

**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.: 21 CH 01987

Judge: Clare J. Quish

**PLAINTIFF CITY OF CHICAGO'S OPPOSITION TO
DEFENDANT'S SECTION 2-619 MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION**

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PRELIMINARY STATEMENT

This case arises from Plaintiff City of Chicago's efforts to address the gun violence epidemic raging within its borders, fueled by illegal gun sales from retailers located just beyond them. Defendant Westforth Sports, Inc. ("Westforth Sports") is one such retailer, a Federal Firearm Licensed gun dealer ("FFL") in Gary, Indiana, less than 10 miles from the Illinois border. For years, Westforth Sports has been the single largest out-of-state supplier of firearms recovered by Chicago police in connection with crimes, due largely to its practice of selling guns to criminal middlemen who then make the short trip to Chicago to re-sell or deliver them—a practice known as "straw purchasing."

Despite flooding Chicago with firearms, Westforth Sports argues that it is not amenable to suit in Illinois. Westforth Sports reasons that, because the straw sales it engaged in took place just over the border in Indiana, it is not subject to personal jurisdiction here. But this argument ignores settled law, the complaint's allegations, and evidence adduced in jurisdictional discovery. Indeed, documents produced by Westforth Sports, together with the depositions of the store's staff, confirm that the store was well aware that it was profiting from Illinois customers. Westforth Sports did so through direct (and frequently illegal) sales to Illinois residents and through indirect straw sales to Illinois customers via intermediaries who could present an Indiana identification.

As set forth below, Westforth Sports' contacts with Illinois are substantial and well beyond the minimum required to pass constitutional muster. And Chicago's claims both arise out of and relate to those contacts. Finally, exercising jurisdiction over Westforth Sports—a gun retailer located ten miles from the Illinois border and with a substantial history of selling guns into Chicago (the closest major city), is entirely in line with notions of fair play and substantial justice. Defendant's motion to dismiss lacks merit, and must be denied.

STATEMENT OF FACTS

A. Chicago's Crisis Of Gun Violence

The City of Chicago is beset by an epidemic of gun violence. In 2020, 4,033 people in the City were shot—a 64% increase from the 2,598 shootings in 2019. Compl. ¶ 22. The number of homicides in Chicago rose to 769 that year, the vast majority of which were gun homicides. *Id.* ¶¶ 22-23. Gun crimes generally, and gun homicides specifically, disproportionately target the City's historically disadvantaged communities. Black Chicagoans, who account for roughly a third of the City's population, make up 80% of its homicide victims. *Id.* ¶ 23. And the aggregate costs to the City are staggering: between 2016 and 2019, the medical costs of treating victims of gun crime in Chicago totaled \$442 million. *Id.* ¶ 26. The cost to public welfare (in terms of criminal justice costs and work loss) over that period totaled \$5 billion. *Id.*

Although Chicago's gun violence epidemic has many effects, its causes are few. There are about 150 FFLs in the Chicago metro area and Lake County, Indiana, but only a tiny fraction of them is responsible for a massive number of crime guns. *Id.* ¶ 29. Westforth Sports is one such source, standing alone as the single largest out-of-state supplier of crime guns from 2009 to 2016, with over 850 guns recovered by the Chicago police department ("CPD"). *Id.* ¶ 30.

B. This Litigation

In response to this deepening crisis of gun violence, and to hold responsible those who have exploited the crisis for profit, the City filed this lawsuit against Westforth Sports in April 2021. The City brings four causes of action against Westforth Sports: (i) public nuisance, (ii) recovery of municipal costs, (iii) negligence, and (iv) negligent entrustment. *Id.* ¶¶ 96-125. The City's complaint seeks damages as well as injunctive relief. *Id.* pp. 40-41.

In August 2021, Westforth Sports moved to dismiss for lack of personal jurisdiction. Westforth claims that it is not subject to the jurisdiction of this Court because the straw purchases

described in the complaint took place at its Indiana store, its advertising is allegedly directed solely to Indiana residents, and it has substantially complied with firearms laws. To resolve certain factual issues raised by this motion, the Court permitted limited jurisdictional discovery. As discussed below, the evidence obtained in discovery documents substantial contacts with the State of Illinois, and the City's claims arise out of or relate to these contacts.

C. Westforth Sports' Extensive Contacts With Illinois

When agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") arrived at Westforth Sports in February 2021 to conduct an inspection they observed that "[t]he parking lot was always full and numerous customers were always present at any given time. **There were always vehicles present with out of State, Illinois, license plates.**" 2021 ATF Firearms Inspection Report, at 8 (emphasis added), attached as Ex. A-1 to the Aff. of James Miller (Ex. A).¹ Earl Westforth, the long-time owner of Westforth Sports, admits that he has been "inundated with a slew of inquiries, via telephone and otherwise, about what is required for Illinois residents to purchase firearms and/or ammunition." Aff. of Earl Westforth ISO Mot. to Dismiss ("Westforth MTD") ¶ 21. And Sheila Lewis, an employee of Westforth Sports from 2017 to 2020, explained that selling firearms to Illinois residents "was just a normal part of our daily operations." Dep. of Sheila Lewis, dated June 8, 2022 ("Lewis Tr."), attached as Ex. A-2, at 72:7-73:4; *see also id.* at 7:22-8:3 (dates of employment).

