

No. 26-\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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PTI UNION, LLC,  
*Petitioner,*  
v.

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ALAMEDA, *et al.*,  
*Respondents.*

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**On Petition for Writ of Certiorari to the  
California Court of Appeal,  
First Appellate District**

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**PETITION FOR WRIT OF CERTIORARI**

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October 15, 2026

## **QUESTIONS PRESENTED**

Whether the Due Process Clause requires a court to determine that a defendant has targeted the forum State with its own contacts before applying the stream-of-commerce theory of specific personal jurisdiction.

Whether a contract manufacturer operating in a single State and exercising no control over the direction of downstream distribution is subject to specific personal jurisdiction wherever its customers distribute the finished goods, based solely on its awareness of potential nationwide distribution.

**PARTIES TO THE PROCEEDING AND  
CORPORATE DISCLOSURE STATEMENT**

Petitioner is PTI Union, LLC. PTI Union, LLC is a North Carolina limited liability company with its headquarters and principal place of business in Missouri. PTI Union, LLC is wholly owned by Broadview Investments, LLC. No parent corporation, and no publicly held corporation, owns 10% or more of Broadview Investments, LLC's stock.

Respondent is the Superior Court of California, County of Alameda.

John E. Maricich, Jr. and Kym Maricich Benedict are the Plaintiffs/Real Parties in Interest.

Chattem, Inc., Shulton, Inc., Merck & Co., Inc., L'Oreal USA, Inc., Pfizer, Inc., Albertsons Companies, Inc., CVS Pharmacy, Inc., Longs Drug Stores California, L.L.C., Minerals Technologies, Inc., Perrigo Company of Tennessee, Safeway, Inc., Target Corporation, Thrifty Corporation, Specialty Minerals, Inc., Vi-Jon, Inc., and Walmart, Inc. are Defendants/Real Parties in Interest.

Petitioner's belief is that the Defendants/Real Parties in Interest identified above have no interest in the outcome of this Petition.

**RELATED PROCEEDINGS**

California Superior Court (Alameda County):

*John E. Maricich, et al. v. Chattem, Inc., et al.,*

No. 25CV116787 (Nov. 19, 2025)

California Court of Appeal (First Appellate District):

*PTI Union, LLC aka Pharma Tech Industries v. The  
Superior Court of Alameda County,*

No. A174945 (April 2, 2026)

California Supreme Court:

*PTI Union, LLC aka Pharma Tech Industries v. The  
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No. S296173 (June 17, 2026)

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**On Petition for Writ of Certiorari to the  
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**PETITION FOR WRIT OF CERTIORARI**

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PTI Union, LLC respectfully petitions for a writ of certiorari to review the order of the California Court of Appeal, First Appellate District, in this case.

**OPINIONS AND ORDERS BELOW**

The decision of the California Superior Court (App. 8a) is unreported. The order of the California Court of Appeal denying the petition for mandate (App. 5a) is unreported. The Supreme Court of California's denial of the petition for review (App. 1a) is unreported.

## JURISDICTION

The California Superior Court entered its order on November 19, 2025. App. 19a. On April 2, 2026, the California Court of Appeal denied Union’s petition for a writ of mandate. App. 7a. On June 17, 2026, the California Supreme Court denied Union’s petition for review. App. 1a.

PTI Union, LLC invokes this Court’s jurisdiction under 28 U.S.C. § 1257(a). Under *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 477–83 (1975), review is available once the state courts have finally resolved the federal issue. The California courts have done so here. Nothing remains in the state-court system that could alter the jurisdictional ruling without waiving the objection.

California preserves the distinction between special and general appearances. A defendant challenges jurisdiction by moving to quash service under Cal. Code Civ. Proc. § 418.10(a)(1), (e)(2). If the motion is denied, the only appellate remedy is a discretionary petition for a writ of mandate. *See Flareau v. Superior Ct.*, 118 Cal. App. 5th 681, 689 (2026). Nearly all such petitioners are summarily denied—about 94% in the Court of Appeal—and the California Supreme Court grants review in only about 8% of civil writ matters. *See* 2026 Court Statistics Report, *Statewide Caseload Trends: 2015–16 through 2025–26*, pp. 17, 43, 45 (2026), Jud. Council of Cal., [https://courts.ca.gov/system/files/file/csr\\_2026.pdf](https://courts.ca.gov/system/files/file/csr_2026.pdf). Absent discretionary review, a defendant that makes a general appearance to litigate the merits forever waives the jurisdictional objection. Preserving the objection therefore requires accepting a default judgment or seeking extraordinary relief before proceeding on the merits. *See Aghaian v. Minassian*, 64 Cal. App. 5th 603, 610 & n.3 (2021).

“The principles of finality” under Section 1257 “have not been construed rigidly.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 47 (1987). *Cox* asks whether the federal issue is complete and whether delayed review would be effective—not whether the state court has entered a conventional merits judgment. *Cox*, 420 U.S. at 477–78, 481–83. Here, the federal issue is independent of the merits, and a decision for Union would end the California litigation against it.

Union should not have to choose between waiving its federal due-process objection and suffering a default judgment. The finality doctrine respects the state-court process; it does not allow a state court to extinguish federal rights through procedural attrition.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fourteenth Amendment to the United States Constitution says, in relevant part:

[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 the United States.

### **INTRODUCTION**

Specific jurisdiction begins with the defendant’s conduct that targets the forum, not the path traveled by a product. Due process requires “contacts that the defendant himself creates with the forum State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (cleaned up).

A defendant's placement of goods into the stream of commerce with the expectation of purchase in the forum state "may indicate purposeful availment." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881–82 (2011) (plurality opinion) (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980)). The question is whether the stream-of-commerce theory may supply the contacts *Walden* requires, or whether a court must first identify forum contacts that the defendant itself created.

While a stream-of-commerce inquiry may help evaluate a defendant's own forum conduct, such as a seller's choice of distribution channels, it cannot answer the antecedent question whether the defendant engaged in any forum-directed conduct at all. Otherwise, a third party's distribution network stands in for the defendant's contacts.

That is what happened here. Union contracted with its customers—the owners of the Dr. Scholl's brand—to perform one intermediate step in the process of making Dr. Scholl's talcum-powder products. The brand owners dictated the "upstream" steps—ingredient sourcing, formulations, and packaging. Union then blended and bottled those products at its Missouri facility. The Dr. Scholl's brand owners then decided whether, where, and through whom those products would be sold. Union knew the products *could* be distributed in the United States, but controlled no part of that distribution. And Union has no offices, employees, facilities, agents, or other presence in California.

Despite Union's discrete role in the Dr. Scholl's supply chain, the California courts premised specific jurisdiction on findings that (1) Union produced 100% of the U.S. requirements for the relevant Dr. Scholl's products; (2) Union agreed to comply with applicable

law; and (3) Union answered an unrelated product-owner inquiry about fill weight for California. Neither court identified any act by which Union itself formed a relationship with or targeted California. Rather, both attributed the brand owners' product choices and actions to Union.

That third-party approach cannot be squared with *Walden* or *Rush v. Savchuk*, 444 U.S. 320 (1980). A third party's decision to do business in a State is "completely adventitious" to a defendant who "had no control over that decision" and engaged in no "purposeful activity related to the forum." *Id.* at 328–29.

Lower courts have obscured this threshold requirement by treating stream of commerce as a freestanding test. Because neither *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), nor *J. McIntyre* produced a majority rationale on the stream-of-commerce question, courts disagree over whether mere awareness of forum sales, awareness plus a regular flow, or additional forum-directed conduct is required. The Court can resolve the antecedent issue without choosing between those formulations if it clarifies that courts must first identify contacts the defendant itself created with the forum.

