No. 16-705

In the Supreme Court of the United States

MONEYMUTUAL LLC,

Petitioner,

v.

SCOTT RILLEY, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Minnesota

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

(1) Does this Court have jurisdiction to review the state-court decision below holding that a Minnesota court could exercise specific personal jurisdiction over the defendant, where the ongoing case has now been removed to federal district court and the defendant is relitigating there the same personal jurisdiction issue?

(2) Did the court below correctly hold, apart from its consideration of whether the defendant's online advertisements were sufficiently related to plaintiffs' claims to support the exercise of personal jurisdiction by a Minnesota court, that specific jurisdiction over the defendant existed based on more than 1,000 emails that the defendant sent to Minnesota residents matching them with predatory lenders?

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INTRODUCTION

Consistent with the Fourteenth Amendment's Due Process Clause, a state court may exercise specific jurisdiction over an out-of-state defendant "in a suit arising out of or related to" the defendant's contacts with the forum. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984). The state-court decision below held that petitioner MoneyMutual, LLC's contacts with Minnesota met that standard and that a Minnesota state court could, therefore, force MoneyMutual to answer in Minnesota for its violations of that state's consumer protection laws and the resulting injuries suffered by a class of Minnesota residents. The state supreme court's decision hinged on the fact that MoneyMutual sent emails to more than 1,000 individuals whom it knew to be Minnesota residents, in which it matched those residents with predatory lenders offering unlawful payday loans. As the state supreme court held, the emails were the "culmination" of transactions at the heart of plaintiffs' claims. App. 30a.

MoneyMutual urges this Court to grant its petition for certiorari to address whether the "arising out of or related to" standard requires a plaintiff to demonstrate that a defendant's forum contacts caused the plaintiff's injuries. Without awaiting this Court's resolution of *Bristol-Myers Squibb Co. v. Superior Court of California*, No. 16-466, another case involving a question of specific jurisdiction, this Court should deny MoneyMutual's petition for certiorari for three reasons.

First, this Court lacks jurisdiction under 28 U.S.C. § 1257 to review the decision below because it is not even arguably final. The state supreme court remanded this case to a trial court for proceedings on the merits, at which point plaintiffs amended their complaint and

added defendants. MoneyMutual and its co-defendants subsequently removed the case to federal court, where MoneyMutual has now filed a motion to dismiss for lack of personal jurisdiction, introduced evidence that it argues was not presented to the Minnesota Supreme Court, and contended that the federal court is not bound by the decision below.

Second, review should be denied because resolution of the question presented by MoneyMutual would not have any effect on the outcome of the decision below. As an initial matter, although MoneyMutual's petition mimics the petition for certiorari in *Bristol-Myers Squibb*, the issues in the two cases are fundamentally distinct. *Bristol-Myers Squibb* involves a mass action brought by non-resident and resident plaintiffs against an out-of-state defendant based on a nationwide marketing and distribution scheme. The issue in that case is whether the exercise of specific jurisdiction is proper with respect to the non-resident plaintiffs' claims, where only resident plaintiffs suffered harm in the forum state. As Bristol-Myers Squibb puts it, the crux of the case is whether jurisdiction lies where non-resident plaintiffs' "claims would be exactly the same even if the defendant had no forum contacts." Pet. *i*, *Bristol-Myers Squibb Co.*, No. 16-466. Here, the plaintiff class is comprised exclusively of Minnesota residents, all of whom suffered harm in that state that could not have occurred absent forum contacts.

In any event, MoneyMutual hangs its question presented on a portion of the decision below that addresses the issue of causation for purposes of establishing specific jurisdiction, but which was unnecessary to the state court's decision. The Minnesota Supreme Court held that MoneyMutual's email contacts,

which were clearly causally related to the claims in the case, "alone [were] sufficient to support" specific jurisdiction. App. 30a. In a later portion of the opinion, the court concluded that MoneyMutual's Google advertising, which specifically targeted Minnesota residents, "buttress[ed] the conclusion that sufficient minimum contacts" existed. *Id.* 30a-31a. Only in addressing the Google advertising did the court state that jurisdictional contacts need not cause a plaintiff's claims so long as they are "sufficiently *related*" to them. *Id.* 29a. The clear implication of the court's opinion is that MoneyMutual's emails to Minnesotans alone justify the exercise of specific jurisdiction, regardless whether a causal nexus between those emails and plaintiffs' claims is required.

