InComm of packaging Vanilla Gift Cards in "a thin cardboard sleeve" that "can be easily opened" to reveal (and steal) the card information "without displaying obvious signs of tampering." (1 EX 23.) It also claimed that InComm improperly denies refunds to consumers victimized by fraud, leaving many consumers unable to recover their card value. (1 EX 8-9.)

12. On this basis, the Complaint asserted a claim against InComm for purported violations of the Business and Professions Code section 17200 *et seq.* (the "UCL"), seeking restitution and civil penalties for all alleged "violations" across the State. (1 EX 38-47.)

13. In the unverified Complaint, Plaintiff did not purport to make its allegations based on personal knowledge or on any investigation by members of the City Attorney's staff. It did not offer any firsthand allegations of occurrences of fraud in California, or of California consumers who lost money through fraud or were denied refunds by InComm.

14. Rather, the Complaint made clear that Plaintiff developed its claims, and indeed the central theory that InComm's insufficient security is the root cause of fraud, by reading stories on the internet. (*See* 1 EX 19-20.) The Complaint quoted at length from local news stories

and unverified online consumer complaints, all involving Vanilla Gift Card consumers who reported unsatisfactory experiences with their cards. (1 EX 16-22.) Through this patchwork of unverified anecdotes, and without ***any*** quantitative information about the rate of occurrence of fraud or InComm's performance relative to peer companies, the Complaint created the impression that Vanilla Gift Cards are insecure and vulnerable to fraud, and that InComm is unhelpful to consumers who are victimized.

15. Most relevant to this Petition, the Complaint also did not connect its speculative theories about gift card fraud to the State of California in any way. The Complaint's allegations reflected that Vanilla Gift Cards are sold nationwide, and occasional occurrences of fraud likewise may occur nationwide. The Complaint alleged no facts showing that InComm's supposedly deficient security or refund practices have caused harm in California—to consumers, retailers, local governments, or anyone else.

16. Although a handful of the hearsay and double-hearsay internet sources in Plaintiff's Complaint involved claims of fraud from consumers who said they were from California, nearly all of these sources included reports that the aggrieved consumers *did* receive refunds (thus refuting the core assertion that InComm improperly denies compensation to fraud victims). (1 EX 61.) Furthermore, none of those accounts contained information that, accepted as true, would indicate that the unsatisfactory consumer experiences had anything to do with the insufficiently secure product packaging alleged in the Complaint.

17. In short, the Complaint did not even contain hearsay allegations, much less firsthand ones, to support its claim that InComm's security and refund practices have caused any harm whatsoever in California.

18. Instead, Plaintiff sued first and asked questions later, reaching beyond the borders of the State and seeking to hale InComm, a South Dakota company with headquarters in Georgia, to answer its speculative claims in a California forum.

D. InComm's Motion to Quash and Jurisdictional Discovery

19. On May 6, 2024, after removing to federal court and ultimately being remanded back to Superior Court, InComm moved to quash service of the summons for lack of personal jurisdiction.

20. Under California's long-arm statute, a trial court may exercise personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." Cal. Code Civ. P. § 410.10.

21. In its motion to quash, InComm emphasized that the Complaint did not demonstrate any in-state injury to consumers in California, or otherwise establish any connection between the forum and Plaintiff's claims. (1 EX 59-61.)

22. In support of the motion to quash, InComm submitted an affidavit from Adam Brault, Senior Vice

President of Financial Services at InComm, establishing that InComm's card-security and customer-service functions—*i.e.*, the practices at issue in the Complaint—are performed by teams in Georgia, not California. (1 EX 74.)[1]

23. Rather than opposing InComm's motion, Plaintiff sought—and InComm assented to—a lengthy period of jurisdictional discovery so Plaintiff could amass evidence of jurisdiction. Not until March 2025 did Plaintiff file an opposition to Plaintiff's motion to quash. (2 EX 349-350.)

24. Thus, Plaintiff had ten months to connect the claims in the Complaint and to the State of California. During this period, Plaintiff served InComm (and some of InComm's nonparty retail partners) with far-reaching requests for documents, but never sought to depose Mr. Brault or any other InComm employee. (*See* 2 EX 350-351.)

25. Also during this period, InComm repeatedly asked Plaintiff to disclose any information it had about *any* California consumer that Plaintiff had reason to believe had been victimized by the security failures

1. Mr. Brault's affidavit also set forth facts relating to InComm's commercial relationships with nationwide brick-and-mortar retailers that sell Vanilla Gift Cards. (1 EX 74-75.) In particular, Mr. Brault noted InComm's lack of control over where in the United States those retailers maintain store locations. (*Id.*) Although these assertions were not contradicted, they pertain to whether InComm has "purposefully availed" itself of the California gift-card market, which InComm does not dispute on this appeal. Accordingly, they are not relevant to the issues on appeal.

hypothesized in the Complaint. (1 EX 153-155.) In return, InComm offered to supply whatever information *it* had about any such consumer's experience. (*Id.*) But every time, InComm's offer was met with silence.

E. Plaintiff's Post-Discovery Opposition

26. Plaintiff filed its opposition to InComm's motion to quash on March 14, 2025. Plaintiff dedicated most of the opposition to emphasizing the significant sales volumes of Vanilla Gift Cards in California through third-party retailers, and the extent of InComm's supposed involvement in the distribution, display, and activation of those cards. (2 EX 311.) According to Plaintiff, this commercial activity constituted "purposeful availment" of the California market, satisfying the first requirement for jurisdiction.

27. But Plaintiff made no evidentiary showing in support of the second requirement: a connection "between the forum and the underlying controversy, principally, an activity or occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, (2017) 582 U.S. 255, 262 (quotation marks and alteration omitted).

28. Plaintiff offered no evidence that the kind of gift card fraud posited in the Complaint had even ***occurred*** in California, much less caused injury there. Nor did it offer evidence of California consumers being improperly denied refunds. On the contrary, the few refund-related

documents submitted with Plaintiff's opposition uniformly appeared to show that consumers who complained about fraud ***did*** receive refunds from InComm. (*See* 2 EX 315.)

29. Indeed, Plaintiff offered no testimony from any California citizen about any occurrence of Vanilla Gift Card fraud or associated injuries in the State.

30. Plaintiff sought to elide this failing by focusing on the "purposeful availment" requirement, which it argued was satisfied by in-state sales of Vanilla Gift Cards—not only through InComm's third-party retail partners but also directly to consumers via InComm's website. (2 EX 310-311.) Not until page 16 of its opposition to InComm's motion to quash did Plaintiff get around to addressing the second requirement of a connection between California and the claims at issue. (2 EX 316.) Plaintiff's discussion of this requirement consisted of a single paragraph, unadorned with any citation to record evidence:

> In this case, "the [victims] are residents of the forum State[]. They used the allegedly defective products in the forum State[]. And they suffered injuries when those products malfunctioned in the forum State[]." (*Ford Motor Co.*, 592 U.S. at 370.) The People seek redress for in-state harms that flow from InComm's unlawful, unfair, deceptive, and fraudulent business practices in the forum state. These practices include: (i) InComm's failure to take reasonable steps to improve the security of Vanilla card technology and packaging in order to prevent foreseeable

> harm to California cardholders from card draining; (ii) InComm's failure to comply with its obligations under California law to promptly reimburse victims of card draining for the unauthorized transactions; and (iii) InComm's misleading statements to California consumers about the security of funds stored on Vanilla cards and their liability for unauthorized transactions. (*Id.*)

31. Plaintiff then quickly pivoted back to the first requirement, arguing that jurisdiction was proper because "InComm conducts substantial business in California and actively serves the market on an ongoing basis." (2 EX 317.)

F. InComm's Reply

32. In its reply brief to the Superior Court, InComm emphasized Plaintiff's failure to satisfy its evidentiary burden on the second jurisdictional requirement, *i.e.*, a connection between the forum and Plaintiff's specific claims. As InComm noted, Plaintiff's conclusory reference to California "victims" was unavailing given that Plaintiff had adduced no evidence that any such victims exist. (2 EX 349, 353-355.)

33. Indeed, as InComm argued, Plaintiff did not offer evidence in admissible form of *any* in-state harm. (2 EX 353-357.) That omission precluded Plaintiff's reliance on the U.S. Supreme Court's decision in *Ford*, a case involving claims by plaintiffs who themselves were injured in the forum states by the allegedly defective product. (*See*

2 EX 354-355.) Here, Plaintiff only speculates, based on hearsay, that somewhere in California, there are "victims" of InComm's alleged misconduct.

34. As for InComm's purported "failures" of security and service, Plaintiff likewise did not offer *any* evidence to rebut InComm's showing that if those failures happened at all, they happened in Georgia, where InComm is headquartered and its relevant operations are located. (2 EX 355-356.) Nor did Plaintiff identify, much less adduce evidence of, any allegedly "misleading statement" disseminated by InComm in California.

35. Instead, InComm noted, Plaintiff elided the distinction between the first requirement of the jurisdictional due process analysis (purposeful availment) and the second (the forum-controversy connection), arguing that the latter was satisfied because "InComm conducts substantial business in California and actively serves the market on an ongoing basis." (2 EX 317.)

36. As InComm noted in its reply, the U.S. Supreme Court rejected precisely such a gambit in another appeal arising from the Superior Court's improper exercise of jurisdiction over a foreign defendant. (2 EX 357.) There, the court explained that "extensive forum contacts that are unrelated to [the] claims" do not establish jurisdiction absent an "adequate link" between the defendant's forum activities and the plaintiff's claims, *i.e.*, an "activity or an occurrence that takes place in the forum State." *Bristol-Myers Squibb Co.*, 582 U.S. at 264–65.