The question recurs often and has real consequences. Contract manufacturers across major industries work in one State for brand owners that sell nationwide. Under the rule applied below, those manufacturers can be sued wherever their customers distribute the finished goods—not because of their own forum-directed conduct, but because of their customers' choices. That is contrary to the fundamental principle of purposeful availment. The Court should grant review and hold that stream of commerce alone cannot

substitute for the defendant-created, forum-specific contacts the Due Process Clause requires.

### STATEMENT OF THE CASE

Union is a North Carolina limited liability company headquartered in Missouri. It conducted all its blending and bottling operations in Union, Missouri.

Union did not design, market, distribute, or sell any retail products to consumers anywhere. Rather, Union is a contract manufacturer that blended and bottled talc-containing Dr. Scholl's products in Missouri for its customers, the brand owners.<sup>1</sup> The brand owners picked up the products "Free on Board" at Union's Missouri facility and controlled their distribution, marketing, and retail sale. App. 12a. Union did not own the Dr. Scholl's products, dictate their ingredients, or control any part of that downstream distribution. *Id.* There is no evidence that Union is licensed, authorized, or registered to do business in California; that it has offices, facilities, a mailing address, telephone number, or any bank accounts in California; or that it has a registered agent to accept service in California. *Id.*

Mr. and Mrs. Maricich filed a complaint against Union and dozens of other companies in California state court, seeking recovery under product-liability and personal-injury theories related to Mr. Maricich's mesothelioma diagnosis. Union moved to quash service for lack of personal jurisdiction, arguing that it had no minimum contacts with California. App. 11a. The Mariciches relied on a "stream of commerce" theory. *See* App. 12a–13a.

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<sup>1</sup> The "brand owners" have changed over time and include Schering-Plough, Merck, and Bayer.

Respondent, the Superior Court of California, County of Alameda, denied Union's motion. After discussing two intermediate state-court opinions, it "elect[ed] to follow" the "stream-of-commerce approach" to specific jurisdiction. App. 18a. It found that Union "contracted to manufacture Dr. Scholl's foot powder" and knew or reasonably should have known that the products would be distributed nationally, including in California. *Id.* The court therefore held that Union "should have been prepared to face suit sounding in product defect in any United States forum where it could reasonably have anticipated the product would be distributed and sold." *Id.* Union timely filed a petition for writ of mandate, prohibition, or other relief to seek review of the decision.

The California Court of Appeal denied the petition. It found no actual Union contacts with California. Instead, it relied on the facts that Union "blended and bottled 100% of the U.S. requirements" for Dr. Scholl's talc-containing products, understood that the products would be distributed throughout the United States, and was "obligated by contract to ensure that the products . . . complied with all applicable United States federal, state, and local laws and regulations." App. 6a. The court held that Union therefore "undertook to produce products whose specifications would meet California requirements," which it treated as "some additional effort[] directed toward the forum state," specifically a "special state-related design." *Id.*

The California Supreme Court denied Union's petition for review. App. 1a.

### REASONS FOR GRANTING THE WRIT

Specific jurisdiction requires contacts that the defendant itself creates with the forum State. The stream-of-commerce theory is a tool for evaluating those contacts, not a substitute for them. This petition asks whether a court may invoke that tool before identifying any forum contacts by the defendant.

The issue is especially important for a contract manufacturer like Union. Union operated only in Missouri, released to brand owners the finished powder products it had blended and bottled there, and had no California presence. The brand owners alone controlled downstream retail distribution. The lower-court approach began with the brand owners' sales within the United States, and then used those customer choices, together with national production and compliance facts, to establish jurisdiction. That approach leaves domestic contract manufacturers exposed wherever their customers sell retail products and unable to structure their conduct with assurance as to where they may be sued. *See World-Wide Volkswagen*, 444 U.S. at 297.

The requested rule follows from *Walden's* unanimous minimum-contacts principle. Courts must identify each defendant's purposeful forum contacts before using the stream-of-commerce tool. For a contract manufacturer that neither controls nor directs downstream distribution, that threshold ends the inquiry because third-party choices cannot create the manufacturer's contacts. When a defendant has forum contacts, the same threshold puts guardrails on the later stream-of-commerce analysis. California's exercise of specific personal jurisdiction over Union therefore violates the Due Process Clause.

**I. *Walden* requires courts to identify the defendant’s own forum contacts before applying the stream of commerce tool.**

The Fourteenth Amendment’s Due Process Clause “sets the outer boundaries” of a state court’s power to exercise personal jurisdiction over nonresident defendants. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011). General jurisdiction is not at issue here. “Specific jurisdiction is different” and requires minimum contacts between the defendant and the forum. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358–59 (2021) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Those contacts go by the name “purposeful availment”: the defendant must take “some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.” *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

On the same day in 1980, the Court reaffirmed these now-foundational principles in a pair of decisions. *See World-Wide Volkswagen*, 444 U.S. at 291 (noting the “long . . . settled” maxim that there must be “‘minimum contacts’ between the defendant and the forum State” (quoting *Int’l Shoe*, 326 U.S. at 316)); *Rush*, 444 U.S. at 327 (requiring that the due process “inquiry must focus on the relationship among the defendant, the forum, and the litigation” (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977))).

*Rush* asked whether Minnesota could exercise *quasi in rem* jurisdiction over a defendant with no Minnesota contacts by attaching an in-state insurer’s obligation to defend and indemnify. *Rush*, 444 U.S. at 322. Applying *International Shoe*, the Court held that “all assertions of state-court jurisdiction” must satisfy the minimum-contacts standard. *Id.* at 327 (quoting

*Shaffer*, 433 U.S. at 212). The Court rejected jurisdiction because there were no “contacts between the defendant and the forum.” State Farm’s decision to do business in Minnesota was “completely adventitious,” the insured defendant “had no control over that decision,” and nothing showed “that the defendant engaged in any purposeful activity related to the forum.” *Id.* at 328–29. An insurer’s in-state obligation did not, “*without more*,” establish *any* contact in the *International Shoe* sense. *Id.* at 329 (emphasis added).

In *World-Wide Volkswagen*, the Court applied these principles and found “a total absence” of “affiliating circumstances” necessary to exercise state-court jurisdiction. 444 U.S. at 295. The Court explained that foreseeability alone is not enough, that amenability to suit does not travel “with the chattel,” and that the relevant foreseeability is whether the defendant’s own conduct and connection with the forum make it reasonable to anticipate being haled into court there. *Id.* at 295–98.

Neither *Rush* nor *World-Wide Volkswagen* purported to change what *International Shoe* and *Hanson* require; both expressly reaffirmed those principles. But *World-Wide Volkswagen* did not stop there. The Court added that a “forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” *Id.* at 297–98. That sentence has caused consternation among courts, this Court included.

This Court twice tried to explicate the “stream-of-commerce” theory, but neither decision produced a majority rationale. See *Asahi*, 480 U.S. 102; *J. McIntyre*, 564 U.S. 873. In *Asahi*, a plurality

concluded that exercising jurisdiction over Asahi would be unreasonable and unfair, while the disagreement concerned cases in which a defendant placed a product in the stream of commerce and the product reached the forum without other conduct purposefully directed there. *Id.* at 110, 113–16 (opinion of O’Connor, J.).

In 2011, the Court again took up the “decades-old questions left open” after *Asahi*. *J. McIntyre*, 564 U.S. at 877. The Court reversed the New Jersey Supreme Court’s holding that a state court could exercise jurisdiction over a foreign manufacturer that knew or reasonably should have known its products were distributed through a nationwide system that might lead to sales in any State. *Id.* at 874–75. But the decision again produced no majority rationale for the stream-of-commerce question.

