No. 19-1204

In the United States Court of Appeals for the Seventh Circuit

FLORENCE MUSSAT, M.D., S.C.,
Plaintiff-Appellant,

v.

IQVIA, INC.,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
CASE NO. 17-CV-8841 (THE HON. VIRGINIA M. KENDALL)

BRIEF OF *AMICUS CURIAE* AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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TABLE OF CONTENTS

Table of authorities ii

Interest of *amicus curiae* 1

Introduction and summary of argument 2

Argument 4

I. *Bristol-Myers* does not preclude nationwide class actions in federal court. 4

A. *Bristol-Myers* overturned only California's unique "sliding scale" test for specific jurisdiction. 5

B. *Bristol-Myers* does not apply to absent class members' claims in federal court. 7

II. Extending *Bristol-Myers* to federal class actions would spark intolerable practical problems. 19

Conclusion 22

TABLE OF AUTHORITIES

Cases

Al Haj v. Pfizer Inc.,
338 F. Supp. 3d 815 (N.D. Ill. 2018) 6, 7, 18

America's Health & Resource Center, Ltd. v. Promologics, Inc.,
2018 WL 3474444 (N.D. Ill. July 19, 2018) 12

Amgen Inc. v. Connecticut Retirement Plans & Trust Funds,
568 U.S. 455 (2013) 17

Bristol-Myers Squibb Co. v. Superior Court of California,
137 S. Ct. 1773 (2017) ..... *passim*

Chicago Teachers Union, Local No. 1 v. Board of Education,
797 F.3d 426 (7th Cir. 2015) 19

Devlin v. Scardelletti,
536 U.S. 1 (2002) 15, 20, 21

Fitzhenry-Russell v. Dr. Pepper Snapple Group, Inc.,
2017 WL 4224723 (N.D. Cal. Sept. 22, 2017) 18

Hargrave v. Oki Nursery, Inc.,
646 F.2d 716 (2d Cir. 1980) 19

In re Checking Account Overdraft Litigation,
780 F.3d 1031 (11th Cir. 2015) 15, 19

In re Chinese-Manufactured Drywall Products Liability Litigation,
2017 WL 5971622 (E.D. La. Nov. 30, 2017) 11

In re Oil Spill by Amoco Cadiz Off Coast of France March 16, 1978,
954 F.2d 1279 (7th Cir. 1992) 8

ISI International, Inc. v. Borden Ladner Gervais LLP,
256 F.3d 548 (7th Cir. 2001) 8

KM Enterprises, Inc. v. Global Traffic Technologies, Inc.,
725 F.3d 718 (7th Cir. 2013) 8

Knotts v. Nissan North America, Inc.,
346 F. Supp. 3d 1310 (D. Minn. 2018) 3, 16, 17

LaDuke v. Burlington Northern RailRoad Co.,
879 F.2d 1556 (7th Cir. 1989) 20

LDGP, LLC v. Cynosure, Inc.,
2018 WL 439122 (N.D. Ill. Jan. 16, 2018) 12

Leppert v. Champion Petfoods USA Inc.,
2019 WL 216616 (N.D. Ill. Jan. 16, 2019) 12

Molock v. Whole Foods Market, Inc.,
297 F. Supp. 3d 114 (D.D.C. 2018) 16

Muir v. Nature's Bounty,
2018 WL 3647115 (N.D. Ill. Aug. 1, 2018) 12, 13

Mullins v. Direct Digital, LLC,
795 F.3d 654 (7th Cir. 2015) 18

Northern Grain Marketing, LLC v. Greving,
743 F.3d 487 (7th Cir. 2014) 12

Practice Management Support Services v. Cirque du Soleil, Inc.,
301 F. Supp. 3d 840 (N.D. Ill 2018) 13

Romine v. Compuserve Corp.,
160 F.3d 337 (6th Cir. 1998) 20

Sanchez v. Launch Technical Workforce Solutions, LLC,
297 F. Supp. 3d 1360 (N.D. Ga. 2018) 17

