07-15386

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BARBARA BAUMAN, *et. al.*,
Plaintiffs / Appellants,

v.

DAIMLERCHRYSLER AG
Defendants / Appellees.

Appeal from Judgment of the United States District Court
for Northern District of California; Case No. 04-00194 (RMW)
The Honorable Ronald M. Whyte

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs-Appellants, Bauman, *et al.* ("Plaintiffs"), hereby reply to Defendant-Appellee's, DaimlerChrysler Aktiengesellschaft ("DCAG" or "Defendant"), Brief. As previously explained, Plaintiffs are workers and trade unionists who were kidnapped, detained, and tortured by state security forces acting at the direction of their former employer, Mercedes-Benz Argentina ("MBA") during Argentina's "Dirty War", or they are the close relatives of workers and trade unionists who were disappeared, and are now presumed to have been murdered by such security forces. Together, as 23 individual Plaintiffs, they brought suit in California under the Alien Tort Statute ("ATS") and the Torture Victims Protection Act ("TVPA"), 28 U.S.C. §1350 *note*, against international car manufacturer and seller, DCAG, the multinational parent of MBA.

In an effort to avoid any responsibility for these egregious acts, DCAG filed a motion to dismiss for lack of personal jurisdiction, which the District Court erroneously granted. Plaintiffs' position is that personal jurisdiction over DCAG in California is proper based on the presence of its wholly-owned subsidiary, Mercedes-Benz USA L.L.C. ("MBUSA"), in the forum as its general agent. Alternatively, Plaintiffs believe that jurisdiction in California is proper pursuant to Fed. R. Civ. P. 4(k)(2), which allows for an aggregate of national contacts, or that

a transfer of venue to Michigan, where DCAG is headquatered, is warranted.

In its Brief, Defendant offers essentially three arguments as to why personal jurisdiction in California is lacking, conveniently ignoring that a California court has found it subject to personal jurisdiction based precisely on the presence of MBUSA as its agent in the forum. *See Wild v. Caliber Motors, Inc.* 2000 Westlaw 35368457 (Cal. Superior 2000)(holding that "Defendant DaimlerChrysler AG's motion to quash is denied because (a) DaimlerChrysler AG cannot insulate itself from California jurisdiction by devising a scheme of distributing for the entire United States and at the same time severing its ties with MBUSA; (b) there is a connection between the two entities (DaimlerChrysler AG and MBUSA) which represents a marketing scheme evidencing more than simply placing a product into the stream of commerce"). DCAG's arguments regarding the lack of personal jurisdiction in California in this case are equally unpersuasive.

First, DCAG attempts to limit the scope of Plaintiffs' appeal and evidence by urging this Court to rely on the District Court's *tentative* order recommending dismissal, and to exclude evidence obtained from Defendant during discovery, particularly its general distributorship agreement, because the District Court allegedly did not admit such documents into evidence. Second, DCAG argues that even if all of Plaintiffs' evidence could be considered, it does not establish the

control necessary for a finding of agency. Finally, DCAG argues that the District Court's ruling that Argentina provides an adequate alternative forum is correct because allegedly this case has no connection to California. None of DCAG's arguments are legally sound, and should accordingly be rejected by this Court.

First, it is well-recognized that a tentative order is not a final order which can serve as the basis for appeal; it is instead simply an initial recommendation by the court which can be later modified. Similarly, the District Court necessarily admitted the evidence submitted by Plaintiffs when it granted Plaintiffs' motions to admit such documents under seal. The fact that the Court later determined that the evidence was, in its view, largely irrelevant went to the weight it afforded the documents, not their intrinsic admissibility.

Second, it is equally well-recognized in this Circuit that where jurisdiction is premised on agency, it is the scope and quality of the relationship that is controlling, and particularly whether the parent is dependent on the subsidiary for its presence in the forum, as is the case here. It does not require a showing of day-to-day control which is necessary only to establish an alter ego relationship, though Plaintiffs believe such day-to-day control is present here between DCAG and MBUSA. In essence, DCAG is attempting to improperly conflate two separate bases for jurisdiction -- alter ego and agency. To be clear, Plaintiffs have only

advanced an agency basis for jurisdiction, not alter ego.

