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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

CITY OF CHICAGO, an Illinois)
Municipal Corporation,)
)
Plaintiff,)
)
-vs-)
WESTFORTH SPORTS, INC.,)
)
Defendant.)
)

Case No.: 2021 CH 01987
Judge: Sophia H. Hall

**DEFENDANT’S RESPONSE IN OPPOSITION TO
PLAINTIFF’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

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Now comes Defendant, Westforth Sports, Inc., to respectfully submit the following response in opposition to Plaintiff's motion to compel. Westforth moved the Court to dismiss Plaintiff's claims for lack of personal jurisdiction, and only discovery relevant to that issue should be permitted. Since Plaintiff's requested discovery is not, Plaintiff's motion should be denied.

INTRODUCTION

Westforth is an Indiana corporation with its principal place of business in Indiana. It happens to be a large firearms dealer near the state line. All of the activity about which Plaintiff complains, however, involves retail firearm sales in Indiana to Indiana residents who provided valid, government-issued photo IDs proving their Indiana residency. Specifically, Plaintiff alleges 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, ¶ 1, 28. Thus, it is these theories -- Plaintiff's theories -- that must necessarily drive this Court's consideration of Westforth's motion to dismiss, Plaintiff's discovery requests and motion to compel, and indeed, this entire case.

For Illinois to exercise specific jurisdiction over Westforth on Plaintiff's claims, Plaintiff has the burden of not only showing sufficient minimum contacts between Westforth (rather than some third party) and Illinois, but also of proving that its claims either arise from or relate to those contacts. Its jurisdictional theory seems to be that Westforth is close to Illinois and firearms sold to in Indiana to Indiana residents sometimes end up in Illinois.¹ That, of course, is not a legally sufficient basis for personal jurisdiction or discovery about it.

¹ Thus, for example, Plaintiff's requested discovery into transfers of firearms to Illinois FFLs for subsequent transfer in Illinois under Illinois law cannot possibly move the needle for jurisdictional purposes here.

ARGUMENT

This Court should deny Plaintiff's motion to compel because the information and documents Plaintiff seeks are irrelevant and will not lead to the discovery of relevant, admissible evidence. "[T]he right to discovery is limited to disclosure of matters that will be relevant to the case at hand in order to protect against abuses and unfairness, and a court should deny a discovery request where there is insufficient evidence that the requested discovery is relevant or will lead to such evidence." *Youle v. Ryan*, 349 Ill. App. 3d 377, 380-381 (4th Dist. 2004). It is the duty of this Court to determine whether evidence is discoverable, and where the requested evidence is so broad that it is not calculated to discovering relevant evidence, the request should be denied. *Green v. Lake Forest Hosp.*, 335 Ill. App. 3d 134, 139 (2nd Dist. 2002); *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 658-659 (1st Dist. 2002) (upholding denial of discovery because relevance was not established and was essentially a "fishing expedition").

I. THE EXERCISE OF SPECIFIC JURISDICTION OVER WESTFORTH REQUIRES A SHOWING OF MINIMUM CONTACTS RELATING TO PLAINTIFF'S CLAIMS.

A. Specific Jurisdiction Arises Only Out Of Activities Purposefully Directed To The Forum And Only As To Claims Directly Related To Those Activities.

"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." *Russell v. SNFA*, 2013 IL 113909, ¶ 40 (emphasis added) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). "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 Dunlop Tires Operations S.A. v. Brown*, 564 U.S. 915, 919 (2011)) ("[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).

“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 own 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 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 thus 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 [in the forum state].” *Id.*²

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, which it did not. 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.

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

² Here, while Plaintiff’s theories do not relate to any contacts of Westforth with Illinois, Plaintiff does not know how many guns that were actually recovered in the city even got there. Who took them to Chicago, when, and under what circumstances? By definition, however, it was someone other than Westforth, and the circumstances behind a gun being recovered in Chicago present a chasm that Plaintiff understandably ignores. Furthermore, many of the guns mentioned in Plaintiff’s complaint have never been recovered, there is no evidence establishing that these guns are in Illinois as compared to any number of nearly infinite possibilities.

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.