Third, although the petition discusses a purported circuit split over the question whether emails may constitute sufficient contacts to confer specific jurisdiction, MoneyMutual does not seek review of this question. In any event, some cases cited by MoneyMutual do not deal with email at all, and instead address whether a defendant's operation of a website may constitute a relevant jurisdictional contact. Those cases that do address email are easily reconcilable with this case.

STATEMENT

Factual Background

MoneyMutual is a Nevada-based company that arranges short-term, or "payday," loans between lenders and consumers. Specifically, MoneyMutual operates a website through which consumers can submit loan applications. As part of those applications, consumers must provide, among other information, their home addresses. App. 4a. MoneyMutual matches each

applicant with a payday lender in its network based on the information provided in the application and advises the applicant of the match by way of email. *Id.* MoneyMutual profits through fees that its network partners pay to receive the consumer "leads" that MoneyMutual provides. *Id.* 3a.

MoneyMutual claims that it carefully chooses lenders in its network and requires that their lending practices comply with applicable state laws. Compl. ¶ 31. Its operations in Minnesota tell a far different story. Minnesota deems MoneyMutual a "consumer short-term lender" under state law because it is an "entity engaged in the business of making or arranging consumer short-term loans" and is neither a bank nor a credit union. Minn. Stat. § 47.601, subd. 1(e). Yet MoneyMutual—and the other lenders with whom it does business—are not licensed to operate in the state, as required by law. Compl. ¶ 2. MoneyMutual also fails to comply with substantive and procedural requirements under state law designed to protect consumers from predatory lenders. It routinely arranges loans that charge consumers interest rates up to 1,304%, well in excess of the state's caps on interest. *Id.* It fails to make requisite loan disclosures and arranges loans that contain illegal terms under Minnesota law. *Id.* MoneyMutual has even arranged loans between Minnesota consumers and lenders after Minnesota regulators have ordered those lenders to cease and desist from lending to Minnesotans. *Id.* ¶ 4.

State Court Proceedings

Respondents, four Minnesota consumers, applied to MoneyMutual for one or more payday loans, which they ultimately received. In 2014, they filed suit in Minnesota state court against MoneyMutual on behalf of a class of

Minnesota residents who had obtained loans through the company since 2009.

Respondents alleged that they were provided illegal loans under Minnesota state law and asserted claims under the state Consumer Fraud Act, the Uniform Deceptive Trade Practices Act, the False Statement in Advertising Act, and state laws regulating payday lenders. Compl. ¶ 7. In addition, they asserted state common-law claims for unjust enrichment, civil conspiracy, and aiding and abetting, all of which arose from MoneyMutual's role in arranging illegal payday loans. *Id.*

MoneyMutual moved to dismiss respondents' claims for lack of personal jurisdiction. Respondents contended that Minnesota courts' exercise of specific jurisdiction over the company was proper in light of (1) the company's emails to known Minnesota residents as part of its lending scheme; (2) its television advertisements; and (3) its online Google advertisements to be displayed when individuals searched for the keywords "payday loans Minnesota" and "payday loans Minneapolis." The state trial court denied the motion to dismiss, and the court of appeals affirmed.

The Minnesota Supreme Court likewise agreed that MoneyMutual was subject to specific jurisdiction in Minnesota state courts. First, the court held that MoneyMutual's emails to Minnesota residents "alone [were] sufficient to support a finding of personal jurisdiction." App. 30a. While acknowledging that "'random, fortuitous, or attenuated'" contacts with state residents cannot support specific jurisdiction, *id.* at 9a (quoting *Walden v. Fiore*, 134 S. Ct. 1115, 1123 (2014)), the court noted the "numerous, long-established precedents allowing courts to exercise personal

jurisdiction over defendants based in part on commercial contacts with businesses or residents that are located inside the forum," *id.* 12a. Here, the court found MoneyMutual "sent over 1,000 emails to known Minnesotans, soliciting them to apply for payday loans." *Id.* 30a. Emphasizing the essential role the emails played in the completion of the loans that gave rise to the claims of each member of the class, the court found that these "emails were the culmination of transactions between MoneyMutual and Minnesota residents through which Minnesota residents provided their personal information to MoneyMutual in return for being matched with a payday lender." *Id.*