Finally, while a recent Supreme Court ruling in Argentina makes clear that Argentina is not an available forum for Plaintiffs' human rights claims due to the applicable statute of limitations; prior to this clarity, the District Court erred in assuming that such a forum was viable and in giving presumptive weight to this single factor.[1] In doing so, Plaintiffs were not provided with the presumption of their choice of forum or having the burden shifted to Defendant to establish the existence of an adequate, alternative forum. Rather, the District Court was required to weigh all reasonableness factors in the context of a personal jurisdiction motion. Had the District Court properly conducted this jurisdictional analysis, as this Court can do under its own *de novo* review, it is clear that personal jurisdiction over DCAG in California is proper and reasonable, particularly given the United States' strong interest in adjudicating ATS and TVPA claims.

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[1]As discussed in Section C, *infra*, the Supreme Court of Argentina recently ruled that human rights cases, such as Plaintiffs' case herein, are foreclosed under Argentinian law due to the applicable two year statute of limitations. A translated copy of this decision, *Larrabeiti Yañez, Anatole Alejandro vs. National Government*, L. 795. XLI. (ROR) L. 632. XLI. APPEAL, can be found in Appellants' Supplemental Excerpts of Record ("Supp. ER"), filed concurrently herewith.

II. ARGUMENT

A. Defendant's Procedural Objections Regarding the Scope of Plaintiffs' Appeal and the Evidence to be Considered Should be Rejected.

1. A Tentative Order is Not a Final Order Reviewable on Appeal.

Defendant's attempt to interject the District Court's tentative order in this appeal is improper. A tentative order is not a final order which can be reviewed. *See, e.g., U.S. v. Smith,* 331 U.S. 469, 474 (1947)("It is not the function of appellate courts to review tentative decisions of trial courts."); *Nat'l Distribution Agency v. Nationwide Mutual Insurance*, 117 F.3d 432, 434 (9th Cir. 1997)("A district court ruling is not final if the court reserves the option of further modifying its ruling."); *Chiron Corp. v. Abbott Laboratories*, 1996 WL 15758, *2 (N.D. Cal. 1996)("The use of a tentative order . . . evinces nothing more than the judicial exercise of caution and the worthy desire to reconsider a preliminary assessment of the law and facts"). Here, the District Court entered one final order and judgment based thereon, an entire year later following significant discovery. The fact that Defendant apparently recognizes that this final order is not well-reasoned, focusing almost exclusively on the existence of an alternative forum, is not a justification to revert back to a non-final, and therefore non-binding, tentative ruling.

2. The District Court Necessarily Admitted and Considered the Evidence Submitted by Plaintiffs.

Defendant's other procedural argument is that this Court should simply ignore the corporate documents evidencing an agency relationship between it and MBUSA. This should also be rejected. Defendant premises this argument on the fact that the District Court deemed such evidence, in its view, to be irrelevant, although it specifically requested briefing on the agency relationship between DCAG and MBUSA. ER-I at 00008.[2] However, this is quite distinct from an evidentiary ruling excluding such evidence. Rather, it went to the weight the District Court afforded to the documents. Indeed, Defendant's position is nonsensical because Plaintiffs were required to file administrative motions with the District Court for admission of each document, as the documents were deemed confidential and subject to a protective order. *See* Docket Entry No. 96, ER-IV at 000493. In granting each such motion, the District Court necessarily accepted such documents into evidence, without any reservation or indication that the administrative orders were limited in any way. *See* Docket Entry Nos. 111, 113, 115, 117, 119, 121, 123, 125, ER-IV at 000497-98.

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[2]Again, all references to the record herein are provided in Plaintiffs' Excerpt of Records ("ER"), following a reference to the appropriate volume (either I, II, III or IV) and specific bates page number at the bottom right of the document.