G. Superior Court Hearing on the Motion to Quash

37. On April 11, 2025, the Superior Court held a hearing on InComm's motion to quash, during which the failures in Plaintiff's arguments came into even sharper relief. Plaintiff asserted, contrary to *Bristol-Myers*, that "[s]ystematically serving a market for the same products at issue in the complaint is sufficient" to establish personal jurisdiction. (1 EX 217.)

38. When InComm noted Plaintiff's failure to demonstrate any connection between the claims and InComm's forum-related activities, Plaintiff doubled down, again underscoring its reliance on market presence alone. Challenged by InComm to "point[] to anything [in the evidentiary record] about an activity or occurrence that took place in the forum state related to their claims," Plaintiff retorted by referencing "the $6 million . . . cards sold in 2023 and the half a billion dollars of transactions on Vanilla cards" within the State. (1 EX 224.) Plaintiff deemed this sales volume "more than sufficient . . . to ha[le] InComm into California," even in the absence of any showing of injury in the state. (*Id.*)

39. This assertion is directly at odds with *Bristol-Myers*, which, as discussed above, rejected that precise contention. 582 U.S at 264. When InComm noted as much, Plaintiff suggested that the holding of *Bristol-Myers* was abrogated in *Ford*, which is incorrect. (1 EX 217.) Rather, as the court explained, the result in *Ford* was different because, unlike in *Bristol-Myers*, the plaintiffs had been

injured in the forum by the allegedly defective product. *See Ford*, 592 U.S. at 370 (distinguishing *Bristol-Myers* on the basis that the *Ford* plaintiffs "suffered injuries when th[e] products malfunctioned in the forum States," yielding an affiliation between the forum and controversy). Plaintiff showed no such injuries here.

H. Superior Court's Order Denying the Motion

40. On April 22, 2025, the Superior Court entered an order denying the motion to quash (the "Order"). (1 EX 271.)

41. As discussed in more detail in Petitioner's memorandum of law, the Order replicated many of the errors of law advanced by Plaintiff during briefing and argument.

42. The Superior Court collapsed the first two requirements of the jurisdictional inquiry, effectively finding that InComm's purposeful availment of the California marketplace relieved Plaintiff of its burden to show a direct connection between the forum and the underlying controversy. (1 EX 262-266.) The Superior Court therefore failed to give any meaningful consideration to that jurisdictional requirement. Notably, its Order made no mention of *Bristol-Myers*.

I. Writ Review is Necessary and Appropriate

43. This petition has been timely filed. InComm sought and the Superior Court granted an extension of

the 10 days provided in Cal. Code Civ. P. § 418.10(c), giving InComm until May 7, 2025, to file this petition.

44. Under Cal. Code Civ. P. § 418.10(c), a petition for a writ of mandate is the only mechanism for review of the denial of a motion to quash. InComm therefore lacks any other adequate remedy at law.

45. Without the relief requested herein, InComm will suffer irreparable harm by being forced to defend a suit the Superior Court has no jurisdiction to hear, in denial of its federal due process rights. The costs and burden to InComm of defending the case are and will be significant.

46. Further, the Superior Court's Order would permit any state court to exercise jurisdiction based on nothing more than a bare allegation of some generalized in-state harm, with no requirement of identifying or substantiating such harm before subjecting an out-of-state defendant to the burden of discovery in a distant, unfamiliar forum. Such an approach would compromise the sovereignty of coequal states and offend notions of interstate comity.

J. Authenticity of Exhibits

47. Exhibits 1-16 accompanying this petition are true and correct copies of original documents on file with the trial court and the transcript of the April 11, 2025 hearing before the trial court. The exhibits are incorporated herein by reference as though fully set forth in this petition and are what they purport to be. The exhibits are paginated

consecutively from page 1 through 359, and references in this petition and the attached memorandum of points and authorities refer to this consecutive numbering.

PRAYER

48. WHEREFORE, InComm prays this Court to issue a peremptory writ of mandate directing the Respondent Superior Court to vacate its order denying the motion to quash service of the summons and directing Respondent to enter a new and different order granting said motion; or, in the alternative, to issue a writ with an order to show cause before this Court at a specified time and place why the foregoing relief should not be ordered; and to grant such other relief as may be just and proper.

Dated: May 7, 2025

By: /s/ Brian Chun
Brian Chun

Attorney for Petitioner-Defendant InComm Financial Services, Inc.

Appendix E

VERIFICATION

1. I am an attorney licensed to practice in California and am one of the attorneys for InComm Financial Services, Inc. I make this verification because I am familiar with the proceedings giving rise to this petition for writ of mandate or other appropriate relief.

2. I have read the foregoing petition, and either know its allegations to be true or believe them to be true based on the documents contained in the accompanying Compendium of Exhibits. The Compendium of Exhibits filed concurrently herewith contains true and correct copies of documents filed or lodged in the Superior Court, together with email correspondence between the Superior Court and the parties in the underlying case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on May 7, 2025, in San Francisco, California.

Dated: May 7, 2025

By: /s/ Brian Chun
Brian Chun

Attorney for Defendant-Petitioner
InComm Financial Services, Inc.

Appendix E

MEMORANDUM

I. Standard of Review

"On review, the question of jurisdiction is . . . one of law. When the facts giving rise to jurisdiction are conflicting, the trial court's factual determinations are reviewed for substantial evidence. [This Court] review[s] independently the trial court's conclusions as to the legal significance of the facts. When the jurisdictional facts are not in dispute, the question of whether the defendant is subject to personal jurisdiction is purely a legal question that [this Court] review[s] de novo." *SK Trading Int'l Co. v. Superior Ct. of San Francisco Cnty.*, (2022) 77 Cal. App. 5th 378, 387 (alterations omitted).

II. Personal Jurisdiction Standard

Under California's long-arm statute, a trial court may exercise personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." Cal. Civ. P. § 410.10. "It has long been established that the Fourteenth Amendment limits the personal jurisdiction of state courts." *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., San Francisco Cty.*, (2017) 582 U.S. 255, 261. The due process principles of the Fourteenth Amendment impose three criteria that must be satisfied before a court may exercise specific personal jurisdiction over an out-of-state defendant.[2] A

2. Plaintiff did not argue, and the Superior Court did not find, that InComm is subject to general jurisdiction in California. (1 EX 261.)

plaintiff must demonstrate (1) that the defendant has "purposefully availed" itself of the forum; (2) that the plaintiff's claim "arises out of or relates to" the defendant's forum-directed activity; and (3) that exercising personal jurisdiction would comport with "traditional notions of fair play and substantial justice." *See*, *e.g.*, *Schwarzenegger v. Fred Martin Motor Co.*, (9th Cir. 2004) 374 F.3d 797, 801–02. Only the second and third requirements are contested on this appeal.

With regard to the second requirement, litigation "arise[s] out of or relate[s] to the defendant's contacts" only where "the connection between the plaintiff's claims and [the defendant's] activities in th[e] State[]" is "close enough to support specific jurisdiction." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, (2021) 592 U.S. 351, 371. This connection may take multiple forms. In some cases, the plaintiff may establish the requisite connection by showing that "the defendant's activities" giving rise to the claims took place in the forum State; in others, the plaintiff may show that the defendant actively cultivated a market for a particular product in the forum state ***and*** that the product then caused injuries to the plaintiff there. *See*, *e.g.*, *id.* at 363–68. In all instances, however, the second requirement demands "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Bristol-Myers Squibb Co.*, 582 U.S. at 262 (cleaned up).

The third requirement, in turn, provides that a court's exercise of jurisdiction must comport in every

case with "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, (1945) 326 U.S. 310, 316 (quotation omitted). This "reasonableness" standard "protects the defendant against the burdens of litigating in a distant or inconvenient forum." *World-Wide Volkswagen Corp. v. Woodson*, (1980) 444 U.S. 286, 292. Just as importantly, it "acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *Id.*

III. Argument

The Superior Court exceeded the jurisdictional limits imposed by the Fourteenth Amendment by committing two distinct errors of law.

First, the Superior Court largely excused Plaintiff from the second requirement of the jurisdictional inquiry, which should have been dispositive here. The Superior Court devoted virtually the entire Order to "purposeful availment" (a point InComm had conceded), and failed to discuss or even quote the legal standard for the independent requirement that the plaintiff's claims "arise out of or relate to" the defendant's forum contacts. The Superior Court sidestepped InComm's arguments on this point by reasoning that "California jurisprudence" did not require Plaintiff to "prematurely prove[] the merits of their allegations at this juncture." (1 EX 266.) That is beside the point. Federal due process principles ***did*** require Plaintiff to demonstrate an in-state "activity or occurrence" underlying the claims, and Plaintiff failed to

do so. The Superior Court erred by relieving Plaintiff of this constitutional requirement.

Second, the Superior Court failed to properly apply the third requirement of the specific personal jurisdiction inquiry, which limits a state court's authority to adjudicate controversies in which the state has little interest. This case is based on Plaintiff's theory, developed through online research, that InComm has inadequate security and customer service. There is nothing California-specific about the claims at issue, and California has no particular interest in adjudicating them. As Plaintiff conceded at oral argument, any state's court could, under Plaintiff's theory, take jurisdiction of the very same Complaint. (1 EX 222.) For these reasons, the court's exercise of jurisdiction is an overreach of state sovereignty, offending traditional notions of federalism and interstate comity. The Order failed to engage with these issues.