B. The Ford Case Does Not Reduce Plaintiff’s Burden.

Plaintiff cites the United States Supreme Court’s recent decision in *Ford Motor Co.* for the proposition that the Court has rejected a “causation-only” approach to specific jurisdiction contacts analysis. While Westforth’s objections are not even based upon such an approach, and while *Ford* did in fact reject such an approach, of importance to Westforth, what the Court in *Ford* actually did was re-emphasize the disjunctive nature of the “arise out of or relate to” standard for specific jurisdiction minimum contacts. Here, it is precisely the “relate to” component that Plaintiff must show for its requested discovery to have any jurisdictional significance.³

1. Ford merely emphasizes the centrality of the “related to” analysis.

Noting that “Ford has a veritable truckload of contacts with Montana and Minnesota,” the Court noted that while the specific injury did not directly arise out of the company’s contacts with the forum jurisdiction, specific jurisdiction could still be exercised where the claims relate to those contacts:

Here, resident-plaintiffs allege that they suffered in-state injury because of defective products that Ford extensively promoted, sold, and serviced in Montana and Minnesota.

³ Not even Plaintiff would argue that its purported harms “arise from” Westforth’s actual contacts with Illinois. The dispute for discovery purposes is whether its purported harms “relate to” those contacts. They do not.

Ford Motor Co. v. Mont. Eighth Judicial Dist. Court., 141 S.Ct. 1017, 1033 (2021). The nature of Ford’s contacts with the forum states were extensive and unquestionably “related to” the claims:

By every means imaginable – among them, billboards, TV and radio spots, print ads, and direct mail – Ford urges Montanans and Minnesotans to buy its vehicles, including (at all relevant times) Explorers and Crown Victorias. Ford cars – again including those two models, are available for sale, whether new or used, throughout the States, at 36 dealerships in Montana and 84 in Minnesota. And apart from sales, Ford works hard to foster ongoing connections to its cars’ owners. The company’s dealers in Montana and Minnesota (as elsewhere) regularly maintain and repair Ford cars, including those whose warranties have long since expired. And the company distributes replacement parts both to its own dealers and to independent auto shops in the two States. Those activities, too, make Ford money. And by making it easier to own a Ford, they encourage Montanans and Minnesotans to become lifelong Ford drivers.

* * * *

Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States. So there is a strong “relationship among the defendant, the forum, and the litigation” – the “essential foundation” of specific jurisdiction.

Id., at 1028-1029.⁴ Thus, irrespective of causation, only contacts of the defendant with the forum state that relate to the matter at hand can be used to establish specific jurisdiction under *Ford*.

2. **Contacts unrelated to the litigation still cannot confer jurisdiction.**

Even if a defendant has contacts with a forum state, such contacts are irrelevant and cannot be used to establish specific jurisdiction over a plaintiff’s claims unless those claims relate to those contacts. In fact, *Ford* expressly stated that the “essential foundation of specific jurisdiction” is “a strong relationship among the defendant, the forum, and the litigation.” *Ford*, supra, at 1028; citing,

⁴ The *Ford* analysis can only be used to permit specific personal jurisdiction where, unlike here, the contacts are extensive and the type of injury relates to those contacts. See, e.g., *Esquivel v. Airbus Ams.*, 2021 U.S. Dist LEXIS 193344 (N.D. Ill. 2021) (claim against the second largest manufacturer of airplanes in the world relating to injuries allegedly resulting from alleged defects in an airplane it manufactured).

Helicopteros Nacionales de Columbia v. Hall, 466 U.S. 408, 414 (1983) (internal quotations omitted) (emphasis added); *Walden v. Fiore*, 571 U.S. 277, 284 (2014). Moreover, specific personal jurisdiction is not the free for all that Plaintiff makes it out to be:

[S]ome relationships will support jurisdiction without a causal showing. That does not mean anything goes. In the sphere of specific jurisdiction, the phrase “relate to” incorporates real limits, as it must to adequately protect defendants foreign to a forum.

Ford, supra, at 1026. The approach of the *Ford* Court, however, is not new, which was painstakingly highlighted by the Court. *Id.* at 1026; *Goodyear*, 564 U.S. at 930 n.6 (“[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales.”).