The state supreme court stated that some courts have rejected emails as jurisdictional contacts on the view that an email capable of being received anywhere does not bring a sender into contact with any particular forum. *See id.* 15a-16a. The court explained, however, that "email-based contacts may establish personal jurisdiction, provided that . . . the plaintiff makes a prima facie showing that the sender 'purposefully directed' the email at the forum." *Id.* 17a. The court found "MoneyMutual's solicitation of and transactions with over 1,000 Minnesotan loan applicants via email" to be just such a "'purposeful direction' of litigation-related conduct" at the forum state. *Id.* 18a.

Although unnecessary to the outcome of the case, the state supreme court then considered the import of other relevant MoneyMutual contacts with Minnesota. It found that MoneyMutual's online advertising was "specifically designed and calibrated to target potential Minnesota customers" and thus "buttress[ed] the conclusion" that MoneyMutual had sufficient contacts with Minnesota. *Id.* 30a. The court observed that MoneyMutual had never

denied that it had bought Google advertisements to be displayed when individuals searched for "the exact keywords 'payday loans Minnesota' and 'payday loans Minneapolis.'" *Id.* 25a.

MoneyMutual argued, however, that the online advertising was irrelevant because plaintiffs had not provided evidence that any class member had actually seen the Google advertisements and clicked on them or that the advertisements "caused [a class member] to apply for a loan at the MoneyMutual website." *Id.* 27a. With respect only to its alternative reliance on the online ads, the court rejected the proposition that a contact gives rise to specific jurisdiction only if it actually causes the plaintiff's injury. Instead, the court held that a contact need only be "'substantially connected' or 'related to' the litigation," *id.* 28a, and found that MoneyMutual's online advertising satisfied that standard.

In contrast, the court concluded that MoneyMutual's television advertising—although it appeared in Minnesota—was not a relevant jurisdictional contact because it was part of a national advertising campaign that did not target Minnesota specifically, either with respect to viewership or content. *Id.* 24a.

After determining that MoneyMutual had sufficient contacts with the state, the court held that exercising specific jurisdiction comported with "traditional notions of fair play and substantial justice," *id.* 31a (internal quotation marks omitted), and it remanded the case for further proceedings.

On remand, the plaintiffs filed an amended complaint. They added as defendants two companies affiliated with MoneyMutual and a new claim under the federal Racketeer Influenced and Corrupt Organizations

(RICO) Act. They also omitted a previously asserted claim under state law for breach of duty. The claims against the new defendants are based on the same facts and circumstances from which the claims against MoneyMutual arose.

Removal and Federal Court Proceedings

Three weeks after plaintiffs amended their complaint in state court, MoneyMutual filed its petition for a writ of certiorari with this Court. Six days later, MoneyMutual and its co-defendants removed the case to the U.S. District Court for the District of Minnesota.

MoneyMutual has since filed a motion to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). *See* Docket Sheet, *Rilley v. MoneyMutual, LLC*, No. 16-4001 (D. Minn.). In support of the motion, MoneyMutual acknowledges that it is "relitigat[ing] personal jurisdiction" before the federal court. Defs.' Amended Mem. of Law in Supp. of Mot. to Dismiss 3 n.2 (Dist. Ct. Doc. 32). It contends that doing so is permissible under Eighth Circuit law despite the law-of-the-case doctrine because its new motion is based on "additional jurisdictional facts not previously proffered" in the state courts and because the Minnesota Supreme Court's decision is clearly erroneous. *Id.* (citing *United States v. Callaway*, 972 F.2d 904, 905 (8th Cir. 1992) (per curiam)). That motion is pending.

REASONS FOR DENYING THE WRIT

I. This Court Lacks Jurisdiction to Review the Decision Below.

MoneyMutual asserts without elaboration that this Court has jurisdiction to review the Minnesota Supreme Court's decision. *See* Pet. 1. However, this Court's jurisdiction extends only to "[f]inal judgments or

decrees" of a state's highest court, 28 U.S.C. § 1257, and the decision below is plainly not final. This Court, therefore, lacks jurisdiction and must deny the petition.