Then came *Walden*. This time, all nine Justices agreed on the principles that govern specific personal jurisdiction, drawing on *International Shoe*, *Hanson*, *Rush*, and *World-Wide Volkswagen*. “First, the relationship must arise out of contacts that the defendant *himself* creates with the forum State.” *Walden*, 571 U.S. at 284 (quotation and citation omitted). “Second,” the “‘minimum contacts’ analysis looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Id.* at 285 (citation omitted). “A defendant’s relationship with a plaintiff or third party, standing alone” is not enough. *Id.* at 286 (citing *Rush*, 444 U.S. at 332).

*Walden*’s unanimity is significant. After the divided opinions in *Asahi* and *J. McIntyre*, the Court agreed on threshold principles rooted in the defendant’s *own* contacts with the forum. That consensus did not resolve the stream-of-commerce debate, but it estab-

lished the framework within which any stream-of-commerce analysis must operate: the defendant must first have contacts with the forum.

*Ford Motor* traced this lineage and confirmed that the “contacts needed for” specific jurisdiction “often go by the name ‘purposeful availment.’” 592 U.S. at 359 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). The defendant must “deliberately ‘reach[] out beyond’ its home—by, for example, ‘exploit[ing] a market’ in the forum State or entering a contractual relationship centered there.” *Id.* (quoting *Walden*, 571 U.S. at 285) (alterations in original). The focus trains on “contacts that the ‘defendant [itself]’ creates with the forum State”; contacts “between the plaintiff (or third parties) and the forum State” are not enough. *Walden*, 571 U.S. at 284. And “even then,” the forum may exercise jurisdiction “only” if the claims “‘arise out of or relate to the defendant’s contacts’ with the forum.” *Ford Motor*, 592 U.S. at 359 (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., S.F. Cnty.*, 582 U.S. 255, 262 (2017)).

*Ford Motor*’s “purposeful availment” analysis—which Ford conceded—rested on Ford’s extensive, direct contacts with Montana and Minnesota: advertising, dealerships, sales, repairs, and replacement-parts distribution for the same vehicle models. *Id.* at 355, 364–65, 371. Those contacts were independent of the plaintiffs’ individual purchases and supplied the purposeful availment required. *Ford* is important for what it said and for what it did not say. The Court did not invoke stream of commerce because Ford’s *own* contacts with the forum States were so extensive that the framework was unnecessary. *Ford*, 592 U.S. at 364–65.

*Ford Motor* thus confirms the sequence that runs through this Court’s cases. When a defendant has extensive forum contacts, its own conduct supplies the evidence of purposeful availment. The stream-of-commerce tool becomes relevant only to *analyze* contacts the defendant has created; it cannot *manufacture* contacts from a third party’s distribution choices.

**II. Contract manufacturers show why third-party distribution cannot satisfy *Walden*’s threshold.**

The stream-of-commerce tool was never designed to treat a product owner’s unilateral distribution choices as a contract manufacturer’s own forum contacts. *World-Wide Volkswagen* described a corporation that “deliver[s] *its products* into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” 444 U.S. at 297–98 (emphasis added). Every defendant this Court has examined under that rubric fits the description: each owned the product at issue and chose to sell it into commerce for its own account. Asahi sold its valve assemblies to Cheng Shin, which incorporated them into tire tubes sold worldwide. *Asahi*, 480 U.S. at 106. J. McIntyre sold its machines to an American distributor that marketed them across the United States. *J. McIntyre*, 564 U.S. at 878 (plurality opinion). The tool asks whether such a seller’s decision to send its goods downstream reflects purposeful availment of a particular forum. It presupposes that the defendant is the one making the relevant distribution choice.

Union is not that kind of defendant. It performed a service—blending and bottling talcum powder to formulas it did not own, using ingredients it did not choose, for brand owners who alone decided where the finished products would be sold. *See App. 11a–12a*. The

brand owners picked up the finished products from Union's Missouri facility. *See id.* Every downstream decision—whether to distribute Dr. Scholl's in California at all, through which channels, and how to market and sell it there—belonged to the brand owners. *See id.* Union's relevant conduct ended when it released the finished goods to their owners in Missouri.

*Rush* supplies the governing principle: a third party's forum activity cannot be attributed to a defendant that had no control over it and engaged in no purposeful activity *of its own* related to the forum. *Rush*, 444 U.S. at 328–29. *Walden* likewise confirms that a defendant's relationship with a third party cannot supply the necessary forum contact. 571 U.S. at 284–86.

That is why applying the stream-of-commerce tool to Union is a category error, not merely a close call or erroneous application of the right test. The tool was built to evaluate forum-directed choices by entities that deliver their own products into commerce: the brand owner that designs a national marketing campaign, the distributor that selects retail channels, or the seller that ships to forum customers. For those entities, the flow of goods is evidence of what *they* chose to do. For Union, the flow of goods into California is evidence only of what the brand owners chose to do. Asking whether those goods reached California through “regular” channels or whether Union did “something more” skips the threshold question whether Union had any forum contacts through its own conduct.

In *Commissariat à l'Énergie Atomique v. Chi Mei Optoelectronics Corp.*, 395 F.3d 1315 (Fed. Cir. 2005), the Federal Circuit considered a foreign manufacturer

of LCD panels whose products reached the forum as components of other companies' finished goods. The court recognized that a showing that the panels flowed into the forum through "regular and anticipated" distribution channels might satisfy Justice Brennan's test even though it would not satisfy Justice O'Connor's. *Id.* at 1321–22. The jurisdictional outcome for a manufacturer that did not control distribution thus turned entirely on which unresolved *Asahi* opinion governed.

Union's case is starker still. Unlike the component maker in *Commissariat*, Union did not sell its output; it provided a service and released finished goods to their owners at its Missouri facility. Yet, under the Brennan-derived approach applied below, the brand owners' distribution choices sufficed, *see* Part D, *infra*, while under the O'Connor approach followed by the First, Sixth, and Ninth Circuits, they would not, *see* Part C, *infra*.

Nor is the question confined to talc or to Union. Contract manufacturing is common in the domestic economy. Brand owners often outsource discrete steps of production, while retaining control and oversight over both upstream (*e.g.*, design and sourcing) and downstream (*e.g.*, distribution and sale) elements. Pharmaceutical companies rely on contract manufacturers to formulate and package drugs. Food and beverage brands rely on co-packers to produce and bottle their products. Consumer-products companies routinely outsource some production steps for goods ranging from cosmetics to household products. Those contract manufacturers commonly operate from a single State, produce to their customers' requirements, and hand off finished goods without any say in (or even interest in) where they are sold.

Under the rule applied below, each contract manufacturer is subject to specific jurisdiction wherever its customers (brand name owners) choose to sell. For products that may be distributed in different states, that means in every state where the product is sold. Exposure therefore depends not on those companies' own conduct, but on the decisions of their customers. Because courts begin with downstream distribution and then apply conflicting stream-of-commerce tests, these businesses cannot know in advance where they may be sued. Whether the Due Process Clause permits that result is "an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c).

### **III. Courts disagree over the stream-of-commerce inquiry when they begin with the product's path.**

When courts begin with downstream distribution, the stream-of-commerce standard is so fractured that a contract manufacturer cannot know what the Due Process Clause requires.