B. DCAG Misrepresents This Circuit's Test for Establishing Jurisdiction Based on Agency.

DCAG's position, relying primarily on *Doe v. Unocal Corp*., 248 F.3d 915, 926 (9th Cir. 2001), is that Plaintiffs cannot establish agency because they cannot show that DCAG exercises day-to-day control over MBUSA. *See* Df. Br. at 18-21. Defendant misstates the controlling law with respect to agency. *See Modesto City Schools v. Riso Kagaku Corp.*, 157 F. Supp.2d 1128, 1133 (E.D. 2001)("[Defendant] contends that . . . *Unocal* require[s] a showing of day-to-day control in order to meet the general agency test. Read in isolation, certain phrases suggest that such may be the case; however, read in context and in relation to other Ninth Circuit decisions, the court finds that day-to-day control is not an element of the general agency test in the Ninth Circuit.")(Citations omitted). *Accord, Harris Rusty & Co. v. Ins. Services, Inc.*, 328 F.3d 1122, 1134-35 (9th Cir. 2003)(recognizing alter ego and agency as two separate and distinct basis for jurisdiction between a parent and subsidiary). *See also Synopsys, Inc. v. Richoh Company, Ltd.*, 343 F. Supp.2d 883, 887 (N.D. Cal. 2003)(holding "under Ninth Circuit precedent, the question is whether the subsidiary's presence truly substitutes for that of the parent. . . However, day-to-day control is not required")(citing *Chan v. Society Expeditions, Inc.* 39 F.3d 1398, 1405 (9th Cir.

1994)).

Plaintiffs are not advancing an alter ego theory of jurisdiction, which may require a showing of day-to-day control, but are advancing an agency theory, which instead focuses on the relationship between the two entities. As indicated in Appellants' Opening Brief ("Pl. Br."), these factors include: the significance of the resident company's functions in the context of the parent's business; the percentage of sales which are derived from the resident company; and the interchange of personnel between the two entities. *See* Pl. Br. at 15-16 (citing *inter alia Modesto*, 157 F. Supp.2d at 1135). In response to these factors, Plaintiffs presented extensive evidence showing that DCAG functioned and held itself out publically as a single, unitary enterprise, with MBUSA sales in California representing a significant source of DCAG's business. *See* Pl. Br. at 15-30.[3] This evidence unquestionably establishes that DCAG is dependent on MBUSA to market and sell its vehicles in the forum. Indeed, courts have found similar facts to support personal jurisdiction. *See, e.g., Acorn v. Household International, Inc.,* 221 F. Supp.2d 1160, 1165-66 (N.D. Cal. 2002)(finding jurisdictional agency where a large portion of parent's sales came from the state through the subsidiary,

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[3]Because much of the evidence cited by Plaintiffs is currently filed under seal, Plaintiffs have not set forth again in this brief such evidence, but have referred the Court to where it may be found in Plaintiffs' Opening Brief.

where there was a significant overlap of corporate officers; and where the parent held itself out as a single, unitary enterprise); *Synopsys*, 343 F. Supp.2d at 887 (finding agency where parent company derived significant sales from the forum through the subsidiary). *See also Modesto*, 157 F. Supp.2d at 1135 (holding "this court may look beyond RKC's and Riso, Inc.'s formal separateness in determining whether Riso, Inc. acted as RKC's general agent. . . .the court must make a common sense appraisal of the economic relationships . . .[and] examine a business relationship from a practical viewpoint of businessmen rather than through the distorting lens of a legal conceptual framework").

Thus, while Plaintiffs believe these same facts are more than adequate to also establish day-to-day control, *see* Pl. Br. at 25-28, it is not necessary that they do so. Plaintiffs also do not need to establish in a strict sense that "but for" MBUSA it would not be able to market and sell its vehicles in California as asserted by Defendant. Rather, the critical inquiry is the closeness of the relationship between DCAG and MBUSA, and the importance of the function being performed by MBUSA in the forum. *See, e.g., Acorn,* 221 F. Supp.2d at 1165-66.

Defendant apparently recognizing that it cannot defeat a finding of agency under the appropriate test astoundingly resorts to urging this Court to adopt its

factual inferences -- specifically that it does not need to rely on MBUSA for the marketing and sale of its vehicles in California. Apart from the fact that a California court has already rejected this very argument, *see Wild v. Caliber Motors, Inc.* 2000 Westlaw 35368457 (Cal. Superior 2000), the law is clear that it is Plaintiffs who are entitled to all reasonable inferences from conflicting evidence on a dismissal motion. *See AT&T v. Compagnie*, 94 F.3d 586, 588-89 (9th Cir. 1996)(citing *Ziegler v. Indian River County*, 64 F.3d 470, 474 (9th Cir. 1995)).

