

Defendant, Westforth Sports, Inc. (“Westforth”), respectfully moves this Honorable Court to dismiss Plaintiff’s claims pursuant to 735 ILCS § 5/2-619 for lack of personal jurisdiction.¹ Westforth presents the affidavit of Earl Westforth and this memorandum in support of its motion.

INTRODUCTION

Before getting to the merits of Plaintiff’s claims and Westforth’s defenses, Plaintiff bears the burden of satisfying the threshold question of whether constitutional due process even allows this Court to entertain such. Neither claimed urgency nor other considerations permit jurisdictional prerequisites to be cast aside as Plaintiff has attempted to do by suing Westforth in Illinois.

Westforth, however, is an Indiana corporation with its principal place of business in Indiana. All of the activity about which Plaintiff complains involves retail firearm sales in Indiana to Indiana residents who provided valid, government-issued photo IDs proving their Indiana residency. The acts of anyone other than Westforth subsequent to such sales cannot create personal jurisdiction over Westforth, and as a result, Plaintiff’s claims must be dismissed.

STATEMENT OF FACTS

I. WESTFORTH IS ONLY “AT HOME” IN INDIANA.

Westforth is an Indiana corporation that has its principal and only place of business located in Gary, Indiana. *See*, Earl Westforth Affidavit, attached hereto as Exhibit A, ¶ 2. Westforth is a federally-licensed firearms retailer holding a Type 01 federal firearms license (“Type 01 FFL”), and has operated as a Type 01 FFL since its inception. *Id.*, ¶ 4. Westforth is licensed in and engaged in the business of selling firearms in Indiana, and every firearm Westforth has sold at retail – including

¹ The undersigned counsel appears solely for the purpose of opposing the State of Illinois’ exercise of jurisdiction over Westforth. All other defenses to Plaintiffs’ claims are expressly reserved and will be raised at the appropriate time in the appropriate court.

every sold as part of the specific transactions cited in Plaintiff's complaint – was sold in the State of Indiana. *Id.*, ¶ 5. Westforth sells firearms in Indiana and in compliance with the laws of the State of Indiana as well as all other federal and local laws and regulations. *Id.*, ¶ 9.²

II. WESTFORTH ONLY SELLS GUNS AT RETAIL IN INDIANA.

For every retail sale of firearms, Westforth's customers completed ATF Form 4473, and Westforth maintains an ATF Form 4473 for every retail firearm transaction as required under the GCA. *Id.*, ¶ 11. ATF Form 4473 requires that a retail purchaser of firearms declare, under penalty of perjury, his or her residence address and state of residence. *Id.*, ¶ 12. ATF Form 4473 also requires that an FFL examine a valid, government-issued photo ID that verifies the individual's residence information and to record the ID information on the form. ATF Form 4473 further requires an FFL to record information concerning the FBI/NICS background check that must be conducted prior to completion of nearly every retail firearm sale to a non-licensee. *Id.* As a Type 01 FFL licensed to do business in the State of Indiana, Westforth was permitted by law to sell firearms at retail only in the State of Indiana, and handguns only to Indiana residents. *Id.*, ¶ 13.

Westforth has never sold any handguns at retail to anyone other than a resident of the State of Indiana. *Id.*, ¶ 14. Westforth is permitted to sell long guns legally at retail to residents of other states only within the State of Indiana and only if such sales are legal both in Indiana and the purchaser's state of residence. *Id.*, ¶ 15. Under federal law, with limited exceptions, each purchaser must provide valid, government-issued photo I.D. showing the purchaser's name, date of birth, state of residence, and residence address. *Id.*, ¶ 16. For every retail sale of firearms, Westforth's customers provided

² Although ¶ 17 of Plaintiff's complaint alleges that "Westforth transacts business within the State of Illinois," it goes on to describe that business as retail sales at Westforth's retail counter (in Indiana) and descriptions online concerning what documentation is required for out-of-state individuals to make certain purchases at Westforth's retail counter (in Indiana). Plaintiff's baseless claim about Westforth transacting business in Illinois is a blatant attempt to craft a pleading inconsistent with its own allegations to somehow establish a basis for jurisdiction.

required I.D. verifying the purchaser's state of residence. *Id.*, ¶ 17. For every retail sale of firearms, Westforth's customers underwent FBI background checks ("FBI/NICS checks") as required under the GCA. *Id.*, ¶ 18. ATF Form 3310.4 is a report of the transfer of more than one handgun to a non-licensee in a five-day period. This form is required to be completed and submitted both to ATF as well as local law enforcement. 18 U.S.C. § 923(g)(3)(A); *Id.*, ¶ 19.

