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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

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| THE EYE CARE CENTER OF NEW JERSEY, PA, on behalf of itself and all others similarly situated,<br><br>Plaintiff,<br>-v-<br><br>TWIN CITY FIRE INSURANCE COMPANY,<br>Defendant. | Case No. 2:20-cv-05743-KM-ESK<br><br>**Oral Argument Requested**<br><br>Motion Day: August 17, 2020 |

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT TWIN CITY'S MOTION TO DISMISS NATIONWIDE CLASS ACTION CLAIMS**

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The Eye Care Center of New Jersey has brought suit against Twin City Fire Insurance Company to enforce an insurance policy that Eye Care reads to cover lost business income stemming from COVID-19, the disease caused by the novel coronavirus, SARS-Cov-2.[1] Eye Care's interpretation of the policy is wrong under New Jersey law, and Twin City has moved to dismiss for failure to state a claim.

Eye Care also seeks to represent a nationwide class of Twin City insureds (along with a New Jersey class). But there is a problem: Eye Care is a New Jersey corporation operating only in New Jersey, suing under a New Jersey insurance policy. Eye Care lacks standing and this Court lacks personal jurisdiction over Twin City with respect to Eye Care's claims on behalf of insureds in other States under the law of other States. Twin City therefore moves to dismiss Eye Care's nationwide claims under Federal Rule of Civil Procedure 12(b)(1) and (b)(2).

## BACKGROUND

Eye Care is a New Jersey corporation with its principal place of business in Bloomfield, New Jersey. Compl. ¶ 11. Twin City is allegedly a Connecticut corporation with its principal place of business in Hartford, Connecticut. Compl. ¶ 14.[2] Eye Care alleges that Twin City issued it commercial property insurance

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[1] On July 10, 2020, the Court entered the parties' stipulation to dismiss defendant The Hartford Financial Services Group without prejudice. ECF No. 11.

[2] Twin City is actually an *Indiana* corporation with its principal place of business in Connecticut. Because neither Twin City's alleged nor actual place of incorporation or principal place of business is New Jersey, this error is irrelevant.

that covers loss or damage to its New Jersey premises, including for business interruption. *See* Compl. ¶¶ 15, 30. Eye Care claims that this policy covers its losses from COVID-19 and, alleging that Twin City wrongly denied coverage, it brings causes of action for declaratory judgment and breach of contract.

Eye Care does not claim to have any operations outside of New Jersey, and it alleges no interaction with Twin City outside of New Jersey. And Eye Care is the only plaintiff—the complaint does not identify other putative class representatives outside of New Jersey, or any contacts inside the State of New Jersey between out-of-State class members and Twin City. Eye Care nevertheless seeks to bring claims for breach of contract and for declaratory judgment on behalf of a nationwide class. *See* Compl. ¶¶ 56, 68-114.

## ARGUMENT

The Court should dismiss the nationwide class claims for two reasons. *First*, Eye Care lacks standing to pursue claims under other States' laws on behalf of out-of-State policyholders who have had no contact with Twin City in New Jersey. *Second*, the Court does not have personal jurisdiction over Twin City with respect to Eye Care's claims purportedly on behalf of out-of-State class members, since Twin City is not subject to New Jersey's general jurisdiction and there is no specific jurisdiction as to claims with no connection to New Jersey. The nationwide class claims should therefore be dismissed under Rule 12(b)(1) and

(b)(2). *See also* Fed. R. Civ. P. 23(c)(1)(A) ("At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action."), (d)(1)(D) ("[T]he court may issue orders that … require that the pleadings be amended to eliminate allegations about representation of absent persons.").

## I. Eye Care Lacks Standing To Pursue Nationwide Claims

Eye Care has no standing to represent the interests of putative class members that contracted with Twin City outside of New Jersey. "A motion to dismiss for want of standing is … properly brought pursuant to Rule 12(b)(1), because standing is a jurisdictional matter." *Ballentine v. United States*, 486 F.3d 806, 810 (3d Cir. 2007). As the "party invoking federal jurisdiction," it is Eye Care that "bears the burden of establishing the elements of standing." *FOCUS v. Allegheny Cty. Ct. of Com. P.*, 75 F.3d 834, 838 (3d Cir. 1996).