1. Assume there may be personal jurisdiction over a corporation when it "delivers its products *into the stream of commerce* with the *expectation* that they will be purchased by consumers in the forum State." *World-Wide Volkswagen*, 444 U.S. at 297–98 (emphasis added). Even then, a contract manufacturer is not subject to specific jurisdiction in every State simply because it knows the brand owner operates nationally. That rule would undermine a defendant's ability to "structure its primary conduct" to avoid certain forums and collapse "interstate federalism" into nationwide specific jurisdiction. *Ford Motor*, 592 U.S. at 359–60 (cleaned up); *cf. J. McIntyre*, 564 U.S. at 905 (Ginsburg, J., dissenting).

Beginning with the product’s distribution history—instead of the defendant’s contacts with the forum—draws courts into four decades of discord. Even if stream of commerce is the proper lens after a defendant’s own forum contacts are identified, the cases disagree over what the theory requires: knowledge that the product will reach the forum, knowledge plus a “regular flow,” or knowledge plus “something more.” The result is that the Due Process Clause operates differently in Idaho than in Maine, and in the Ninth Circuit than in the Fifth.

The fractured precedents frame that recurring confusion, and this case presents its distinct contract-manufacturer application. At one end is *World-Wide Volkswagen*, which shows a complete lack of purposeful availment—no forum affiliations whatsoever, only the “unilateral activity” of the consumer. 444 U.S. at 298. At the other end is *Ford Motor*, which shows direct purposeful availment by a company whose “business is everywhere” and that reached out to the forum States “[b]y every means imaginable.” 592 U.S. at 355, 365. *Asahi* and *J. McIntyre* fall closer to *World-Wide Volkswagen*. What the Due Process Clause requires of a *domestic* contract manufacturer that provides a discrete role in the product’s supply chain, but where distribution is wholly controlled by a brand owner, remains unanswered.

2. Equally problematic is that the stream-of-commerce inquiry varies by jurisdiction, creating a serious risk that similar product-distribution cases will be resolved differently. Indeed, California’s trial courts alone have resolved this inquiry differently in cases involving Union and the *same* product. App. 6a-7a. California intermediate decisions reflect the tension. *Compare Bombardier Recreational Prods.*,

*Inc. v. Dow Chem. Can. ULC*, 216 Cal. App. 4th 591, 597 (2013), *with L.W. v. Audi AG*, 108 Cal. App. 5th 95, 114 (2025), *cert. denied*, *Audi AG v. L.W.*, No. 25-349, ---S. Ct. ---, 2026 WL 135621 (Jan. 20, 2026).

On one side is *Bombardier*. There, the Court of Appeal, Third District—after reviewing both *Asahi* and *J. McIntyre*—affirmed dismissal based on “the California Supreme Court’s most recent description of the purposeful availment requirement” as “understood in light of” *J. McIntyre*. *Bombardier*, 216 Cal. App. 4th at 602. It explained that purposeful availment focuses on the defendant’s purposeful and voluntary acts “toward the forum,” including directing “activities at residents of the forum,” deriving a benefit from those activities, and creating a “substantial connection.” *Id.* at 602–03. The court said “[o]ne principle a majority of the United States Supreme Court has agreed upon is that mere knowledge, without *something more*, is insufficient to establish jurisdiction in a forum state.” *Id.* at 604 (emphasis added). *Bombardier* thus appears to adopt Justice O’Connor’s approach.

On the other side is *L.W.*, which upheld jurisdiction over Audi AG under “the minimum contacts standard . . . announced in *World-Wide Volkswagen*” and “the stricter stream-of-commerce plus approach articulated by Justice O’Connor in *Asahi*.” 108 Cal. App. 5th at 114. It treated Justice Breyer’s concurrence in *J. McIntyre*—which controlled the judgment on its facts, though it commanded only two votes—as suggesting that “additional efforts” are required only when regular flow or a regular course of sales in the forum is not shown. *Id.*

Other courts diverge too. Compare *Vt. Wholesale Bldg. Prods., Inc. v. J.W. Jones Lumber Co.*, 914 A.2d 818, 826 (N.H. 2006) (“We find Justice O’Connor’s

‘stream of commerce plus’ theory more consistent with *World-Wide Volkswagen*”), and *Braun v. Bearman Indus., LLC*, 740 S.W.3d 300, 307 n.6 (Ky. 2025) (following the “stream of commerce plus” approach and noting it “has been adopted by the Sixth Circuit”), with, e.g., *Dilworth v. LG Chem, Ltd.*, 355 So. 3d 201, 207 (Miss. 2022) (applying the stream-of-commerce approach and relying on the Fifth Circuit’s decision in *In re DePuy* for support); *Griffin v. Ste. Michelle Wine Ests., Ltd.*, 491 P.3d 619, 635–36 (Idaho 2021) (concluding that the court was “bound by *World-Wide Volkswagen*, the reasoning in Justice Brennan’s concurring opinion in *Asahi*, and Justice Breyer’s concurring opinion in *J. McIntyre*”).

The Circuits likewise disagree over the stream-of-commerce tool. The Ninth follows Justice O’Connor’s approach. *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 503 (9th Cir. 2023) (“Under our circuit’s law, the placement of a product into the stream of commerce, without more, is not an act purposefully directed toward a forum state, even if the defendant is aware that the stream of commerce may or will sweep the product into the forum state.” (cleaned up)). Some Circuits agree. E.g., *Bridgeport Music, Inc. v. Still N The Water Pub.*, 327 F.3d 472, 480 (6th Cir. 2003) (“[W]e make clear today our preference for Justice O’Connor’s stream of commerce ‘plus’ approach.”); *Boit v. Gar-Tec Prods., Inc.*, 967 F.2d 671, 683 (1st Cir. 1992).

Other Circuits take Justice Brennan’s approach. E.g., *J.S.T. Corp. v. Foxconn Interconnect Tech. Ltd.*, 965 F.3d 571, 575–76 (7th Cir. 2020) (recognizing that the Seventh Circuit “is among those that apply the stream of commerce theory in products liability cases”); *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prods.*

*Liab. Litig.*, 888 F.3d 753, 778–79 (5th Cir. 2018) (embracing “Justice Brennan’s more expansive view”).

The result is that the Due Process Clause applies differently depending on the State, Circuit, or District Court in which the issue arises. The Federal Circuit has recognized as much. *See AFTG-TG, LLC v. Nuvoton Tech. Corp.*, 689 F.3d 1358, 1362 (Fed. Cir. 2012) (noting that the Court “declined to resolve its long-standing split on that theory”); *see also Commissariat*, 395 F.3d at 1321–22. The recurring, outcome-determinative disagreement concerns whether awareness, regular flow, or something more controls once courts turn to the stream-of-commerce theory. No contract manufacturer can know which rule governs until it is sued.

The split persists because courts treat stream of commerce as a freestanding jurisdictional test and then disagree over its content. The Court can resolve this petition by holding that stream-of-commerce analysis presupposes that the defendant created its own forum contacts. For a defendant like Union, which has no independent California contacts, the O’Connor-Brennan divide is immaterial because there is nothing for any version of the test to operate on. For defendants that do have forum contacts, the threshold inquiry would require courts to identify the defendant’s forum-directed conduct before selecting or applying a stream-of-commerce formulation.