III. WESTFORTH'S ADVERTISING IS DIRECTED ONLY TO INDIANA.

Westforth maintains a passive, non-interactive website providing information about its location, hours and days of operation, and basic contact information. *Id.*, ¶ 20. After politicians and activists began frequently and publicly announcing how "easy" it was for Illinois residents to go to Indiana to purchase firearms, Westforth was inundated with a slew of inquiries, via telephone and otherwise, about what is required for Illinois residents to purchase firearms and/or ammunition. Westforth has only responded to such customer-initiated inquiries by providing accurate information concerning what those requirements are. *Id.*, ¶ 21. Westforth currently does not sell firearms to Illinois residents even if they come to Indiana and meet the requirements for a lawful purchase. *Id.*

The May 2018 Facebook posting by Westforth identified in Plaintiff's complaint notified veterans of a discount program offered by a manufacturer, the ad specifically acknowledged Westworth's inability to sell product under this program to non-Indiana residents, and merely offered to assist non-Indiana veterans in locating a participating dealer in their own states. *Id.*, ¶ 22. From January 2011 to the present, Westforth Sports has not advertised via radio or television media and has never targeted advertising to Illinois. *Id.*, ¶¶ 23-24. Westforth has purchased newspaper advertisements in Indiana on somewhere between ten and fifteen occasions in the last twenty years. *Id.*, ¶ 25. All of those advertisements were in an Indiana newspaper, the Times of Northwest Indiana

(the “Times”). *Id.* Of those, all but one was distributed only in Indiana. *Id.* Regarding the one Times advertisement that was distributed outside of Indiana, the Times had a special on a “full run” which covered the newspaper’s entire circulation area in northwest Indiana and included a small section in Illinois. *Id.* Westforth maintains two billboards, both of which are in the State of Indiana. The first is approximately two blocks away from Westforth’s premises and the other is approximately one mile away from Westforth’s premises. *Id.*, ¶ 10.

IV. WESTFORTH’S “ONLINE” PRESENCE IS INSIGNIFICANT.

For Westforth to transfer a firearm to a retail customer, that customer must come to Westforth’s retail location in Indiana and receive the transfer of the firearm in Indiana. *Id.*, ¶ 26. In addition to retail sales in Indiana, Westforth made occasional direct transfers of firearms directly to other FFLs pursuant to 27 C.F.R. § 478.94 on rare occasions. *Id.*, ¶ 27. The websites, theshootingstore.com and galleryofguns.com, are operated by other FFLs to advertise their product. *Id.*, ¶¶ 28-29. Westforth does not sell its own product through galleryofguns.com, but rather is merely listed as an FFL that a customer can select from which to receive ordered product in Indiana. *Id.* The website, gunsamerica.com, provides a platform to connect sellers of firearms with prospective buyers and facilitate transfer of those sales through FFLs where necessary. *Id.*, ¶ 30. Westforth does not sell its own product through gunsamerica.com, but rather is merely listed as an FFL that a customer can select from which to receive ordered product in Indiana. *Id.*

V. WESTFORTH’S SALES FULLY COMPLIED WITH ALL APPLICABLE LAW.

Regarding the transactions specifically addressed in Plaintiff’s complaint, every such transaction involved sale to an Indiana resident. *Id.*, ¶¶ 31, 38, 42, 46, 50, 54, 58, 62, 66, 70, 75, and 80. For each transaction specifically addressed in Plaintiff’s complaint, the purchasers, under

