

“currently” sell guns to Illinois residents at its store and only “occasional[ly]” ships them into Illinois for customers there. *Id.* at 3-4.

To rebut these arguments, the City sought discovery under Supreme Court Rule 201(l), asking Westforth to disclose its transaction records with *the rest* of the traffickers identified by the City—not just the ones that Westforth chose to feature in exhibits to its motion. The City also requested that Westforth produce records of its sales to Illinois customers, in order to evaluate and test the self-serving characterizations of these transactions in Westforth’s motion. Yet Westforth objects to this discovery as irrelevant and unduly burdensome, despite raising these very issues in its own brief. Westforth cannot simultaneously rely on these documents and assertions to argue that Illinois courts lack jurisdiction, but then refuse to produce them in jurisdictional discovery.

The parties attempted to resolve these issues under Rule 201(k) but are at an impasse. The City therefore respectfully requests that the Court order Westforth to produce (a) the balance of its transaction records with known traffickers identified by the City and (b) certain limited records of its sales to Illinois customers.

STATEMENT OF FACTS

The City alleges that Westforth creates a public nuisance by “knowingly selling its products to an ever-changing roster of gun traffickers and straw (sham) purchasers who transport Westforth’s guns from Indiana into Chicago.” Compl. ¶ 1. As of the day the complaint was filed, the City had identified “at least 40 separate purchasers who have since been charged with federal firearms crimes in connection with their transactions at the store.” *Id.* ¶ 52. This number has since grown to 49 known federal criminal prosecutions for straw purchasing and related crimes involving gun purchases at Westforth. The complaint specifically discusses fourteen traffickers as examples, but also makes clear that *all* of Westforth’s transactions with traffickers are potential

bases for both liability and for personal jurisdiction, as *all* are evidence of Westforth's willingness to violate federal law in order "to access the lucrative criminal secondary market for firearms in Chicago." *Id.* In addition to alleging knowing illegal sales to traffickers, the complaint also asserts that Westforth engages in marketing that targets Illinois customers, *id.* ¶ 17, sells guns to Illinois residents at its retail location, *id.* ¶ 18, ships firearms into Illinois for delivery to Illinois customers via Illinois gun dealers, *id.* ¶ 21, and has previously violated federal law by transferring guns to Illinois residents without observing the waiting period required by Illinois law, *id.* ¶ 20.

Westforth moved to dismiss the complaint for lack of personal jurisdiction. Westforth contends that all of the transactions at issue involve "Indiana residents who provided valid, government-issued photo IDs proving their Indiana residency," and thus do not comprise purposeful conduct directed at Illinois. Westforth MTD, at 1. Westforth also appears to concede selling firearms to Illinois residents at its retail counter but says that it does not "currently" do so. *See id.* at 3 (*citing* Westforth Aff., ¶ 21). In addition, Westforth admits selling to customers through other gun stores "on rare occasions," but does not say how often these sales involve Illinois customers or gun stores. *Id.* at 4 (*citing* Westforth Aff., ¶ 27).

Westforth's motion is accompanied by a 91-paragraph affidavit of owner Earl Westforth, and approximately 273 pages of transaction records with the fourteen traffickers that the complaint identifies by name. Westforth's motion generally attaches two types of transaction records: (1) ATF Form 4473s, which are firearms transaction records completed each time Westforth sells a firearm; and (2) ATF Form 3310.4s, which are reports of multiple handgun sales required each time Westforth sells more than one handgun to a customer within a five-day period.

At a status conference, the parties agreed to conduct limited discovery on the issue of personal jurisdiction pursuant to Illinois Supreme Court Rule 201(l). *See* Aug. 24, 2021 Order, at

1. The City then served document requests and interrogatories, three of which remain outstanding for purposes of this motion. Request for Production No. 1(a) and (b) seeks transaction records for all 49 of the traffickers identified by the City, and enumerates them by name in its defined terms. *See* Plaintiff’s First Set of Personal Jurisdiction Requests for Production of Documents to Defendant Westforth Sports, Inc. at 6 (“RFPs”), attached as **Exhibit A**. RFPs No. 1(c), 3, and 7 collectively request records pertaining to Westforth’s sales to Illinois customers (both over the counter and via other gun stores). *See id.* at 6-7.