A. The Superior Court Erroneously Relieved Plaintiff of its Burden to Show a Connection Between the Claims and Forum

The Superior Court should have granted InComm's motion to quash because Plaintiff failed to show that its claims bear the sufficiently "close" connection to InComm's California contacts that due process requires. *Ford Motor Co.*, 592 U.S. at 371. The acts and omissions of which Plaintiff complains relate entirely to InComm's product packaging, customer service, and other business practices that indisputably occur in Georgia. And Plaintiff did not offer any admissible evidence of a *single* injury in California.

This case, therefore, is no different from *Bristol-Myers*. There, the California courts attempted to assert personal jurisdiction in a suit accusing a nationwide company of product defects, based solely on the fact that the company had "extensive contacts" with California, and despite the fact that the claims did not arise from injury in that state. *Bristol-Myers Squibb Co.*, 582 U.S. at 259–60. The U.S. Supreme Court rejected that effort. *Id.* at 264. It concluded that the plaintiffs had not demonstrated "a connection between the forum and the specific claims at issue," given that "all the conduct giving rise to the . . . claims occurred elsewhere," and the plaintiffs "d[id] not claim to have suffered harm in [California]." *Id.* at 265.

The fact that the defendant marketed the product at issue extensively in California was, accordingly, of no consequence. In the absence of an "affiliation between the forum and the underlying controversy," *i.e.*, an "activity or occurrence . . . in [the] forum State," "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* at 264.

These principles control here, yet the Superior Court entirely disregarded them, failing even to cite *Bristol-Myers*. The Superior Court misstated the governing legal standard, erroneously conflated the first and second requirements of the specific jurisdiction inquiry, and wrongly determined that Plaintiff was excused from its jurisdictional burden because the required showing might overlap with the merits of the case.

Appendix E

1. The Superior Court Conflated the First Two Requirements of the Personal Jurisdiction Inquiry and Employed the "Sliding Scale" Approach Rejected in *Bristol-Myers*

By its own telling, the Superior Court conflated the first and second criteria of the due process inquiry. Its Order embraced Plaintiff's erroneous theory that robustly servicing a product market in the forum state is sufficient ***on its own*** to establish specific jurisdiction, even in the absence of any injury or other relevant "occurrence" in that State.

This was evident in both the structure and content of the Superior Court's Order. Its section headings jumped immediately from "purposeful direct[ion]" to "fair play and substantial justice"—skipping right over the second, "arising out of or relating to," requirement. (1 EX 262, 266.) Its reasoning followed suit. The Order focused heavily on evidence cited by Plaintiff as illustrative of InComm's "minimum contacts" with California, and treated those contacts as per se sufficient to support jurisdiction. For example, the Order declared that "InComm is actively, intricately, and purposefully involved in the sales, marketing, and distribution of its products in California," and that these were "purposeful activities that establish the minimum contacts ***necessary to subject In Comm to specific jurisdiction***." (1 EX 264; *see also* 1 EX 265 ("InComm's ***substantial and purposeful commercial activities in the forum support personal jurisdiction***" (emphasis added)).)

This is wrong as a matter of law. At best, these "minimum contacts" support a showing of the first requirement for specific personal jurisdiction—the "purposeful availment" requirement, *which InComm conceded.*[3] But contrary to the Superior Court's holding, no degree of purposeful availment, standing alone, is sufficient to "support personal jurisdiction" or "subject InComm to personal jurisdiction" on its own. (1 EX 265.) The proponent of jurisdiction also must meet the second requirement, demonstrating that the claims "bear[] a *substantial connection* to" the defendant's forum contacts. *Vons Cos., Inc. v. Seabest Foods, Inc.*, (1996) 14 Cal. 4th 434, 452 (emphasis added). On that point, the Superior Court made no separate factual findings; if it had, it would have found that jurisdiction was lacking. As in *Bristol-Myers*, "[w]hat is needed—and what is missing here—is a connection between the forum and the specific claims at issue." *Bristol-Myers Squibb Co.*, 582 U.S. at 265.

To further compound this legal error, the Superior Court revived the "sliding scale approach" to personal jurisdiction that was expressly rejected in *Bristol-Myers*. *Id.* at 264. According to the Superior Court's Order, the

3. Solely for purposes of this Petition, and without waiver of any argument in future proceedings in this or other matters, InComm does not contest Plaintiff's recitation of the facts relating to InComm's California commercial activities as set forth in Plaintiff's Opposition. (2 EX 309-315.) The Superior Court likewise noted that Plaintiff's recitation of these facts was "largely undisputed" for purposes of the motion to quash. (1 EX 261.) Accordingly, InComm's Petition is not directed to the Superior Court's factual findings but rather to its erroneous application of the governing law.

"scope and substantial nature" of InComm's California activities, including through providing customer service to California consumers and security monitoring of cards sold in the state, are "bases for specific jurisdiction"—though none of them gives rise to Plaintiff's allegations or has been shown to cause harm in the State. (1 EX 265.) The Superior Court inferred, without explanation, a loose thematic connection between these general security- and customer-service-related activities and "the card draining at the heart of this case." (*Id.*) That, combined with the "substantial" and "purposeful" nature of InComm's activities, was good enough for the Superior Court to declare these activities "bases for specific jurisdiction" over InComm. (*Id.*)

This "sliding scale" approach, in which "the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims," was rejected in *Bristol-Myers*, *see* 582 U.S. at 264. That approach, the court reasoned, is not rooted in principles of specific personal jurisdiction but instead "resembles a loose and spurious form of general jurisdiction." *Id.* Accordingly, in *Bristol-Myers* the California court could not exercise jurisdiction over a non-resident defendant—in the absence of evidence of in-state injury or in-state misconduct—simply because the defendant's nationwide business enterprise included substantial but unrelated contacts to a California product market. Yet that is exactly what the Superior Court did here, disregarding *Bristol-Myers* and InComm's arguments based on it.

Appendix E

At oral argument, when InComm referenced *Bristol-Myers*, the Superior Court suggested the case was categorically inapplicable because the plaintiffs there were nonresidents of California. (1 EX 214.) That is incorrect. As an initial matter, Plaintiff here is, by its own account, ***also*** a nonresident of California. (1 EX 11.) More importantly, the *Bristol-Myers* plaintiffs' nonresident status was significant only because of its practical consequences: it meant the plaintiffs could not show that they "suffered harm" in California or that the other events underlying their claims occurred there. *Bristol-Myers Squibb Co.*, 582 U.S. at 265. So too here, Plaintiff has identified no "harm" in California or otherwise linked its claims to InComm's activities in the state. Accordingly, *Bristol-Myers* is directly controlling, and the Superior Court's disregard of it was error.

Finally, *Ford* is not to the contrary and did not apply a different legal standard. The Plaintiff and the Superior Court noted *Ford*'s emphasis on the defendant's in-forum marketing activities, which go to the "purposeful availment" requirement. (1 EX 265.)[4] But they ignored entirely that *Ford* ***also*** featured an accident ***in the forum state***, which involved the allegedly defective automobile and caused the plaintiffs' injuries, and which ultimately

4. The Superior Court's Order describes as "*persuasive*" "cases like" *Ford*. (1 EX 265 (emphasis added).) In fact, decisions from the U.S. Supreme Court, are *binding* on questions of federal due process. The Superior Court's mischaracterization of these authorities as merely "persuasive" suggests that the Superior Court felt free to disregard such decisions, like *Bristol-Myers*, to the extent it was not "persuaded."

satisfied the second requirement. Here, by contrast, there is no evidence of an in-state injury or any other substantial connection between Plaintiff's claims and InComm's California-directed activities. By dispensing with the requirement of such a connection, and premising jurisdiction entirely on InComm's unrelated California-directed activities, the Superior Court committed a legal error that this Court should reverse.

2. The Superior Court Misconstrued Plaintiff's Claims to Invent a Connection Between Those Claims and InComm's Unrelated Contacts

Though the Superior Court did not devote any section of its Order to the second requirement, its lengthy "purposeful availment" section included a one-paragraph discussion of the purported "nexus" between the forum and the claims (*see* 1 EX 266). That terse discussion, however, only underscored the Superior Court's conflation of the first and second requirements. The Superior Court did not identify or quote the prevailing legal standard on the second requirement, *i.e.* that there be "a connection between the forum and the specific claims at issue." *Bristol-Myers Squibb Co.*, 582 U.S. at 265. Instead, it emphasized again InComm's "minimum contacts" with and "activities" in California, ultimately concluding without explanation that "[t]he minimum contacts established by the People undoubtedly have a sufficient nexus to the controversy." (1 EX 266.)

As part of this effort, the Superior Court re-defined Plaintiff's "controversy" to conform to InComm's purported California activities, rendering illusory the requirement of a "nexus" between the two. The Complaint alleges three categories of InComm's purported misconduct: (1) failure to use adequately secure packaging for Vanilla Gift Cards; (2) failure to reimburse consumers victimized by package tampering; and (3) unidentified and vaguely described "misleading statements." (1 EX 8-9; *see also* 2 EX 306.) Plaintiff has not demonstrated—or even argued—that any of these occurred, or caused injury in, California. Thus, Plaintiff has not shown a "nexus" between the forum and the "injury producing activities" alleged in the Complaint.

Yet the Superior Court, in search of a nexus to the forum that the Plaintiff did not supply, declared that the "the alleged injury producing activities" include ***everything*** InComm does to "display[]," "sell[]," "package[]" or "monitor[]" the cards or to respond to customer complaints about them. (1 EX 266.) On these grounds, the Superior Court found that InComm's allegedly "injury producing activities" closely overlapped with its "activities in the forum." (*Id.*) But the Superior Court's formulation of the alleged "injury producing activities" had no basis in the Complaint, the record, or Plaintiff's arguments. The Complaint takes no issue with the way InComm "displays" or "sells" the cards, and not even Plaintiff has described InComm's general sales and distribution efforts as "injury producing activities." By imposing this sweeping, revisionist definition of Plaintiff's claims, the Superior Court again vitiated the requirement

of a connection between the forum and the "specific claims" at issue.