Accordingly, courts apply *Ford* narrowly to make the “relate to” requirement actually have substance and mean something. For example, the Supreme Court of Oregon, applying *Ford*, recently reiterated the significance of relationship between a defendant’s in-state activity and the foreseeability of being sued related to that activity:

We continue to adhere, however, to our conclusion that a case will “arise out of or relate to” the defendant’s connection to Oregon only if the defendant’s Oregon activities “provide a basis for an objective determination that the litigation was reasonably foreseeable. Nothing about the Court’s analysis in *Ford Motor Co.* calls into question that Court’s prior assertion that the concept of foreseeability is “critical to due process analysis.”

* * * *

In addition, there must be a relationship between the defendant’s activities in the state and the particular claims – commonly described as a requirement that the plaintiff’s claims “must arise out of or relate to the defendant’s contacts with the forum” state. At a minimum, to satisfy that requirement, the “nature and quality” of the defendant’s Oregon activities must permit a determination that it was “reasonably foreseeable” that the defendant would be sued in Oregon for the type of claim at issue.

Cox v. HP Inc. 368 Ore. 477 (2021). *See also, Hepp v. Facebook*, 2021 U.S. App. LEXIS 28830, *4 (3rd Cir. 2021) (finding no jurisdiction where “the alleged contacts do not relate to [claim], and the [claim] not relate to any of the contacts”); *Sambrano v. United Airlines, Inc.*, 2021 U.S. Dist. LEXIS 215289 (N.D. Tex. 2021) (United Airlines’ contacts with Texas not sufficient to confer specific jurisdiction over it for claim that did not relate to Texas); *Murphy v. Viad Corp.*, 2021 U.S. Dist. LEXIS 192453 (E.D. Mich. 2021) (“[T]he Court’s holding in *Ford* does not confer personal jurisdiction over defendants as broadly as Plaintiff appears to believe.”); *Zurich A.M. Life Ins. Co. v. Nagel*, 2021 U.S. Dist. LEXIS 217865 (S.D. N.Y. 2021) (“[W]hile it is not necessary that the contacts be causally related to a claimant’s claims, they still must be related to these claims in some less than trivial way if the words ‘relate to’ are to have any meaning.”);⁵ *O’Neil v. Somatics, LLC*, 2021 U.S. Dist. LEXIS 183730 (D. N.H. 2021) (relying on *Goodyear* in *Ford* analysis to decline to exercise specific personal jurisdiction where the claims were unrelated to the defendant’s contacts with the forum state).

3. Specific jurisdiction under *Ford* requires extensive contacts.

Contrary to Plaintiff’s position, the exercise of specific jurisdiction under any “relate to” analysis is only justified in the most extreme of circumstances where the contacts are unmistakably extensive and rise to the level of a defendant such as Ford Motor Company or Airbus:

Chiappa Italy has not invaded Indiana’s market “[b]y every means imaginable,” as Ford did in Montana and Minnesota. There are no Indiana “billboards, TV and radio spots, print ads, and direct mail” from Chiappa ...

* * * *

Instead, Chiappa’s Italy’s closest contact to Indiana is that Hoosiers can buy some of its products through its website and use the website

⁵ Although applying *Ford* and *Russell*, a recent First District. ruling hinged on “arising from” causation rather than a “relating to” analysis presently at issue. *Qualizza v. Fischer Fine Home Bldg., Inc.* 2021 IL App (1st) 201242-U.

to find Indiana gun dealers who sell or can transfer firearms. That's a far cry from Ford's "36 dealers in Montana and 84 in Minnesota."

Patterson v. Chiappa Firearms, USA, Ltd., 2021 U.S. Dist. LEXIS 91331 (S.D. Ind. 2021) (refusing specific jurisdiction over an out-of-state firearm manufacturer due to insufficient contacts even though the actual gun at issue was sold and the injury occurred in the forum). Thus, absent *Ford*-like contacts, a court should not even consider a "relate to" basis for specific jurisdiction.

II. PLAINTIFF'S REQUESTED DISCOVERY CANNOT BE PROBATIVE AS TO SPECIFIC PERSONAL JURISDICTION OVER WESTFORTH IN ILLINOIS.

Plaintiff's motion to compel arose out of Westforth's responses to Plaintiff's discovery requests. Those requests arose out of Westforth's motion to dismiss, which itself arose out of the theories set forth in Plaintiff's own complaint. Thus, this Court's consideration of Plaintiff's present motion must begin and end factually with Plaintiff's complaint and legally with whether those facts establish specific personal jurisdiction in Illinois over Westforth.