SEC v. Carrillo,
115 F.3d 1540 (11th Cir. 1997) 11, 14

Sloan v. General Motors LLC,
287 F. Supp. 3d 840 (N.D. Cal. 2018) 11

Smith v. Bayer Corp.,
564 U.S. 299 (2011) 15, 18

Tamburo v. Dworkin,
601 F.3d 693 (7th Cir. 2010) 13

United Electric, Radio & Machine Workers of America v. 163 Pleasant Street Corp.,
960 F.2d 1080 (1st Cir. 1992) 11

World–Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980) 10

Other authorities

Diane P. Wood,
Adjudicatory Jurisdiction and Class Actions, 62 Ind. L.J. 597 (1987) 18

Charles A. Wright & Arthur R. Miller,
Federal Practice & Procedure § 1069.7 (4th ed. 2018) 19

INTEREST OF *AMICUS CURIAE*[1]

The American Association for Justice (or AAJ) is a national, voluntary bar association established in 1946 to strengthen the civil-justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest trial bar. AAJ's members primarily represent plaintiffs in personal-injury actions, employment-rights cases, consumer cases, and other civil actions, including class actions. Throughout its more than 70-year history, AAJ has served as a leading advocate of the right of all Americans to seek legal recourse for wrongful injury.

AAJ files this brief because neither the district court nor the parties have addressed all the relevant arguments bearing on the key question in this appeal: Does *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), apply to nationwide class actions in federal court? In particular, this brief addresses the mistake that several district courts in this circuit have made of misreading Rule 4 and Rule 23 of the Federal Rules of Civil Procedure to require or permit the application of state-based limitations on personal jurisdiction in federal court. The proper application of *Bristol-Myers* is important to AAJ, its members, and the law more broadly. And this case is among the first to reach the appellate courts on the issue.

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[1] All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* or its counsel made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This brief presents key arguments that are not adequately addressed in the opinion below or in the appellant's brief. Several district courts in this circuit have mistakenly read Rule 4 and Rule 23 to require or permit the application of state-based limitations on personal jurisdiction in federal court. That erroneous approach ignores the constitutional distinction between due-process limitations on state and federal courts, misses several important differences between named parties and unnamed class members, and is inconsistent with longstanding applications of the Federal Rules of Civil Procedure.

In *Bristol-Myers*, the U.S. Supreme Court rejected California's doctrinal test for specific jurisdiction, which was so relaxed as to resemble "a loose and spurious form of general jurisdiction." 137 S. Ct. at 1781. In so holding, the Supreme Court noted that it was applying only "settled principles of personal jurisdiction," and was not changing any of the standards for personal jurisdiction that have governed for decades. *Id.* at 1783. But in the years since the decision, a number of litigants have argued that many class actions, including most nationwide class actions, are now constitutionally invalid for lack of personal jurisdiction over the defendant with respect to the claims of unnamed class members. Although the tendency in lower courts around the country has been to reject that radical proposed change to personal-jurisdiction doctrine, there are a number of district courts in this circuit that

have gone the other way. *See Knotts v. Nissan N. Am., Inc.*, 346 F. Supp. 3d 1310, 1332 (D. Minn. 2018) (collecting cases and noting that, "[o]utside of Illinois, district courts have largely declined to extend [*Bristol-Myers*] to the class action context").

Those courts have erred in several important ways. For starters, courts have never been required to engage in a personal-jurisdiction inquiry that asks whether the exercise of jurisdiction over defendants is appropriate with respect to unnamed class members; the inquiry has focused exclusively on the named parties. *Bristol-Myers* does not dictate a different approach. It was not a class action, but a mass action with no unnamed parties. And the Court's opinion did not even discuss—much less change—how personal jurisdiction rules apply in the class-action context.

Additionally, the district courts that have applied *Bristol-Myers* to class actions have mistakenly extended the Supreme Court's reasoning from state-court actions (like *Bristol-Myers*) to cases in federal court, where its reasoning does not apply. *Bristol-Myers* applied the Due Process Clause of the Fourteenth Amendment, which acts "as an instrument of interstate federalism." 137 S. Ct. at 1781. But federal courts are subject to the due-process restrictions of the Fifth Amendment, not the Fourteenth Amendment, and the same federalism interests are not implicated.

