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U.S. DISTRICT COURT
N.D. OF ALABAMA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

PURE FITNESS, LLC, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	Case No. 2:20-cv-00775-RDP
THE HARTFORD FINANCIAL SERVICES GROUP, INC.; HARTFORD FIRE INSURANCE COMPANY; and TWIN CITY FIRE INSURANCE COMPANY,	)	**OPPOSED** **ORAL ARGUMENT REQUESTED**
Defendants.	)	

**MOVANT'S INITIAL SUBMISSION
IN RESPONSE TO EXHIBIT B OF THE COURT'S ORDER:**

**DEFENDANT TWIN CITY FIRE INSURANCE COMPANY'S
MOTION TO DISMISS AMENDED MULTISTATE CLASS ACTION CLAIMS**

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Pure Fitness, LLC has brought suit against Twin City Fire Insurance Company to enforce an insurance policy that it reads to cover lost business income stemming from COVID-19, the disease caused by the novel coronavirus, SARS-CoV-2. Pure Fitness also seeks to represent multistate classes of Twin City insureds. But there is a problem: Pure Fitness is an Alabama limited liability corporation, operating only in Alabama, suing only under an Alabama insurance policy. Pure Fitness lacks standing and this Court lacks personal jurisdiction over Twin City for its claims on behalf of insureds in other States under the law of other States. Twin City therefore moves to dismiss Pure Fitness's multistate class claims under Federal Rule of Civil Procedure 12(b)(1) and (b)(2).

I. BACKGROUND

Pure Fitness is a gym (and an Alabama limited liability corporation) in Vestavia Hills, Alabama. (*See* Doc. 18, ¶ 13). Twin City is allegedly a Connecticut corporation with its principal place of business in Connecticut. (Doc. 18, ¶ 14).[1] Pure Fitness alleges that Twin City issued it commercial property insurance that covers loss or damage to its Alabama premises, including for business interruption. (*See* Doc. 18, ¶¶ 19-26). Pure Fitness claims that its policy covers alleged losses from COVID-19 and that Twin City has wrongly denied coverage.

Pure Fitness does not claim to have any operations outside Alabama, and it alleges no interaction with Twin City outside Alabama. The amended complaint does not identify other putative class representatives outside Alabama, or any contacts inside Alabama between out-of-State class members and Twin City. Yet Pure Fitness seeks to bring claims for breach of contract and declaratory judgment on behalf of multistate classes. (Doc. 18, ¶¶ 62-67, 81-140).

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[1] 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 Alabama, this error is irrelevant.

II. ARGUMENT

The Court should dismiss the multistate class claims for two reasons. *First*, Pure Fitness 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 Alabama. *Second*, the Court does not have personal jurisdiction over Twin City for Pure Fitness's claims purportedly brought on behalf of out-of-State class members, since Twin City is not subject to Alabama's general jurisdiction and there is no specific jurisdiction as to claims with no connection to Alabama. The multistate class claims should therefore be dismissed under Rule 12(b)(1) and (b)(2). *See also* Fed. R. Civ. P. 23(c)(1)(A) (court must determine whether to certify class action "[a]t an early practicable time"), (d)(1)(D) ("[T]he court may issue orders that … require that the pleadings be amended to eliminate allegations about representation of absent persons.").

A. Pure Fitness Lacks Standing To Pursue Multistate Claims

Pure Fitness lacks standing to represent the interests of putative class members that contracted with Twin City outside Alabama. The Constitution limits the federal courts to adjudicating actual cases or controversies, *see* U.S. CONST. art. III, § 2, which includes the requirement that plaintiffs, "based on their complaint, must establish that they have standing to sue." *Raines v. Byrd*, 521 U.S. 811, 818 (1997). Standing doctrine "developed … to ensure that federal courts do not exceed their authority as it has been traditionally understood." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Thus, standing "confines the federal courts to a properly judicial role." *Id.* "[T]he party invoking federal jurisdiction bears the burden of establishing its existence." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998); *see also Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) (explaining that "standing is jurisdictional" and raised under Rule 12(b)(1)).

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).