The Supreme Court's "standing cases confirm that a plaintiff must demonstrate standing for each claim he seeks to press." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). The Court has explained that "the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of *the particular claims* asserted." *Allen v. Wright*, 468 U.S. 737, 752 (1984) (emphasis added). And the fact "[t]hat a suit may be a class action … adds nothing to the

question of standing." *Lewis v. Casey*, 518 U.S. 343, 357 (1996) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 n.20 (1976)). A named class "plaintiff still must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants." *Warth v. Seldin*, 422 U.S. 490, 501 (1975); *see also O'Shea v. Littleton*, 414 U.S. 488, 494 (1974) ("[I]f none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." (citations omitted)). And, again, this requirement applies "for *each* claim" that a named plaintiff "seeks to press." *DaimlerChrysler*, 547 U.S. at 352 (emphasis added). "Standing in the context of class actions remains a claim by claim prerequisite." *In re Wellbutrin XL Antitrust Litig.*, 260 F.R.D. 143, 151-152 (E.D. Pa. 2009).

Under this precedent, a named plaintiff "may bring state law claims only under the law of the state where he or she lived and the alleged injury occurred." *Dzielak v. Whirlpool Corp.*, 26 F. Supp. 3d 304, 332 (D.N.J. 2014) (McNulty, J.). Courts in this District have often concluded that plaintiffs "lack standing to assert claims on behalf of unnamed plaintiffs in jurisdictions where Plaintiffs have

suffered no alleged injury." *Ponzio v. Mercedes-Benz USA, LLC*, __ F. Supp. 3d __, 2020 WL 1183733, at *14 (D.N.J. Mar. 11, 2020) (Rodriguez, J.).[3]

As this Court has explained, "[t]he reason for this approach should be clear." *Dzielak*, 26 F. Supp. 3d at 332 n.18. "If this were not the case, a 'plaintiff would be able to bring a class action complaint under the laws of nearly every state in the Union without having to allege concrete, particularized injuries relating to those states, thereby dragging defendants into expensive nationwide class discovery, potentially without a good-faith basis.'" *Id.* (quoting *In re Magnesium Oxide Antitrust Litig.*, 2011 WL 5008090, at *10 (D.N.J. Oct. 20, 2011) (Debevoise, J.)). "This reasoning rings particularly true here, where Plaintiff is alleging breach of contract … claims in literally every state in the Union." *Federman v. Bank of Am., N.A.*, 2014 WL 12774688, at *11 (D.N.J. Dec. 16, 2014) (Pisano, J.) (holding that a New Jersey plaintiff whose "injury has no causal relation to the other 49 states,

[3] *See also McGuire v. BMW of N. Am., LLC*, 2014 WL 2566132, at *6 (D.N.J. June 6, 2014) (Linares, J.) ("Plaintiff here lacks standing to assert claims under the laws of the states in which he does not reside, or in which he suffered no injury."); *Semeran v. Blackberry Corp.*, 2016 WL 3647966, at *6 (D.N.J. July 6, 2016) (Vazquez, J.) (dismissing multi-state class claims on standing grounds because, "[e]ven when a plaintiff is a part of a multi-state class, courts in this Circuit have held that the plaintiff does not have standing to assert claims under the laws of states in which he does not reside"); *In re Ductile Iron Pipe Fittings (DIPF) Indirect Purchaser Antitrust Litig.*, 2013 WL 5503308, at *11 (D.N.J. Oct. 2, 2013) (Thompson, J.) ("After reviewing the different approaches, this Court agrees that named plaintiffs lack standing to assert claims under the laws of the states in which they do not reside or in which they suffered no injury.").

nor do the laws of the other 49 states provide redress … lacks standing to bring claims for breach of contract … under the laws of any other state").[4]

Other decisions in this District have declined to consider a named plaintiff's standing to bring all claims on a motion to dismiss, but they are far less persuasive. This line of cases appears to begin with *Ramirez v. STi Prepaid LLC*, 644 F. Supp. 2d 496 (D.N.J. 2009) (Wigenton, J.). There, the court held that "named representative plaintiffs initially need only establish that they individually have standing to bring their claims," calling "the fact that the named Plaintiffs may not have individual standing to allege [claims] in states other than [their own]" both "immaterial" and "an issue to be resolved at the class certification stage." *Id.* at 504-505.