That Illinois residents make up a significant portion of Westforth Sports' customer base is no accident. Westforth Sports makes it cheap and easy for Illinois residents to acquire guns. It responds to customer inquiries from Illinois both online and by phone, providing instructions on how Illinois residents can purchase firearms and ammunition from the store. Excerpts of Westforth

¹ All exhibits, other than affidavits, are attached to the Affidavit of James Miller, and designated as "A-#."

Sports Google.com business listing, attached as Ex. A-3; Dep. of Earl Westforth, dated June 7, 2022 (“Westforth Tr.”), attached as Ex. A-4, at 155:11-22 (describing phone inquiries from Illinois residents). On its Google business page, Westforth Sports explains:

[I]f you are from Illinois, I actually DO need your FOID card in order [sic] to sell you firearms or ammunition . . . Illinois has its own special rules for waiting periods.

* * *

We require a FOID card to purchase ammunition specifically of IL residents.

Ex. A-3 at 1-2.

Earl Westforth testified that Westforth Sports added this explanation out of a desire to sell firearms to Illinois residents, and specifically to avoid complications and delays when selling to these customers. Westforth Tr. at 167:21-168:13 (explaining that too many Illinois residents were traveling to the store only to ask “‘what do you mean you got to have a FOID card? Nobody told me that[.]’ . . . So we try to [say], ‘hey, if you’re coming out to make a purchase, you have to have your driver’s license. You need your FOID card . . .’”). Westforth Sports trains its employees on special procedures for completing firearm sales to Illinois residents, but does not offer that training for sales to customers from other states. *Id.* at 171:21-172:10; 193:2-7; 199:8-17. And although Westforth Sports may not advertise in Illinois with physical billboards, it *does* advertise via its Google.com business listing (Ex. A-3), on Facebook (Westforth Tr. at 159:8-24), and via its relationships with Illinois FFLs, as discussed below.

Westforth Sports sells firearms to Illinois residents in three ways: (i) by selling handguns (pistols or revolvers) to Illinois residents and delivering them via in-state FFL intermediaries; (ii) by selling long guns (rifles and shotguns) to Illinois residents directly at the store counter; and (iii)

by selling both handguns and long guns to straw purchasers at the store counter who present Indiana identification, but are funneling these guns to others, including Illinois residents.

1. *Westforth Sports' Handgun Sales to Illinois Residents*

The first way that Westforth intentionally derives revenue from Illinois is by selling handguns to Illinois customers and then shipping them into Illinois for delivery via Illinois FFL intermediaries.² From January 2018 through April 2021, Westforth sold 381 handguns to Illinois residents this way. *See* Ex. A-5 (transaction records for handguns sold to Illinois residents); *see also* Miller Aff. ¶¶ 8-9 & App. 1 (summarizing transaction records); Westforth Tr. at 173:9-174:8 (describing FFL transfer process). These sales alone accounted for 2.7% of Westforth's handgun sales by volume from 2018 to 2021. *See* Ex. A-6 (chart of firearm sales volumes, listing 14,215 total handgun sales between 2018-2021).

Westforth Sports' handgun sales into Illinois were so routine that the store even had preferred FFLs in Illinois that it regularly worked with. As Earl Westforth testified, the store had mutually beneficial relationships with a select few Illinois gun stores: these Illinois FFLs wanted “a portion of [Westforth's] business,” and in exchange for “get[ting] some transfers sent out to them,” they would direct business back to Westforth Sports by recommending it to “customers for products that [the Illinois FFLs] don't carry.” Westforth Tr. at 182:23-184:24. The Illinois FFLs would also give Westforth Sports “a better deal” if it bought guns from them directly. *Id.* at 185:7-10. And keeping copies of these Illinois FFLs' licenses on file allowed Westforth Sports to streamline its transactions with Illinois residents. *See Id.* at 185:15-186:18. According to Earl Westforth, Illinois customers were willing to incur the delay caused by shipping the gun and the

² Under federal law, an FFL may only sell a handgun to an out-of-state customer by conducting the transfer through an FFL in the customer's state. 18 U.S.C. § 922(b)(3).

additional transfer costs at the local FFL because Westforth sold guns cheaper than Illinois stores. Westforth Tr. at 196:25-197:4. This evidence contradicts Earl Westforth's statement in his affidavit that "Westforth Sports has never sold any handguns at retail to anyone other than a resident of the State of Indiana." *See* Westforth MTD Aff. ¶ 14.