To be sure, the Order's maximalist characterization of the "injury producing" conduct also encompassed some activity legitimately at issue, such as the way InComm "packages" the cards and allegedly "fails to adequately respond" to complaints of fraud. (*Id.*) But InComm showed—in a sworn and unrebutted affidavit—that ***those*** activities *do not take place in California*. (1 EX 74-76.) Plaintiff did not dispute this, and the Superior Court did not question it. By including these activities on its haphazard list of "InComm's activities in the forum," (1 EX 266), the Superior Court conflated InComm's *California activities* with the *activities at issue in the Complaint*. This conflation precluded any meaningful assessment of the required connection between the two.

In short, all the "activities" the Superior Court referenced in this discussion were either "InComm's activities in the forum" ***or*** its "alleged injury producing activities"***—but none were both***. By collapsing them together, the Superior Court further demonstrated its disregard for the constitutional requirement that the latter "arise out of or relate to" the former. Rather, like the lower courts in *Bristol-Myers*, the Superior Court added up the total of all InComm's supposed California contacts, even those wholly "unrelated" to Plaintiff's claims, in order to find jurisdiction. That "loose and spurious" analysis violates due process and constitutes a clear error of law. *Bristol Myers Squibb Co.*, 582 U.S. at 264.

3. The Superior Court Abrogated Plaintiff's Evidentiary Burden

Finally, the Superior Court committed another error of law by relieving the Plaintiff of its evidentiary burden at the jurisdictional phase merely because its failure of proof may *also* go to the merits.

InComm emphasized below that the only connection between the forum and the controversy that Plaintiff identified in its opposition is the presence in California of "victims" of InComm's alleged misconduct. (*See* 2 EX 307, 316; 2 EX 349, 353-355.) Plaintiff invoked such "victims" to fit this case into the facts of *Ford*, where the plaintiffs pleaded on personal knowledge that they were injured in car accidents in the fora. (2 EX 315.) But here, Plaintiff was unable to muster, after ten months of jurisdictional discovery (plus its pre-suit diligence—if any) a shred of proof that any such victims exist. For that matter, Plaintiff adduced no evidence that the mechanism of fraud alleged in the Complaint had even occurred in California or caused injury there.

Plaintiff did not argue otherwise. Instead, it emphasized at argument that it need not prove "consumer injury" as a matter of California law. (1 EX 217-219.) But while Plaintiff may not be subject to the same statutory-standing requirement as a private UCL plaintiff, it has chosen to rely—for purposes of a jurisdictional inquiry governed by the U.S. Constitution—on the purported existence of California "victims." A "motion to quash is an evidentiary motion," and the plaintiff must meet its burden with "competent evidence in affidavits and authenticated

documentary evidence." (1 EX 260 (quoting *Ziller Elecs. Lab GmbH v. Superior Ct.*, (1988) 206 Cal. App. 3d 1222, 1233).) Accordingly, Plaintiff's failure to offer any evidence of the "victims" that supposedly justify a California court's exercise of jurisdiction should have been fatal.

The Superior Court excused Plaintiff from this constitutional requirement on the basis of "California jurisprudence" holding that a plaintiff need not "prov[e] the truth of the allegations constituting the causes of action in order to justify the exercise of jurisdiction over nonresident parties." (1 EX 266 (quotation marks and citation omitted); *see also* 1 EX 262 n.3.) The Superior Court criticized InComm's invocation of the due process requirements as an improper demand that Plaintiff "prematurely prove[] the merits." (1 EX 266.) This reasoning got things backward: The fact that a failure to prove jurisdictional facts might *also* affect the merits is no reason to ignore the jurisdictional defect. *See*, *e.g.*, *In re Auto. Antitrust Cases I & II*, (2005) 135 Cal. App. 4th 100, 110 (when "personal jurisdiction is asserted on the basis of a nonresident defendant's alleged activities in this state, facts relevant to jurisdiction may also bear on the merits of the complaint"); *Regents of Univ. of New Mexico v. Superior Ct.*, (1975) 52 Cal. App. 3d 964, 970 n.7 (where jurisdiction "depends on the validity of the substantive claim against the foreign defendant," a plaintiff who fails to "even support [that claim] by a prima facie showing . . . cannot demand that [a court] judge the question of jurisdiction in the light of a claim he apparently does not have").

Rivelli v. Hemm, (2021) 67 Cal. App. 5th 380, is instructive. There, plaintiff alleged that one defendant

had violated his fiduciary duty to a California corporation, and that another, Straumann, had aided and abetted the first. Plaintiff asserted that both defendants were subject to jurisdiction because they had participated in the California corporation's affairs. As to Straumann, however, the Court of Appeal, Sixth District, found no "evidence that the conduct Straumann directed at California . . . is connected with the specific charge of aiding and abetting an alleged breach." *Id.* at 403. It did so after surveying various California authorities establishing that "facts relevant to jurisdiction may also bear on the merits of the case," but that a plaintiff is nevertheless required in such cases to come forward with competent evidence of those facts. *Id.* (citation omitted).

In one brief footnote, the Superior Court hinted that in-state injury might have occurred here, citing documents that not even ***Plaintiff*** had cited to support such a conclusion. (*See* 1 EX 262 n.3 (citing Louk Decl., Exs. M, O).) These documents—non-InComm records containing unsworn statements—are hearsay twice over and inadmissible. Cal. Evid. Code § 1200. Moreover, even accepting their contents as true, the documents provide no indication that the consumers discussed therein fell victim to the misconduct alleged in the Complaint. On the contrary, these hearsay accounts appear to show that the consumers called InComm's customer-service line and *were provided refunds* for their unsatisfactory card experiences (*see* 2 EX 340; 2 EX 345)—in direct contradiction of the allegations in the Complaint (*see* 1 EX 9) and of the notion of any harm. It is no wonder that Plaintiff did not rely on these documents to demonstrate in-state injury supporting jurisdiction. The Superior

Court should not have ascribed any significance to them, either.

Indeed, Plaintiff has provided even less than the plaintiff in *Rivelli*, where at least there was a declaration from an ostensibly injured party. Here, Plaintiff had ten months to conduct jurisdictional discovery—let alone the years in which it could have done a pre-suit investigation. As a litigant with the investigatory resources of the City Attorney, Plaintiff was in a better position than anyone to identify allegedly injured California consumers, or any other nexus sufficient to satisfy the second prong of the jurisdictional inquiry. It failed to do so.

B. The Exercise of Jurisdiction Would Violate Traditional Notions of Fair Play and Substantial Justice

The Supreme Court has long held that "restrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.'" *Bristol-Myers Squibb Co.*, 582 U.S. at 263 (quoting *Hanson v. Denckla*, (1958) 357 U.S. 235, 251). The Fourteenth Amendment's Due Process Clause limits state courts' adjudicatory authority to ensure "that the States . . . do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp.*, 444 U.S. at 292. That is just what the Superior Court did here. As with prong two, the Superior Court merged its assessment of prong three with its findings on purposeful availment,

resting its conclusion solely on its "[a]nalysis of the factors above[.]" (1 EX 267.) This was error.

As the Superior Court itself noted, the analysis of whether exercising jurisdiction is reasonable should instead focus on, among other factors, "the interest of a state in . . . regulating the business involved; the ease of access to an alternative forum; the avoidance of a multiplicity of suits and conflicting adjudications; and the extent to which the cause of action arose out of defendant's local activities." (1 EX 266-267 (quoting *Integral Dev. Corp. v. Weissenbach*, (2002) 99 Cal. App. 4th 576, 591).)

Here, exercising jurisdiction over InComm was unreasonable. Plaintiff failed to identify any California consumer that was allegedly injured by InComm's conduct. As such, Plaintiff's claims seek not to redress any California injuries but rather to second-guess, through litigation, the business practices and policies of a citizen of a coequal state thousands of miles away. The Fourteenth Amendment does not permit this. Because California has no special interest in this case, due process supplies no basis for its exercise of jurisdiction over InComm. Indeed, Plaintiff conceded that under its expansive conception of due process, any public prosecutor could bring this exact same complaint in any state court. (*See* 1 EX 222.) To exercise jurisdiction on that basis would dispense with all meaningful limits on state sovereignty—exactly the outcome that the due process limitations on jurisdiction are intended to prevent. *Bristol-Myers Squibb Co.*, 582 U.S. at 263 (the reasonableness inquiry protects defendants against being forced to "submit[] to the coercive power

of a State that may have little legitimate interest in the claims in question.").

In defending its exercise of jurisdiction, the Superior Court relied, cryptically, on the fact that a federal court previously remanded Plaintiff's lawsuit for lack of *subject-matter* jurisdiction. (1 EX 267 at n.4; *see also California ex rel. Chiu v. InComm Fin. Servs., Inc.*, (N.D. Cal. Mar. 26, 2024) 2024 WL 1281330.) That is irrelevant to the questions presented here. The fact that California state courts are courts of general subject-matter jurisdiction does not also mean that they have universal *personal* jurisdiction. Nor did the remand order discuss, let alone dispose of, the due process principles at issue here.

CONCLUSION

For these reasons, the Court should grant the petition for a writ of mandate, and direct the Superior Court to grant InComm's motion to quash service of summons.

Dated: May 7, 2025

By: /s/ Brian Chun
Brian Chun

Attorney for Petitioner-Defendant InComm Financial Services, Inc.