penalty of perjury and other consequences, indicated on multiple lines that they were Indiana residents and provided valid, government-issued photo identification as required under the Gun Control Act to prove their Indiana residence. *Id.*, ¶ 31. For each transaction specifically addressed in Plaintiff's complaint, all necessary forms, including ATF Form 4473 and ATF Form 3310.4, were properly completed and submitted. *Id.*, ¶ 31, Appendix pgs. 001-271. With the exception the transactions wherein Westforth participated in ATF's sting operations, for each transaction specifically addressed in Plaintiff's complaint, the purchaser passed the required FBI/NICS background check or else the statutory period expired prior to the transfer. *Id.*, ¶¶ 33, 39, 43, 47, 51, 55, 59, 63, 67, 71, 76, and 81-85. For each applicable transaction specifically addressed in Plaintiff's complaint, Westforth Sports timely submitted ATF Form 3310.4 under the Gun Control Act, thereby providing notification of the handgun purchases both to local law enforcement and the ATF. *Id.*, ¶¶ 35, 40, 44, 48, 52, 56, 60, 64, 68, 72, 77, 81, and 86.

VI. WESTFORTH COOPERATED WITH ATF STING OPERATIONS.

Certain transfers involving Jones, Thomas, and Magee were made only after consultation with ATF and the Office of the United States Attorney and only in a manner consistent with their instructions. *Id.*, ¶¶ 78, 82-85. For each transaction, Westforth made a notation at the time on the applicable 4473 Form. *Id.* Westforth identified the specific representatives of the United States government who consulted them regarding the sting operations and have attached correspondence acknowledging Westforth's cooperation and instructions. *Id.*, see also, Appendix pg. 272.

VII. ATF TRACE REQUESTS HAVE NO JURISDICTIONAL SIGNIFICANCE.

On occasion, FFLs receive firearm trace requests from ATF. *Id.*, ¶ 88. ATF advises that the existence of a trace does not mean that a firearm was used in a crime or recovered from or in

connection with a crime, but merely that the firearm has come to the attention of law enforcement. *Id.*, ¶ 89. When an FFL such as Westforth, receives a trace request from ATF, the FFL is provided no information either as to the reason for the trace or the location of the firearm. *Id.*, ¶ 90. If a firearm was recovered in Illinois, an FFL receiving a trace request would not receive that information, nor would the FFL be notified as to the jurisdiction initiating the request. *Id.*, ¶ 91.

ARGUMENT

Despite a bare allegation that “[t]his Court has personal jurisdiction over Defendant under 735 ILCS 5/2-209 because Westforth transacts business within Illinois,” the remainder of Plaintiff’s complaint – and reality – tell an altogether different story. It is Plaintiff’s burden to establish a *prima facie* basis upon which jurisdiction over Westforth can be exercised. *Aspen American Ins. Co. v. Interstate Warehousing, Inc.*, 2017 IL 121291, ¶ 12 (2017). Here, Plaintiff cannot meet that burden and its complaint should be dismissed.

I. ILLINOIS DOES NOT HAVE GENERAL JURISDICTION OVER WESTFORTH.

“General jurisdiction exists when the defendant’s general business contacts with the forum state are continuous and systematic.” *Russell v. SNFA*, 2011 IL App (1st) 093012, ¶24. Recently, the United States Supreme Court has dramatically limited the reach of general jurisdiction by declaring that a corporate defendant is subject to general jurisdiction only where the corporation’s place of incorporation or principal place of business is located, except in the most “exceptional” cases. *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011). Applying *Daimler*, the Illinois Supreme Court declined to find general jurisdiction where “there is no evidence that the defendant’s contacts with Illinois have rendered it

‘essentially at home’ in this state.” *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281, ¶ 21.³

In Illinois, jurisdiction exists over a defendant "doing business" in the state, regardless of whether the cause of action arises within Illinois. 735 ILCS 5/2-209(b)(4) (West 2014). The “doing business” requirement “is a very demanding standard for a plaintiff to meet.” *Wesly v. Nat’l Hemophilia Found.*, 2017 IL App 3d 160382, ¶ P25 (2017). “Courts must make a case-by-case determination on the unique facts presented when deciding whether a corporation’s activities are sufficiently permanent and continuous” to satisfy the standard. *Khan v. Van Remmen, Inc.*, 325 Ill. App. 3d 49, 54 (2nd Dist. 2001); *Cardenas Marketing Network, Inc. v. Pabon*, 2012 IL App (1st) 111645, ¶ 31 (“requires the nonresident corporation's business activity in Illinois to be carried on, not casually or occasionally, but with a fair measure of permanence and continuity.”); *Morgan, Lewis & Bockius LLP v. City of East Chicago*, 401 Ill. App. 3d 947, 953 (1st Dist. 2010) (requirement met only where “the foreign corporation has taken up residence in Illinois and, therefore, may be sued on causes of action both related and unrelated to its activities in Illinois”).