Handguns sold by Westforth to Illinois residents via FFL transfer are causing harm in Chicago. CPD has already recovered 23 of the handguns sold to Illinois residents in this timeframe. *Compare* Aff. of Sgt. Randolph Nichols ¶ 10, attached as Ex. B (identifying firearm recoveries by serial number) *with* Miller Aff. App. 1 (identifying FFL transfers to Illinois residents by serial number). One of the guns was used to murder a man two weeks before the City filed this lawsuit. *See* Sgt. Nichols Aff. ¶ 10. Two others were associated with aggravated assaults, and another was used in an armed robbery. *Id.* Moreover, at least five of the handguns sold to Illinois residents appear to violate Illinois law, which prohibits the sale or delivery of certain handguns with zinc alloy components that melt or deform at low temperatures—in essence, cheap, low-quality handguns. *See* 720 ILCS 5/24-3(A)(h); *see also* Aff. of Greg Lickenbrock ¶ 14, attached as Ex. C.

2. Westforth Sports' Long Gun Sales to Illinois Residents

The second way that Westforth Sports intentionally derives revenue from Illinois is by selling rifles and shotguns to Illinois customers over the counter. From January 2018 to August 2021, the store sold 157 long guns directly to Illinois residents this way. *See* Ex. A-7 (transaction records for long guns sold to Illinois residents); *see also* Miller Aff. ¶ 12 & App. 2 (summarizing transaction records). From 2018 to 2020, the only years for which the City has full annual data, these long gun sales to Illinois residents accounted for 4.99% of the store's overall long gun sales by volume. *See* Ex. A-7; *see also* Miller Aff. App. 2 (142 long gun sales to Illinois residents between 2018 and 2020); Ex. A-6 (listing 2,845 total long gun sales between 2018 and 2020).

Almost half of these long gun sales to Illinois customers—at least 70—violate federal, state, and local law, because they involved assault weapons whose sale or possession is prohibited under local ordinances applicable in the purchaser’s place of residence. Lickenbrock Aff. ¶¶ 8, 11. For example, in Chicago, it is illegal to “import, sell, manufacture, transfer, or possess an assault weapon.” CHI. IL. MUN. CODE § 8-20-075. Yet Westforth Sports sold at least 47 assault weapons to Chicago residents between February 2018 and March 2021. Lickenbrock Aff. ¶ 8. As discussed *infra* at 25, by engaging in these sales, Westforth Sports violated the Gun Control Act, which permits long guns to be sold to out-of-state residents only if “the sale, delivery, and receipt fully comply with the legal conditions of sale in both States.” 18 U.S.C. § 922(b)(3).

In addition, contrary to its statement that “Westforth Sports currently does not sell firearms to Illinois residents even if they come to Indiana,” the store’s transaction records show that it is in fact continuing to sell long guns to Illinois residents. *Compare* Westforth MTD Aff. ¶ 21 *with* Ex. A-8 (transaction records for Illinois residents post-dating filing of City’s lawsuit); *see also* Deposition of Tim Morrissey, dated July 8, 2022 (“Morrissey Tr.”), attached as Ex. A-9, at 53:12-54:1 (describing long gun sale to Illinois resident in or about May 2022).

3. Westforth Sports’ Sales to Straw Purchasers

The third way that Westforth intentionally derives revenue from Illinois is by knowingly selling to straw purchasers and gun traffickers, who then transfer those guns to residents of Illinois. Since 2013, Westforth has sold firearms—handguns *and long guns*—to at least 53 individuals who have been charged with purchasing the guns illegally.³ Miller Aff. ¶ 15 (summarizing N.D. Ind.

³ This number does not include *every* person who illegally purchased guns at Westforth, but only those who were charged by federal prosecutors in the Northern District of Indiana, where Westforth Sports is located, between December 2014 and the initiation of the City’s lawsuit in April 2021. Together, they account for 44% of prosecutions during that period in that district for illegal gun purchases. Miller Aff ¶ 15.

straw purchaser prosecutions). The transaction records associated with these individuals establish that Westforth Sports sold at least 266 firearms to straw purchasers. *See* Ex. A-10 (straw purchaser transaction records); *see also* Miller Aff. ¶ 17 & App. 3 (summarizing transaction records).

The transaction records document the myriad red flags that Westforth Sports saw—but ignored—indicating that these customers were actually buying guns for other people. For instance, on December 16, 2019, Westforth Sports sold two Taurus pistols to Marqwan Blasingame. One of the questions that Mr. Blasingame had to answer on the federal transaction form was: “[a]re you the actual transferee/buyer of the firearm(s) listed on this form?” Ex. A-11 at 1 (Blasingame December 16, 2019 ATF Form 4473 Firearms Transaction Record (“Form 4473”). Blasingame checked “No,” indicating that the gun was not actually for him. *Id.* As former ATF agent Joseph Bisbee explains, based on his years of investigating gun trafficking, this is a “major indicator” of straw purchasing. Aff. of Joseph Bisbee, attached as Ex. D, ¶ 14.