Some of the district courts that have held otherwise, and limited federal-court jurisdiction to the personal jurisdiction of the states in which they sit, have relied on a misreading of Rule 4. That rule governs the proper geographic scope of service of

process by a federal court, but is not a freestanding limitation on federal courts' jurisdiction. Service of process on the defendant by unnamed class members has never been required under Rule 4, Rule 23, or any other law. Rule 4 therefore does not limit federal courts' jurisdiction over unnamed class members' claims.

This case could be the first in which a federal circuit decides whether, contrary to the Supreme Court's statement that it applied only settled law, *Bristol-Myers* in fact revolutionized class-action doctrine. This Court should take the opportunity to clarify the scope of *Bristol-Myers* and hold that class actions may proceed so long as there is personal jurisdiction over the defendant with respect to the claims of the named plaintiffs.

ARGUMENT

I. *Bristol-Myers* does not preclude nationwide class actions in federal court.

For decades, courts were in agreement that, in a case like this one, involving a nationwide class action in federal court, the claims of absent class members are irrelevant for purposes of establishing personal jurisdiction. The Supreme Court's decision in *Bristol-Myers* gives no license to overturn that settled understanding. The due-process concerns animating the Court's decision are simply inapplicable here. Although "the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment,"

Bristol-Myers, 137 S. Ct. at 1781, no similar constitutional constraint applies to federal courts deciding absent class members' claims.

A. *Bristol-Myers* overturned only California's unique "sliding scale" test for specific jurisdiction.

The district court's holding is based entirely on its overreading of *Bristol-Myers*. That case did not involve a class action in federal court. It involved a mass action in which a group of 678 individual plaintiffs (86 of whom were from California, and 592 of whom were from other states) filed separate complaints in California state court. *Id.* at 1778. The California Supreme Court held that the out-of-state plaintiffs could bring their state-law claims in California court based on that state's unique "sliding scale approach to specific jurisdiction," which allowed the required "connection between the forum contacts and the claim" to be reduced depending on how "wide ranging the defendant's forum contacts" were. *Id.*

The U.S. Supreme Court reversed. It explained that, under "settled principles regarding specific jurisdiction," 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.'" *Id.* at 1781 (quotation marks omitted). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* California's "sliding-scale approach" contravened this settled framework because it relaxed "the strength of the requisite connection between the forum and the specific claims at issue." *Id.*

By its own reckoning, however, *Bristol-Myers* was narrow—nothing more than a "straightforward application . . . of settled principles of personal jurisdiction." *Id.* at 1783; *see id.* at 1781 ("Our settled principles regarding specific jurisdiction control this case."). And the Court was careful to cabin the scope of its decision. Because the decision "concern[ed] the due process limits on the exercise of specific jurisdiction by a State," the Court took pains to note, the opinion did not touch "on the exercise of personal jurisdiction by a federal court." *Id.* at 1783–84. Nor did it decide whether the same result would obtain in a class action under Rule 23. *See id.* at 1789 n.4 (Sotomayor, J., dissenting) (explaining that "the Court today does not confront the question whether its opinion here would also apply to a class action").

Standing alone, this is enough to reverse the district court's flawed view of *Bristol-Myers*. Although its decision turned entirely on the premise that *Bristol-Myers* applies to "nationwide class actions in federal court," the district court offered no explanation—let alone any developed reasoning—to justify disregarding the express limitations contained in the opinion itself. SA8. The court did not cite "any pre-*Bristol-Myers* decision holding that, in a class action where the defendant is not subject to general jurisdiction, specific jurisdiction must be established not only as to the named plaintiff(s), but also as to the absent class members." *See Al Haj v. Pfizer Inc.*, 338 F. Supp. 3d 815, 818 (N.D. Ill. 2018). "The pre-*Bristol-Myers* consensus, rather, was that due process neither precluded nationwide or multistate class actions nor

required [an] absent-class-member-by-absent-class-member jurisdictional inquiry." *Id.* at 818–19. Nothing about *Bristol-Myers* should upend this consensus. The "settled principles regarding specific jurisdiction" are unchanged by that decision, *Bristol-Myers*, 137 S. Ct. at 1781, and they provide no support for the district court's radical new rule.