*STi Prepaid* fails to recognize, however, that "a plaintiff must demonstrate standing for *each claim* he seeks to press." *DaimlerChrysler*, 547 U.S. at 352 (emphasis added). A plaintiff like Eye Care that wants to press claims under the laws of fifty States must have standing to do so—those *are* its "individual claims." *STi Prepaid*, 644 F. Supp. 2d at 505. If Eye Care is not pressing those out-of-State

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[4] This Court has also observed that "courts have sometimes sidestepped Article III standing questions when simultaneously faced with dispositive class certification issues." *Dzielak*, 26 F. Supp. 3d at 322 n.18. But that is a "practical exception, employed for purposes of judicial economy," which "must be confined to its proper context." *Id.* In general, a "court presented squarely with an issue of standing with respect to a named plaintiff must address that issue." *Id.* This motion squarely raises that issue.

claims, then no one is—Eye Care is the only named plaintiff. *STi Prepaid* never cited *DaimlerChrysler* or any other of the Supreme Court's standing cases that "confirm" this principle. *DaimlerChrysler*, 547 U.S. at 352; *see supra* at 3-4. But *STi Prepaid*'s conclusion—although at odds with Supreme Court precedent—then influenced future cases. *See, e.g.*, *In re FieldTurf Artificial Turf Mktg. & Sales Practices Litig.*, 2019 WL 4957933, at *3 (D.N.J. Oct. 8, 2019) (Shipp, J.); *In re Dr. Reddy's Lab. Ltd. Sec. Litig.*, 2019 WL 1299673, at *12 (D.N.J. Mar. 21, 2019) (Sheridan, J.). This Court should not follow that mistaken approach.

Instead, properly applying Supreme Court precedent shows that Eye Care has no standing to represent the interests of out-of-State putative class members. Eye Care exists in one State and purchased insurance from Twin City in one State: New Jersey. The claims that any nonresident putative class members may have arise under the laws of the States governing their particular contracts. After all, a "claimed right to insurance coverage is a creation of state contract law." *In re U.S. Brass Corp.*, 110 F.3d 1261, 1268 (7th Cir. 1997); *see also Gen. Eng'g Corp. v. Martin Marietta Alumina, Inc.*, 783 F.2d 352, 356 (3d Cir. 1986) ("The construction of contracts is usually a matter of state … common law."); *Ruhlin v. N.Y. Life Ins. Co.*, 106 F.2d 921, 923 (3d Cir. 1939) (noting the "general rule that the construction of an insurance contract is governed by the law of the state"); *Johnson Matthey Inc. v. Pa. Mfrs.' Ass'n Ins. Co.*, 593 A.2d 367, 371 (N.J. Super.

Ct. App. Div. 1991) (noting that if an insured party has locations "in 50 states" then "its policy would cover … liabilities in 50 states … under 50 different bodies of law," and thus "the same nationwide policy language may mean different things to different states of contracting"). If Twin City has breached another State's contract law—which Twin City denies—Eye Care has suffered no harm from it. Eye Care thus has no standing to assert common-law claims for breach of contract (or seek declaratory relief as to the meaning of contracts) under the laws of States to which it has no connection and for alleged breaches that have caused it no harm.

## II. This Court Lacks Personal Jurisdiction Over Twin City For Eye Care's Claims Brought On Behalf Of Nonresident Class Members

Eye Care's lack of standing suffices as a basis to dismiss the nationwide class claims. The absence of personal jurisdiction supplies a second, independent basis for the same relief. This Court's personal jurisdiction over Twin City derives from its specific contacts with the forum—that is, its policy insuring Eye Care's New Jersey business. Twin City does not contest the Court's personal jurisdiction over it for the claims of New Jersey policyholders like Eye Care. But this Court has no personal jurisdiction over Twin City for claims with no connection to the State of New Jersey.