To illustrate what it meant by an “exceptional case,” the United States Supreme Court pointed to *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). *Daimler*, 571 U.S. at n. 19. In *Perkins*, the defendant corporation was forced to relocate temporarily from the Philippines to Ohio because of World War II. *Perkins*, 342 U.S. at 447-48. Ohio was thus "the center of the corporation's wartime activities" and, effectively, a "'surrogate for the place of incorporation or head office.'" *Daimler*, 571 U.S. at n. 8. (quoting Arthur T. von Mehren & Donald T.

³ Even before more recent U.S. Supreme Court guidance, Illinois courts were already clear that general jurisdiction could not be created by mere advertisement or solicitation in the state. *E.g.*, *Radosta v. Devil’s Head Ski Lodge*, 172 Ill. App. 3d 289 (1st Dist. 1988); *Cook Associates, Inc. v. Lexington United Corp.*, 87 Ill. 2d 190 (1981).

Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1144 (1966)). As such, the defendant corporation was subject to general jurisdiction in that state. *Perkins*, 342 U.S. at 448. Citing *Perkins*, Illinois courts have properly rejected efforts of plaintiffs to exercise jurisdiction beyond the truly “exceptional case” permitted in *Daimler*. E.g., *Aspen*, supra (warehousing and distributing product in Illinois and registering to do business in Illinois insufficient to meet “exceptional case” standard).

Plaintiff has alleged nothing even remotely approaching the type of “exceptional case” required for general jurisdiction to arise under *Daimler*, and general jurisdiction exists as to Westforth only in Indiana.

II. DUE PROCESS DOES NOT ALLOW ILLINOIS TO EXERCISE SPECIFIC JURISDICTION OVER WESTFORTH.⁴

The due process clause “gives a degree of predictability to the legal system that allows defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-472 (1985). Illinois courts may “exercise personal jurisdiction over an out-of-state defendant if the defendant has certain minimum contacts with [the state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Rios v. Bayer Corp.* 2020 IL 125020, ¶ 16 (quoting *Daimler*, 571 U.S. at 126). Here, subjecting Westforth to jurisdiction in Illinois would violate its Fourteenth Amendment right to due process.

⁴ Because the Illinois long-arm statute contains a “catch-all provision” which permits Illinois courts to exercise personal jurisdiction to the full extent allowed by the state and federal constitutions, and as neither the First District nor the Illinois Supreme Court has identified any substantive differences between the state and federal due process analyses, Westforth’s brief will follow the First District’s analysis in *Hernandez* and present only a federal due process analysis. *Hernandez v. Oliveros*, 2021 IL App (1st) 200032, ¶ 16 (citing *Kowal v.*

A. Plaintiff's Causes of Action Do Not Arise Out of or Relate to Westforth's Contacts with Illinois.

“Specific jurisdiction requires a showing that the defendant directed its activities at the forum state and the cause of action arose out of or relates to the defendant’s contacts with the forum state.” *See, Russell v. SNFA*, 2013 IL 113909, ¶ 40 (emphasis added) (citing *Burger King*, 471 U.S. at 472). “Under specific jurisdiction, a nonresident defendant may be subjected to a forum state’s jurisdiction based on certain ‘single or occasional acts’ in the state but only with respect to matters related to those acts.” *Id.* (quoting *Goodyear* 564 U.S. at 919) (“[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.”). “For specific jurisdiction, a defendant’s general connections with the forum are not enough.” *Bristol-Myers Squibb Co. v. Superior Court of Cal. San Francisco Cty.*, 137 S. Ct. 1773, 1781 (2017).