Moreover, the fact that DCAG claims it could rely on other independent distributors does not alter the fact that DCAG itself would necessarily have to step in to find an alternative to MBUSA, and closely monitor any third-party distributor in this important market. In short, DCAG would still maintain a presence in California. Nor is there any reason to believe that Defendant would rely on third-party distributors where it does not have a history of doing so in California specifically, and where past attempts to do so have failed. *See* Pl. Br. at 17-19. *See, e.g., Modesto*, 157 F. Supp.2d at 1136 (rejecting a similar argument by the defendant parent company and holding "[a]bsent a showing that RKC has sold or marketed its products through third-party distributors in markets comparable in size and importance to the United States market . . . the court cannot find that RKC would do so now in the absence of Riso, Inc."). This Court should likewise refuse

to draw any factual inferences in favor of DCAG that it would not need to rely on MBUSA to service California, when it has historically done so for years. *See* Pl. Br. at 17-19.

C. Personal Jurisdiction Over DCAG in California is Reasonable and Proper.

With regards to the reasonableness of asserting personal jurisdiction over DCAG, Defendant again misrepresents Plaintiffs' position. Plaintiffs' objection is not over whether Argentina is an adequate, alternative forum, which it is not, but whether the District Court erred in overemphasizing this factor is assessing the reasonableness of personal jurisdiction over DCAG. In essence, Plaintiffs' appeal is premised on the fact that the Court inappropriately treated Defendants' personal jurisdiction motion as one for *forum non conveniens* without any of the procedural safeguards inherent in a forum analysis, such as the presumption in favor of Plaintiffs' choice of forum or shifting the burden to Defendant of establishing an adequate, alternative forum. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981). *See also Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1116 (9th Cir. 2002)(holding "while *forum non conveniens* and personal jurisdiction analyses overlap, they are by no means identical"); *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.,* 84 F.3d 560, 575(2d Cir.1996)(holding "the related common law

concept of *forum non conveniens* should not be conflated with the due process concerns that are the focus [personal jurisdiction]."); *Foster-Miller, Inc. v. Babcock & Wilcox Canada*, 46 F.3d 138, 150 (1st Cir. 1995)(holding an alternative forum consideration does not belong in a minimum contacts analysis as it is already committed to the doctrine of *FNC*); *Fitzsimmons v. Barton*, 589 F.2d 330, 334 (7th Cir. 1979)(refusing to import FNC considerations into the personal jurisdiction analysis).

Defendant has not cited a single case which indicates that it is acceptable to consider the existence of an alternative forum more strongly in the jurisdictional equation or that this factor should supercede all other reasonableness considerations. Rather, this Circuit is clear that all reasonableness factors should be considered, giving no single factor particular importance. *See, e.g., Roth v. Garcia Marquez*, 942 F.2d 617, 623 (9th Cir. 1991)(holding no single reasonableness factor is dispositive); *Hendrick v. Daiko Shoji Co., Ltd.,* 715 F.2d 1355, 1359 (9th Cir. 1983)*(* "These [due process reasonableness] factors are not mandatory tests, each of which a plaintiff must pass in order for a court to properly assume jurisdiction. Instead, the factors illuminate the considerations of fairness and due process set forth in *International Shoe.*"). Here, a balanced consideration of all the reasonableness factors weighs in favor of exercising personal jurisdiction

over DCAG in California. Again, these include: 1) the extent of purposeful interjection; (2) the burden on the defendant; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the suit; (5) the most efficient judicial resolution of the dispute; (6) the convenience and effectiveness of the relief for the plaintiff; and (7) the existence of an alternative forum. *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1198-99 (9th Cir. 1998). *See* Pl. Br. at 37-48 (discussing each factor).

DCAG offers several reasons as to why subjecting it to personal jurisdiction in California would be unreasonable, focusing primarily on the availability of Argentina and Germany as alternative fora, the undue burden of proceeding in California, and its alleged lack of purposeful interjection in California. However, DCAG's arguments are contrary to recognized law and the record in this case.