A. Retail Long Gun Sales In Indiana To Illinois Residents Cannot Give Rise To Specific Personal Jurisdiction Over Westforth In Illinois On Plaintiffs' Claims.

Retail long gun sales to Illinois residents at Westforth's place of business in Indiana cannot confer specific jurisdiction over Westforth on Plaintiff's claims. Plaintiff's litigation is based upon its premise, albeit unfounded, that "Westforth feeds the market for illegal firearms 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, where they are resold to individuals who cannot legally possess firearms, including convicted felons and drug traffickers" because of Indiana's "significantly weaker gun laws." *See*, Compl. ¶¶ 1, 28. Plaintiff's claims do not relate to transfers of long guns in Indiana to out-of-state customers applying the laws of both states, and documents related to such can be of no jurisdictional significance.

An FFL's retail firearm transactions must take place in the state where the FFL's licensed premises is located. *See*, 18 U.S.C. § 922(c); 27 C.F.R. § 478.100. Federal law permits an FFL to sell a rifle or shotgun to a non-resident of the state of the FFL's licensed premises only if the transaction complies with the law of state where the FFL is located as well as the law of the purchaser's state of residence. *See*, 18 U.S.C. § 922(b)(3); 27 C.F.R. § 478.99(a). That is, an Illinois resident may purchase a long gun from Westforth only if the transaction takes place at Westforth's licensed premises in Indiana and the laws of both Indiana and Illinois are followed.

Plaintiff has not alleged that Westforth has created a nuisance or otherwise been negligent by selling long guns in Indiana to customers who identify themselves as Illinois residents and whose transactions are governed by Illinois law. Evidence of such contacts between Westforth and residents of Illinois, no matter how numerous, cannot have a probative effect on the issue of minimum contacts under *Ford* because such contacts do not relate to Plaintiff's claimed harm.

B. Transfers To FFLs In Illinois Cannot Give Rise To Specific Personal Jurisdiction Over Westforth In Illinois On Plaintiff's Claims.

Transfers of handguns to Illinois FFLs cannot confer specific jurisdiction over Westforth on Plaintiff's claims. Again, Plaintiff's claims are based upon the imagined premise that Westforth somehow facilitates sales to arm people wishing to take advantage of Indiana's "significantly weaker laws." Plaintiff's claims do not relate to transfers of handguns to Illinois FFLs who can only transfer such to Illinois residents under the laws of the State of Illinois, and documents related to such can be of no jurisdictional significance.

An FFL may transfer a handgun only to a resident of the state in which its licensed premises are located. *See*, 18 U.S.C. § 922(b)(3). Thus, Westforth does not and legally cannot transfer handguns to non-residents of Indiana. Thus, should a non-resident of Indiana wish to purchase a

handgun from Westforth's inventory, that firearm must first be transferred to an FFL in that person's state of residence who may then complete the transfer at its own licensed premises and applying the law of the state in which it is located. That is, any transfer of a firearm to an Illinois FFL will either be transferred out of state to another FFL or, if transferred to a non-licensee, will be transferred by the Illinois FFL applying Illinois law.

Again, Plaintiff has not alleged that Westforth has created a nuisance or otherwise been negligent by transferring firearms to Illinois FFLs who then complete transfers to non-licensee Illinois residents in accord with Illinois law. Evidence of such contacts between Westforth and FFLs in Illinois (or any resident ultimately receiving a firearm from an Illinois FFL), no matter how numerous, cannot have a probative effect on the issue minimum contacts under *Ford* because such contacts do not relate to Plaintiff's claimed harm.

C. Transfers To Indiana Residents In Indiana Cannot Give Rise To Specific Personal Jurisdiction Over Westforth In Illinois On Plaintiff's Claims.