This Court’s denial of certiorari in *Audi AG v. L.W.*, 108 Cal. App. 5th 95 (Cal. Ct. App. 2025), *cert. denied*, --- S. Ct. ---, 2026 WL 135621 (Jan. 20, 2026), does not diminish the need for review. *L.W.* involved Audi AG—a brand-owning manufacturer that designed, marketed, and sold vehicles through a nationwide dealer network, giving it extensive contacts with the forum that

muddled the stream-of-commerce question. Union’s case is categorically different. Union is not a brand-owning manufacturer; it has no distribution role, no forum contacts, and no control over downstream commerce. Those facts strip the stream-of-commerce question to its core: whether the cumulative facts relied on below—awareness of potential nationwide distribution, producing the entire U.S. supply, a federal-law and Missouri-law compliance obligation, and the fill-weight communication—can establish specific personal jurisdiction over such a company. And it presents the issue *L.W.* never cleanly raised—whether the stream-of-commerce tool may be applied as a freestanding jurisdictional test, or only after the court first determines that the defendant created its own contacts with the forum.

**IV. The threshold rule resolves Union’s case without requiring a choice among *Asahi* formulations.**

The decisions below illustrate why the threshold rule is necessary. Both the Superior Court and the Court of Appeal applied the stream-of-commerce theory without first asking whether Union had created purposeful California contacts of its own. Then, the Superior Court relied on foreseeability and regular flow, while the Court of Appeal treated customer-controlled distribution and nationwide compliance facts as “something more.” Those differing applications show how starting with downstream distribution invites courts to use the tool as a substitute for the contacts *Walden* requires.

1. Both the Superior Court and the Court of Appeal skipped *Walden*’s antecedent question. *See* App. 8a, 5a. The Superior Court neither cites *Walden* nor finds its requirement—contacts the defendant

itself created with California itself—satisfied. *See* App. 8a. The Court of Appeal likewise jumped to *Asahi* and *L.W.* without addressing *Walden* or *International Shoe*. *See* App. 5a. The lower courts therefore treated stream of commerce as the starting point without identifying a single California contact by Union itself.

2. The courts’ divergent applications of the stream-of-commerce doctrine shows the recurring confusion that a clear threshold rule would remedy.

The Superior Court treated Union’s alleged awareness that Dr. Scholl’s products might reach California as sufficient notice, rather than identifying any California contact Union itself created. It compounded that error by treating “additional efforts” as necessary only absent a “regular flow” or “regular course of sales” in the forum. App. 18a. It thus made a “mere likelihood that a product will find its way into the forum state” enough, despite that having “never been a sufficient benchmark for personal jurisdiction.” *World-Wide Volkswagen*, 444 U.S. at 295, 297. The court relied on Justice Brennan’s *Asahi* concurrence, which used awareness of the distribution system and economic benefits from it as the basis for purposeful availment. *Asahi*, 480 U.S. at 121 (Brennan, J., concurring in part and concurring in the judgment). Justice O’Connor rejected that approach: “a defendant’s awareness” that the stream of commerce may or will sweep a product into the forum is not enough. *Asahi*, 480 U.S. at 112 (opinion of O’Connor, J.). Because there was no “action by *Asahi*” related to California and no product design in anticipation of California sales, her plurality found specific jurisdiction lacking. *Id.* at 112–13.

The Superior Court also relied on a sentence from *L.W.*—a judicial gloss on Justice Breyer’s *J. McIntyre* concurrence—for the proposition that a “regular flow”

dispenses with any need to show additional forum-related conduct. App. 18a; *see L.W.*, 108 Cal. App. 5th at 114. But Justice Breyer’s concurrence, which controlled the judgment on the facts, explained that no precedent “finds that a single isolated sale, even if accompanied by” a nationwide sales effort, “is sufficient” for specific jurisdiction in New Jersey. *J. McIntyre*, 564 U.S. at 888 (Breyer, J., concurring in the judgment). Treating “foreseeability” or “awareness” plus “regular flow” or “something more” as alternatives reinforces the confusion that produces different outcomes.

The Court of Appeal’s errors are different but more straightforward. It adopted the same “foreseeability” standard as the Superior Court and then treated that finding as “something more.” Three facts underpinned that reasoning. First, the court found Union “blended and bottled 100% of the U.S. requirements” for Dr. Scholl’s products, which were “distributed throughout the United States.” App. 6a (citation omitted). Second, it found Union was “obligated by contract to ensure” that Dr. Scholl’s complied “with all applicable United States federal, state and local laws and regulations,” including California. *Id.* Third, the court noted Union responded to an email *from its customer*—the brand owner—so *the customer* could report “fill weight” to California, which the Court of Appeals treated as producing products with a “special” California-related “design.” *Id.* (quotations and citations omitted). Yet the Court of Appeals elides the fact that Union’s customer is the brand owner, which held the sole discretion whether and how to sell Dr. Scholl’s in California. The reasoning again treated customer-directed distribution as Union’s own forum connection.

The Court of Appeal’s reliance on a nationwide obligation to satisfy a forum-specific standard illustrates the need to distinguish nationwide production from purposeful availment of a particular State. Blending and bottling product for the United States market to the brand owner’s instructions is not the same as producing for California. The contract language likewise states a national standard. *Id.* If compliance with a nationally uniform obligation subjected every manufacturer to jurisdiction in every State that enforces it, purposeful availment loses its limiting function, and specific jurisdiction becomes a nationwide substitute for general jurisdiction. More fundamentally, the obligation cannot cure the absence of a forum contact Union itself created.

The Court of Appeal’s third fact—the fill-weight email—fares no better. As described by the court, Union responded to a brand-owner inquiry about product fill weights so that the brand owner could report the information to California. *See id.* The email identifies no communication *by* Union *with* California and no act by which Union directed its manufacturing or sales activity *in* or *at* California. Merely answering a customer’s request for information to be reported to the State is not a defendant “deliberately ‘reach[ing] out beyond’ its home—by, for example, ‘exploit[ing] a market’ in the forum State.” *Ford Motor*, 592 U.S. at 359 (quoting *Walden*, 571 U.S. at 285). The email cannot supply the missing threshold contact.

The analogy to *Asahi* is direct: Justice O’Connor and three other Justices found no jurisdiction because there was no “action by Asahi” directed at California and Asahi had not “design[ed] its product in anticipation of sales in California.” *Asahi*, 480 U.S. at 112–13 (opinion of O’Connor, J.). The same principle applies

here. Union did not design a product for California; it confirmed specifications its customer requested. Recharacterizing that confirmation as a “special state-related design” does not transform passive responsiveness into the affirmative, forum-directed conduct purposeful availment requires. Nor can that characterization overcome the antecedent rule that the forum contact must be created by Union itself.

And the fill-weight email cannot bear the jurisdictional weight the Court of Appeal assigned it. Even if the email constituted “something more,” the question remains—something more than *what*? The stream-of-commerce tool itself cannot supply the predicate contacts. *See* Part A, *supra*. The Court of Appeal skipped that first step and pressed the email into service to satisfy a freestanding test. That recurring tool/test confusion is itself a reason for this Court’s review.

Contract manufacturers do not own the products they produce; brand owners make the upstream and downstream decisions. Union took on a narrow role for the Dr. Scholl’s brand owners, confined to Missouri. When courts begin with final downstream distribution, fractured approaches to the stream-of-commerce doctrine allow those third-party choices to become jurisdictional contacts for the manufacturer. A threshold rule requiring courts first to identify what the defendant did in the forum, and *then* to use the stream-of-commerce tool to analyze those contacts, reaffirms the fundamental requirement of purposeful availment and restores the Due Process Clause’s promises of uniformity and predictability.

**CONCLUSION**

The Court should grant Union's petition for a writ of certiorari.

Respectfully submitted,

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October 15, 2026

## **APPENDIX**

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**APPENDIX A**

IN THE SUPREME COURT OF CALIFORNIA

En Banc

[Filed: June 17, 2026]

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S296173

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PTI UNION, LLC AKA PHARMA TECH INDUSTRIES,

*Petitioner,*

v.