A. To be reviewable by this Court, a state-court judgment "must be the final word of a final court." *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997) (internal quotation marks omitted). Ordinarily, to invoke this Court's jurisdiction, a petitioner must demonstrate that a state court judgment is not subject to "further review or correction" and does not constitute a "merely interlocutory or intermediate step[]" in the litigation. *Id.* (internal quotation marks omitted).

MoneyMutual cannot meet this standard. Here, the Minnesota Supreme Court affirmed a lower-court decision on a motion to dismiss that the exercise of specific jurisdiction over MoneyMutual was proper. It then remanded for further proceedings on the merits. The decision below did not end either the litigation or, importantly, the dispute over personal jurisdiction. Rather, after plaintiffs filed an amended complaint, the case was removed to federal court, where MoneyMutual has moved again to dismiss plaintiffs' claims for lack of personal jurisdiction. In that currently pending motion, MoneyMutual contends that it has produced new "jurisdictional facts" not presented below, and argues that the federal district court presiding over the case is not bound by the personal-jurisdiction orders of the Minnesota state courts. Defs.' Amended Mem. of Law in Supp. of Mot. to Dismiss 3 n.2 (Dist. Ct. Doc. 32).

The decision from which MoneyMutual seeks review is thus without question an "interlocutory or intermediate step" in the litigation. And to respondents' knowledge, this Court has never accepted review of a state-court decision under the procedural posture in

which this case comes to the Court, where the state-court's decision is not final even as to the federal question presented.

B. This Court, in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), identified four categories of cases in which it has jurisdiction under § 1257 "without awaiting the completion of" additional proceedings on remand from a state supreme court. *Id.* at 477. Each exception applies only where the state supreme court's ruling finally determines the federal question on which the petitioner seeks review, which is not the case here in light of the removal and further proceedings on the jurisdictional point. For that reason as well as others specific to the four categories, this case does not fit within any of the *Cox* exceptions.

First, this case is not one in which "the federal issue" of personal jurisdiction is "conclusive," nor is "the outcome of further proceedings preordained." *Id.* at 479. MoneyMutual may still prevail on the merits of the state-law claims that were before the state courts and, under the amended complaint, on the federal RICO claim. Accordingly, the first *Cox* exception does not apply. Likewise, the possibility of MoneyMutual's victory at trial means that "the federal issue, . . . decided by the highest court in the State," will not necessarily "survive and require decision regardless of the outcome" of future proceedings. *Id.* at 480. The second *Cox* exception therefore does not apply either. And—fatal to the third *Cox* exception—MoneyMutual cannot contend that "later review of the federal issue cannot be had" because the "governing state law would not permit [it] again to present [its] federal claims for review." *Id.* at 481. Indeed, MoneyMutual is now relitigating its personal-jurisdiction defense in federal court and contends that

the Minnesota Supreme Court's decision has no binding effect there. Moreover, even if the decision below would bind lower federal courts under the law-of-the-case doctrine, a lower court's adherence to that doctrine "cannot insulate an issue from this Court's review." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988).

Nor does this case fall into the fourth *Cox* exception, which applies to cases in which "the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action." 420 U.S. at 482-83. Even if this Court might have had jurisdiction to review this case had it remained in state court, the decision below cannot now be deemed to have "finally decided" the federal issues implicated by the question of personal jurisdiction. In MoneyMutual's view, the decisions of the state courts are now of no import, as the case and the federal issue of personal jurisdiction are pending in federal court. Indeed, even if this Court were to grant review, it could not reverse the judgment or order the Minnesota Supreme Court to reconsider a decision in a case over which the lower court lost jurisdiction after removal.[1]

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[1] Even if the federal issue had been finally decided in this case, the fourth *Cox* exception would apply only if the issue were of such importance that not reviewing it now "might seriously erode federal policy." 420 U.S. at 483. This Court has relied on the fourth *Cox* exception to review some state-court decisions that permit the exercise of personal jurisdiction over out-of-state defendants. *See Calder v. Jones*, 465 U.S. 783, 788 n.8 (1984); *Shaffer v. Heitner*, 433

II. Review Should Be Denied Because Resolution of the Question Presented Would Not Affect the Outcome of the Decision Below.