Neither Argentina or Germany can provide an adequate, alternative forum for Plaintiffs' human rights claims against Defendant. With regards to Argentina, a recent Supreme Court decision, *Larrabeiti Yañez, Anatole Alejandro vs. National Government*, has definitely foreclosed Argentina as an available forum by imposing a mandatory two year statute of limitations on the type of human rights claims asserted by Plaintiffs herein. This is apart from the inability to bring Plaintiffs' case against a corporate actor in Argentina, and Plaintiffs' inability to

access full discovery. *See* Pl. Br. at 42-43. In *Larrabeiti Yañez*, several plaintiffs, upon reaching the age of majority, brought cases against the Republic of Argentina for the forced disappearance of their parents or other family members. The Court explains that "[t]he argument that the action to claim compensation has no statute of limitations because it arises from crimes against humanity, and such crimes have no statute of limitations in the penal sphere, cannot be accepted." *See* ¶ 5, Supp. ER at 5-6. Instead, the Court held that the two year (plus three months) statute of limitations (from the age of majority) is applicable. *See* ¶ 2, Supp. ER at 2-3. Essentially, the Court refused to equitably toll the plaintiffs' claims, *see* ¶ 4, Supp. ER at 3-4, as a U.S. court would be permitted to do so here. *See, e.g.,Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1153 (11th Cir. 2005). In addition, the Court noted that claims for further monetary damages were contrary to the national scheme devised to compensate victims of the war, despite the plaintiffs' argument that the state awards provided did not fully compensate them for prolonged emotional suffering. *See* ¶ 4, 6, Supp. ER at 3-4; 6.

While this decision was regrettably unavailable at the time of the District Court's ruling, this Court can now fully consider this decision under its own *de*

novo review,[4] which should erase any doubt about the inadequacy of Argentina as a forum. *See, e.g., Bank of Credit and Commerce International, Ltd. v. State*, 273 F.3d 241, 246 (2d Cir. 2001)(holding "an adequate forum does not exist if a statute of limitations bars the bringing of the case in that forum"); *Altmann v. Republic of Austria*, 142 F. Supp.2d 1187, 1209 (C.D. Cal. 2001)(holding "if Plaintiff's claims are barred by the statute of limitations, she would be left without a remedy; clearly, therefore, Austria is not an adequate alternative forum for Plaintiff's claims").

The applicable statute of limitations and the lack of equitable tolling similarly forecloses Germany as an alternative forum. DCAG misrepresents the record in asserting that Plaintiffs' German law expert does not offer an authority for his position that equitable tolling is unavailable under German law. *See* Declaration of Wolgang Kaleck, ER-IV at 429 (citing two relatively recent decisions by the German courts). Further, even assuming that Plaintiffs' claims were viable in Germany, Germany holds no greater interest in adjudicating Plaintiffs' claims simply because DCAG is a dual German-American corporation,

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[4]*See Crown Point Development, Inc. v. City of Sun Valley*, 2007 WL 3197049, *2 (9th Cir. 2007)(holding "[w]here 'the question presented is one of law, we consider it in light of all relevant authority'")(quoting *Ballaris v. Wacker Siltronic Corp.*, 370 F.3d 901, 908 (9th Cir.2004)).

given the significant U.S. interest in adjudicating ATS and TVPA claims.

DCAG cites only one case, *Amoco Egypt Oil v. Leonis Navigation Co.*, 1 F.3d 848 (9th Cir. 1993), indicating that personal jurisdiction cannot be based on a state's general interest in the subject matter of the lawsuit. *See* Df. Br. at 38. However, this was not an ATS or TVPA case and certainly predates recent precedent clearly articulating a strong U.S. interest in hearing the type of human rights claims asserted by Plaintiffs herein. *See, e.g., In re Estate of Marcos Human Rights Litig.*, 25 F.3d 1467, 1475 (9th Cir. 1994); *Wiwa v. Royal Dutch Petroleum Co.*, 226 F. 3d 88, 106 (2d Cir 2000).