In the Eleventh Circuit, the governing precedent is *Griffin v. Dugger*, 823 F.2d 1476 (11th Cir. 1987). There, a Black correctional officer named Peners Griffin alleged that the Florida Department of Corrections (FDOC) discriminated in its discipline, promotions, and entry-level examinations. But there was a problem—Griffin had passed the entry-level exam, although other Black applicants had failed it. The court explained that "it is not enough that a named plaintiff can establish a case or controversy between himself and the defendant by virtue of having standing as to just one of many claims he wishes to assert. Rather, each claim must be analyzed separately, and a claim cannot be asserted on behalf of a class unless at least one named plaintiff has suffered the injury that gives rise to that claim." *Id.* at 1483. Griffin, the court explained, did "allege injury

as a result of the FDOC's discipline and promotion practices: he claimed that on specific occasions the FDOC illegally disciplined him and did not promote him, because of his race." *Id.* So "Griffin had standing to assert discipline and promotion claims." *Id.* But he himself had "suffered no injury as a result of the FDOC's use of the written entry-level examination," which he had passed. *Id.* "Griffin thus lacked constitutional standing to assert a testing claim," and the court held "that the district court erred when it permitted Griffin to raise the testing claim on behalf of himself and on behalf of others." *Id.* at 1484.

"In accordance with this principle, named plaintiffs in class actions have, time and again, been prohibited from asserting claims under a state law other than that which the plaintiff's own claim arises." *Feldman v. BRP US, Inc.*, 2018 WL 8300534, at *6 (S.D. Fla. Mar. 28, 2018) (collecting cases). For example, a court in this District explained "that in a class action, … each named plaintiff must have standing for his or herself …. for every claim asserted in the Complaint" and may "not merely assert that the plaintiff will represent a future class member who will have standing." *Phillips v. Hobby Lobby Stores, Inc.*, 2016 WL 11272150, at *3-4 (N.D. Ala. Oct. 21, 2016). Under similar reasoning, courts in this Circuit have "time and again … prohibited" "named plaintiffs in class actions … from asserting claims under a state law other than that which the plaintiff's own claim arises." *E.g.*, *Weiss v. General Motors LLC*, 418 F. Supp. 3d 1173, 1180-1181 (S.D. Fla. 2019) (citation omitted) (collecting cases).

This analysis demonstrates that Pure Fitness lacks standing to represent the interests of out-of-State putative class members. Pure Fitness operates a gym in one State and bought insurance from Twin City in one State: Alabama. Its only alleged injury is breach of an Alabama contract. 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 Shapiro v. Associated Int'l Ins. Co.*, 899 F.2d 1116, 1119 (11th Cir. 1990) (noting "a contract of … insurance and the rights created thereby are determined by the local law of the state" (citation omitted)). If Twin City has breached another State's contract law—which it denies—Pure Fitness has suffered no harm from it. To permit one Alabama gym to assert breaches of *other* States' contract law on behalf of multistate classes would let Pure Fitness raise claims that it individually lacks standing to bring—an approach that the Eleventh Circuit has foreclosed. *Griffin*, 823 F.2d at 1483. Pure Fitness thus lacks standing to assert claims for breach of contract or seek declaratory relief under the laws of States for which it has no connection and for alleged breaches that have caused it no harm. Its multistate class claims should be dismissed.

And the multistate claims are properly dismissed now. In *Griffin*, the Eleventh Circuit made clear that standing to assert each claim must be considered *before* Rule 23's requirements. The court "emphasize[d] that any analysis of class certification must begin with the issue of standing." 823 F.2d at 1482. That is because "the threshold question is whether the named plaintiffs have individual standing, in the constitutional sense, to raise certain issues," and "[o]nly after the court determines the issues for which the named plaintiffs have standing should it address the question whether the named plaintiffs have representative capacity, as defined by Rule 23(a), to assert the rights of others." *Id.* Especially when standing is lacking for certain claims on the face of the complaint, "'addressing the issue of standing at the motion to dismiss phase of the litigation, rather than waiting for the class certification phase, is not premature.'" *Weiss*, 418 F. Supp. 3d at 1179. "Nothing is gained by" deferring this issue until class certification, and "no binding authority direct[s] this court" to do so. *Phillips*, 2016 WL 11272150, at *4.

Some decisions in this Circuit have deferred meritorious standing challenges until class

certification, but their logic is inconsistent with *Griffin*. For example, in *In re Equifax, Inc., Customer Data Security Breach Litigation*, the court declined to dismiss claims brought under the laws of Puerto Rico and the Virgin Islands even though "no Plaintiff has alleged any connection to, or residence in, either of those territories." 362 F. Supp. 3d 1295, 1344 (N.D. Ga. 2019); *see also Amin v. Mercedes-Benz USA, LLC,* 301 F. Supp. 3d 1277, 1283-84 (N.D. Ga. 2018). The *Equifax* court determined that "*Griffin v. Dugger* … is distinguishable because that decision was made in the context of class certification, where such questions are most appropriate." 362 F. Supp. 3d at 1344. But the fact that the defendants raised standing in *Griffin* on an interlocutory appeal of class certification does not mean that a court can postpone a standing challenge raised earlier, on a motion to dismiss. As *Griffin* emphasized, a named plaintiff's individual standing to raise certain issues is a "threshold question." 823 F.2d at 1482. That is because "standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, 641 F.3d 1259, 1264 (11th Cir. 2011). Courts risk "exceed[ing] their authority as it has been traditionally understood" if they delay considering a standing challenge under Rule 12(b)(1) until class certification and so subject a defendant to nationwide class discovery into claims that—on the face of the complaint—the named plaintiff cannot pursue. *Spokeo*, 136 S. Ct. at 1547.