Instead of terminating the transaction, the clerk instructed Blasingame to change his answer to “Yes.” *See* Ex. A-11 at 1. Asked whether Westforth employees prompted Blasingame to cross that answer out rather than denying the sale, Earl Westforth conceded “I would say definitely.” Westforth Tr. at 228:13. Blasingame then went on to buy ten more handguns in the span of just ten more days. *See* Ex. A-10; Miller Aff. App. 3. So far, three of these handguns have been recovered; two by CPD and one in Gary, Indiana. Sgt. Nichols Aff. ¶ 11 (recoveries of firearm serial numbers AA6063181 & TMC11968); *see also* Ex. A-12 ¶ 3 (Blasingame criminal complaint describing recovery in Gary, IN). Westforth Sports sold one of the handguns recovered by CPD to Blasingame on December 16, 2019, after Blasingame told the store, in no uncertain terms, that he was not the actual purchaser. *See* Ex. A-11. Police recovered this gun during a gang suppression operation just seven months after purchase, in the possession of a felon. Sgt. Nichols Aff. ¶ 17.

Similarly, in May 2017, Phillip Harvey purchased a Glock pistol from Westforth Sports. *See* Ex. A-13 (Harvey May 13, 2017 ATF Form 4473). This was the fourth gun Harvey had bought at Westforth Sports in less than 10 days. *See* Ex. A-10; Miller Aff. App. 3. Harvey initially checked on the transaction form that the gun was not for him. *See* Ex. A-13. After he changed his answer, Westforth sold him the gun anyway. *See id.* CPD recovered the gun the following year from a felon affiliated with the Black Disciples gang. Sgt. Nichols Aff. ¶ 18.

These were not isolated incidents—the policy at Westforth Sports allows customers to “correct” their answers to indicate that the gun was actually for them, not to terminate the transaction. Westforth Tr. at 233:11-19. Tim Morrissey, a former Westforth Sports employee of 30 years, testified that when buyers checked a box on purchase forms indicating the gun was intended for someone else, he would “go back and say, ‘read it again’” so the buyer could “correct” their answer. Morrissey Tr. at 79:23-80:6; *see also* Lewis Tr. at 39:23-40:9. The documents produced thus far in this litigation show at least five instances of this practice occurring in sales to known straw purchasers. *See* Ex. A-14 (ATF Form 4473s for various customers).

Another troubling example is the case of Levar Reynolds, a man who purchased 15 guns at Westforth Sports (of which five have been recovered in Chicago). *See* A-10; *see also* Miller Aff. App. 3 (summarizing Reynolds transactions); Sgt. Nichols Aff. ¶ 11 (recoveries of serial numbers SJY11640, BGHC759, BCXV993, BGHC760, and FFTC709⁴). When he first came to Westforth Sports, Mr. Reynolds indicated on his transaction form that he resided in “IL” before crossing that out and writing “IN.” Ex. A-15 (Reynolds December 29, 2016 ATF Form 4473). In May 2018, Mr. Reynolds returned to Westforth Sports and purchased five handguns (four of which were effectively identical) in a *single transaction*, even though buying multiple handguns in a single

⁴ This firearm is believed to be reflected in Westforth Sports’ records as serial number FFTC70.

transaction is a significant red flag of straw purchasing—and the simultaneous purchase of *identical* guns, even more so. *See* Ex. A-10; *see also* Miller Aff. App. 3 (summarizing May 17, 2018 transaction); Westforth Tr. at 240:9-12 (admitting that Reynolds’ purchases were “identical, except for cosmetic differences”); Bisbee Aff. ¶ 15. CPD recovered two of those guns *the very next day* from a Chicago man indicted on multiple felonies, along with drugs and other handguns. Sgt. Nichols Aff. ¶ 13.

Other times, it was the customer’s behavior, rather than answers on their paperwork, that put Westforth Sports on notice that the customers were straw-buying for others. For example, customers would come into the store and buy multiple identical or near-identical guns, either all at once or in close succession—clear indicators of trafficking. Bisbee Aff. ¶ 13. There are too many examples of these suspicious transactions to list here, but they include:

- Westforth Sports sold 21 guns to straw purchaser Kyle Jackson, 20 of which it sold during a 10-month period between June 2019 and March 2020. *See* Ex. A-10; *see also* Miller Aff. App. 3 (summarizing Jackson purchases). Six of Jackson’s purchases involved the sale of multiple handguns, and Jackson bought numerous duplicate guns, including four- and five-of-a-kind. *See* Ex. A-10; *see also* Miller Aff. App. 3. In November 2019, Chicago Police investigating a gunfire alert recovered one of Jackson’s pistols from an 18-year-old gang member, with just a 13-day time-to-crime. Sgt. Nichols Aff. ¶¶ 11, 14. In February 2020, Chicago Police recovered a second Jackson handgun, also in the possession of a suspected gang member, this time with a two-month time-to-crime. *Id.* Chicago Police have so far recovered five handguns that Westforth Sports sold to Jackson. Sgt. Nichols Aff. ¶ 11 (recovery of serial numbers TMD49000, CP124579, TMT36457, 846992, and FBX8343).
- Westforth Sports sold at least 19 handguns to straw purchaser Kadeem Fryer in less than five months in 2020, including eight separate multiple handgun sales. *See* Ex. A-10; *see also* Miller Aff. App. 3 (summarizing Fryer purchases); Ex. A-16 (Fryer multiple sale report forms). Fryer preferred Glockes, and bought numerous Glockes in duplicate and triplicate. *See* Ex. A-10; *see also* Miller Aff. App. 3. CPD has recovered five handguns that Westforth Sports sold to Fryer, including one recovered from a juvenile and another from a parolee, both of which had been modified to turn them into illegal fully-automatic machine guns. Sgt. Nichols Aff. ¶¶ 11, 15 (recovery of serial numbers VCN851, VFZ892, BEVD065, VVT934, and BMXX866).