SUPERIOR COURT OF ALAMEDA COUNTY,

*Respondent;*

CHATTEM, INC. et al.,

*Real Parties in Interest.*

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Court of Appeal, First Appellate District,  
Division One – No. A174945

---

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*

2a

Supreme Court of California  
Clerk of the Court  
350 McAllister Street  
San Francisco, CA 94102-4797

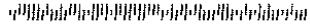
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O'Melveny & Meyers LLP  
400 South Hope Street, 19th Floor  
Los Angeles, CA 90071

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3a

### Calendaring

Due Date/Time: 06/22/2026 11:34 AM

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| <b>VIP:</b>                     | <u></u>                                    |
| <b>Requestor Email:</b>         | <u>LitigationCalendar@omm.com</u>          |
| <b>Requestor Phone</b>          | <u>9999999</u>                             |
| <b>Requestor Department</b>     | <u>Litigation</u>                          |
| <b>Requestor Location</b>       | <u>Litigation</u>                          |
| <b>Submitter</b>                | <u>Francisco J Alvarado</u>                |
| <b>Submitter Email</b>          | <u>falvarado@omm.com</u>                   |
| <b>Submitter Phone</b>          | <u></u>                                    |
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| <b>No. of Pages</b>             | <u>3</u>                                   |
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| <b>Billing Code 2</b>           | <u>0600000-00010</u>                       |
| <b>Billing Code Name 2</b>      | <u>DEPARTMENT<br/>MEETINGS AND AD...</u>   |
| <b>Submission Method</b>        | <u>Email</u>                               |
| <b>Client System Identifier</b> | <u></u>                                    |
| <b>Request Group</b>            | <u>Document(s)</u>                         |

4a

Instructions:

Method of Service:

- ☒ USPS Mail
- ☐ Overnight Courier
- ☐ Personally Served

Other:

Partial Scan:

- ☐ Document larger than 100 pages
- ☐ Bound document
- ☐ Certified document
- ☐ Exhibits

Exception:

- ☐ Digital media copy enclosure
- ☐ Medical records
- ☐ Originally signed documents

Deliver Originals: Aaron Henson

Doc Sent to Calendar: ☒ Yes

Postmark Date - date sent: 06/17/2026 03:30 . . .

Time Received to Mailroom: 06/20/2026 03:30 . . .

5a

**APPENDIX B**

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

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A174945

(Alameda County Superior Court No. 25CV116787)

---

PTI UNION, LLC AKA PHARMA TECH INDUSTRIES,

*Petitioner,*

v.

THE SUPERIOR COURT OF ALAMEDA COUNTY,

*Respondent;*

CHATTEM, INC. et al.,

*Real Parties in Interest.*

---

BY THE COURT:

The petition for writ of mandate, prohibition, or other appropriate relief is denied. (*Asahi Metal Industry Co., Ltd. v. Superior Court* (1987) 480 U.S. 102, 112 (plur. opn. of O'Connor, J.) ["Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, *designing the product for the market in the forum State . . .*"], italics added; *L.W. v. Audi AG* (2025) 108 Cal.App.5th 95, 114 [" [Alt a minimum, a plaintiff trying to establish personal jurisdiction over a foreign manufacturer must show a "regular . . . flow" or "regular course" of sales in the forum state, and/or some additional efforts directed toward the forum

state, such as “special state-related design, advertising, advice, [or] marketing.”).) Here, between 2008 and 2019, petitioner blended and bottled certain talc-containing products for the Product Owners. (See Petr’s Exh. Vol. III, pp. 649, 684, 686-687.) Petitioner blended and bottled 100% of the U.S. requirements for such products. (Petr’s Exh. Vol. III, p. 652.) It estimated that it blended and bottled between 600,000 and 800,000 thousand bottles of said products on average per year. (Petr’s Exh. Vol. III, p. 654.) Petitioner thus understood that the products it blended and bottled would be distributed throughout the United States, necessarily including California. (Petr’s Exh. Vol. III, pp. 651, 687-688, 698.) Petitioner was obligated by contract to ensure that the products it bottled and blended complied “with all applicable United States federal, state and local laws and regulations.” (Petr’s Exh. Vol. III, p. 944.) Thus, petitioner undertook to produce products whose specifications would meet California requirements. (Petr’s Exh. Vol. III, p. 1010.) Therefore, in addition to knowing that its products would be distributed in California, petitioner made “some additional efforts directed toward the forum state, such as `special state-related design.” (*L.W. v. Audi AG*, *supra*, 108 Cal.App.5th at p. 114, quoting *J. McIntyre Machinery, Ltd. v. Nicastro* (2011) 564 U.S. 873, 889 (conc. opn. of Breyer, J.).)

On March 16, 2026, counsel for petitioner submitted a letter enclosing two *tentative* rulings from the Los Angeles County Superior Court. Petitioner has not properly sought judicial notice of the rulings. (Cal. Rules of Court, rule 8.252(a)(1) [“To obtain judicial notice by a reviewing court under Evidence Code section 459, a party *must serve and file a separate motion with a proposed order.*”], italics added.) Nor would the tentative rulings have been a proper subject

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of judicial notice even if petitioner had followed the correct procedure. “Even assuming for the sake of argument that the case in question involves the same issue as the case before us . . . a written trial court ruling has no precedential value.” (*Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, 761 [denying request for judicial notice of superior court orders].) We therefore have not considered the orders.

Date: April 2, 2026

\_\_\_\_\_Humes, P.J.\_\_\_\_ P.J.

Before: Humes, P.J., Banke, J., and Smiley, J.

8a

**APPENDIX C**

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

---

No. 25CV116787

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JOHN E. MARICICH, JR. et al

*Plaintiff/Petitioner(s)*

vs.

CHATTEM, INC., individually et al

*Defendant/Respondent(s)*

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Date: 11/19/2025

Time: 4:30 PM

Dept: 18

Judge: Patrick McKinney

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**ORDER**

The Court, having taken the matter under submission on 11/10/2025, now rules as follows: Specially appearing defendant PTI Union, LLC's ("Defendant") Motion to Quash Service of Summons for Lack of Personal Jurisdiction ("Motion to Quash") was heard on November 10, 2025. After consideration of the supporting and opposition papers, and the arguments of counsel at the hearing, Defendant's Motion to Quash is DENIED.

Plaintiffs' Request to conduct further jurisdictional discovery is DENIED as moot.

#### APPLICABLE LAW

“When a defendant challenges jurisdiction through a motion to quash, the plaintiff bears the burden to demonstrate facts, as to each nonresident defendant, justifying the exercise of jurisdiction by a preponderance of evidence.” (Strasner v. Touchstone Wireless Repair & Logistics, LP (2016) 5 Cal.App.5th 215, 221-222.)

“The plaintiff must do more than merely allege jurisdictional facts. It must present evidence sufficient to justify a finding that California may properly exercise jurisdiction over the defendant. The plaintiff must provide affidavits and other authenticated documents in order to demonstrate competent evidence of jurisdictional facts. Allegations in an unverified complaint are insufficient to satisfy this burden of proof. Declarations cannot be mere vague assertions of ultimate facts, but must offer specific evidentiary facts permitting a court to form an independent conclusion on the issue of jurisdiction.” (In re Automobile Cases I & II (2005) 135 Cal.App.4th 100, 110 [internal citations omitted].)