[CERTIFICATE INTENTIONALLY OMITTED]

[PROOF OF SERVICE AND EXHIBITS INTENTIONALLY OMITTED]

APPENDIX F – MOTION TO QUASH SERVICE OF THE SUMMONS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO, FILED MAY 6, 2024

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Case No. CGC-23-610333

PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH SAN FRANCISCO CITY ATTORNEY DAVID CHIU,

Plaintiff,

vs.

INCOMM FINANCIAL SERVICES, INC.; TBBK CARD SERVICES, INC.; SUTTON BANK; PATHWARD N.A.; AND DOES 1 THROUGH 10,

Defendants.

Filed May 6, 2024

Reservation No.: N/A
Judge: None assigned
Date: June 28, 2024
Time: 9:30 a.m.
Dept.: Law & Motion, 302

Trial Date: Not set
Action Filed: November 9, 2023

Appendix F

DEFENDANT'S NOTICE OF MOTION AND MOTION TO QUASH SERVICE OF SUMMONS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

TO PLAINTIFF THE PEOPLE OF CALIFORNIA AND ITS COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on June 28, 2024, at 9:30 a.m. or as soon thereafter as the matter may be heard, in Department 302 of the above-entitled Court, located at 400 McAllister Street, San Francisco, California 94102, Defendant InComm Financial Services, Inc., specially appearing, will and hereby does move the Court for an order quashing service of summons.

This motion is made pursuant to section 418.10, subd. (a)(1) of the Code of Civil Procedure on the grounds that Defendant, InComm Financial Services, Inc. ("InComm"), does not do business in the State of California or otherwise have contacts with the State sufficient for this Court to exercise personal jurisdiction over it.

In support of its motion, Defendant InComm, relies upon this Notice of Motion and Motion, on the accompanying Memorandum of Points and Authorities and Declarations of Jane Metcalf and Adam Brault, and on all the pleadings and papers on file herein.

Dated: May 6, 2024 /s/ Brian Chun

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[TABLES INTENTIONALLY OMITTED]

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Complaint is long on innuendo and legal conclusions, but short on key facts, including any facts to

support this Court's exercise of jurisdiction over InComm. As a South Dakota corporation with headquarters in Georgia, InComm is not "at home" in California, and thus not subject to the general jurisdiction of its courts. Accordingly, Plaintiff ("the City Attorney") must demonstrate a factual basis for the exercise of specific personal jurisdiction. This requires a showing that (i) InComm purposefully directed activity to California; ***and*** (ii) the City Attorney's claims arise from or relate to that activity. The Complaint's allegations show nothing of the sort. Though the Complaint accuses InComm, in conclusory terms, of undertaking "unlawful, unfair and fraudulent business practices" in California, it identifies no "business practices" that InComm performs in, or directs to, California. Nor does it allege that the City Attorney's claims "arise out of" any such practices. Accordingly, the Complaint has demonstrated no basis for personal jurisdiction, and service of summons should be quashed.

The Complaint primarily takes aim at InComm's packaging for its Vanilla Gift Cards, which the City Attorney deems "insufficient" to protect against tampering. According to the Complaint, this "insufficiency" enables thieves to tamper with card information before the cards are sold; return the cards to store shelves; wait for unwitting consumers to purchase them; and then use the pilfered information to "drain" the cards' newly-loaded funds. In other words, the City Attorney claims that InComm's packaging makes it too easy for criminals to steal money off Vanilla Gift Cards, and that InComm has misled consumers about this fact. The Complaint also insinuates that InComm has failed to refund consumers

when they fall prey to this theft. On these bases, the City Attorney asserts claims under California's Unfair Competition Law, Cal. Bus. & Prof. Code. § 17200 (the "UCL").

The City Attorney's characterization of InComm's conduct is unsupported by factual allegations, and is entirely wrong. But more importantly for purposes of this motion, the Complaint contains no hint that InComm directed any of the conduct at issue to California. The Complaint does not allege that InComm develops its packaging or manages its customer service teams in California (in fact, both operations are in Georgia). And while the Complaint vaguely contends that InComm "sells" the offending cards to consumers in California, its factual allegations show otherwise. There is no allegation that InComm operates any retail locations in California. Rather, the Complaint acknowledges, third-party retailers (*e.g.*, top national pharmacy chains) are the ones who sell the cards to consumers, in California and elsewhere. To be sure, InComm produces the cards, and releases them into the stream of commerce, which presumably takes them to consumers in all 50 states. But as courts have repeatedly held, that does not constitute purposeful direction to any one state. Simply put, the City Attorney's mere allegation that some Vanilla Gift Cards have landed in stores in California does not subject InComm to suit there.

Even if the Complaint did allege that InComm purposefully directed these brick-and-mortar sales to California—which it does not—it fails to establish the second prong of specific jurisdiction: that the City

Attorney's claims "arise out of" those forum contacts. Though the Complaint lobs vague accusations of wrongdoing at InComm, it does not take aim at particular Vanilla Gift Card sales that occurred in California, or caused injury to consumers in the state. For that matter, it does not identify admissible evidence of even one Californian who claims to have been injured by InComm's conduct. Thus, even if the Complaint alleged InComm's purposeful direction of retail sales to California consumers, it would still flunk the second prong of the personal jurisdiction test, as its claims do not arise from any such sales.

Finally, the Complaint's brief references to InComm's internet sales platforms provides no hook for jurisdiction, either. The Complaint alleges that InComm operates websites, through which it sells Vanilla Gift Cards to consumers nationwide—including, the Complaint presumes, some in California. But once again, the second prong is missing, because the Complaint's claims do not allege, much less "arise out of," any internet sales to consumers in California. Nor could they: the entire premise of the Complaint is that InComm has made it too easy for criminals to tamper with Vanilla Gift Cards ***while the cards sit on store shelves before purchase***. By definition, cards that consumers order over the internet are unaffected by that issue, and bear no connection to the City Attorney's claims.

In short, the City Attorney has no grounds for summoning InComm to a California court, and should not be permitted to do so. Although any criminals who actually ***stole*** gift card funds in California would surely be

subject to suit in the state, the City Attorney has chosen instead to pin the blame on InComm for making the cards in the first place. This decision is not only peculiar, but also impermissible, given the City Attorney's failure to support its assertion of jurisdiction with any factual allegations of InComm's in-state activities. The Court should grant InComm's motion and quash the service of summons.

II. STATEMENT OF FACTS

A. Plaintiff's Claims

Defendant InComm, a premier financial technology company, is incorporated in South Dakota and maintains its principal place of business in Georgia. InComm offers a range of innovative payment products, including, as alleged in the Complaint, "Vanilla" branded-prepaid gift cards ("Vanilla Gift Cards").[1] Vanilla Gift Cards are "open-loop" gift cards, meaning that they physically resemble credit cards, and can be used to pay for goods and services at merchants that accept the credit card network associated with the card (*e.g.*, Visa or MasterCard). (Compl. ¶¶ 20-21.)

1. The Complaint names InComm Financial Services, Inc. ("IFS") as a defendant. IFS, along with Interactive Communications International ("ICI"), is part of a group of affiliated entities collectively known as InComm Payments. ICI is the corporate entity primarily responsible for the design, manufacturing and distribution of the cards at issue. IFS, meanwhile, handles payment authorization, settlement, fraud research and dispute management in connection with these cards. Thus, IFS and ICI work collaboratively within the broader InComm Payments organization to offer the suite of services associated with the Vanilla Gift Cards.

When a consumer buys a Vanilla Gift Card, the card is "activated," or loaded with an initial cash balance, at the point of sale. (*Id.* ¶ 21, 36.) The balance then becomes available for spending. (*Id.* ¶ 36.) Vanilla Gift Cards cannot be "reload[ed]" with additional funds after the initial activation, and they are not linked to specific bank accounts or individuals. (*Id.* ¶ 28.)[2]

As the Complaint's allegations show, Vanilla Gift Cards have achieved unparalleled placement in premium retail chains, reflecting their popularity among consumers. Many top national retailers, such as Walgreens, Safeway, and CVS, offer Vanilla Gift Cards. (*Id.* ¶ 31.) The Complaint also notes that some of these retailers elect to offer Vanilla Gift Cards to the exclusion of any other open-loop prepaid product, a reflection of Vanilla Gift Cards' best-in-class status. (*Id.* ¶ 32.) InComm also sells physical and electronic Vanilla Gift Cards directly to consumers through its online sales platforms, such as its Vanilla Gift website, www.vanillagift.com. (*Id.* ¶ 31.)

The Complaint does not allege that there is anything wrong with the Vanilla Gift Cards themselves. Instead, it contends that InComm has failed to ensure the security of its card packaging, leaving the cards susceptible to

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2. The Complaint alleges that InComm charges a monthly "inactivity fee" on certain Vanilla Gift Cards after a certain period of activity. Compl. ¶ 27. Though this assertion is irrelevant to the City Attorney's claims, it is also wrong, as the Complaint's own incorporated sources demonstrate. Every Vanilla Gift Card cardholder agreement makes clear that Vanilla Gift Card funds are subject to no fees at any point after activation, nor do the funds ever expire. (Compl. ¶ 34.)

what the Complaint refers to as "package tampering" and "card draining." In general terms, these practices refer to criminals "tampering" with unsold gift cards as they sit on retail store racks. The City Attorney alleges that InComm's purportedly "lax" packaging makes it easy for a criminal to walk into a large chain store, open the packaging of an unsold Vanilla Gift Card, record the card information (including the 16-digit card number), reseal the packaging, and return the card to the rack. (*Id.* ¶¶ 34-36.) Then, according to the Complaint, an unsuspecting consumer purchases the card and loads it with funds, only to have the criminal immediately spend the funds and "drain[]" the balance by using the stolen card information. (*Id.* ¶¶ 50-54.)