The issue is, therefore, properly considered at this stage. And it is properly resolved by dismissing Pure Fitness's claims purportedly asserted on behalf of nonresident unnamed class members for lack of standing.

B. This Court Lacks Personal Jurisdiction Over Twin City For Pure Fitness's Claims Brought On Behalf Of Nonresident Class Members

Pure Fitness's lack of standing suffices to dismiss the nationwide class claims. The lack

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 Pure Fitness's Alabama gym. Twin City does not contest the Court's personal jurisdiction over it for the claims of Alabama policyholders like Pure Fitness. But this Court has no personal jurisdiction over Twin City for claims with no connection to the State of Alabama.

"Exercises of personal jurisdiction" are limited "by due process constraints on the assertion of adjudicatory authority." *Daimler AG v. Bauman*, 571 U.S. 117, 121-122 (2014); *Walden v. Fiore*, 571 U.S. 277, 283 (2014) ("The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts."). Federal courts "follow state law in determining the bounds of their jurisdiction over persons." *Daimler*, 571 U.S. at 125 (citing Fed. R. Civ. P. 4(k)(1)(A)). Thus, federal due process and the law of the forum State set the limits for the exercise of personal jurisdiction—a single inquiry here, because Alabama's long-arm statute is coextensive with federal due process. *Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 925 (11th Cir. 2007).

On a motion to dismiss under Rule 12(b)(2), the plaintiff bears the burden to show that personal jurisdiction exists. *See Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1350 (11th Cir. 2013). Personal jurisdiction over a defendant may be "general or all-purpose" or "specific or case-linked jurisdiction." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

1. The Court Lacks General Jurisdiction Over Twin City

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*, 571 U.S. at 137. Otherwise, to be subject to general jurisdiction, a corporation's contacts must "render

them essentially 'at home' in the forum state," which could occur only in an "exceptional case." *Id.* at 139 & n.19. Twin City is incorporated and has its principal place of business outside Alabama (*see* Doc. 18, ¶ 14), and Pure Fitness alleges no contacts by Twin City with Alabama suggesting that this is the exceptional case where Twin City is at home outside the paradigmatic locations. *See Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1205 (11th Cir. 2015) ("A foreign corporation cannot be subject to general jurisdiction in a forum unless the corporation's activities in the forum closely approximate the activities that ordinarily characterize a corporation's place of incorporation or principal place of business."); *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1317-18 (11th Cir. 2018) (holding that "the heavy burden of establishing such an exceptional case" is not met by allegations that the defendant "conducted significant business in Florida" since "*Daimler* tells us that even 'substantial, continuous, and systematic" business is insufficient to make a company 'at home' in the state"). So this Court lacks general jurisdiction over Twin City.

2. The Court Lacks Specific Jurisdiction Under *Bristol-Myers Squibb*

Specific jurisdiction, on the other hand, exists only for 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 Diamond Crystal Brands*, 593 F.3d at 1267. For instance, this Court has specific jurisdiction over Twin City for claims arising out of Alabama insurance contracts, like Pure Fitness's own policy and those of other Alabama insureds.

Not so, however, for the claims that Pure Fitness purportedly asserts on behalf of unnamed putative class members *outside* Alabama. This Court cannot exercise specific jurisdiction over Twin City for claims of nonresident putative class members with no adequate link to Alabama. 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 Pure Fitness seeks to assert on behalf of non-Alabama putative class members and the State of Alabama—by definition, those claims are not by Alabama companies, are not based on Alabama insurance law, and are not disputing coverage for Alabama businesses. "The mere fact that" Pure Fitness obtained insurance policies in Alabama—"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. *See 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., 441 F. Supp. 3d 1028, 1036 (S.D. Cal. 2020).[2] Just so here: Under *Bristol-Myers*, Twin City's coverage decision on an Alabama gym's Alabama insurance policy covering its Alabama business cannot support specific jurisdiction over claims with no connection to Alabama.