A defendant's “minimum contacts” with California can establish the Court's personal jurisdiction over the defendant in two ways: generally (i.e., as to all claims and causes of action) or specifically (i.e., as to causes of action related to the contacts themselves). (See Bristol-Meyers Squibb Co. v. Superior Court of California (2017) 137 S.Ct. 1773, 1779-1780.)

To afford general jurisdiction to a state's courts, a defendant's contacts with the state must be so systematic and extensive that the corporation is “fairly

regarded as at home” in the state. (*Daimler AG v. Bauman* (2014) 571 U.S. 117, 137-139.) The paradigm examples of corporations at home in California include those which are incorporated here or have their principal place of business within the state. (*Daimler AG*, *supra*, 571 U.S. at p.137; *Goodyear Dunlop Tires Ops., S.A. v. Brown* (2011) 564 U.S. 915, 923-924.)

A state court can constitutionally exercise “specific” specific personal jurisdiction over an out-of-state corporate defendant as to causes of action or claims when: (1) the defendant purposely established contacts with the forum state; (2) a plaintiff’s cause of action “arises out of” or is “related to” the defendant’s contacts with the forum state; and (3) the forum’s exercise of personal jurisdiction in the particular case comports with “fair play and substantial justice.” (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477-478.) “In order for a court to exercise specific jurisdiction over a claim, there must be an ‘affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.’” (*Bristol-Meyers*, *supra*, 137 S.Ct. at p.1781.) “When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” (*Ibid.*) Further, “specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.” (*Bristol-Meyers*, *supra*, 137 S.Ct. at p. 1780.)

Plaintiff has the burden of production of evidence on the first two elements of the specific personal jurisdiction analysis stated above. (*LG Chem, Ltd. v. Sup.Ct. of San Diego County* (2022) 80 Cal.App.5th 348, 361.) “It is [plaintiff’s] burden to prove this second prong of the specific jurisdictional analysis, and he

must do that with ”competent evidence of jurisdictional facts.” (80 Cal.App.5th at 365, quoting *Rivelli v. Hemm* (2021) 67 Cal.App.5th 380, 393.) “In the sphere of specific jurisdiction, the phrase ‘relate to’ incorporates real limits, as it must to adequately protect defendants foreign to a forum.” (80 Cal.App.5th at 367, quoting *Ford Motor Co.* (2021) 141 S.Ct. 1017, 1026.) “Where . . . the defendant’s motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss.” (*Yamashita v. LG Chem, Ltd.* (9th Cir. 2023) 62 F.4th 496, 502,

Merely selling a product that ends up being used in California is insufficient to create specific personal jurisdiction unless the sale was purposefully targeted to California. (*Bombardier Recreational Prods., Inc. v. Dow Chem. Canada ULC* (2013) 216 Cal.App.4th 591, 603-604; see also *World-Wide Volkswagen Corp.* (1980) 444 U.S. 286, 297 [presence of defendant’s product in forum state, even if foreseeable, is insufficient if the defendant did not direct it there].)

#### ANALYSIS OF MOTION

In the May 5, 2025 moving papers, Defendant presents evidence that it was originally formed as a Delaware limited liability company, is presently a North Carolina limited liability company and has its principal place of business in Missouri. (Brasher Dec. ¶ 3.) Defendant presents evidence that it blended and bottled talcum powder products under the Dr. Scholl’s brand name pursuant to contract with the owners of the rights to the Dr. Scholls brand name and product lines (“Owner”), including as relevant here Dr. Scholls brand foot powder. (*Id.* at ¶ 4, 7 and 8.) The Dr. Scholls brand name/product line owners provided the product

formulations and specifications for the talcum powder products including designation of the raw materials, the raw materials suppliers and the content and design of the labeling to be used on the Dr. Scholls brand talcum powder products Defendant blended and bottled. (Id. at ¶ 9.) Plaintiffs in Opposition object to, inter alia, ¶ 9 of the Brasher Declaration, but Plaintiffs in Opposition after three rounds of briefing present no evidence Defendant provided product formulations and specifications with respect to Dr. Scholls brand foot powder. Plaintiffs also object to ¶¶ 1-13 of the Brasher Declaration, but they present no evidence in Opposition that the Dr. Scholls owners did not take possession of the products at Defendant's facility in Missouri or that Defendant ever shipped the products into California or made any decisions about where the products would be distributed once the Dr. Scholls owners took possession of the products.

Defendant's moving papers contain no evidence whether it has ever been authorized to conduct business in California, has ever had an agent for service of process in California, has ever owned or leased any property in California or has ever employed anyone in California. The Court observes that the California Secretary of State's business search website has no record that any corporate entity with "PTI Union" in its name has ever been authorized to conduct business in California. Plaintiffs in Opposition present no evidence that Defendant has ever had any of these California forum contacts.

In Opposition, Plaintiffs present evidence that Defendant was the exclusive blender and bottler of Dr. Scholls brand foot powder for the Owner's "U.S. requirements" during the period between 4/1/2008 until 2019, pursuant to a series of written contracts

going back to 1997 between the then current owner of the Dr. Scholls trademark and product lines and Defendant's predecessor in interest with respect to blending and bottling certain Dr. Scholls brand talcum powder products, including Dr. Scholls foot powder. (10/28/25 Supp. Stewart Decl. Exh. 1 at 11:18-23, 14:16-22 Plaintiffs also present evidence that Mr. Maricich was exposed to Dr. Scholls foot powder from his childhood until approximately 2010. (See Exh. 1 to 7/2/2025 Stewart Declaration.) Plaintiffs also present evidence that during the 2008 to 2019, Defendant blended and bottled between 600,000 and 800,000 bottles of Dr. Scholls powder products per year. (10/28/25 Supp. Stewart Decl. Exh. 1 at 17:15-18.)

The only evidence Plaintiffs present of any California forum directed activity by Defendant is a series of emails in 2015, five years after Mr. Maricich's last claimed use of Dr. Scholls foot powder, regarding the provision of "target fill weights" that needed to be sent or provided to California, which Plaintiffs argue is connected to requirements under the California Safe Cosmetics Act (Cal. Health & Safety Code § 111791 et seq.). (10/28/2025 Supp. Stewart Dec. Exh. 11.) There is no evidence in the record whether Defendant was responding directly to a request from California regulators to Defendant or if this was a request from the Owner, and there is no evidence whether Defendant transmitted its substantive response directly to California regulators or to the Owner.

"[T]he minimum contacts test asks whether the 'quality and nature' of the defendant's activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that State. . . . The test 'is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether

the requisite 'affiliating circumstances' are present. (Bombardier Recreational Prods., Inc. v. Dow Chem. Canada ULC (2013) 216 Cal.App.4th 591, 597.)

The Court's tentative ruling for the initial 6/3/2025 hearing on this Motion to Quash requested that the parties' supplemental briefing "address which of [the decisions L.W. v. Audi AG (2025) 108 Cal.App.5th 95 and Bombardier] or any other decisions are controlling" in the present circumstances. However, neither of Plaintiffs' two subsequent briefs address the Bombardier decision at all. Bombardier remains pertinent to the current analysis, because L.W. quotes Bombardier at some length at 108 Cal.App.5th at 112 and nowhere states that it disagrees with Bombardier's reasoning or that in the L.W. Court's opinion, Bombardier was wrongly decided on its facts. Thus, L.W. strongly indicates that Bombardier is good law and correctly decided on its facts, which are in certain respects distinguishable from L.W.'s facts.