MoneyMutual contends that this Court's review is necessary to decide, for purposes of specific jurisdiction, whether and to what extent a causal nexus is required between a defendant's forum contacts and a plaintiff's claims. However, even if the Court had jurisdiction to review this case, it should deny the petition for certiorari, and not hold the case for resolution of *Bristol-Myers Squibb v. Superior Court of California*, No. 16-466, because resolution of the question stated by MoneyMutual and the one presented in *Bristol-Myers Squibb* would have no effect on the state supreme court's disposition of MoneyMutual's personal-jurisdiction defense.

A. MoneyMutual's petition for certiorari argues that this Court should review the Minnesota Supreme Court's conclusion that MoneyMutual's Google ads were relevant jurisdictional contacts because they were "sufficiently *related*" to plaintiffs' claims, App. 29a, even though they were not the but-for or proximate cause of those claims.

The fatal flaw in MoneyMutual's argument is that the holding of which MoneyMutual seeks review appears only *after* the state supreme court's separate determination that MoneyMutual's emails to Minnesota residents were "alone sufficient" to establish minimum contacts for purposes of specific jurisdiction. *Id.* 30a. The ordering of the court's opinion indicates that the court was aware of various approaches in the case law with

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U.S. 186, 195 n.12 (1977). However, those cases directly addressing jurisdiction in this context predate this Court's more recent emphasis on the "exceptional" nature of the *Cox* exceptions. *See Jefferson*, 522 U.S. at 84.

respect to the nexus required between forum contacts and a plaintiff's claims, and it determined that the emails met any applicable standard.

Other parts of the court's rationale underscore that the emails in this case were the cause of plaintiffs' injuries and would have met even the most stringent causal nexus requirement urged by MoneyMutual. As the Minnesota Supreme Court emphasized, "MoneyMutual sent over 1,000 emails to known Minnesotans, soliciting them to apply for payday loans." *Id.* 30a. "These emails were the culmination of transactions between MoneyMutual and Minnesota residents through which Minnesota residents provided their personal information to MoneyMutual in return for being matched with a payday lender." *Id.* As MoneyMutual concedes, the emails on which the court relied were sent "after contact was initiated by persons submitting information through the website," and they "informed applicants of the interest expressed by a lender." Pet. 11.

These contacts were not only the but-for cause of plaintiffs' injuries—that is, without the emails matching the plaintiffs with lenders, the causes of action would not have arisen—but they were the proximate cause of the claims as well. A proximate-cause standard in this context "distinguishes between foreseeable and unforeseeable risks of harm." *Nowak v. Tak How Investments, Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996). And MoneyMutual surely foresaw that consumers who received its emails would in fact consummate loans with matched lenders and suffer any consequences of those loans falling short of what state law required. Indeed, MoneyMutual's business model depends on such loan consummation; otherwise, lenders in its network would

have no economic incentive to pay MoneyMutual for consumer "leads."

That the state supreme court had no need in its discussion of MoneyMutual's emails to address expressly the nexus required between a plaintiff's claims and a defendant's forum contacts is unsurprising for an additional reason: MoneyMutual never argued for a ratcheting up of the nexus standard in its briefing to the Minnesota Supreme Court. Indeed, the words "proximate cause" do not appear even once. Rather, in the course of considering the Google advertisements, the state supreme court had to surmise that MoneyMutual contested the strength of the nexus between its online advertisements and the claims at issue. It noted that MoneyMutual's reference to the "irrelevan[ce]" of the online advertisements "presumably refer[red]" to the requirement that for purposes of specific jurisdiction, harm to a plaintiff must "'arise out of or relate to' the defendant's contacts with the forum." App. 27a (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). But unlike its arguments regarding the Google ads, MoneyMutual's arguments with respect to the *emails* did not even inferentially suggest that these contacts had no causal relationship to plaintiffs' claims.

B. In its petition, MoneyMutual attempts to cast doubt on the relationship between plaintiffs' claims and MoneyMutual's Minnesota contacts. It emphasizes that it did not extend loans to or receive money from consumers. Pet. 11. But these arguments are relevant, if at all, to the merits of the claims. Plaintiffs contend that MoneyMutual's role in a payday lending scheme—which consisted of MoneyMutual arranging payday loans between consumers and lenders in exchange for "lead" fees—violated state consumer protection laws, including

a law that classifies any entity that arranges a payday loan as itself a short-term consumer lender in the state. MoneyMutual does not suggest that if plaintiffs' theory of liability is correct, the plaintiffs' claims are not causally related to the company's email contacts. And its disagreement with plaintiffs' theory of liability hinges on questions of state law not decided by the Minnesota Supreme Court and inappropriate for this Court's review.