- Westforth Sports sold at least 19 handguns to straw purchaser Darryl Ivery in just six months in 2020. *See* Ex. A-10; *see also* Miller Aff. App. 3 (summarizing Ivery purchases). To buy this many handguns so quickly, Ivery made seven separate multiple-sale transactions at Westforth, including a period with three multiple sales in under a month. *See* Ex. A-17 (Ivery multiple sale report forms). Even Earl Westforth acknowledged that by this point store employees should have been asking “Hey Darryl, what are you doing with all these guns?” Westforth Tr. at 208:15-23. But instead of halting Ivery’s suspicious buying spree, Westforth Sports kept selling to him, even after two handguns it sold to him were recovered less than a month later in Chicago (one in the possession of a juvenile, and the other in connection with an aggravated assault). Sgt. Nichols Aff. ¶¶ 11, 16. Indeed, Westforth sold Ivery a dozen more handguns after these recoveries. *See* Ex. A-10; *see also* Miller Aff. App. 3.

Although buying multiple firearms in a short time, particularly handguns of a similar make and model, is a known indicator of straw purchasing, Bisbee Aff. ¶ 15, Westforth staff expressed no concerns about engaging in such transactions. When asked to confirm that he “had no concerns by the time [Ivery has] now purchased six handguns in under a month that he might be a straw purchaser or trafficker,” Earl Westforth explained that “[I]f [law enforcement] never even contacted me, I don’t have a concern in the world.” Westforth Tr. at 215:10-14 (emphasis added); *see also* Lewis Tr. at 32:22-33:10 (stating that it was not concerning if someone attempted to buy ten of the same guns at the same time).

Receiving trace requests from ATF, which indicate that a gun purchased at the store had been recovered by law enforcement, is another well-known red flag of straw purchasing. Bisbee Aff. ¶ 15. Earl Westforth did not, however, consider this when making sales:

Q. Why does receiving a trace request about a customer not cause you concern with respect to subsequent purchases by that customer?

A. A customer can buy as many as they want. And if there’s already a trace in multiple forms sent in, ATF knows what’s going on. The state knows what’s going on. If he’s a bad person, they’re going to tell us to quit selling to him. **It’s not our job to tell him no.**

Westforth Tr. at 85:14-22 (emphasis added).

Finally, many of the purchases described above—and two-thirds of all the store’s documented sales to straw purchasers—were made with cash. *See* Receipts, attached as Ex. A-18; *see also* Miller Aff. App. 3 (identifying 177 cash purchases). As former ATF agent Bisbee explains, cash transactions (together with other factors) are an indicator of straw purchasing because straw purchasers frequently use cash handed to them by the intended recipient of the firearm rather than the straw purchaser’s own credit card. Bisbee Aff. ¶ 16.

Unsurprisingly in light of the above, ATF has repeatedly cited Westforth Sports for allowing straw purchases to occur, further confirming its long-standing and illegal sales practices.⁵ ATF cited Westforth Sports in 2002, 2006, and 2010 for “fail[ing] to verify the transferee/buyer of the firearm by allowing Item 11a. to be answered ‘No.’”⁶ *See* Ex. A-19 at 4 (2014 ATF Firearms Inspection Report, noting “REPEAT VIOLATION” for this issue). In 2012, ATF cited Westforth Sports for multiple instances of having “transferred firearms to a straw purchaser after NICS denied transactions to associates of the straw purchaser.” *Id.* at 3. In 2017, ATF cited the store for transferring a firearm without a background check and without verifying the identification of the person picking up the gun. Ex. A-20 at 12 (2017 ATF Firearms Inspection Report). Earl Westforth told ATF that after this instance he talked to his employees about “possible straw purchasers.” *Id.*

On at least two occasions Westforth Sports’ employees underwent remedial training that covered “[i]dentifying and preventing straw transactions.” *See* Ex. A-21 (2013 ATF Assignment and Report form); Ex. A-20 at 10. Earl Westforth himself testified that ATF had “provided [him]

⁵ Under the Freedom of Information Act, the ATF has produced more than 2,700 pages detailing Westforth Sports’ compliance history. The store’s history of violations is too extensive to summarize here. By way of example, in 2021 alone, ATF cited Westforth Sports for seven separate categories of regulatory violations. Ex. A-1, at 3. Therefore, Plaintiff refers only to violations directly related to straw purchasing.