Here, Plaintiff’s claims relate to and arise out of its assertion that “Westforth feeds the market by knowingly selling its products to an ever-changing roster of gun traffickers and straw (sham) purchasers who transport Westforth’s guns from Indiana to Chicago” and that “guns are frequently brought into Chicago from Indiana and Wisconsin – two neighboring states that have significantly weaker gun laws.” Complaint, attached hereto as Exhibit B, at ¶¶ 1, 28. Thus, while Westforth categorically denies Plaintiff’s claims, they all relate to transfers direct to consumers in Indiana, not transfers in Illinois or to FFLs in Illinois or anywhere else. Accordingly, to the extent that Westforth has transferred firearms to other FFLs around the country and in Illinois (who would, in turn, handle the first retail to transfer in their own state or else transfer the firearm to another FFL, law enforcement agency, etc. applying Illinois requirements, etc.), Plaintiff’s claims do not

Westchester Wheels, Inc., 2017 IL App (1st) 152293, ¶ 17); *Cori v. Schlafly*, 2021 IL App (5th) 200246, ¶ 21;

relate to transfers by Illinois FFLs who obtained firearms from Westforth, and such are irrelevant for assessing specific jurisdiction.

B. Westforth Lacks Sufficient Minimum Contacts with Illinois to Reasonably Anticipate Being Haled Into Court There.

To establish jurisdiction, Plaintiff has the burden of showing that the conduct that it complains of – retail sales in Indiana – satisfy the minimum contacts requirement of constitutional due process. “In determining whether minimum contacts exist, the court considers ‘the relationship among the defendant, the forum and the litigation.’” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984). To establish minimum contacts, Westforth’s conduct must have been purposely directed towards Illinois. *Burger King*, 471 U.S. at 474-476. Thus, to satisfy due process, contacts with the forum must lead a defendant to “reasonably anticipate being haled into court there” relative to those transactions. *World-Wide Volkswagen Corp.*, 444 U.S. 286, 295-297 (1980).

1. Only Westforth’s contacts with Illinois are of jurisdictional significance.

In *Walden v. Fiore*, 134 S. Ct. 1115 (2014), the U.S. Supreme Court addressed the Constitutional due process considerations that must be satisfied before a court may exercise personal jurisdiction over an out-of-state defendant. Specifically, noting that “[t]he Due Process Clause of the Fourteenth Amendment constrains a State’s authority to bind a nonresident defendant to the judgment of its courts,” the court in *Walden* focused on the limits of specific jurisdiction and the necessary “minimum contacts” analysis to create specific jurisdiction. What the court in *Walden* highlighted was that it is only a particular defendant’s contacts with the forum state – not those of other individuals – upon which specific jurisdiction may be based.

If no part of a defendant’s course of conduct occurred in the forum state and the defendant

Russell v. SNFA, 2013 IL 113909, ¶ 32.

formed no jurisdictionally relevant contacts with that forum, the minimum contacts prerequisite to the exercise of jurisdiction over that defendant are lacking. *Walden*, at syllabus. Due process requires a showing that a defendant’s relationship with the forum “arise out of contacts that the ‘defendant himself’ creates with the forum State,” as “[d]ue process limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant – not the convenience of plaintiffs or third parties.” *Id.* at 1122. No matter how significant others’ contacts with the forum state, “those contacts cannot be ‘decisive in determining whether the due process rights are violated.’” *Id.* It is a defendant’s contacts that matter, “not the defendant’s contacts with persons who reside there.” *Id.*

Ultimately, *Walden* emphasizes that the only determinative and decisive factor for the court’s constitutional due process analysis is whether Westforth itself had sufficient contacts of jurisdictional significance with Illinois to reasonably anticipate being haled into court there. That consumers from Illinois – or any other state for that matter – may travel to Indiana to visit Westforth and purchase product from it there is not of jurisdictional significance. That Indiana residents – like those named in Plaintiff’s complaint – allegedly illegally sold firearms in Illinois is also not of jurisdictional significance. All that matters under *Walden* is the extent of Westforth’s contacts within Illinois relative to Plaintiff’s alleged injury. Here, of course, there were none.