On a motion to dismiss under Federal Rule of Civil Procedure 12(b)(2), the plaintiff bears the burden to demonstrate that personal jurisdiction exists. *See Metcalfe v. Renaissance Marine, Inc.*, 566 F.3d 324, 330 (3d Cir. 2009). The law

of the forum State and federal due process set the limits for this Court's exercise of personal jurisdiction—a single inquiry here, since "New Jersey's long-arm statute provides for jurisdiction coextensive with the due process requirements of the United States Constitution." *Miller Yacht Sales, Inc. v. Smith*, 384 F.3d 93, 96 (3d Cir. 2004) (citing N.J. Ct. R. 4:4-4(c)). Personal jurisdiction over a defendant may be "general or all-purpose jurisdiction" or "specific or case-linked jurisdiction." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

General jurisdiction—by which a defendant is subject to *any* suit—exists only where a defendant is "essentially at home." *Goodyear*, 564 U.S. at 919. For "a corporation, the place of incorporation and principal place of business" are the paradigmatic locations. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Otherwise, to be subject to general jurisdiction, a corporation's contacts must be "so 'continuous and systematic' as to render them essentially 'at home' in the forum state." *Id.* at 139. Twin City is incorporated and has its principal place of business outside New Jersey, *see* Compl. ¶ 14, and Eye Care alleges no contacts by Twin City with New Jersey other than Eye Care's own insurance policy. So this Court does not have general jurisdiction over Twin City.

Specific jurisdiction, on the other hand, applies only to claims that arise out of or relate to the defendant's contacts purposefully directed at the forum and only when it "comport[s] with fair play and substantial justice." *Burger King Corp. v.*

*Rudzewicz*, 471 U.S. 462, 476 (1985); *see also O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 317 (3d Cir. 2007). For instance, this Court has specific jurisdiction over Twin City for claims arising out of New Jersey insurance contracts, like Eye Care's own policy and those of other New Jersey insureds.

Not so, however, for the claims that Eye Care purportedly asserts on behalf of unnamed putative class members *outside* New Jersey. This Court cannot exercise jurisdiction over Twin City for claims of nonresident putative class members with no adequate link to New Jersey. This conclusion follows from the Supreme Court's decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017). That case held that a California court could not exercise specific jurisdiction in a mass tort action over a defendant for claims by nonresident plaintiffs with no "adequate link" to the State of California—even if "*other* plaintiffs … who reside in California … can bring claims similar to those brought by the nonresidents." *Id.* at 1781. This means that *each* claim must arise from a defendant's forum-related activities—and it does not matter whether specific jurisdiction exists for a different claim. *See id.* at 1783.

The same logic that precluded specific jurisdiction over Bristol-Myers for claims by nonresident plaintiffs applies here. "What is needed—and what is missing here—is a connection between the forum and the specific claims at issue." *Bristol-Myers*, 137 S. Ct. at 1781. There is no connection between the specific

claims that Eye Care attempts to assert on behalf of non–New Jersey putative class members and the State of New Jersey—by definition, those claims are not by New Jersey companies, are not based on New Jersey insurance law, and are not disputing coverage for New Jersey businesses. "The mere fact that" Eye Care obtained an insurance policy in New Jersey—"and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents' claims." *Id.*

For good reason, then, courts have held that they lack personal jurisdiction over a defendant for claims with no connection to the forum State brought by a resident named plaintiff on behalf of nonresident unnamed putative class members. "Members of a nation-wide class action, aside from those class members from [the forum State], do not have a connection between the forum and the specific claims at issue." *In re Dicamba Herbicides Litig.*, 359 F. Supp. 3d 711, 724 (E.D. Mo. 2019). Thus, spraying pesticides on Missouri soybeans does not grant specific jurisdiction over claims based on other States' crops. *Id.* Or buying animal habitats in California does not permit "specific jurisdiction over nationwide class claims related to out of state purchases." *Carpenter v. PetSmart, Inc.*, _ F.3d _, 2020 WL 996947, at *5 (S.D. Cal. Mar. 2, 2020).[5] Just so here: Under *Bristol-*

[5] *See also, e.g.*, *Zuehlsdorf v. FCA US LLC*, 2019 WL 2098352, at *15 (C.D. Cal. Apr. 30, 2019) (dismissing "the class allegations as to the class members whose claims have no nexus with California"); *Wenokur v. AXA Equitable Life Ins.*

*Myers*, Twin City's coverage decision on a New Jersey company's New Jersey insurance policy covering its New Jersey business cannot support specific jurisdiction over claims with no connection to New Jersey.