⁶ At the time of those inspections, question 11.a on ATF Form 4473 asked whether the customer is the “actual transferee/buyer” of the firearm, warning that “You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person.” *See, e.g.*, Ex. A-11.

with . . . training about detecting and preventing straw purchasing.” Westforth Tr. at 94:24-95:1; *accord* Lewis Tr. at 82:18-83:4. In fact, Earl Westforth personally attended at least four warning conferences with the ATF to review the store’s failures to enforce the law properly, and almost had his license revoked on two separate occasions—both times after inspections identified illegal straw sales. *See* Ex. A-22 (ATF Warning Conference correspondence); *see also* Ex. A-19 at 4 (noting revocation recommendations in 2011 and 2012).

After one of the times that Westforth Sports almost lost its license, ATF sent Earl Westforth a letter instructing him to “put safeguards in place to prevent future straw purchases,” and giving recommendations. Ex. A-22 at 1-2.⁷ One of those recommendations was to “record[] denied and/or delayed firearms transaction information and compare[] it to information provided by future customers, [so that] multiple clerks can all quickly identify possible straw purchases.” *Id.* But when ATF agents arrived at Westforth in February 2021, they witnessed two employees “rip up and discard” transaction forms for a suspicious purchase that was halted. Ex. A-1 at 3. When questioned, the employees “both explained that it was the store’s practice to discard 4473s in which the transfer did not occur.” *Id.* Not only does this violate the law, it contravenes the instructions that ATF gave the store.

Westforth Sports has refused to adopt safeguards against straw purchasing in other areas, as well. For example, the store’s sole procedure for detecting a customer who bought multiple handguns over a short period of time, but not *so* short that it triggered reporting requirements, was if a “staff member[] recognizes the person.” Westforth Tr. at 207:9-13. Tellingly, the store has a track record of failing to timely submit multiple sale reports to ATF, a deficiency that keeps law

⁷ Incredibly, at his deposition, Earl Westforth claimed not to remember any of these recommendations. Westforth Tr. at 110:11-21.

enforcement in the dark about this potential indicator of straw purchasing. *See, e.g.*, Ex. A-1 at 5 (noting “several multiple handgun sales [that] were not caught by the licensee and therefore unreported,” and others that were identified but not submitted to ATF because of fax problems); *see also* A-19 at 4 (noting failure to complete and submit multiple sale form). Similarly nonexistent is any procedure for checking whether law enforcement had already contacted the store to trace a firearm sold to a given customer before the store sold that customer another gun. *See* Westforth Tr. at 84:22-85:2 (“Q. Do you have any system, policy, or procedure to identify or flag a customer who comes back to buy another gun after the store has already received a trace request for an earlier purchase by that customer? MR. RUDD: Same objection [to form]. A. No.”). As a result, customers could buy guns that kept turning up at crime scenes (and getting traced to Westforth Sports), but the store would never connect those traces to the person when he or she came back to buy more guns.

Westforth Sports’ contribution to gun violence in Chicago via these illegal sales is undeniable. Out of the 266 illegal firearms for which the City has received transaction records, CPD has *already recovered 48 guns*, or 18%. *Compare* Sgt. Nichols Aff. ¶ 11 (summarizing firearm recoveries by serial number) *with* Miller Aff. App. 3 (identifying Westforth firearm sales to straw purchasers by serial number). They have been associated with a wide range of criminal activity, including multiple homicides, multiple assaults and batteries, and multiple incidents of domestic violence. Sgt. Nichols Aff. ¶ 12. Some of the firearms were converted to fully-automatic firing. *Id.* Many of the possessors of these illegal guns had gang affiliations, others had felony convictions, and yet others were minors. *Id.*

Westforth Sports has long known that its guns are having a devastating effect in Chicago. Even assuming that Westforth Sports was ignorant that it was the top out-of-state source of crime

guns in Chicago from 2009 to 2016,⁸ there are plenty of other indicators that the store's illegal sales are arming criminals in Chicago. In 2014, Westforth Sports received an email from the U.S. Department of Justice regarding a sting operation pertaining to one of its customers that was to take place at the store. Westforth Tr. at 129-133; *see also* Ex. A-23 (2014 email correspondence). The email stated that “a firearms trafficking organization in Indiana [was] trafficking firearms to Vice Lord and Gangster Disciple street gang members on the west side of Chicago” and referred to a customer at Westforth Sports who was possibly a straw purchaser. Ex. A-23 After receiving this email, Earl Westforth admits that he was on notice that straw purchasers at his store were attempting to purchase guns to traffic to Chicago. *See* Westforth Tr. at 132:6-133:10.

Along the same lines, Earl Westforth acknowledged that CPD and law enforcement from surrounding Illinois communities contacted him at least a half dozen times in recent years, as they conducted gun investigations. Westforth Tr. at 122:18-22; 124:3-18. When asked which law enforcement agencies he interacted with besides the ATF, Earl Westforth responded: “**Chicago, of course**, all the different—ATF, all the local police departments.” Westforth Tr. at 122:18-22 (emphasis added).