Finally, Plaintiff's complaint identified certain Indiana residents who had purchased firearms at Westforth's store in Indiana after having provided valid, government-issued photo identification demonstrating residency in Indiana consistent with the Indiana residence information recorded on their ATF Form 4473 transaction records. These individuals were subsequently prosecuted in Indiana for various firearms law violations. Westforth attached the firearms transaction records for those individuals to the affidavit of Earl Westforth in support of its motion to dismiss and has produced these documents in response to Plaintiff's discovery requests. As noted above, applying *Walden*, even were Plaintiff somehow able to track the travel of any given firearm into Illinois, it is Westforth's contacts with the forum state, not the action of someone else at some later time, that is determinative for this Court's jurisdictional analysis.

This issue has been addressed in light of *Ford* as well. “The Supreme Court has explained that the contacts supporting purposeful direction must be the defendant's own choice and not 'random, isolated, or fortuitous.'" *Cisco Sys. v. Dexon Comput., Inc.*, 2021 U.S. Dist. LEXIS 103613 (N.D. Cal. 2021); *quoting Ford*, supra at 1025 (quoting *Keeton*, 465 U.S. at 774). In 2019 New York’s highest court, recognizing the “decidedly local” nature of an FFL’s retail firearm business, held that the exercise of specific personal jurisdiction over an Ohio FFL in New York was impermissible even if, unlike here, there was evidence that the FFL may have had reason to know that the purchaser may himself eventually take the guns to New York. *Williams v. Beemiller*, 33 N.Y.3d 533 (2019).

Just as retail firearm sales in Ohio to Ohio residents cannot serve as the basis for specific personal jurisdiction in New York in *Williams*, retail firearm sales in Indiana to Indiana residents cannot serve as the basis for specific personal jurisdiction in Illinois. Thus, Plaintiff’s requested discovery should not be permitted.

III. THE “EFFECTS TEST” CANNOT APPLY TO CREATE JURISDICTION HERE.

While Plaintiff mentions the “effects test” almost in passing, such does not apply to the Court’s analysis here. The “effects test” theory arose to allow jurisdiction in a defamation case to be had at the place where the defamation was directed and, thus, where its effects occurred. *Calder v. Jones*. 465 U.S. 783 (1984). In *Calder*, jurisdiction was proper in California where a Florida reporter published a libelous story concerning a California actress where the reporter knew that California was where the actress lived and worked. *Id.* The United States Supreme Court, however, has clarified that the effects test only operated to confer jurisdiction in *Calder* “because publication to third persons is a necessary element of libel, [] the defendants’ intentional tort actually occurred in California.” *Walden*, supra; citing *Keeton* 465 U.S. 777.

Since *Calder*, courts have further clarified the “effects test” elements, including: 1) intentional conduct, 2) expressly aimed at the forum state, 3) with the defendant's knowledge that the plaintiff would be injured in the forum state. *Tamburo v. Dworkin*, 601 F.3d 693, 703 (7th Cir. 2010); *United Servs. Auto. Ass’n v. New Day Fin., LLC*, 2018 U.S. Dist. LEXIS 226340 (W.D. Tex. 2018) (the effects test serves “to assist in the minimum contacts analysis in cases involving intentional torts”). “[Effects test] jurisdiction is rare” and should not serve to allow jurisdiction “even an intentional tort where the only jurisdictional basis is the alleged harm to a [forum state] resident.” *Moncrief Oil Int’l, Inc. v. Gazprom*, 481 F.3d 309, 314 (5th Cir. 2007); citing, *Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 870 (5th Cir. 2001).

Furthermore, the Illinois First District Court of Appeals has left no doubt that the “effects test” cannot be used to create specific personal jurisdiction independent of a defendant’s purposeful contacts with the forum state:

[E]ven discounting the fact that no intentional tort is at issue here, [the defendant’s] alleged tortious actions were not directed at Illinois. Keeping in mind the cornerstone of personal jurisdiction, due process still requires that the defendant purposefully established minimum contacts in Illinois.