B. *Bristol-Myers* does not apply to absent class members' claims in federal court.

Ignoring *Bristol-Myers*' own express limitations led the district court to make a crucial analytical error. It held that "the Constitution and state law guide the personal jurisdiction analysis" in this case. SA13. But the court applied the wrong analysis under both the Constitution and state law. The relevant constitutional inquiry for federal courts, under the Due Process Clause of the Fifth Amendment, looks to a defendant's contacts with the entire country, not with the forum state—a principle that the district court ignored, and that many of the cases it cited ignore as well. And the only way that state law and constitutional limits on state courts become relevant in federal court is by operation of the Federal Rules of Civil Procedure, which the district court and other cases in this circuit have misapplied, too.

1. To begin with, the personal-jurisdiction inquiry under the Constitution is different for federal courts than it is for state courts. "The jurisdiction whose power federal courts exercise is the United States of America, not the [s]tate" in which a given suit is brought. *ISI Int'l, Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 551 (7th

Cir. 2001), *as amended* (July 2, 2001). As a consequence, in federal court, "due process requires only that [a defendant] have sufficient minimum contacts with the United States as a whole to support personal jurisdiction." *KM Enters., Inc. v. Global Traffic Techs., Inc.*, 725 F.3d 718, 731 (7th Cir. 2013); *see also In re Oil Spill by Amoco Cadiz Off Coast of France Mar. 16, 1978,* 954 F.2d 1279, 1294 (7th Cir. 1992). For defendants that reside or operate in the United States, that test will nearly always be satisfied. *See, e.g.*, *ISI Int'l*, 256 F.3d at 551–52 (upholding personal jurisdiction in the U.S. District Court for the Northern District of Illinois based on a letter sent to California, a law firm hired in Michigan, and a patent application filed with the federal government).

It is satisfied here as well. Nobody disputes that the defendant—"a Delaware corporation with its principal place of business in Pennsylvania"—has sufficient contacts with the United States as a whole. SA10. Thus, under a straightforward application of existing precedent, there is no constitutional impediment to a federal court exercising personal jurisdiction over the defendant. *See KM Enters.*, 725 F.3d at 731; *ISI Int'l*, 256 F.3d at 551–52. As discussed below, further questions may arise under statutory law or the Federal Rules of Civil Procedure; but as a constitutional matter, personal jurisdiction over the defendant is well within the established bounds of due process.

Bristol-Myers itself makes this clear. There, the Court considered a state court's exercise of personal jurisdiction over claims brought by out-of-state plaintiffs even in

the absence of "any adequate link between the State and the nonresidents' claims." 137 S. Ct. at 1776. That approach implicated the *Fourteenth Amendment's* Due Process Clause, which "limits the personal jurisdiction of state courts." *Id.* at 1779. As the Court explained, because a "state court's assertion of jurisdiction exposes defendants to the State's coercive power," the "power of a state court to render a valid personal judgment against a nonresident defendant" is "subject to" the due-process constraints imposed by the Fourteenth Amendment. *Id.*

The Supreme Court held that California's approach to personal jurisdiction was incompatible with those constraints. That was so not because of any "practical problems resulting from litigating in the forum"—the defendant there was already facing suit in California court for similar claims brought by California residents—but because the due-process "interests" of the Fourteenth Amendment "encompass[] the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question." *Id.* at 1780. As the Court explained, because the "States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts," the "sovereignty of each State" implies "a limitation on the sovereignty of all its sister States." *Id.* (quotation marks omitted). In other words, the Fourteenth Amendment's "restrictions on personal jurisdiction" offer "more than a guarantee of immunity

from inconvenient or distant litigation," they also "are a consequence of territorial limitations on the power of the respective States." *Id.*

In *Bristol-Myers*, this "federalism interest" proved "decisive." *Id.*; *see also id.* at 1788 (Sotomayor, J., dissenting) ("The majority's animating concern, in the end, appears to be federalism."). California's exercise of sovereign power over the claims of, say, Ohio plaintiffs would have encroached on the interests of Ohio courts to hear their residents' cases and apply their own procedural rules. *See World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292–93 (1980) (explaining that the "principles of interstate federalism" embodied in the Fourteenth Amendment's Due Process Clause "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"). As a result, the Court explained, "even if" California's exercise of personal jurisdiction over nonresidents' claims would have exposed the defendant to "minimal or no inconvenience," and "even if" California was "the most convenient location for litigation," California's exercise of personal jurisdiction was incompatible with the Fourteenth Amendment's Due Process Clause. *Bristol-Myers*, 137 S. Ct. at 1780–81.