This Court notes that Bombardier clearly relies on what the L.W. Court refers to as the "stream-of-commerce plus" theory of specific personal jurisdiction, where "mere foreseeability, at least where products are not sold in a state as part of the regular and anticipated flow of commerce into that state, is not enough to establish minimum contacts with the forum state." (216 Cal.App.4th at 597; 108 Cal.App.5th at 110.) In comparison, L.W. relies more on a straight "stream-of-commerce" theory "because the record shows that [auto manufacturer] Audi, through its [sole] distributor VWGoA, intentionally placed its vehicles into the regular flow of commerce to the United States, including to California." (108 Cal.App.5th at 114.) However, L.W. further states:

“[W]e are mindful that . . . the United States Supreme Court has not agreed on the precise requirements necessary to establish specific jurisdiction under a stream-of-commerce theory beyond foreseeability that a product may enter the forum state. However, under any of the analyses articulated by the various lead opinions, there is enough in this particular case for Audi to be properly summoned.” (Ibid.)

*Yamashita v. LG Chem, Ltd.* (9th Cir. 2023) 62 F.4th 496, 503-504, indicates that the Ninth Circuit applies a stream-of-commerce plus test. However, the relevant facts of *Yamashita* are quite different from either *Bombardier* or *L.W.*

The present facts fall somewhere in between *Bombardier* and *L.W.* In *Bombardier*, a Sea-Doo brand personal watercraft manufactured by defendant *Bombardier Recreational Products, Inc.* (“BRPI”) caught fire injuring plaintiff, allegedly due to a defective fuel tank manufactured by *Dow Chemical Canada ULC* (“Dow Chem”), a Canadian company based in Calgary, Alberta. BRPI cross-claimed against Dow Chem, and Dow Chem moved to quash the cross-complaint based on lack of personal jurisdiction in California. Although the trial court sustained Dow Chem’s objections to BRPI’s evidence showing that Dow Chem knew the Sea-Doo watercraft incorporating Dow Chem’s fuel tanks would be marketed and sold in California, the Court of Appeal’s decision is clear that even if Dow Chem had such knowledge, that evidence did not change the outcome under the totality of the circumstances. The *Bombardier* decision cites to no evidence regarding the number of or regularity with which Sea-Doo watercraft incorporating Dow Chem fuel tanks were sold in California.

This Court notes that Bombardier relies heavily on *Asahi Metal Industry Co. v. Sup.Ct. of Solano* (1987) 480 U.S. 102, a case which unanimously found that the California trial court lacked personal jurisdiction over a Taiwanese motorcycle tire manufacturing corporation's cross-claims against a Japanese manufacturer of tire valves arising out of a motorcycle accident in California. However, no majority of justices could agree on theories that (1) the stream-of-commerce plus test had not been satisfied, or (2) that trying the cross-claims in California would not comport with fair play and substantial justice where the Taiwanese corporate cross-complainant could just as easily pursue the claims in a Taiwanese or Japanese court. Although the Bombardier Court did not expressly address this alternative fair play and substantial justice argument, a reasonable inference is that corporate cross-complainant BRPI could have pursued its cross-claims against Dow Chem in a court in Canada, where the opinion states both the fuel tank sales occurred and BRPI manufactured its personal watercraft before distributing them into the United States. (216 Cal.App.4th at 595.)

In *L.W.*, plaintiffs' minor child was allegedly injured when an Audi Q7 automobile plaintiff had placed in "park" mode nevertheless "surged forward" and pinned the child to a garage wall after plaintiff exited the vehicle. Plaintiffs brought suit against both German auto manufacturer Audi AG ("Audi") and Audi's exclusive distributor for Audi brand vehicles in the United States, including California, Volkswagen Group of America, Inc. ("VWGoA"). The opinion is unclear whether VWGoA is a second-tier subsidiary of Audi; however, the opinion states that pursuant to contract Audi has the right to designate the directors

of Audi of America, LLC, VWGoA's parent corporate entity.

Although Audi had no direct forum contacts with California, did not sell vehicles directly to consumers in the United States, and did not exercise day-to-day control over VWGoA, Audi was responsible for the design and manufacture of Audi brand vehicles distributed and sold in the United States exclusively by VWGoA. However, Audi has registered its trademarks in the United States, has litigated in federal court to protect those trademarks, has authorized numerous car dealerships in California to use those trademarks, including the Audi name, and Audi vehicles are regularly and in large numbers distributed into California for sale by VWGoA.

In the present action, the Court finds that talc-containing Dr. Scholls foot powder was a product that between 2008 and 2019 was intentionally placed into the regular flow of commerce in the United States and was routinely distributed and sold in California. Although Defendant argues it would not have known that the Owners of the Dr. Scholls brand intended to distribute Dr. Scholls foot powder into California, like in *L.W.*, "there is enough in this particular case for [Defendant] to be properly summoned." Dr. Scholls foot powder is a nationally distributed, retailed and advertised product, and the only surprise would have been if the Owners had elected not to distribute Dr. Scholls foot powder into California.

However, in other respects the present facts are more like *Bombardier*. The evidence before the Court supports a finding that Defendant was a mere contractor to the Owners of the Dr. Scholls brand who provided blending and bottling services based on formulas and raw materials inputs determined by the

Owners. Unlike L.W., where Audi was entirely responsible for the design and manufacture of the Audi Q7 and employed a wholly controlled entity as the exclusive distributor for that product in the United States, including California, Dr. Scholls foot powder was the Owners' product, which the Owners designed and for which the Owners decided the inputs.

However, L.W. states in relevant part: "Tellingly, J. McIntyre [Machinery, Ltd. v. Nicaastro (2011) 564 U.S. 873] confirms that 'additional efforts' are required only if 'regular flow' or 'regular course of sales' in the forum state are not shown." As stated above, Dr. Scholls foot powder was a nationally distributed and retailed product during the relevant period, and Defendant was indisputably directly involved in the manufacture of that product between April 2008 and 2019, overlapping with the period of Mr. Maricich's use of Dr. Scholls foot powder. Further, unlike Bombardier or Asahi, the Owners are not cross-claiming against Defendant with respect to the Motion to Quash. Instead, Plaintiffs are suing Defendant directly for their injuries under, inter alia, a strict liability theory.

Upon consideration of the facts and the applicable controlling authorities, the Court elects to follow L.W.'s stream of commerce approach. Here, Defendant, when it contracted to manufacture Dr. Scholls foot powder, a product it knew or reasonably should have known would be distributed nationally, including into California, Defendant should have been prepared to face suit sounding in product defect in any United States forum where it could reasonably have anticipated the product would be distributed and sold.

Wherefore, the Court DENIES Defendant's Motion to Quash.

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The Court SUSTAINS Plaintiffs' Objections to the Brasher Declaration based on lack of adequate foundation for personal knowledge, but notes that Plaintiffs bear the burden to present evidence of Defendant's California forum contacts or other evidence supporting a finding of this Court's personal jurisdiction on this Motion to Quash.

Dated : 11/19/2025

/s/ Patrick McKinney  
Patrick McKinney/Judge

20a

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

[Filed: 11/19/2025]

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PLAINTIFF/PETITIONER:

JOHN E. MARICICH, JR. et al

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DEFENDANT/RESPONDENT:

CHATTEM, INC., individually et al

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CERTIFICATE OF ELECTRONIC SERVICE  
CODE OF CIVIL PROCEDURE 1010.6

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Case Number:

25CV116787

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I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Ruling on Submitted Matter entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Dated: 11/19/2025

Chad Finke, Executive Officer / Clerk of the Court By:  
/s/ P. Drummer-Williams  
P. Drummer-Williams, Deputy Clerk

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Case Number: 25CV116787

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SHORT TITLE: MARICICH, JR., et al.

vs

CHATTEM, INC., INDIVIDUALLY, et al.

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