MoneyMutual also contends that it could not have purposefully availed itself of Minnesota laws through emails to Minnesotans because the company's email systems are automated. *Id.* The state supreme court correctly explained that the automation of MoneyMutual's systems is "no excuse . . . because MoneyMutual or others under its direction programmed these systems." App. 19a n.12. Indeed, the fact that MoneyMutual devised its systems to accept and process loan applications of Minnesota residents and to match those residents with loans purportedly in compliance with state law only underscores that MoneyMutual's contacts with Minnesota are not "random, fortuitous, or attenuated." *Walden v. Fiore*, 134 S. Ct. 1115, 1123 (2014) (internal quotation marks omitted); *see also uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 428 (7th Cir. 2010) (rejecting an argument that a defendant's automated online sales did not support personal jurisdiction and observing that the defendant "itself set the system up this way" and thus could not "point to its hundreds of thousands of customers in Illinois and tell" the court that "[i]t was all their idea"); *accord Illinois v. Hemi Grp. LLC*, 622 F.3d 754, 758 (7th Cir. 2010).

At bottom, MoneyMutual has no legitimate argument that the email transactions were not a proximate cause of

plaintiffs' asserted injuries under plaintiffs' theory of liability. Because the court below found the email transactions alone sufficient to exercise personal jurisdiction, the question presented in the petition is not dispositive of whether MoneyMutual is subject to personal jurisdiction in Minnesota. Review should be denied.

C. Although the question presented in the petition for certiorari mimics the one submitted in *Bristol-Myers Squibb*, the issues in the cases are fundamentally distinct. Accordingly, MoneyMutual's petition should not be held for this Court's resolution of *Bristol-Myers Squibb*.

Bristol-Myers Squibb involves a product-liability mass action brought in California state court by non-resident and resident plaintiffs against an out-of-state drug company. *See Bristol-Myers Squibb Co. v. Superior Court*, 377 P.3d 874, 878, 887-88 (Cal. 2016). The issue in that case is whether the exercise of specific jurisdiction over the defendant is proper with respect to the *non-resident* plaintiffs' claims, where only resident plaintiffs were subject to the company's advertising in the forum state and suffered harm there. The state supreme court held that the company engaged in "nationwide marketing, promotion, and distribution of" the drug at issue and that these nationwide efforts "created a substantial nexus between the nonresident plaintiffs' claims and the company's contacts in California concerning" the drug to justify the exercise of specific jurisdiction. *Id.* at 888.

Here, the plaintiff class is composed exclusively of Minnesota residents, all of whom entered into transactions with MoneyMutual in Minnesota and suffered harm there. MoneyMutual cannot conceivably

contend that plaintiffs' "claims would be exactly the same even if the defendant had no forum contacts," Pet. *i*, *Bristol-Myers Squibb Co.*, No. 16-466, a distinction at the heart of Bristol-Myers Squibb's petition for certiorari to this Court.

III. The Circuits Are Not In Conflict over the Question Whether Emails May Constitute Forum Contacts That Justify the Exercise of Specific Jurisdiction.

Although MoneyMutual identifies the question presented as whether a causal link is necessary between a defendant's forum contacts and a plaintiff's claims, it spends five pages of its petition describing a purported circuit split over a separate question: whether a defendant's email contacts with a forum state may ever be considered when assessing specific personal jurisdiction, and if so, when. *See* Pet. 28-32. MoneyMutual does not ask this Court to grant certiorari to answer that question, but it asserts that the online contacts in this case "*particularly* warrant[]" review of the question presented. *Id.* 27 (emphasis added).

Even if the Court were to construe the petition to raise the added question of whether MoneyMutual's emails to more than 1,000 Minnesotans were relevant contacts regardless of their causal connection to plaintiffs' injuries, the question is unworthy of review. Although the Minnesota Supreme Court also suggested a split of authority on this question, App. 16a-17a, the differences in outcomes among appellate court cases are easily explained by factual distinctions.