Sabados v. Planned Parenthood, 378 Ill. App. (3d) 243, 250 (1st Dist. 2007). Notably, every case Plaintiff relies on for jurisdiction hinges on the relatedness of the defendant’s contacts, not their mere effects. *See, e.g., Innovative Garage Door Co. v. High Ranking Domains, LLC*, 2012 IL App (2d) 120117 (2nd Dist. 2012) (defendant contracted with Illinois company and claims related to the contact); *Russell*, supra at ¶ 40 (defendant sold product into Illinois and claim related to product defect); *Levy v. Gold Medal Prods. Co.*, 2020 IL App (1st) 192265 (defendant sold product into Illinois and claim related to product defect). Such, however, has no bearing on Westworth’s alleged conduct here, and a “relate to” analysis renders the requested discovery irrelevant.

Thus, although Plaintiff understandably wants to move the Court's analysis away from the relatedness of Westforth's contacts to the alleged harm, its own cases bring the analysis right back to where it belongs. Accordingly, the "effects test" does not create jurisdiction where none exists.

IV. THE REQUESTED DISCOVERY UNREASONABLY AND UNNECESSARILY INVADES THE PRIVACY OF WESTFORTH'S CUSTOMERS.

Under the Illinois Constitution, people have a "right to be secure in their persons, houses, papers, and other possessions against...invasions of privacy..." *Dufour v. Mobile Oil Corp.*, 301 Ill. App. 3d 156, 161 (1st Dist. 1998). Unreasonable invasions of privacy are forbidden, and "in the context of civil discovery, reasonableness is a function of relevance." *Kunkel v. Walton*, 179 Ill. 2d 519, 538 (1997). Plaintiff's requested discovery into Westforth's long gun transfers to Illinois residents and transfers to Illinois FFLs essentially seeks the identity of all of Westforth's Illinois customers, what firearms they acquired, and all of the sensitive information (name, birth date, address, social security number, driver's license number, etc.) contained in Westforth's documents.

While it was one thing to produce documents concerning the specific individuals identified in Plaintiff's complaint as having been charged and convicted (notably, in Indiana) relative to firearms they purchased, it is another thing altogether to provide private and sensitive information to Plaintiff relating to individuals with no reason at all to expect that any of them have been engaged in anything illegal relating to their firearms purchased in compliance with Illinois law. As these transactions are not even relevant to the Court's specific jurisdiction analysis, the unreasonable invasion of privacy weighs heavily against ordering production.

V. THE REQUESTED DISCOVERY CREATES AN UNDUE BURDEN.

It is clear from Plaintiff's complaint and discovery that it has already assembled, no doubt through readily-available public records, its list of "straw purchasers." The public record for these

individuals' criminal cases should show what they are alleged to have done relative to firearms law violations, what firearms were involved, and where those firearms were purchased. Plaintiff has access to this. Without a compelling explanation of what would be gained for purposes of its jurisdictional evidentiary burden from requiring Westforth to locate, copy, redact, and produce disposition and other records -- none of which would ever provide information concerning what happened to any firearm after leaving Westforth's store -- the burden of production is undue.

Moreover, Plaintiff's requests for all documents relating to transfers to Illinois FFLs or Illinois long gun purchasers in Indiana would require complete duplication of a substantial portion of Westforth's records and the task of redacting all information from those records unrelated to those specific transfers.⁶ As these contacts do not even relate to Plaintiff's claims and cannot possibly form the basis for specific personal jurisdiction, the burden of production is undue.

CONCLUSION

Plaintiff chose to sue Westforth in Illinois. Plaintiff chose what theories to put in its complaint. Thus, Plaintiff's choices are what provide the framework for the Court's consideration of whether Plaintiff's requested discovery is probative as to specific personal jurisdiction over Westforth in Illinois on Plaintiff's claims. It is not, and since the burden of showing that it is falls on Plaintiff, its motion to compel should be denied.

WHEREFORE, for the reasons set forth above, Defendant, Westforth Sports, Inc., respectfully requests that this Court deny Plaintiff's motion to compel.

⁶ For example, attached as Appendix A is a sample of just one page of Westforth's acquisition and disposition records ("A&D Book"). FFLs are required by law to keep a record of each firearm acquired as well as information pertaining to that firearm's disposition. 18 U.S.C. § 923(g)(1)(a). The acquisition information is recorded on the left page upon acquisition and the disposition information for each specific firearm recorded on the right page upon disposition. Production of Westforth's A&D Book pages relative to any specific disposition would require locating disposition, copying the pages, and redacting the private information of Westforth's other customers.

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Respectfully submitted,

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