⁸ The City of Chicago published reports in 2014 and 2017 identifying Westforth Sports as the top out-of-state supplier of crime guns recovered in the City. *See* City of Chicago, TRACING THE GUNS: THE IMPACT OF ILLEGAL GUNS ON VIOLENCE IN CHICAGO 1 (May 27, 2014) (“2014 Trace Report”), <https://www.chicagobusiness.com/Assets/downloads/20151102-Tracing-Guns.pdf>; City of Chicago, GUN TRACE REPORT 4 (2017) (“2017 Trace Report”), <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/October/GTR2017.pdf>. These reports received widespread news coverage. *See, e.g.*, ABCNews Chicago, “Report details sources of guns used in Chicago crimes” (Oct. 29, 2017), <https://abc7chicago.com/chicago-guns-gun-trace-report-crime-sources/2581073/>; Indy Star, “Report: 1 of 5 guns recovered in Chicago crimes come from Indiana” (Oct. 31, 2017), <https://www.indystar.com/story/news/crime/2017/10/31/report-1-5-guns-recovered-chicago-crimes-come-indiana/816399001/>; Chicago Sun Times, “‘Gun Trace Report’ details origins of Chicago guns, possible solutions” (Oct. 29, 2017), <https://chicago.suntimes.com/2017/10/29/18341083/gun-trace-report-details-origins-of-chicago-guns-possible-solutions>.

ARGUMENT

This Court may exercise jurisdiction upon “any [] basis . . . permitted by the Illinois Constitution and the Constitution of the United States.” 735 ILCS 5/2-209(c). Under this statute, there is no “substantive difference between Illinois due process and federal due process on the issue of a court’s exercising personal jurisdiction over a nonresident defendant.” *Russell v. SNFA*, 2013 IL 113909, ¶ 32. While there are two types of jurisdiction that a court may exercise over an out-of-state defendant—general and specific—only the latter is at issue here.

To establish specific personal jurisdiction, a plaintiff must demonstrate (1) the existence of minimum contacts with the forum; (2) that “the cause of action arose out of or relates to the defendant’s contacts with the forum state;” and (3) that “it [is] reasonable to require the defendant to litigate in Illinois.” *Harding v. Cordis Corp.*, 2021 IL App (1st) 210032, ¶¶ 25, 29, 47.

A complaint must “establish[] a *prima facie* basis upon which jurisdiction over an out-of-state resident may be exercised.” *Roiser v. Cascade Mountain, Inc.*, 367 Ill. App. 3d 559, 561 (2006). The defendant may overcome this *prima facie* case with “uncontradicted evidence that defeats jurisdiction.” *Campbell v. Acme Insulations, Inc.*, 2018 IL App (1st) 173051, ¶ 10. But when the plaintiff submits contrary evidence, any conflicts in the pleadings and affidavits are resolved in the plaintiff’s favor, and any un rebutted allegations are taken as true. *Id.*

I. WESTFORTH SPORTS HAS MINIMUM CONTACTS WITH ILLINOIS

The first prong of the personal jurisdiction analysis is satisfied where a defendant either “purposefully directed his activities at the state” or “purposefully availed himself of the privilege of conducting business in the forum state[.]” *Felland v. Clifton*, 682 F.3d 665, 673 (7th Cir. 2012). As the Supreme Court recently explained in *Ford Motor Co. v. Montana Eighth Judicial District Court*, a defendant is subject to personal jurisdiction where it “take[s] some act by which it purposefully avails itself of the privilege of conducting activities within the forum State” and

“deliberately reach[es] out beyond its home—by, for example, exploiting a market in the forum State.” 141 S. Ct. 1017, 1024-25 (2021) (internal quotation marks and brackets omitted).

A. Westforth Is Ready And Willing To Do Business With Illinois Residents.

A corporation purposefully avails itself of the privilege of doing business in Illinois by indicating it is “ready and willing to do business with Illinois residents.” *Ill. v. Hemi Grp. LLC*, 622 F.3d 754, 758 (7th Cir. 2010). Attempts to avoid jurisdiction “ring[] particularly hollow” where a defendant “knowingly did do business with Illinois residents.” *Id.*

Contrary to Earl Westforth’s self-serving statements that the store does not “currently” sell guns over-the-counter to Illinois residents, and only “occasionally” sells handguns to out-of-state residents via FFL transfer, *see* Westforth MTD Aff. ¶¶ 21 & 27, the store sold at least 538 firearms—both handguns and long guns—directly to Illinois residents in this manner between January 2018 and April 2021. *See* Exs. A-5 & A-7 (Illinois handgun and long gun transaction records); *see also* Miller Aff. Apps. 1 & 2 (summarizing transaction records). These gun sales directly to Illinois residents generated substantial revenue for the store—more than \$320,000 between 2018 and 2021, or 2.7% of the store’s total revenue—undercutting the claim that the store does not “derive[] substantial revenue” from sales to Illinois. *See* Ex. A-25 (Illinois customer receipts); *see also* Miller Aff. ¶ 32 & Apps. 1 & 2 (summarizing these receipts and calculating \$320,390.74 in revenue from sales to Illinois residents from 2018 to 2021); Ex. A-24 (Handwritten revenue figures, identifying \$11,584,699.89 in total revenue over this time); Westforth MTD Aff. ¶¶ 6, 8. Westforth Sports’ Illinois revenues put it squarely in the company of other businesses whose sales to Illinois customers constitute minimum contacts. *See, e.g., Schaefer v. Synergy Flight Ctr., LLC*, 2019 IL App (1st) 181779, ¶ 4 (Texas company that derived between 1% and 2.5% of revenues from Illinois clients subject to jurisdiction in Illinois); *Harding.*, 2021 IL App