Although it is unfortunately true that criminal actors sometimes target gift cards through package-tampering schemes, the City Attorney's suggestion that this problem is unique to Vanilla Gift Cards—let alone attributable to the products' "lax" packaging—is just wrong. Many other U.S. jurisdictions have devoted considerable law enforcement resources to addressing the issues of card package tampering and "draining," a problem that affects ***all*** brands and types of prepaid cards, and has been traced to a sophisticated international crime network.[3] The City

3. See Ex. A, Decl. of Jane Metcalf in Support of the Mot. to Quash ("Metcalf Decl."), Bahari, *Plano Police Seize Thousands of Gift Cards in Scheme,* Dallas Morning News (Apr. 17, 2024), available at https://tinyurl.com/3fz8nkuy (describing seizure of "thousands of gift cards" of brands other than Vanilla, and reporting that "federal authorities are investigating the involvement of Chinese organized crime rings in gift card schemes"

Attorney, by contrast, has arbitrarily opted to cast the blame on InComm and its purportedly deficient packaging. The Complaint alleges, in conclusory terms, that InComm produces insecure packaging and improperly denies refunds to consumers who seek them. (*Id.* ¶ 76.) These actions are alleged to violate the fraudulent, unlawful and unfair prongs of the UCL.

B. Jurisdictional Allegations

The Complaint does not purport to allege general personal jurisdiction over InComm. Rather, in an attempt to establish specific personal jurisdiction, the Complaint includes the conclusory allegations that "Defendants are engaging in unlawful, unfair, and fraudulent business practices in San Francisco" and "some of the unlawful conduct occurred in San Francisco." (Compl. ¶¶ 15-16.) The factual allegations, however, fail to bear this out. InComm's purportedly objectionable "business practices," *i.e.*, its card packaging and customer service operations, have no connection to California. The Complaint does not and cannot allege otherwise.

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that have cost U.S. consumers "hundreds of millions of dollars."). As set forth in the article, the investigation of this international theft ring has required cooperation among state law enforcement authorities as well as the U.S. Secret Service, U.S. Immigrations and Customs Enforcement, and U.S. Department of Homeland Security. All of these law enforcement professionals would surely be surprised to hear the San Francisco City Attorney's dismissal of gift card fraud as a "relatively unsophisticated crime" wholly attributable to one product's packaging. (Compl. ¶ 50.)

Appendix F

The Complaint attempts to shore up the California connection with the claim that InComm "sells" Vanilla Gift Cards "in San Francisco and throughout California." (*Id.* ¶ 9.) But its allegations belie that claim, too. The Complaint's allegations reflect that InComm does not in fact "sell[]" cards at physical locations; third-party retailers, particularly national chains such as "Walgreens . . . Safeway, and CVS," do. (*Id.* ¶ 31.) As detailed in the accompanying Declaration of Adam Brault, that is accurate: all sales of Vanilla Gift Cards in brick-and-mortar stores occur through third-party retailers. (Decl. of Adam Brault, Sr. VP of Financial Services at InComm, in Support of Mot. to Quash ("Brault Decl.") ¶¶ 9-10.) Those retailers, rather than InComm, select the store locations where these sales occur. (*Id.*)

The Complaint also tries to muster a California connection by noting that InComm sells Vanilla Gift Cards directly to consumers from its online sales platforms, such as vanillagift.com. (*Id.* ¶ 9.) The Complaint observes that these websites are "available to Californians," and that they enable consumers to purchase Vanilla Gift Cards directly from InComm. (*Id.* ¶ 9.) However, the Complaint does not identify any such online sales that form the basis of its claims. Nor could it, since online sales are, by definition, impervious to the in-store "package tampering" that is the focus of the Complaint. Indeed, the Complaint expressly focuses its allegations on Vanilla Gift Card sales that occur at brick-and-mortar locations of national chain retailers. In short, the Complaint is devoid of any allegation that InComm directed any "conduct" underlying the City Attorney's claims to the State of California.

C. Allegations About California Consumers

Also missing from the Complaint are any allegations that InComm's purported misconduct has caused any harm in the state. The City Attorney declares that InComm's alleged misdeeds are "rampant," that they have "harmed . . . consumers for years," and that consumers who buy Vanilla Gift Cards are "likely" to be swindled out of their "hard-earned money." (*Id.* ¶¶ 23 19, 94.) Yet it appears from the Complaint that the City Attorney has not located or spoken with ***even one*** such consumer. The Complaint contains no accounts of consumers in San Francisco, or elsewhere in California, who have relayed their bad Vanilla Gift Card experiences to the City Attorney's office or other government agencies. Nor does it identify any other California entity, such as a store or municipality, that claims to have suffered injury from InComm's supposed misdeeds.

Instead, the Complaint alleges that the City Attorney has read unflattering things about Vanilla Gift Cards on the internet, and proceeds to quote from them at length. The Complaint references negative comments that unnamed or pseudonymous posters made on open consumer-review chat forums, such as "trustpilot.com" and "complaintsboard.com." (*Id.* ¶¶ 48-49.) It quotes stories from local news stations in, *e.g.*, Hampton, Virginia and Irvine, California. (*Id.* ¶ 106.) And although it attempts to add a patina of legitimacy by quoting from what it obliquely refers to as "the BBB's [Better Business Bureau] In[C]omm webpage," (*id.* ¶ 78), these quotes do not come from the BBB's own remarks, or even from

formal "complaints" that consumers submitted to the BBB for investigation. Instead, "the BBB's InComm webpage" refers to the BBB's unpoliced customer review forum, which is no more reliable than any other open internet forum, and which even the BBB accordingly disregards when assigning companies their "grades" (InComm's grade is A+).[4] These unverified, unreliable accounts constitute the lone support for the Complaint's claim of "rampant" consumer harm. Notably, there is no allegation that the City Attorney has ever spoken to any of these individuals or personally investigated any of these claims.

What is more, even if every word of every pseudonymous hearsay comment pasted into the Complaint were true, that ***still*** would not show that InComm's alleged misdeeds caused harm to California consumers. Only five of the quotations are from consumers who identify themselves as California residents (*see id.* ¶¶ 43(e), 50-52; 43(f); 43(g); 43(i); 93(i)), and while all of these quotes involve accounts of card balance theft, none of them conclusively attributes the theft to package tampering. Further, four of the five sources acknowledge that InComm *provided a refund* to the victimized consumer, contrary to the Complaint's allegation that InComm harms consumers by refusing to do so. (*Id.* ¶¶ 43(f); 43(g); 43(i); 92.) (Whether the fifth

4. *See* Metcalf Decl. Exhibit B, Better Business Bureau, InComm Financial Services profile page https://tinyurl.com/3wu2ws7n (cataloguing formal complaints and resolutions, noting customer "reviews" are not considered in BBB rating, and assigning InComm an A+ rating); Metcalf Decl. Exhibit C, https://tinyurl.com/2p9p6rxb (open BBB customer review forum for InComm).

consumer who posted an online review eventually received a refund is unclear.) Thus, the Complaint is wholly bereft of facts establishing a *single instance* in which a California citizen was harmed by InComm's alleged misconduct.

III. ARGUMENT

"California courts may exercise personal jurisdiction on any basis consistent with the Constitutions of California and the United States." (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268 (hereafter *Pavlovich*); *see also* Cal. Code Civ. Proc. § 410.10.) On a motion to quash for lack of personal jurisdiction, "the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction." (*T.A.W. Performance, LLC v. Brembo, S.p.A.* (2020) 53 Cal.App.5th 632, 641 (hereafter *T.A.W. Performance*), internal quotation marks and citation omitted.) Moreover, it is not enough for "[t]he plaintiff . . . [to] merely allege jurisdictional facts." (*In re Auto. Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 110.) Rather, the plaintiff must "present evidence" through "affidavits and other authenticated documents" that are "sufficient to justify a finding that California may properly exercise jurisdiction over the defendant." (*Id.*) "Allegations in an unverified complaint are insufficient to satisfy this burden of proof," (*id.*) as are "hearsay" allegations made on "information and belief" rather than personal knowledge. (*Sheard v. Superior Ct.* (1974) 40 Cal.App.3d 207, 212.)

Here, because InComm is a South Dakota corporation headquartered in Georgia, it is not "at home" in California, and accordingly is not subject to general personal

jurisdiction in the state. (*Daimler AG v. Bauman* (2014) 571 U.S. 117, 119.) Rather, the City Attorney must demonstrate a basis for "specific personal jurisdiction" over InComm. Specific jurisdiction is confined to adjudication of "'issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" (*T.A.W. Performance*, *supra,* 53 Cal.App.5th at 642, quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 564 U.S. 915, 919.) Accordingly, it requires the City Attorney to establish a basis for personal jurisdiction that is specific to, and arises from, the facts of the City Attorney's claims in this particular case.

Specific personal jurisdiction demands a three-part showing: "(1) The nonresident defendant must ***do some act or consummate some transaction with the forum*** or perform some act by which he ***purposefully avails*** himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which ***arises out of or results from the defendant's forum-related activities***; and (3) exercise of jurisdiction must be reasonable.'" (*Jewish Defense Org. v. Super. Ct. of Los Angeles*, 72 Cal. App.4th 1045, 1054, emphasis added, citation omitted.) All three elements are mandatory. (*See id.* at 1062) (court "need not address the other prongs of the test for specific jurisdiction" if one prong is not met).)

Here, the City Attorney fails to allege, much less prove, either (1) conduct by InComm purposefully directed at the State of California or (2) a nexus between InComm's supposed contacts and the City Attorney's UCL claim.