3. *Bristol-Myers Squibb* Is Not Distinguishable

On the other hand, the courts that have distinguished *Bristol-Myers* have relied on facial rather than substantive distinctions. For instance, some courts (including in this Circuit) have declined 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); *Jones v. Depuy Synthes Prods., Inc.*, 330 F.R.D. 298, 311 (N.D. Ala. 2018); *Dennis v. IDT Corp.*, 343 F. Supp. 3d 1363, 1366 (N.D. Ga. 2018); *Becker v. HBN Media, Inc.*, 314 F. Supp. 3d 1342, 1345 (S.D. Fla. 2018).

But the reasoning of *Bristol-Myers* applies equally to a class action. Courts have widely recognized its applicability to claims by nonresident named plaintiffs, holding that *Bristol-Myers* does apply to their individual claims in a class action.[3] That conclusion is correct for claims asserted on behalf of nonresident *unnamed* plaintiffs as well. Like a mass action, a class action is

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

[3] *See, e.g.*, *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 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).

"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 B. RUBENSTEIN, NEWBERG ON CLASS ACTIONS ("NEWBERG") § 6:25 n.5.50 (5th ed. Supp. 2020) ("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." (citation omitted)). 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 Pure Fitness'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 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). Joinder of a class 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.").

Courts concluding otherwise often cite two differences between a mass action and a class action. First, "[i]n contrast to mass actions, where each plaintiff is a real party in interest, class actions are brought in a representative capacity." *Jones*, 330 F.R.D. at 311. Second, "Rule 23 contains procedural safeguards that adequately protect Defendants' due process rights" and are not present in mass actions. *Id.* at 312. Respectfully, neither facial difference 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 multistate class claims purportedly asserted by Pure Fitness. It is therefore incorrect to view this motion as seeking "to dismiss nonresident putative class members"; rather, it seeks "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 now moves to dismiss.

Second, 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."). "[T]he procedural safeguards of Rule 23 are meant primarily to protect the absent class members," not "to favor or protect defendants." *PetSmart*, 441 F. Supp. 3d at 1037. 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 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). 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 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.

4. Exercising Jurisdiction Would Be Unconstitutionally Unfair

Since Pure Fitness's claims on behalf of out-of-State putative class members do not arise out of or relate to activities that Twin City purposefully directed at the State of Alabama, the Court lacks specific jurisdiction and need not consider whether jurisdiction would violate fair play and substantial justice—that is, whether "exercising jurisdiction would be unconstitutionally unfair." *Diamond Crystal Brands*, 593 F.3d at 1274. 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 defending an individual claim or a statewide class action." *PetSmart*,

441 F. Supp. 3d at 1036. On the other hand, the State of Alabama'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 with Twin City, a nonresident. *Burger King*, 471 U.S. at 477. The State of Alabama's interests—including its interest "in furthering fundamental substantive social policies," *id.*—will be vindicated by adjudicating the Alabama claims of Pure Fitness. And Pure Fitness's "interest in obtaining convenient and effective relief" will also be protected, because Pure Fitness is entitled to *no* relief for the out-of-State claims it allegedly brings for out-of-State 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 Pure Fitness to expand this narrow dispute—between a nonresident insurer and Alabama policyholder over the meaning of one Alabama insurance policy—with claims purportedly brought on behalf of unnamed plaintiffs across the country.

5. This Issue Should Be Decided Now

Finally, whether this Court has personal jurisdiction over Twin City for Pure Fitness'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 pending in at least 15 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 Alabama are pursuing their claims in their home States. There is no benefit to allowing non-Alabama 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, Massachusetts, or elsewhere benefit from having their contract claims under their States' laws asserted by an Alabama gym in a far-off forum—rather than in individual actions or putative

statewide class actions in their home States.

In sum, the logic of *Bristol-Myers* and the strictures of due process mean that this Court cannot exercise personal jurisdiction over Twin City with respect to the Pure Fitness's claims purportedly asserted on behalf of out-of-State unnamed class members. Accordingly, the nationwide claims should be dismissed for lack of personal jurisdiction.

III. CONCLUSION

For these reasons, Pure Fitness's claims on behalf of multistate classes should be dismissed for lack of standing and personal jurisdiction.

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Respectfully submitted,

/s/ Christopher C. Frost

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* Applications for admission *pro hac vice* forthcoming

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CERTIFICATE OF SERVICE

This document is being filed with the Court electronically via the ECF system. The requirements of service and proof of service of this document are satisfied by the automatic notice of filing sent by the CM/ECF software in accordance with the Local Rules of this Court on this 5th day of October 2020.

/s/ Christopher C. Frost
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