But the Fifth Amendment is different. Whatever federalism concerns limit the exercise of a state's power to decide state-law claims of nonresidents, no similar concerns apply to a federal court's exercise of its authority. Put simply: For claims in federal court (particularly federal-question claims such as those at issue here), "the

federalism concerns which hover over the jurisdictional equation" are entirely "absent." *SEC v. Carrillo*, 115 F.3d 1540, 1543 (11th Cir. 1997) (quoting *United Elec., Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1085 (1st Cir. 1992)). That is why the Court in *Bristol-Myers* made clear that its holding applied only to "the due process limits on the exercise of specific jurisdiction by a State," and did not affect "the exercise of personal jurisdiction by a federal court." 137 S. Ct. at 1783–84. And it is why post-*Bristol-Myers* courts considering the constitutional limitations on personal jurisdiction in nationwide federal class actions have held that "the due process right does not obtain . . . in the same manner because all federal courts, regardless of where they sit, represent the same federal sovereign, not the sovereignty of a foreign state government." *Sloan v. Gen. Motors LLC*, 287 F. Supp. 3d 840, 858–59 (N.D. Cal. 2018); *see also In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 2017 WL 5971622, at *19 (E.D. La. Nov. 30, 2017) (explaining that "federalism concerns are not present" in federal class actions). Claims in federal court present "no risk of a state court exceeding the bounds of its state's sovereignty and subjecting residents of another state to the coercing power of its courts." *Sloan*, 287 F. Supp. 3d at 859.

2. The district court did not address this fundamental distinction between the constitutional limits on state and federal courts. Nor did it explain what it meant when it said that "state law guide[s] the personal jurisdiction analysis." SA13. Other district courts in this circuit, however, have suggested that *Bristol-Myers* "imposes an

indirect bar" on federal courts' jurisdiction because the Federal Rules of Civil Procedure require federal courts "to apply the personal-jurisdiction law of the states in which they sit." *Muir v. Nature's Bounty*, 2018 WL 3647115, at *4 (N.D. Ill. Aug. 1, 2018) (emphasis in original); *see, e.g.*, *Leppert v. Champion Petfoods USA Inc.*, 2019 WL 216616, at *4 (N.D. Ill. Jan. 16, 2019) (citing *N. Grain Mktg., LLC v. Greving*, 743 F.3d 487, 491 (7th Cir. 2014)); *Am.'s Health & Resource Ctr., Ltd. v. Promologics, Inc.*, 2018 WL 3474444, at *2 (N.D. Ill. July 19, 2018) (citing *LDGP, LLC v. Cynosure, Inc.*, 2018 WL 439122, at *2 (N.D. Ill. Jan. 16, 2018) (citing Rule 4(k)(1)(A))). Under this reasoning, *Bristol-Myers* restricts state courts, and the Federal Rules limit federal courts in some circumstances to the jurisdiction of state courts, so *Bristol-Myers* limits federal-court jurisdiction as well. *Muir*, 2018 WL 3647115, at *4.

This line of reasoning does not support the district court's holding. Although it might apply to a federal court's exercise of personal jurisdiction over a named party, it does not apply to the exercise of jurisdiction over unnamed class members. The only way in which the Federal Rules connect personal jurisdiction in federal court to the geographic limitations placed on state courts is through Rule 4(k), which permits federal courts to establish personal jurisdiction over a defendant via service of process. Under Rule 4(k)(1)(A), federal courts may serve process on a defendant who is "subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." When a federal court serves process under Rule 4(k)(1)(A),

that service of process is thus limited to the territorial reach of the state courts where the federal court sits.