With respect to RFP No. 1(a) and (b), Westforth produced the same transaction records previously filed as exhibits to its motion to dismiss, plus sales receipts and excerpts from its log book (also known as an “Acquisition and Disposition book” or “A&D book”) for these transactions. *See* Westforth Sports, Inc.’s Responses to Plaintiff’s First Set of Personal Jurisdiction Requests for Production of Documents (“Westforth Responses”), at 4, attached as **Exhibit B**. However, it has refused to produce any records relating to traffickers beyond the fourteen mentioned by name in the complaint, objecting on the basis of relevance and undue burden. *See id.* Westforth has provided no reason as to why the first fourteen traffickers are relevant to jurisdiction, but the remaining 35 are not. Similarly, the fact that Westforth sold guns to a lot of traffickers certainly cannot be a reason to bar disclosure.

With respect to RFPs No. 1(c), 3, and 7 (pertaining to records of Illinois sales), the City has offered to narrow these requests to only log book entries for three years of sales and has agreed to forgo all other transaction records associated with these sales. *See* Oct. 19, 2021 Ltr. to T. Rudd, at 2-3, attached as **Exhibit C**. However, Westforth has refused to produce a single document. Instead, Westforth has offered to count annual handgun and long gun-shipments to Illinois as well as in-store transactions with Illinois residents using its A&D books, and to disclose these aggregate

figures—but not the underlying records. *See* Oct. 22, 2021 Ltr. to J. Miller, at 3, attached as **Exhibit D**; *see also* Nov. 2, 2021 email correspondence, attached as **Exhibit E**. This option would prevent the City from conducting its own analysis and review of Westforth’s Illinois sales.

The parties met and conferred multiple times on these issues but are at an impasse. *See* Ex. E.

ARGUMENT

Rule 201(l)(1) provides that, during the pendency of a motion to dismiss for lack of personal jurisdiction, a plaintiff may take discovery “on the issue of the court’s jurisdiction over the person of the defendant[.]” Ill. Sup. Ct. R. 201(l)(1). Under the backdrop of Rule 201, “the scope of information considered ‘relevant’ under [the Illinois Supreme Court’s] discovery rules is expansive, including not only evidence that would itself be admissible at trial, but also information leading to the discovery of admissible evidence.” *Kunkel v. Walton*, 179 Ill. 2d 519, 531 (1997). Taken together, this means that the City is entitled to take discovery that is either relevant to personal jurisdiction or that is reasonably calculated to lead to the discovery of such information. As explained below, both categories of requested discovery easily clear this threshold of relevance to personal jurisdiction and thus should be produced.

In addition, both types of discovery sought by the City specifically address arguments and questions of fact that Westforth has raised its motion to dismiss. *See* Westforth MTD, at 1 (citing transaction records with certain straw purchasers as evidence of residence); *see also id.* at 3-4 (contesting timing and volume of sales to Illinois residents). Where, as here, a “plaintiff requests discovery on the issues raised [in a defendant’s limited appearance to contest personal jurisdiction], the trial court, pursuant to the provisions of Supreme Court Rule 201(l), *must allow that inquiry.*” *Falstad v. Falstad*, 152 Ill. App. 3d 648, 655 (1st Dist. 1987) (emphasis added)

(reversing denial of discovery into service of process, where defendant contested service in special appearance). Indeed, “a trial court should not refuse a discovery request and grant a motion to dismiss where it reasonably appears discovery might assist the party resisting the motion.” *Yuretich v. Sole*, 259 Ill. App. 3d 311, 317 (4th Dist. 1994). The City is thus entitled to the requested discovery for the additional reason that the discovery bears directly on arguments raised in Westforth’s motion.