On the other hand, the courts that have distinguished *Bristol-Myers* have relied on facial rather than substantive distinctions. For instance, some courts have refused to apply *Bristol-Myers* to a class action because that case concerned a mass action. *See, e.g.*, *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 443 (7th Cir. 2020) (holding that *Bristol-Myers* does not apply to "a nationwide class action filed in federal court under a federal statute"); *Gress v. Freedom Mortg. Corp.*, 386 F. Supp. 3d 455, 465 (M.D. Pa. 2019).

But the reasoning of *Bristol-Myers* applies equally to a class action. Courts have widely rejected that distinction for claims by nonresident named plaintiffs, holding that *Bristol-Myers* does apply to their individual claims in a class action.[6]

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*Co.*, 2017 WL 4357916, at *4 n.4 (D. Ariz. Oct. 2, 2017) (noting that the court "lacks personal jurisdiction over the claims of putative class members with no connection to Arizona"). *Cf. Roy v. FedEx Ground Package Sys., Inc.*, 353 F. Supp. 3d 43, 58 (D. Mass. 2018) (holding in Fair Labor Standards Act case that the failure to pay overtime in one State does not give rise to "personal jurisdiction over the claims of potential opt-in plaintiffs who do not work … in [that State]"); *Maclin v. Reliable Reports of Tex., Inc.*, 314 F. Supp. 3d 845, 850 (N.D. Ohio 2018) (same).

[6] *See, e.g.*, *Ponzio*, 2020 WL 1183733, at *8; *Chernus v. Logitech, Inc.*, 2018 WL 1981481, at *5-6 (D.N.J. Apr. 27, 2018) (Wolfson, J.); *Horowitz v. AT&T Inc.*, 2018 WL 1942525, at *15 (D.N.J. Apr. 25, 2018) (Martinotti, J.); *see also Roy*, 353 F. Supp. 3d at 56-57 ("District courts generally have extended the specific jurisdiction principles articulated in *Bristol-Myers* to the analysis of personal

That conclusion is correct for claims asserted on behalf of nonresident *unnamed* plaintiffs as well. Like a mass action, a class action is "a species" of "traditional joinder," which "merely enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (plurality opinion). "A court that adjudicates claims asserted on behalf of others in a class action exercises coercive power over a defendant just as much as when it adjudicates claims of named plaintiffs in a mass action." *Molock v. Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 307 (D.C. Cir. 2020) (Silberman, J., dissenting); *see also* 2 WILLIAM RUBENSTEIN, NEWBERG ON CLASS ACTIONS ("NEWBERG") § 6:25 n.5.50 (5th ed.) ("A putative class representative seeking to hale a defendant into court to answer to the class must have personal jurisdiction over that defendant just like any individual litigant must."). And *Bristol-Myers* made clear that due process requires personal jurisdiction over a defendant for "the specific claims at issue," 137 S. Ct. at 1781—which here includes Eye Care's claims on behalf of nonresident putative class members. *See* NEWBERG § 6:26 (noting that "a proposed class-wide [judgment] triggers a defendant's right to class-wide due process, that is, its right

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jurisdiction over named plaintiffs in federal class actions.") (collecting cases); *Chufen Chen v. Dunkin' Brands, Inc.*, 2018 WL 9346682, at *5 (E.D.N.Y. Sept. 17, 2018) (explaining that applying *Bristol-Myers* to "each named plaintiff in a purported class action … comports with the weight of district court authority on the subject") (collecting cases), *aff'd*, 954 F.3d 492 (2d Cir. 2020).

to ensure the requisite territorial connection between it and the court as to the full scope of its liability").