In grappling with how to apply *Bristol-Myers*, several district courts have mistakenly concluded that Rule 4(k)(1)(A) limits the exercise of personal jurisdiction by federal courts over unnamed class members. These courts have taken that provision to be a freestanding limitation on federal-court jurisdiction writ large, as opposed to a mechanism for establishing personal jurisdiction via service of process. The *Muir* court, for instance, cited a discussion of Rule 4(k)(1)(A) for the proposition that "a federal court's jurisdiction over a defendant's person is determined by the law of the state in which it sits." *Muir*, 2018 WL 3647115, at *2 (citing *Tamburo v. Dworkin*, 601 F.3d 693, 700 (7th Cir. 2010)); *see also Practice Mgmt. Support Servs. v. Cirque du Soleil, Inc.*, 301 F. Supp. 3d 840, 862 (N.D. Ill 2018).

It is true that the case law surrounding Rule 4(k)(1)(A) sometimes speaks in generalities about "personal jurisdiction," but the context always makes clear that the relevant question is about the appropriate scope of service of process. *See, e.g.*, *Tamburo*, 601 F.3d at 700 ("Where no federal statute authorizes nationwide service of process, personal jurisdiction is governed by the law of the forum state."). A straightforward reading of Rule 4(k) confirms that it would never limit personal jurisdiction over a defendant that is properly served, and no case holds otherwise.

This matters here, because in a class action a defendant needs to be served with process only by the named plaintiff, not by unnamed class members. Were it otherwise, nationwide class actions would have been impossible long before *Bristol-Myers*. Indeed, Rule 4's geographic limitations have been in place for decades, but no case that we are aware of suggests that it renders class proceedings inappropriate because a district court has served process only on behalf of a named plaintiff.

Bristol-Myers itself again illustrates this important distinction. Recall that it began not as a class action but as a mass action—nearly 700 separate claims filed by nearly 700 individual plaintiffs in California. In that context, the Supreme Court explained, each actual claim must independently establish an "adequate link" with the forum state. 137 S. Ct. at 1781. That is because personal jurisdiction is plaintiff-specific—a party with a claim against a defendant cannot rely on a third party's connection to establish personal jurisdiction over the defendant for its claim.

And this "remains true even when third parties ([in *Bristol-Myers*], the plaintiffs who reside in California) can bring claims similar to those brought by the nonresidents." *Id.* Why? Because personal jurisdiction is "predicated on the well settled principle that 'service of process constitutes the vehicle by which the court obtains jurisdiction.'" *Carrillo*, 115 F.3d at 1543. In a mass action like *Bristol-Myers*, service of process must be accomplished separately by each individual plaintiff. *See* 137 S. Ct. at 1778 (explaining that the defendant "moved to quash [the] service of

summons" for each out-of-state plaintiff's claims). Hence, "[w]hat is needed" before a nonresident plaintiff can validly effect service by deploying a foreign state's long-arm statute (like California's in *Bristol-Myers*) "is a connection between the forum and the specific claims at issue." *Id.* at 1781.

Not so for absent class members. Unlike a mass action, in which every plaintiff holds an individual claim and seeks party status to litigate that claim to judgment, in a class action under Rule 23 (and most state analogues), "a nonnamed class member is [not] a party to the class-action litigation before the class is certified." *Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011) (describing any contrary view as "novel" and "surely erroneous"). This distinction makes all the difference. Before certification, absent class members are in no way parties to the litigation and so hold no obligation to independently establish personal jurisdiction or secure service over any defendant. Put another way, before class certification, the claims of any absent class members are not before the court. *See In re Checking Account Overdraft Litig.*, 780 F.3d 1031, 1037 (11th Cir. 2015) ("Certification of a class is the critical act which reifies the unnamed class members and, critically, renders them subject to the court's power.").

Certifying the class does not require anything more for personal-jurisdiction purposes. That is because, as the Supreme Court has made clear, "nonnamed class members" are generally "not parties" for jurisdictional purposes. *See Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002) (explaining that absent class members, for example,

"cannot defeat complete diversity"). If they were, absent class members could "destroy diversity in almost all class actions." *Id.* at 10. For class actions, the only requirement—"what is needed," to use the words of *Bristol-Myers*—is a sufficient connection between the forum and the named plaintiff's "specific claims at issue." 137 S. Ct. at 1781.