A. Westforth’s Transaction Records With Traffickers and Straw Purchasers Should Be Disclosed.

Westforth’s transaction records with the 49 known traffickers and straw purchasers are relevant to personal jurisdiction because they are evidence that Westforth knew it was selling guns to individuals who were not buying the guns for themselves, but for the purpose of trafficking the guns to others. If Westforth can rely on these transaction records to argue that the person completing the form was an Indiana resident, then certainly the City should be able to rely on the same documents to show that Westforth knew *that the person completing the form was not the actual purchaser of the gun*. By way of example, the limited number of transaction records produced so far document numerous red flags that Westforth ignored, including that some of the customers first indicated that they were not the actual buyers of the guns and that at least one of the buyers first indicated that he lived in Illinois. *See, e.g.*, Westforth MTD Ex. A-3, at 076; Westforth MTD Ex. A-7, at 203; Westforth MTD Ex. A-8, at 239. In yet another instance, the correspondence kept alongside the transaction records shows that Westforth participated in an ATF sting operation in which it was told that a group of buyers was attempting to traffic firearms to gang members on the west side of Chicago. *See* Westforth MTD Ex. A-8, at 273.

Evidence that Westforth knowingly sold firearms to straw purchasers and traffickers in violation of federal law is relevant to several theories of personal jurisdiction. It is evidence that

Westforth knowingly places guns into an illegal “stream of commerce,” effectively using the straw purchasers to access and sell into criminal markets that Westforth cannot sell into directly. Where a defendant sells its products into Illinois via the stream of commerce, it can be subject to jurisdiction there even where the defendant “denie[s] specific knowledge of the final destination of its [products].” *Russell v. SNFA*, 2013 IL 113909, ¶ 13. Separately, it also establishes elements of the “effects test” theory of jurisdiction, because it shows that Westforth engages in knowing and illegal conduct whose foreseeable effects are felt only a few miles across the border, in Chicago. See *Innovative Garage Door Co. v. High Ranking Domains, LLC*, 2012 IL App (2d) 120117, ¶ 23 (explaining that “conduct is purposefully directed at a state where (1) the conduct at issue is intentional; (2) it is expressly aimed at the forum state; and (3) the defendant is aware that its effects will be felt in the forum state”). Under either theory, the City is entitled to Westforth’s transaction records with the balance of the known straw purchasers, not just the fourteen that Westforth has disclosed to date.

In addition, disclosure of these records is reasonably calculated to lead to the discovery of evidence relevant to personal jurisdiction. For example, the transaction forms contain the serial numbers of the guns sold, which will enable the City to determine exactly how many of these guns were used in crimes in Chicago. And the transaction forms also identify which Westforth employees took part in each transaction. Determining the identity of these employees will allow the City to depose them about other factors (such as conversations with the buyer, or the buyers’ conduct while in the store) that could have put Westforth on further notice of straw purchasing, trafficking to Chicago, or both.

Westforth may argue that the transaction records alone do not establish the store’s knowledge that straw-purchased guns were bound *for Chicago specifically*, given the traffickers’

presentation of Indiana identification. *See* Westforth MTD, at 1. But this argument mistakes relevance to personal jurisdiction with sufficiency: the records here are clearly relevant even if a given record may not, on its own, suffice to establish personal jurisdiction.

Finally, contrary to Westforth's objections, production of these records does not constitute an undue burden. Westforth has already produced transaction records for 14 straw purchasers, covering approximately 123 firearm sales. While 35 straw purchasers remain outstanding, these individuals are known to have an additional 118 firearms, according to federal criminal filings—a number roughly equivalent to Westforth's initial production.

B. A&D Records of Westforth's Sales to Illinois Residents Are Relevant to Personal Jurisdiction.

Westforth's transaction records with Illinois customers are also relevant to personal jurisdiction, and therefore discoverable. Westforth sells firearms to Illinois residents in at least two ways: (1) by selling "long guns" (meaning rifles and shotguns) to them at its retail counter, *see* Westforth MTD, at 2, and (2) by shipping guns (of all types) into Illinois where the final transfer to the Illinois customer takes place at an Illinois gun store, *see id.* at 4.¹ In its objections, Westforth argues that these sales are not relevant to specific jurisdiction because none of the straw purchases underlying the alleged public nuisance are known to involve firearms obtained this way. *See* Westforth Responses, at 1-2 (Ex. B). Westforth's arguments are incorrect for a number of reasons.