DCAG also cannot seriously contend that it has not purposefully interjected itself into the Californian economy when in California MBUSA sales made up 2.4% of the total sales for DCAG in 2004. *See* ER-II at 46. DCAG also admits that it pays more than $64 million annually to 707 California employees, $15 million annually to 1,562 California retirees, $1 billion total to California suppliers, and $31 million annually in California taxes. *Id.* DCAG cannot report these figures to its shareholders and the public at large as one consolidated company and now seek to disavow this same information as being attributable solely to its various subsidiaries to avoid jurisdiction. Rather, DCAG made no such distinction in its corporate records and should not be able to do so now.

Indeed, at least one California court has already rejected DCAG's attempt to distance itself from the California market, which represents one of its most significant markets for Mercedes-Benz vehicles. *See Wild,* 2000 Westlaw 35368457 at *1.

Finally, DCAG's argument that it would face an undue burden in having to defend a suit in California is equally tenuous. This Circuit has long recognized that the burdens of proceeding in an other forum is alleviated by modern means of communication, travel and technology. *See, e.g., Panavision International, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir.1998)(holding "in this era of fax machines and discount air travel requiring [the defendant] to litigate in [a foreign jurisdiction] is not constitutionally unreasonable.); *Sinatra*, 854 F.2d at 1199 (holding "modern advances in communications and transportation have significantly reduced the burden of litigating in another country"). Certainly, DCAG, as a multi-million dollar corporation, cannot seriously complain of undue hardship, particularly when it does in fact have control over much of the evidence. *See, e.g., Soto v. City of Concord*, 162 F.R.D. 603, 619 (N.D. Cal.1995)("A party may be ordered to produce a document in the possession of a non-party entity if that party has a legal right to obtain the document or has control over the entity who is in possession of the document."); *Japan Halon Co. v. Great Lakes Chem.*

Corp. 155 F.R.D. 626, 627 (N.D. Ind.1993)(finding that close business relationship constituted control of documents held by non-party); *United States v. Faltico,* 586 F.2d 1267, 1270 (8th Cir.1978)(affirming that parent/subsidiary corporate relationship constituted control over documents).

D. This Court Can Consider Plaintiffs' Alternative Arguments Regarding Jurisdiction Under Rule 4(k)(2) and Venue Transfer.

Defendant is mistaken that this Court cannot consider Plaintiffs' alternative arguments regarding Rule 4(k)(2) national jurisdiction and venue transfer simply because the District Court limited the scope of these arguments. Df. Br. at 52-59. Rather, all matters raised and presented for review are properly preserved for appeal. *U.S. v. Harue Hayashi*, 282 F.2d 599, 601 (9th Cir. 1960)("In federal practice any question which has been presented to the trial court for a ruling and not thereafter waived or withdrawn is preserved for review."); *Ecclesiastes 9:10-11-12, Inc. v. LMC Holding Co.,* 497 F.3d 1135, 1141 (10th Cir. 2007)("An issue is preserved for appeal if a party alerts the district court to the issue and seeks a ruling.").

DCAG's remaining arguments regarding national jurisdiction and venue transfer are equally misguided. With regards to jurisdiction under Rule 4(k)(2), DCAG inexplicably argues that it does not have national U.S. contacts although its

cars are marketed and sold throughout the United States, it maintains corporate offices and other facilities through out the United States, it regularly makes use of the United States as a judicial forum, and its stock is traded in the United States. *See* Pl. Br. at 34-35. Notably, DCAG itself admits that it depends upon the U.S. for 45% of its annual revenue, ER-III at 195, and their vehicle sales account for nearly one percent of the U.S. gross domestic product. ER-III at 178. Having proudly disclosed these figures to the general public and its shareholders without any limitation or clarification, DCAG now seeks to attribute many of its national contacts to its subsidiaries. DCAG simply cannot have it both ways now to defeat a proper assertion of jurisdiction, and this Court should reject its attempt to do so.