As an initial matter, some of the authorities cited by MoneyMutual (at 29-32) do not involve email at all, but instead address the question whether operation of an interactive website may give rise to specific jurisdiction.

See Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc., 334 F.3d 390, 400-01 (4th Cir. 2003); *Revell v. Lidov*, 317 F.3d 467, 476 (5th Cir. 2002); *see also* Yasmin R. Tavakoli & David R. Yohannan, *Personal Jurisdiction in Cyberspace: Where Does It Begin, and Where Does It End?*, 23 Intell. Prop. & Tech. L.J. 3 (2011). MoneyMutual is wrong to equate the treatment of emails with the treatment of websites here. Although both involve online activity, their jurisdictional analysis could "diverge significantly, given the targeted nature of email, which is sent to a particular recipient, compared to the indiscriminate accessibility of an internet forum." *Shrader v. Biddinger*, 633 F.3d 1235, 1247 (10th Cir. 2011). In this respect, emails may be more analogous to "phone calls, faxes, and letters made or sent by out-of-state defendants to forum residents," which "have been found sufficient to support specific personal jurisdiction when they directly give rise to the cause of action." *Id.*

The cases cited by MoneyMutual that *do* address emails are consistent with the decision below. For example, in *Advanced Tactical Ordnance Systems, LLC v. Real Action Paintball, Inc.*, 751 F.3d 796 (7th Cir. 2014), a trademark infringement, unfair competition, and trade secrets case, the plaintiff—the defendant's competitor—sought to base specific jurisdiction over the defendant in Indiana in part on the defendant's "sending of two allegedly misleading emails to a list of subscribers that included Indiana residents." *Id.* at 802. Although the court held that the emails to *third-party* consumers did not support specific jurisdiction given the claims at issue, the court rejected "some sort of easier-to-apply categorical test" beyond the traditional due process inquiry for determining whether "virtual contacts" support the exercise of jurisdiction. *Id.* (internal quotation marks omitted). The court observed that while

"[t]he connection between the place where an email is opened and a lawsuit is entirely fortuitous," its view might "be different if there were evidence that a defendant in some way targeted residents of a specific state." *Id.* at 803.

In the instant case, the state court specifically found that the emails evidenced "'purposeful direction' of litigation-related conduct at Minnesota." App. 18a. Unlike in *Advanced Tactical*, where a plaintiff attempted to establish jurisdiction on the basis of a defendant's tangentially related in-forum internet contacts with third parties, the court below found jurisdiction on the basis of consumer transactions that the defendant conducted through email with plaintiffs known to be Minnesotans.

Similarly, *be2 LLC v. Ivanov*, 642 F.3d 555 (7th Cir. 2011), another Seventh Circuit case cited by MoneyMutual, involved trademark claims brought by an online matchmaking company against a principal of another matchmaking business. The plaintiff asserted that Illinois courts could exercise specific jurisdiction over the defendant because individuals with Chicago addresses had registered for matchmaking services with the defendant's company. The court rejected personal jurisdiction based on these contacts between third parties because they were too "attenuated"; it stressed that there was no "evidence of any interactions between [the defendant] and the . . . members with Illinois addresses." *Id.* at 559. In contrast, in this case, MoneyMutual's emails evince direct interactions with consumers who compose the plaintiff class. Far from being attenuated contacts, the emails were critical vehicles for MoneyMutual's arrangement of illegal loans.

Other Seventh Circuit case law confirms that, where purposefully directed at the forum state, email contacts

may justify the exercise of specific jurisdiction. In *Tamburo v. Dworkin*, 601 F.3d 693 (7th Cir. 2010), for example, the court of appeals held that specific jurisdiction over a defendant was proper where the defendant was alleged to have used "blast emails to the online dog-pedigree community . . . to defame and tortiously generate a consumer boycott against [the plaintiff], knowing that he lived and operated his software business in Illinois and would be injured there." *Id.* at 697.