First, and perhaps most importantly, Westforth explicitly relied on the supposed absence of Illinois sales in its motion to dismiss. *See* Westforth MTD at 3-4 (claiming that the store does not "currently" sell to Illinois residents and that it only sells guns through in-state dealers "on rare

¹ It is illegal under federal law to sell handguns over the counter to out-of-state residents. 18 U.S.C. § 922(b)(3).

occasions.”). It cannot put these assertions forward as a basis to avoid jurisdiction and then prevent the City from verifying their accuracy.

Second, the Supreme Court of the United States has explicitly rejected the narrow interpretation of specific jurisdiction that Westforth relies on. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021) (rejecting “causation-only” approach to specific jurisdiction, and examining out-of-state defendant’s contacts with forum even where allegedly defective product was sold in a different state). As the Supreme Court has explained, “[n]one of our precedents has suggested that only a strict causal relationship between the defendant’s in-state activity and the litigation will do.” *Id.* In *Ford*, the Supreme Court analyzed the defendant’s extensive connections with the forum state before determining that the state had jurisdiction. *Id.* at 1028-29. This is exactly the type of documents that Westforth has refused to produce.

In addition, Westforth’s Illinois contacts go towards establishing that it is reasonable to make Westforth litigate in Illinois, which is a component of due process when assessing specific jurisdiction. *See Keller v. Henderson*, 359 Ill. App. 3d 605, 613 (2d Dist. 2005). Illinois courts have considered a foreign defendant’s contacts with Illinois as part of their specific jurisdiction analysis even where those contacts are not causally related to plaintiff’s injury. *See, e.g., Russell*, 2013 IL 113909, ¶ 91 (assessing defendant’s ongoing business relationship with Illinois company as part of specific jurisdiction analysis, despite defective product having been introduced into Illinois by a separate and unrelated company); *see also Levy v. Gold Medal Prods. Co.*, 2020 IL App (1st) 192264, ¶ 51 (California manufacturer subject to personal jurisdiction in Illinois where, among other things, it regularly sold products to other Illinois customers besides the one through which plaintiff was injured). Because Westforth’s Illinois sales are part of the due process analysis for personal jurisdiction, they are subject to discovery under Rule 201(1) and must be disclosed.

Perhaps recognizing the clear relevance of the requested documents, Westforth has offered to disclose certain information about its annual sales to Illinois customers from the A&D records, but not to disclose the records themselves. *See* Nov. 2, 2021 email correspondence (Ex. E). But the City propounded document requests for these records because it is the only approach that allows the City to perform its own analysis and determine what information from these records would best assist the Court in assessing Westforth’s Illinois contacts. In light of Rule 201(b)(1)’s instruction that “a party may obtain by discovery *full disclosure* regarding any matter relevant to the subject matter involved in the pending action,” disclosure of the underlying records is appropriate. *See* Ill. Sup. Ct. R 201(b)(1). Moreover, the burden of reviewing and producing the relevant A&D records—as opposed to reviewing and then summarizing certain information gleaned from them—is likely only incremental. The City is entitled to full discovery of this relevant information in its original form, as requested. Westforth should be ordered to turn over its A&D records of sales to Illinois customers so that the City—and ultimately, this Court—can properly assess the scope of Westforth’s contacts with Illinois.

CONCLUSION

For the foregoing reasons, the City of Chicago respectfully asks that the Court issue an order compelling Westforth to produce documents responsive to Requests 1, 3, and 7 concerning its transactions records with the remaining known straw purchasers, and its A&D records for sales to Illinois customers and transfers to Illinois gun stores.

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Respectfully submitted,

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