DCAG's argument with regards to venue transfer are equally perplexing. First, the very case on which it relies, *World Skating Fed'n v. Int'l Skating Union*, 357 F. Supp.2d 661, 666 (S.D.N.Y. 2005), itself makes clear that a transfer of venue is appropriate to cure an alleged defect in personal jurisdiction, stating "[u]nder § 1406(a) [t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought. A court that does not have personal jurisdiction over the defendants may nonetheless transfer under the provision . . ." (citations omitted). The sole reason

why the court in that case refused to transfer venue was because the plaintiffs failed to offer sufficient minimum contacts in the other proposed jurisdictions, a situation completely distinguishable for the case herein. Here, Plaintiffs propose a transfer of venue to a jurisdiction where DCAG, by its own admission, maintains a principle place of business, namely Michigan. *See, e.g.,* ER-III at 412, 415 (stating "DaimlerChrysler is domiciled in Stuttgart, Germany and has dual operational headquarters: Stuttgart and Auburn Hills, Michigan, in the United States").[5] Notably, DCAG has been subject to suit in Michigan. *See, e.g., Taylor v. DaimlerChrysler AG*, 313 F. Supp.2d 703 (E.D. Mich. 2004); *In re DaimlerChrysler AG Securities Litigation*, 216 F.R.D. 395 (E.D. Mich. 2003). Accordingly, should this court find personal jurisdiction lacking over DCAG in California based on its own *de novo* review, it should reverse the District Court's

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[5] As indicated in Plaintiffs' Opening Brief, DCAG's contacts with Michigan go far beyond just having a headquarters located there. The Audit Committee of the Supervisory Board of DCAG also operates a Business Practices Office (BPO) in Michigan. ER-III at 214. The BPO is charged with ensuring that DCAG's Integrity Code, which governs the behavior of its employees worldwide, is enforced by each of its subsidiaries by accepting complaints of suspected accounting violations or violations of the Integrity Code. *Id.* DCAG also operates its GP&S division in Auburn Hills. ER-III at 258. DCAG's Investor Relations department held a "large number of one-on-one meetings in Auburn Hills" (emphasis added) so that "analysts, institutional investors, ratings agencies and private shareholders" would receive timely investment information and to raise funding for its operations. ER-III at 205.

decision on venue and transfer Plaintiffs' case to Michigan.

VIII. CONCLUSION

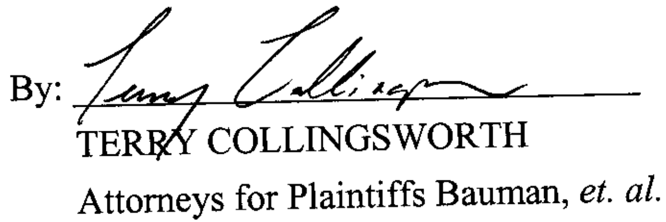
Wherefore all the foregoing reasons judgment should be reversed.

Dated: November 14, 2007

Respectfully Submitted,

INTERNATIONAL RIGHTS ADVOCATES;

DANIEL M. KOVALIK (UNITED STEELWORKERS); LAW OFFICE OF KIM E. CARD

By: 

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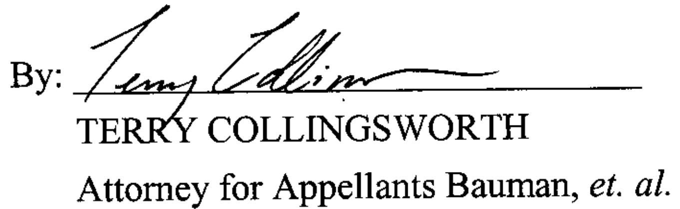
CERTIFICATE OF COMPLIANCE PURSUANT TO CIRCUIT RULE 32-1

I certify that Appellants' Reply Brief is proportionately spaced, has a typeface of 14 points, and contains 4694 words.

Dated: November 14, 2007

Respectfully Submitted,



By: ______________________

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PROOF OF SERVICE

I am a resident of Washington, D.C.; I am over the age of 18 years and not a party to the within action; my business address is 218 D Street, SE, Washington, D.C. 20003.

On November 14, 2007, I served the following documents described as: APPELLANTS' REPLY BRIEF, and APPELLANTS' SUPPLEMENTAL EXCERPTS OF RECORD on all interested parties in this action by mailing a true copy thereof enclosed in sealed envelopes via Federal Express mail, priority overnight, to the following addresses:

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