The Eighth Circuit's case law also is not at odds with the Minnesota Supreme Court's decision. *Fastpath, Inc. v. Arbela Technologies Corp.*, 760 F.3d 816 (8th Cir. 2014), on which MoneyMutual relies, involved a suit between two companies over an alleged breach of a mutual confidentiality agreement. The court of appeals held that the defendant's "emails and phone calls to [the plaintiff] in Iowa" were "insufficient to establish personal jurisdiction" there because those contacts were "merely incidental" to the claims. *Id.* at 823-24 (internal quotation marks omitted). In contrast, the defendant's "solicitation of the Agreement took place outside Iowa, the Agreement [did] not specifically contemplate the exchange of information in Iowa, the covenant not to compete [was] not limited to or focused on Iowa, and any alleged breach of the Agreement occurred outside Iowa." *Id.* at 824. Unlike the circumstances in *Fastpath*, the emails from MoneyMutual matching Minnesota consumers with lenders were a key link in the defendant's unlawful conduct giving rise to plaintiffs' claims.[2] In any event, in light of the removal of this case

[2] The Minnesota Supreme Court also cited Eighth Circuit case law as providing that emails, calls, and fax communications may support, but not directly establish, personal jurisdiction. App. 16a n.10. The Eighth Circuit's case law in this regard is far from clear.

to federal court, the Eighth Circuit may have the opportunity to determine for itself whether MoneyMutual's contacts with Minnesota are sufficient to support specific jurisdiction, thus obviating any possibility of conflict.

Likewise, the decision below poses no conflict with the case law of the Third Circuit. *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446 (3d Cir. 2003), a trademark infringement case, held that the record did not support a finding that a defendant, a Spanish company with a Spanish website, knowingly conducted business with New Jersey residents through its site. *Id.* at 454. However, the court of appeals held that the district court had erred in denying a request for jurisdictional discovery: Two documented sales to New Jersey residents—albeit ones whose residence appeared to be unknown to the defendant—and "subsequent emails sent from [the defendant] to" those residents suggested the "possible existence of contacts needed to support jurisdiction." *Id.* at 457. The Third Circuit's decision recognizes emails could support the exercise of specific jurisdiction where a defendant sends them to individuals it knows to reside in the forum state.

Similarly, in *Ackourey v. Sonellas Custom Tailors*, 573 F. App'x 208 (3d Cir. 2014), the Third Circuit held that a Pennsylvania federal court lacked specific

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See, e.g., *Finley v. River N. Records, Inc.*, 148 F.3d 913, 916-17 (8th Cir. 1998) (upholding the exercise of specific jurisdiction where defendant's fraudulent conduct was effected through letters and calls to the forum state and defendant knew its conduct would have an effect there); *Hylland v. Flaum*, No. 16-CV-04060, 2016 WL 6901267, at *5-*6 (D.S.D. Nov. 22, 2016) (taking stock of the Eighth Circuit's pronouncements in this area and holding that emails to a forum state could support specific jurisdiction where they formed the basis of a plaintiff's alienation-of-affection claim).

jurisdiction over defendants to resolve a copyright infringement suit where the defendants maintained a website that permitted customers to email requests for appointments. *Id.* at 210. The court's determination hinged on the fact that there was "no evidence Defendants received any web-based requests for appointments in Pennsylvania or transacted any business whatsoever with Pennsylvania residents via its website." *Id.* at 212. A holding that a defendant's mere ability to receive emails from a jurisdiction is insufficient to support specific jurisdiction has no bearing on whether *sending* emails to residents of that jurisdiction as an essential part of a business transaction is sufficient. *Ackourey* therefore does not remotely stand for the proposition that MoneyMutual's more than 1,000 emails to known Minnesota residents to match them with payday lenders offering illegal loans could not support specific jurisdiction here.

MoneyMutual is also wrong to rely on Tenth Circuit case law. In *Shrader v. Biddinger*, 633 F.3d 1235 (10th Cir. 2011), cited by MoneyMutual, the Tenth Circuit held that an Oklahoma court lacked specific jurisdiction over an out-of-state defendant for defamation and other intentional torts because the allegedly defamatory email was not shown to have been sent to anyone in Oklahoma or otherwise to have targeted the state. *Id.* at 1248. The court of appeals noted that the plaintiff "might have satisfied his burden on personal jurisdiction" if there had been any evidence—as there is in this case with MoneyMutual—that the defendant had sent his email to individuals the defendant knew were from the forum state. *Id.*

Because the petition, to the extent that it even raises the question, presents no split of authority as to whether

the email-based transactions that MoneyMutual engaged in with Minnesota consumers suffice to establish relevant forum contacts, this Court should deny review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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