2. **Placing a product in the stream of commerce, by itself, cannot support a finding of jurisdiction.**

Merely placing a product into commerce, without expecting that it will be purchased by consumers in a given forum, is not enough to establish the purposeful activity towards the forum state required for the exercise of personal jurisdiction. *Asahi Metal v. Sup. Ct. of Calif.*, 480 U.S. 102, 112 (1987); *World-Wide Volkswagen*, 444 U.S. at 297-298. Instead, there must be “some act by which the defendant purposely avails itself of the privilege of conducting activities with the forum

State, thus invoking the benefits and protection of its laws.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Here, all of Plaintiff’s claims relate to sales at a retail store in Indiana to individuals who provided Indiana government identification showing Indiana residency and certified under penalty of perjury that they were Indiana residents. As Westforth is an out-of-state retailer doing business solely in the State of Indiana, Illinois cannot exercise personal jurisdiction over it relative to the sales about which Plaintiff complains without violating its Fourteenth Amendment right to due process.

3. Referral of business elsewhere is not sufficient to establish jurisdiction.

Plaintiff cites a May 2018 Facebook posting by Westforth directing prospective out-of-state purchasers to other dealers because it cannot sell certain product to them. That advertisement, notifying veterans of a discount program offered by a manufacturer, appeared as follows:



Of course, the discount program offered by Glock, a manufacturer, applied to pistols which, as

discussed above, cannot be sold by an FFL to a resident of another state. Thus, the ad specifically acknowledges Westforth's inability to sell product under this program to non-Indiana residents and merely offers to assist non-Indiana veterans in locating a participating dealer in their own states.

To the extent that Plaintiff relies on Westworth's May 2018 Facebook posting to somehow create jurisdiction presumably everywhere in America, such is entirely unsupported by the law.⁵

C. A Firearm Trace Has No Jurisdictional Significance.

Plaintiff's complaint alleges that certain firearms were "traced" by ATF, but fails to tell the Court that an FFL receiving a firearm trace would not receive information about the location of the firearm or circumstances giving rise to the trace. A firearm trace is initiated by request to ATF from a law enforcement agency for *bona fide* law enforcement purposes through the submission of a trace request to ATF. 18 U.S.C. § 923(g)(7). Upon receipt of a valid trace request, the ATF's Tracing Center begins the process of contacting licensees by first contacting the manufacturer or importer, and then the wholesaler, retailer, and any other licensees in the chain of distribution. ATF's sole inquiry to each licensee is the same, namely, to whom did they transfer the firearm. ATF continues to inquire down the chain of distribution until it can identify the first non-licensee retail purchaser. Each licensee is required by law to keep an acquisition and disposition record, from which the licensee should be able to answer the trace request. *See*, 18 U.S.C. § 923(g)(1)(A). The licensee is not required to keep any record of the trace request it receives from ATF.

⁵ Selling product even on an auction website to an out-of-state purchaser is not sufficient to support a finding of jurisdiction. *See, e.g., MacNeil v Trambert*, 401 Ill. App. 3d 1077, 1082 (3rd Dist. 2010) (seller had no control over who ultimately purchases an item and in which state they reside); (citing *Foley v. Yacht Management Group, Inc.*, 2009 U.S. Dist. LEXIS 58441 (N.D. Ill July 9, 2009)). This, of course, makes sense, otherwise making sales on any website where the customer's residence is not known until the time of the purchase would potentially subject a seller to surprise jurisdiction only to be known when the buyer had accepted the offer of sale. A true auction website is virtually indistinguishable from a non-bidding website or an auction website with a "buy it now" function. Thus, sales to customers through online means — and which would necessarily be transferred to an FFL in the customer's home state for that FFL to make the retail transfer to an end user — even

ATF provides only the serial number of the weapon it is seeking to trace. ATF does not provide the licensee with any information concerning the location of the law enforcement agency originating the trace, the reason for the request, or even if the firearm being traced had anything to do with, let alone was used in, a crime. For example, if the police cannot read a digit of the serial number on a gun, they may trace all ten guns bearing numbers 0-9 for that digit of the serial number. Each licensee, such as Westforth, knows only its piece of information in the chain of distribution.

Thus, the mere fact that a firearm was traced provides no usable information to an FFL for knowing where or how that firearm came to the attention of law enforcement.