The Complaint therefore fails the personal jurisdiction test several times over. Because this defect would exist even if the City Attorney proved every factual allegation in the Complaint, jurisdictional discovery cannot cure it, and the service of summons must be quashed.

A. The Complaint Does Not Establish Any Purposeful Direction Towards California

The first prong of the jurisdiction inquiry, "purposeful direction," is a demanding one, and requires its own subsidiary three-part showing: "[T]he defendant allegedly [must] have (1) committed an ***intentional act***, (2) ***expressly aimed*** at the forum state, (3) causing harm that the defendant ***knows is likely to be suffered in the forum state***." (*Schwarzenegger v. Fred Martin Motor Co.*, (9th Cir. 2004) 374 F.3d 797, 803.) Because the first two sub-prongs "focus[] on the defendant's intentionality," it is not enough to "merely assert[] that a defendant knew or should have known that his intentional acts would cause harm in the forum state." (*Pavlovich, supra,* 29 Cal.4th at 269-270.) Rather, the plaintiff must proffer facts showing that "the defendant ***purposefully and voluntarily direct[ed]*** his activities toward the forum[.]" (*Id.* at 269 (emphasis added).) The City Attorney's Complaint does not and cannot allege any such facts.

1. California Sales of InComm Gift Cards

The Complaint appears to premise specific jurisdiction on the contention that InComm "***sells*** Vanilla cards in San Francisco and throughout California." (Compl.

¶ 9, emphasis added.) But the City Attorney's factual allegations, such as they are, belie that conclusory assertion. The Complaint focuses on sales of Vanilla Gift Cards by national third-party retailers, such as "Walgreens . . . Safeway, and CVS." (*Id.* ¶ 31; *see also*, *e.g.*, *id.* ¶ 43(f) (NBC Los Angeles story that the City Attorney cites stating that the news station reached out to the CVS where "Zelinka *bought*" the cards).) Nowhere does the Complaint allege that InComm itself operates any retail location in California that sells Vanilla Gift Cards. And in fact, InComm operates no such locations, in California or any other state. (Brault Decl. ¶ 9.) Accordingly, by the Complaint's own telling, it is third-party retailers, not InComm, that "sell" the cards at California stores.

These third-party sales of InComm's products are patently insufficient to show InComm's "purposeful direction" of any activity to the State of California. "As courts within this circuit have recognized, the fact that retailers sell Defendant's products in the forum does not itself demonstrate that Defendant expressly aimed its conduct at the forum." (*Cole-Parmer Instrument Co. LLC v. Pro. Labs., Inc.*, (N.D. Cal. July 20, 2021, No. 20-CV-08493-LHK) 2021 WL 3053201 at *8 (collecting cases); *see also Martin Bros. Elec. Co. v. Superior Ct. in & for Stanislaus Cnty.* (1953) 121 Cal.App.2d 790, 792; *Le Vecke v. Griesedieck W. Brewery Co.* (9th Cir. 1956) 233 F.2d 772, 775.) This is because "the mere act of placing the product into the stream of commerce" does not constitute "an act purposefully directed toward the forum state," notwithstanding "a defendant's awareness that the stream of commerce may or will sweep the product into [that]

state." (*Holland America Line Inc. v. Wartsila North America, Inc.* (9th Cir. 2007) 485 F.3d 450, 459 (hereafter *Holland*).)

As the Complaint reflects, and the accompanying Declaration of Adam Brault confirms, InComm's connection to the sale of Vanilla Gift Cards by the national retailers identified in the Complaint amounts to "placing the product into the stream of commerce." (*Id.*) The City Attorney cannot claim that InComm actually "makes" the sales of Vanilla Gift Cards that occur at Walgreens or Safeway locations in California. What is more, he also cannot demonstrate that InComm exercises any other form of "significant control over the ultimate distribution of its products" that ensures their "purposeful direction" to California retail locations. (*T.A.W. Performance, supra,* 53 Cal. App. 5th at 646 (*quoting Pavlovich, supra,* 29 Cal.4th at 276); *see also Adobe Sys. Inc. v. Cardinal Camera & Video Ctr., Inc.* (N.D. Cal. Oct. 7, 2015, No. 15-CV-02991-JST) 2015 WL 5834135, at *5 (finding no personal jurisdiction where plaintiff failed to allege that defendant "directed its sales activities to California.").) On the contrary, it is the third-party retailers—not InComm—that decide where they will sell the Vanilla Gift Cards. (Brault Decl. ¶¶ 9-10.) If the retailers referenced in the Complaint were to close all their California locations, or stop selling Vanilla Gift Cards at those locations, the California brick-and-mortar sales targeted in the Complaint would cease. InComm, meanwhile, could neither instigate nor prevent such an occurrence. Accordingly, InComm lacks "significant control over the ultimate distribution of its products" to

these California retail locations. (*T.A.W. Performance, supra,* 53 Cal.App.5th at 646.)

These facts distinguish this case from *Ford Motor Co.*, where the U.S. Supreme Court deemed Ford's extensive marketing of its cars in the forum state sufficient to constitute purposeful availment. (*Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.* (2021) 592 U.S., 351, 364-67 (hereafter *Ford*).) There, the court premised its conclusion on the "raft of [] in-state activities" Ford had undertaken, which included licensing dealerships; supplying auto shops with replacement parts; fostering an "active resale market"; and advertising its products in local media, all in the forum state. (*Id.*) In contrast, the Complaint here fails to allege any activities, much less a "raft" of them, that InComm directs to California in connection with the brick-and-mortar sales of Vanilla Gift Cards.

Of course, InComm does not claim ignorance of the fact that some of its products are sold in California. But as noted above, InComm's "awareness that the stream of commerce may or will sweep the product into the forum state does not convert the mere act of placing the product into the stream of commerce into an act purposefully directed toward the forum state." (*Holland*, *supra*, 485 F.3d at 459 (citation omitted).) Because the City Attorney does not and cannot allege any such act with regard to the California sales of Vanilla Gift Cards at issue in the Complaint, it has not shown any grounds for subjecting InComm to suit there. Finally, the Complaint's allegation that InComm sells cards directly

to consumers online, through websites that are "available to Californians," does nothing to support the exercise of personal jurisdiction. (Compl. ¶ 9.) As an initial matter, the Complaint does not allege any specific sales of Vanilla Gift Cards to "Californians" through these websites. More importantly, as explained in Section III (B) (1) below, even if the Complaint did contain such allegations, there is no connection between InComm's direct website sales and Plaintiff's claims. Rather, the City Attorney's claims focus on criminal tampering with Vanilla Gift Cards *in third-party retail stores*, such as the chain retailers referenced in the Complaint. In other words, although such direct online sales could potentially constitute "purposeful availment" if the Complaint actually alleged any (which it does not), they could not possibly satisfy the second prong of the specific jurisdiction inquiry, discussed below.

2. InComm's Responses to Consumer Refund Requests

The City Attorney also vaguely suggests, based on a review of anonymous internet comments, that InComm denies refund requests made by consumers nationwide. (*See* Compl. ¶ 76.) But this also does not establish InComm's purposeful direction of activities to California. Once again, the Complaint does not support this contention with any factual allegations of California consumers who have requested refunds and been denied. And even if it did, InComm's mere response to a California consumer's inquiry would still not constitute "purposeful direction" of the sort that can satisfy the first prong of the personal jurisdiction test.

Appendix F

As the Complaint acknowledges, InComm's transaction dispute process is consumer-driven, in that it "begins with a call" by the consumer to InComm; only after that initial outreach does InComm provide a dispute form to the consumer. (Compl. ¶ 76.) Responding to a communication initiated by a consumer—even one who identifies himself as being in California—is not purposeful conduct expressly aimed at California, because "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." (*Hanson v. Denckla* (1958) 357 U.S. 235, 253.) Accordingly, courts routinely hold that responses to consumer inquiries from the forum state, where the defendant does not initiate the outreach, fail to establish personal jurisdiction. (*See, e.g., Resolution Trust Corp. v. First of America Bank* (C.D. Cal. 1992) 796 F. Supp. 1333, 1336 (reasoning that having a "telephone service which allows people to call the bank from all parts of the country and world to perform banking transactions" would not constitute purposeful availment without some other "affirmative action to avail itself of a particular forum"); *Revis v. SFG Equipment Leasing Corp.* (E.D. Cal. June 19, 2007, No. CV F 07-0311LJODLB) 2007 WL 1792313, at *4 (finding no purposeful direction because "telephone and internet contact responded to [plaintiff's] inquiries and was not initiated by [defendant], except to respond [plaintiff's] missed calls"); *cf. West Corp. v. Superior Court* (2004) 116 Cal.App.4th 1167, 1176 (finding that a phone call to defendant's 1-800 number initiated by plaintiff constituted purposeful availment only because the

defendant attempted an "upsell"; otherwise, the call would not have been sufficient to establish jurisdiction).)

So too here, the Complaint contains no allegations suggesting that InComm affirmatively reaches out to California consumers. Indeed, by the Complaint's own telling, InComm simply responds to their inquiries in the same way it does to inquiries from consumers in any of the other 49 states. Thus, even if the City Attorney had managed to point to ***even one*** California consumer who claims to have been wrongly denied a refund (which he has not), InComm's response to such a consumer would not satisfy the first prong of the personal jurisdiction test.

3. The Absence of Other California Contacts

As set forth above, the Complaint does not and cannot allege that InComm has "purposefully directed" brick-and-mortar sales, or purported refund denials, to California. In addition, the Complaint fails to identify any other potentially relevant activity that InComm "directed" at California. Taking the Complaint at its word, the conduct that the City Attorney challenges is InComm's packaging design and responses to customer refund requests. Putting aside whether these allegations are true, it is undisputed that these activities occur *outside California* and are not purposely directed to California. (Brault Decl. ¶¶ 7-8.)