Rule 4 and its service-of-process principles therefore do not provide a basis to restrict federal-court jurisdiction where there is otherwise valid service of process. Even though Rule 4(k)(1)(A) incorporates the geographic limitations of state courts, it does so only with respect to how process is served. Such geographic limitations on service of process have not been an obstacle to nationwide class actions before, and *Bristol-Myers* does not change the rules regarding service of process or class actions.

3. There is another "key distinction[]" between class actions and mass actions. *Molock v. Whole Foods Market, Inc.*, 297 F. Supp. 3d 114, 126 (D.D.C. 2018). In a mass action, "each joined plaintiff may make different claims requiring different responses." *Knotts*, 346 F. Supp. 3d at 1334. To be certified as a class action under Rule 23, by sharp contrast, a "suit must satisfy due process procedural safeguards that do not exist in mass tort actions." *Id.* at 1333. These include Rule 23's requirements of "numerosity, commonality, typicality, adequacy of representation, predominance and superiority." *Id.* Together, these requirements ensure that a "proposed class is sufficiently cohesive to warrant adjudication by representation." *Amgen Inc. v. Conn.*

Retirement Plans & Trust Funds, 568 U.S. 455, 469 (2013) (quotation marks omitted). A proposed class that fails even one of these requirements will not be certified, while a class that meets each requirement will, by virtue of doing so, present the defendant with "a unitary, coherent claim to which it need respond only with a unitary, coherent defense." *Sanchez v. Launch Tech. Workforce Sols., LLC*, 297 F. Supp. 3d 1360, 1366 (N.D. Ga. 2018).

To appreciate the point, just look at this case. The named plaintiff is pressing a single claim that the defendant sent unsolicited faxes in violation of federal law. If the named plaintiff is able to eventually obtain certification of that claim, it would mean that the key elements of the claim, and the key defenses, are common to the class. In that scenario, the defendant would assert the *same defenses* against the *same claim* by the *same named plaintiffs*—regardless of whether the class were nationwide or limited to Illinois (as the district court's holding would require). It would make no sense, from the standpoint of due process and fairness, to insist on a slew of identical lawsuits presenting the same claim in federal court. To the contrary, "it promotes efficiency and expediency to litigate all claims at once rather than to separate the nationwide class." *Knotts*, 346 F. Supp. 3d at 1334. And if the claims turn out to be materially different, class certification will not be appropriate.

The district court's rule is thus as pointless as it is radical. Any "concern about protecting a defendant's due process rights" is misplaced because those rights are

"protected by other features of the class device." *Cf. Mullins v. Direct Digital, LLC*, 795 F.3d 654, 672 (7th Cir. 2015) (declining to impose new class-action requirement for due-process reasons when Rule 23's requirements already protected a defendant's due-process rights). And, as noted earlier, the "pre-*Bristol-Myers* consensus" was "that due process neither precluded nationwide or multistate class actions nor required [an] absent-class-member-by-absent-class-member jurisdictional inquiry." *Al Haj*, 338 F. Supp. 3d at 818–19; *see Fitzhenry-Russell v. Dr. Pepper Snapple Grp., Inc.*, No. 17-cv-564, 2017 WL 4224723, at *5 (N.D. Cal. Sept. 22, 2017) (citing several pre-*Bristol-Myers* cases for the proposition that, "in class actions, the citizenship of the unnamed plaintiffs is not taken into account for personal jurisdiction purposes"); Diane P. Wood, *Adjudicatory Jurisdiction and Class Actions*, 62 Ind. L.J. 597, 616 (1987) ("[In a representational action,] the contacts supporting the individual's claim against the defendants should support the entire class's claims.").

This consensus existed for a good reason. Under the district court's rule, every absent class member—even before certification—would have to demonstrate specific personal jurisdiction for claims that are not before any court and that may never be brought. That is nonsensical. A "proposed class action" is no more an actual class action than a "rejected" one. *Smith*, 564 U.S. at 315. A "properly conducted class action" can "come about in federal courts in just one way—through the procedure set out in Rule 23." *Id.* Until that happens, and even after, the only plaintiff that

matters for purposes of personal jurisdiction is the named plaintiff. *See In re Checking Account*, 780 F.3d at 1037 ("Absent class certification, there is no justiciable controversy" between a defendant "and the unnamed putative class members.").