D. Exercise of Personal Jurisdiction Over Westforth Sports Would Violate Traditional Notions of Fair Play and Substantial Justice.

Even if a defendant has the necessary minimum contacts with the forum state, the assertion of personal jurisdiction over him will still violate the due process clause of the Fourteenth Amendment unless it comports with "traditional notions of fair play and substantial justice." *See, Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). This test centers on whether it is reasonable to exercise personal jurisdiction over the defendant given the circumstances of the particular case, and five factors are considered in making this determination:

- 1) the burden that the exercise of jurisdiction will impose on the defendant;
- 2) the interests of the forum state in adjudicating the case;
- 3) the plaintiff's interest in obtaining convenient/effective relief;
- 4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and
- 5) the shared interest of the states in furthering fundamental social policies.

if directly related to an alleged in-state harm, would not be sufficient to establish sufficient minimum contacts.

Burger King, 471 U.S. at 477 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

1. **The exercise of jurisdiction by Illinois would impose a substantial burden on Westforth.**

Although other factors may sometimes be considered in determining whether the exercise of personal jurisdiction over a defendant in a case is reasonable, the primary concern is always the burden on the defendant. *World-Wide Volkswagen*, 444 U.S. at 292. Here, Westforth is an Indiana corporation doing business exclusively in the state of Indiana. Requiring it to litigate this case in Illinois – a state with which it has no connection whatsoever – imposes an unreasonable burden on it. Not only this, but every transaction identified in Plaintiff’s complaint took place in Indiana, just as every purchaser identified in Plaintiff’s complaint was an Indiana resident. Presumably, should Plaintiff’s claims survive to be heard on their merits, the parties would not even be able to compel the appearance of any witnesses to the very transactions about which Plaintiff complains as they are all in Indiana.

2. **A penalty judgment in favor of the City of Chicago would not be entitled to full faith and credit for enforcement in Indiana.**

Finally, to the extent that Plaintiff believes its claims and requested remedies are meritorious and worth pursuing, it ought to want to pursue them in Indiana rather than Illinois. The State of Illinois has no legitimate interest in utilizing court resources for Plaintiff to pursue a judgment in Illinois that would almost certainly be unenforceable against Westforth in Indiana. Specifically, as Plaintiff is not a private individual and the award obtained is penal in nature, the Courts of the State of Indiana are precluded from enforcing the foreign jurisdiction’s strictly penal judgment. *E.g.*, *Cap Gemini America, Inc. v. Judd*, 1992 Ind. App. LEXIS 1312, *32-33 (1st Dist. 1992); (citing *Huntington v. Attrill*, 146 U.S. 657, 669 (1892)); *Nelson v. George*, 399 U.S. 224, 229 (1970); *City*

of Oakland v. Desert Outdoor Adver., Inc., 127 Nev. 533, 543 (2011) (California municipal ordinance creating public penalty to abate alleged nuisance deemed unenforceable by Nevada Supreme Court applying *Huntington*).

Penal judgments – just like the one sought by Plaintiff – are those intended “to punish an offense against the public justice of the foreign state.” *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1219-1220 (9th Cir. 2006). Thus, it “is not by what name the statute [on which the judgment is based] is called by the legislature or the courts of the State in which it was passed, but whether it appears to the tribunal which is called upon to enforce it to be, in its essential character and effect, a punishment of an offense against the public, or a grant of a civil right to a private person.” *Id.* (citing *Huntington*, 146 U.S. at 682).

Here, Plaintiff’s claims under the cost-recovery statute are undeniably “penal” and unenforceable against an Indiana defendant. Moreover, Plaintiff’s other claims are likewise penal in their effect as they seek to punish Westforth for an alleged public offense causing public harm, and the State of Indiana is not required to enforce the City of Chicago’s public policy to the detriment of one of its own citizens. Accordingly, an order from this Court granting any of the relief Plaintiff is seeking would be for naught as it would not be enforceable in Indiana against Westforth.

WHEREFORE, for the reasons set forth above, Defendant, Westforth Sports, Inc., respectfully requests that this Court dismiss Plaintiff’s complaint for lack of personal jurisdiction, and also award any further relief deemed just and appropriate.

Dated: Chicago, Illinois
August 16, 2021

Respectfully submitted,

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