Accordingly, the Complaint fails to allege any activity by InComm that satisfies the first prong of the specific jurisdiction inquiry. InComm's motion should be granted for that reason alone.

B. The Complaint Does Not Allege a Substantial Connection between InComm's California Contacts and the Cause of Action

Because the City Attorney has failed to identify any purposeful act directed to California, it is not necessary to consider the second prong of the test for specific jurisdiction. But the City Attorney cannot satisfy that prong, either, because there is no connection between InComm's asserted California contacts and the City Attorney's claims under the UCL. To satisfy the second prong of the test for specific jurisdiction, the City Attorney must not only demonstrate InComm's purposeful contacts with California, but must also show that the claims in the Complaint are "related to or arise[] out of" those contacts such that there is a "substantial nexus or connection between [defendant's] forum activities and the plaintiffs' claims." (*Aquila, Inc. v. Superior Ct.* (2007) 148 Cal. App.4th 556, 575.)

This second prong is therefore "a claim-tailored inquiry that requires [courts] to examine the plaintiff's specific injury and its connection to the forum-related activities in question." (*Briskin v. Shopify, Inc.*, (9th Cir. 2023) 87 F.4th 404, 413 (hereafter *Briskin*).) In other words, the second prong demands a "connection" between the defendant's forum contacts and the plaintiff's purported injuries. The City Attorney has established no such connection here.

Appendix F

1. InComm's Alleged Contacts with California Are Unrelated to Plaintiff's Claims

As discussed above, the City Attorney's only factual allegation that InComm "sells" cards to consumers is its reference to InComm's online sales, which InComm makes directly to consumers through its consumer-facing websites. Of course, the Complaint does not allege any actual direct sales to California consumers, much less establish that its clams "arise" from such sales. What is more, online sales could not possibly help the City Attorney satisfy the "arising from" prong of the jurisdiction inquiry, because they are categorically irrelevant to the City Attorney's UCL claims. The City Attorney's theory of liability is that InComm has misled consumers about the risk of physical tampering with unsold Vanilla Gift Cards ***in retail stores***. This theory, by definition, implicates only gift cards that are sold in retail stores. It necessarily excludes InComm's internet sales of Vanilla Gift Cards, which, like most internet sales, involve direct shipment to the consumer. (*See* Brault Decl. ¶ 11, explaining that InComm fulfills internet purchases by shipping physical cards or emailing electronic cards directly to consumers.) Thus, the City Attorney's claims premised on Vanilla Gift Cards' packaging and in-store placement has "nothing to do with" these arguable California contacts. (*Briskin,* 87 F.4th at 414–15; *see also Rivelli v. Hemm* (2021) 67 Cal. App.5th 380, 401 (rejecting a claim that a fraud claim arose out of or was related to defendants forum contacts where "none of the[] alleged misrepresentations is connected to evidence of [defendant's] forum-related activities").) For

this reason, InComm's direct-to-consumer internet sales would necessarily flunk the second prong of the personal jurisdiction test.

2. Plaintiff Fails to Show *Any* Injury in California, Which Is Necessary for the Exercise of Personal Jurisdiction

As set forth above, the sales of Vanilla Gift Cards at the third-party retailers referenced in the Complaint flunk the first prong of the personal jurisdiction test, as those sales involve no conduct that InComm intentionally aimed at California. Moreover, even if the City Attorney could clear that hurdle (he cannot), those sales would fail the second prong, due to the absence of any allegation or evidence that those third-party sales caused injury in California. A showing of in-state injury is vital where, as here, specific jurisdiction is premised on allegations of a tort committed in California. (*See Yamashita v. LG Chem., Ltd.* (9th Cir. 2023) 62 F.4th 496, 506 (seeking to "determine whether Yamashita's *injuries* either arose out of or related to" defendant's contacts and noting that under *Ford*, "relatedness requires a close connection between contacts and *injury*") (emphasis added).) The Complaint's failure to identify *any* injury in California provides an independent basis to defeat its assertion of specific jurisdiction.[5]

5. InComm expects the City Attorney to argue that there is no need to show California injury because the UCL authorizes local prosecutors to sue even in the absence of actual injury to consumers. But such an argument would confuse *statutory standing* (*i.e.*, whether the City Attorney has the ability to sue)

To start, none of the Complaint's allegations of consumer injury, regardless of location, is based on personal knowledge or investigation. All the Complaint alleges is that the City Attorney has read some negative statements about Vanilla Gift Cards on the internet. These hearsay accounts cannot serve as the basis of personal jurisdiction, particularly in the absence of any showing that the City Attorney took steps to investigate or verify them. (*See Judd v. Superior Ct.,* (Ct. App. 1976) 60 Cal.App.3d 38, 44 (declining to consider purported advertisement in evaluating personal jurisdiction as "clearly hearsay" without foundation for admission).)

Moreover, even if unverified internet accounts could provide a basis for personal jurisdiction, these individual narratives do not demonstrate injury to California consumers. Although five of the Complaint's hearsay internet anecdotes involve consumers claiming to be in California, the Complaint fails to identify a single California consumer who was both deceived by InComm's statements and *injured in California* as a result. Four of these consumers acknowledge receiving refunds from InComm, and the status of the fifth is indeterminate. Stripped of its conclusory allegations, the Complaint identifies "no harm in California and no harm to California residents," much less any harm that is substantially connected to InComm's asserted contacts. (*Bristol-Myers Squibb Co. v. Super. Ct. of Cal., San Francisco County* (2017) 582 U.S. 255, 266 (emphasis added); *see also Roman*

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with *personal jurisdiction* (*i.e.*, whether InComm has committed a tort in the State of California). Injury is the sine qua non of tort.

v. Liberty University, Inc. (2008) 162 Cal.App.4th 670, 681 (finding no specific personal jurisdiction because "the nexus between [defendant's] activities in California and the injury plaintiff suffered is so attenuated as to be virtually nonexistent").)

In short, specific jurisdiction demands a showing that InComm expressly directed retail sales at California ***and*** that those sales led to injury in California. The Complaint does not and cannot allege any of these building blocks of personal jurisdiction, let alone all of them.

C. The City Attorney Is Not Entitled to a Fishing Expedition to Cure These Defects

Having failed to establish any basis for personal jurisdiction over InComm before filing suit, the City Attorney will likely pursue "jurisdictional discovery" in the hopes of cobbling one together after the fact. But jurisdictional discovery is not "a fishing expedition" for plaintiffs who have rushed into court with no grounds for jurisdiction to start with. (*Hernandez v. Mimi's Rock Corp.* (N.D. Cal. 2022) 632 F. Supp. 3d 1052, 1062.) InComm, as a nonresident defendant, "cannot be required to answer any question which is not relevant to the subject matter of the motion [to quash]," and has "the right to protect itself against oppressive [discovery] without making a general appearance." (*1880 Corp. v. Superior Court of City and County of San Francisco* (1962) 57 Cal.2d 840, 843.)

California courts thus routinely hold that discovery as to personal jurisdiction, if allowed at all, must be limited

to the "single issue" of the plaintiff's theory of jurisdiction, and is not an invitation to explore "other theories of jurisdiction" not pled in the complaint. (*Campanelli v. ImageFIRST Unif. Rental Serv., Inc.* (N.D. Cal. July 1, 2016, No. 15-CV-04456-PJH) 2016 WL 8730526, at *2–*3 (discovery as to personal jurisdiction was limited to a "single issue" and was not an invitation to investigate "other theories of jurisdiction"); *eMag Sols., LLC v. Toda Kogyo Corp.* (N.D. Cal. Dec. 21, 2006, No. C 02-1611 PJH) 2006 WL 3783548, at *3 ("Jurisdictional discovery in this case shall be *limited*.")

Here, the City Attorney's jurisdictional allegations are so minimal that it is difficult to imagine what topics, if any, could be proper subjects of jurisdictional discovery. That, however, is a problem of the City Attorney's own making. If indeed InComm is perpetrating "rampant" consumer fraud in California, the City Attorney would have been well advised to identify even one or two examples of such an occurrence before filing suit in the state. As a government actor, the City Attorney enjoys greater investigative power and a more commanding public platform than most litigants, which should have made it all the easier to clear this hurdle. Having failed to do so, he can hardly demand that InComm appear in California and do his homework for him. Thus, any jurisdictional discovery should be narrowly targeted to the jurisdictional allegations in the Complaint, which are virtually nonexistent.

IV. CONCLUSION

The City Attorney's Complaint consists of vague insinuations of wrongdoing, supported by minimal facts, unconnected to any harm to any California citizens. These insinuations are meritless, but in any event, they afford no basis for haling InComm to Court in California. Indeed, this Complaint is such an extreme overreach that it appears to be an outlier for the City Attorney. InComm is aware of no other recent case in which the City Attorney has asserted consumer-fraud claims against an out-of-state company with such minimal connection to the State. (*Cf., e.g.*, Compl., *People of the State of California v. Justfly Corp.*, (Sept. 19, 2019, CGC-19-576328) (alleging claims against out-of-state service provider based on allegations of direct misrepresentations to California consumers, as recounted to the City Attorney by California consumers).)

Why the City Attorney went so far out of its way to sue InComm, armed with nothing more than some anonymous reviews found on the internet, InComm can only speculate. But this detour does not comport with due process, and InComm cannot be required to answer the City Attorney's claims in a court 2,500 miles from its headquarters. The Court should grant InComm's motion and quash the service of summons for lack of personal jurisdiction.

Appendix F

Dated: May 6, 2024 /s/ Brian Chun

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[EXHIBITS INTENTIONALLY OMITTED]