II. Extending *Bristol-Myers* to federal class actions would spark intolerable practical problems.

The district court's contrary rule, if adopted by this Court, would undermine the core efficiency interests that lie at the foundation of modern class-action practice. It has long been understood that the "unified federal courts" have "a stake in discouraging duplicative litigation not only within a single district but within the entire system." *Hargrave v. Oki Nursery, Inc.*, 646 F.2d 716, 720 (2d Cir. 1980). As this Court has explained, class actions afford an "efficient and fair" way to "answer the question once for all plaintiffs rather than in piecemeal litigation." *Chicago Teachers Union, Local No. 1 v. Bd. of Educ.*, 797 F.3d 426, 444 (7th Cir. 2015). So, in the absence of any procedural unfairness, "considerations of judicial efficiency, the federal policy against piecemeal litigation, and the plaintiff's convenience weigh in favor of requiring a defendant who already is before the court to defend against all pending claims, particularly when they fall within the same common nucleus of operative fact." Wright & Miller, *Federal Practice & Procedure* § 1069.7 (4th ed. 2018).

Embracing the district court's understanding would undermine all of these fairness and efficiency interests. Because the claims at issue arise out of the same nucleus of operative facts, resolving those facts and claims in a different forum would

almost certainly overlap, and possibly conflict, with the proceedings in this case. There is nothing desirable about that possibility. The "specter of judicial duplication of effort looms particularly ominously in the class action context, where the potential for inefficiency is acute." *Romine v. Compuserve Corp.*, 160 F.3d 337, 341 (6th Cir. 1998).

Indeed, litigating a putative nationwide class action in different forums "gives rise to two problems." *LaDuke v. Burlington N. R.R. Co.*, 879 F.2d 1556, 1560 (7th Cir. 1989). "First, a party may try to accelerate or stall proceedings in one of the forums in order to ensure that the court most likely to rule in its favor will decide a particular issue first. Second, the possibility exists that one court, unaware that the other court has already ruled, will resolve an issue differently and create a conflict between the two forums." *Id.* Permitting common claims to be litigated together in one forum—so long as the Constitution does not forbid it—advances "the major goal[]" of "simplify[ing] litigation involving a large number of class members with similar claims." *Devlin*, 536 U.S. at 10. But that goal "would be defeated," *see id.*, if would-be named plaintiffs from different states had to file separate federal class-action cases, causing both delay and potential conflict. In short, the overall convenience of the parties—including the defendant's—is much better served by having the claims heard in a single forum rather than fifty.

What's more, that serious practical problems would accompany a rule adopting the district court's ill-considered theory for dismissal here are obvious. Who

are the absent class members that would be required to come forward to avoid dismissal? Without a court-approved definition of the class, who would know whether they might be subject to a court's dismissal for lack of personal jurisdiction? Would there need to be an additional, pre-certification round of notice to inform potential class members that they might be affected? And what about the difficulties of administration? Would federal courts now be compelled to consider the connection between every absent class member's potential claim and the forum? When, and under what circumstances, would that require jurisdictional discovery? In *Devlin*, the Supreme Court rejected just such a possibility, explaining that the "[e]ase of administration of class actions would be compromised" by the possibility that federal judges would be forced to consider jurisdictional prerequisites "of all class members, many of whom may even be unknown," before "determining jurisdiction." 536 U.S. at 10. Is that no longer good law? If so, why? The district court's decision offers no answers.

Ultimately, for putative nationwide class actions, judicial economy is better served by having the claims of all plaintiffs heard in one forum. And where doing so would not offend any due-process interest—fairness, convenience, or federalism—courts remain free to exercise personal jurisdiction over even those claims that lack an independent connection to the federal forum to achieve this goal. The Court should therefore reverse the district court's decision striking the class allegations.

CONCLUSION

The district court's decision should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 5,321 words, excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Circuit Rule 32(b) because it has been prepared in proportionally spaced typeface in 14-point Baskerville font using Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2019, I electronically filed this brief with the Clerk of the Court for the U.S. Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I certify that all participants are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

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