Thus, the reasoning of *Bristol-Myers* did not turn on the procedural nuances of a California mass action—it is a *constitutional* case. The Court tested an exercise of "the State's coercive power" for "compatibility with the Fourteenth Amendment's Due Process Clause." 137 S. Ct. at 1779 (quoting *Goodyear*, 564 U.S. at 918). Rule 23 does not and cannot abrogate the due process rights of defendants—a class action "is not a license for courts to enter judgments on claims over which they have no power." *Molock*, 952 F.3d at 307 (Silberman, J., dissenting); *see also In re Dental Supplies Antitrust Litig*, 2017 WL 4217115, at *9 (E.D.N.Y. Sept. 20, 2017) ("The constitutional requirements of due process do[] not wax and wane when the complaint is individual or on behalf of a class. Personal jurisdiction in class actions must comport with due process just the same as any other case."); NEWBERG § 6:26 ("If the class prevails in the case, the goal is a binding judgment over the defendant as to the claims of the entire nationwide class—and the deprivation of the defendant's property accordingly.").

In deciding otherwise, courts have cited two differences between a mass action and a class action. *See, e.g.*, *Gress*, 386 F. Supp. 3d at 465; *Sotomayor v. Bank of Am., N.A.*, 377 F. Supp. 3d 1034, 1038 (C.D. Cal. 2019). First, "a plaintiff in a mass tort action is named as a plaintiff, making each 'a real party in interest.'"

*Id.*; *see also Gress*, 386 F. Supp. 3d at 465. Second, "Federal Rule of Civil Procedure 23 imposes additional due process safeguards on class actions that do not exist in the mass tort context." *Sotomayor*, 377 F. Supp. 3d at 1038. Respectfully, neither of those facial differences adequately distinguishes the application of *Bristol-Myers*'s constitutional holding to class actions.

*First*, focusing on the party status of absent class members misapprehends the inquiry. By this motion, Twin City seeks dismissal of the nationwide class claims of the named plaintiff, Eye Care. Twin City does not seek "to dismiss nonresident putative class members; it move[s] to dismiss the named plaintiffs' claim to represent those putative class members." *Molock*, 952 F.3d at 303 (Silberman, J., dissenting). Put otherwise, this motion "is challenging the *named plaintiffs'* alleged entitlement *to bring* those claims on behalf of the putative class members." *Id.* at 302 (emphasis original). "The putative class members' claims are nominally present in the case, … even if the class members themselves are not." *Id.* So whether nonresidents are actual parties in interest in a mass action or unnamed plaintiffs in a precertification putative class action does not affect the Court's application of *Bristol-Myers* to the *claims* brought on nonresidents' behalf—the claims that Twin City moves to dismiss.

In addition, since nonresidents' party status does not affect the personal jurisdiction analysis, this issue should be resolved now rather than delayed until

class certification, as some courts have done. *See, e.g.*, *Cruson v. Jackson Nat'l Life Ins. Co.*, 954 F.3d 240, 250 (5th Cir. 2020); *Molock*, 952 F.3d at 296; *Chernus v. Logitech, Inc.*, 2018 WL 1981481, at *7-8 (D.N.J. Apr. 27, 2018) (Wolfson, J.). When "a named plaintiff's claim of entitlement to represent a class is defective as a matter of law, for example, because the court would lack personal jurisdiction over the defendant with respect to class claims, a defendant's motion to dismiss or narrow the representative claim on those grounds is not premature." *Molock*, 952 F.3d at 303 (Silberman, J., dissenting); *see also* NEWBERG § 6:26 n.29 (noting that "regardless of how a court resolves the 'party' question, the fact remains that the goal of the nationwide class action is to disgorge nationwide relief from the defendant in the instant forum").

*Second*, Rule 23's procedural requirements cannot and do not substitute for the constitutional due-process protections owed defendants. *See Sotomayor*, 377 F. Supp. 3d at 1038. "[T]he procedural safeguards of Rule 23 are meant primarily to protect the absent class members," not "to favor or protect defendants"—which "is reflected in the fact that defendants almost always vigorously oppose class certification." *PetSmart*, 2020 WL 996947, at *6. Rule 23 "protect[s] the interests *of the class*" by requiring "representative parties" who have claims "typical of the claims … of the class." Fed. R. Civ. P. 23(a)(3)-(4) (emphasis added). But common questions and typical claims alone cannot justify "expos[ing] defendants

to the State's coercive power." *Bristol-Myers*, 137 S. Ct. at 1779 (quoting *Goodyear*, 564 U.S. at 918). Similarity between a resident named plaintiff's individual claim and its claims asserted on behalf of unnamed nonresident plaintiffs might (or might not) satisfy Rule 23, but it does not empower a court to exercise jurisdiction over a nonresident defendant for the latter claims. That is the very mistake that the State of California made in *Bristol-Myers*, where it exercised personal jurisdiction merely "because the claims of the nonresidents were similar in several ways to the claims of the California residents." *Id.* Explaining that it "is an insufficient basis for jurisdiction" that "third parties (here, the plaintiffs who reside in California) can bring claims similar to those brought by the nonresidents," *id.* at 1781, the Supreme Court corrected that error. Courts applying *Bristol-Myers* should not repeat it.

Since Eye Care's claims on behalf of nonresident putative class members do not arise out of or relate to activities that Twin City purposefully directed at the State of New Jersey, the Court lacks specific jurisdiction and need not consider whether jurisdiction would comport with fair play and substantial justice. *See O'Connor*, 496 F.3d at 317. But this consideration too counsels against exercising specific jurisdiction. On this front, "the 'primary concern' is the burden on the defendant." *Bristol-Myers*, 137 S. Ct. at 1780 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). And, as courts have recognized, the

"burden … to defend a nationwide class action is significantly greater than the burden of defending an individual claim or a statewide class action." *PetSmart*, 2020 WL 996947, at *5. On the other hand, "the forum State's interest in adjudicating the dispute" between nonresident putative class members and Twin City is nonexistent—those unnamed plaintiffs have insurance policies under other States' laws insuring businesses in other States with Twin City, a nonresident defendant. *Burger King*, 471 U.S. at 477. The State of New Jersey's interest will be entirely vindicated by adjudicating the New Jersey claims of Eye Care and possibly a New Jersey class. And Eye Care's "interest in obtaining convenient and effective relief" will also be wholly protected, because Eye Care itself is entitled to *no* relief for the out-of-State claims it allegedly brings for nonresident unnamed class members. *Id.* Last, it would not serve "the interstate judicial system's interest in obtaining the most efficient resolution of controversies" (*id.*) to permit Eye Care to expand this narrow dispute—between a nonresident insurer and New Jersey policyholder over the meaning of a New Jersey insurance policy insuring a New Jersey business—with its claims purportedly on behalf of unnamed plaintiffs across the country.

Finally, whether this Court has personal jurisdiction over Twin City for Eye Care's claims on behalf of nonresidents is an issue to be resolved now. This case is one of many individual actions, putative statewide class actions, and putative

nationwide class actions currently pending in 14 States and the District of Columbia that concern COVID-19 coverage under insurance policies issued by Twin City (or related entities) under the laws of those States. Insureds outside New Jersey are pursuing their claims in their home States. There is no benefit to allowing non–New Jersey claims to linger in this case through class-certification briefing—and expansive, burdensome, and ultimately irrelevant nationwide class discovery—when those claims can be and are being more appropriately and efficiently litigated elsewhere. Nor do policyholders in California, Florida, or elsewhere benefit from having their contract claims under their States' laws asserted by Bloomfield ophthalmologists in a far-off forum—rather than in individual actions or putative statewide class actions in their home States.

This issue is, therefore, properly considered at this stage. And it is properly resolved under *Bristol-Myers*, which requires that Eye Care's claims purportedly asserted on behalf of nonresident unnamed class members be dismissed for lack of personal jurisdiction.

## CONCLUSION

For these reasons, Eye Care's claims purportedly brought on behalf of a nationwide class should be dismissed for lack of standing and personal jurisdiction.

Dated: July 14, 2020

Respectfully submitted,

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