(1st) 210032, ¶ 11 (Delaware company headquartered in California subject to jurisdiction in Illinois where .5% of its revenue came from sales to Illinois customers).

Westforth Sports knew that it was selling guns to Illinois residents, and took affirmative steps to solicit, facilitate, and fulfill these transactions. For starters, Westforth Sports' marketing reach extended into Illinois by design. The store's business listing on Google includes a question-and-answer section *explicitly* directed toward Illinois residents, explaining the requirements for Illinois residents to purchase firearms from Westforth Sports. *See supra* at 3-4. Westforth Sports published this information to avoid complications in selling guns to Illinois customers. Westforth Tr. at 167:21-168:13. The store's other online advertising, such as its sale flyers on Facebook, likewise reached Illinois residents, and Earl Westforth confirmed that the advertised discounts were extended to Illinois customers. *Id.* at 158:21-159:14. And Westforth Sports maintained mutually beneficial relationships with Illinois FFLs that would direct business to Westforth Sports by recommending it to "customers for products that [the Illinois FFLs] don't carry." Westforth Tr. at 182:23-184:24. This evidence contradicts Earl Westforth's claim that the store "has never targeted advertising to Illinois," and has not "conducted or solicited business or engaged in any other persistent course of conduct in the State of Illinois." Westforth MTD Aff. ¶¶ 6, 24.

Westforth Sports' online marketing shows that the store "stood ready and willing to do business with Illinois residents" for purposes of minimum contacts. *See Hemi Grp.*, 622 F.3d at 758 (defendant subject to jurisdiction in Illinois where website advertised willingness to "ship to any state in the country except New York," which meant that defendant "expressly elected to do business with the residents of forty-nine states" including Illinois); *see also Greene v. Karpeles*, 2019 WL 1125796, at *6 (N.D. Ill. Mar. 12, 2019) ("[I]t is not necessary for Karpeles to have

singled out Illinois . . . Karpeles could target Illinois by purposefully directing his business activities toward Illinois just as he had toward all other states.”) (internal citation omitted).

Once Illinois customers were in the store, Westforth Sports took numerous affirmative steps to consummate business with them. As discussed *supra* at 4-6, Westforth Sports trained employees on special rules for processing firearms transactions with Illinois customers; it shipped the handguns they bought—more than 380 guns—across state lines, into Illinois; and it purposefully cultivated interstate business relationships with Illinois FFLs to facilitate and complete these transactions. In sum, Westforth Sports did “more than simply place its [] products into the nationwide stream of commerce; it has also engaged in conduct purposefully directed at Illinois regarding those products, which is all that is required . . . to allow the circuit court to assert specific personal jurisdiction[.]” *Levy v. Gold Medal Prods. Co.*, 2020 IL App (1st) 192264, ¶ 55.

B. Westforth Sports’ Sales To Straw Purchasers Constitute Minimum Contacts With Illinois.

In an attempt to distract from its exploitation of Illinois’ lucrative market for guns, Westforth Sports emphasizes that its sales to straw purchasers were made in-person at its Indiana store by customers presenting Indiana identification, and thus claims these sales are irrelevant to jurisdiction in Illinois. MTD at 11-12. This argument fails for three reasons. First, Westforth Sports’ sale of guns to straw purchasers who re-sold the weapons to Illinois residents (itself sufficient to establish jurisdiction) forms only one portion of its jurisdictionally relevant contacts. Second, the evidence demonstrates that Westforth knew, or had reason to know, that the straw purchasers intended to transfer the guns. Third, the fact that straw purchasers acted as middlemen between its Indiana store and the Illinois market does not deprive this Court of jurisdiction.

As discussed *supra* at 7, Westforth has sold at least 266 firearms to people who were charged with illegally purchasing the guns for others. CPD have already recovered 48 of these

guns. Sgt. Nichols Aff. ¶ 11. The fact that so many guns sold by Westforth Sports were later used in crimes in Chicago is hardly accidental. The evidence outlined at pages 8-12 shows that Westforth Sports persisted in selling guns even where those sales involved telltale signs of straw purchasing, such as purchases of multiple identical or near-identical weapons by a single customer, frequent additional purchases over a short timeframe, and admissions by customers that they were purchasing the guns on behalf of others. And Westforth Sports consummated these sales despite ATF's repeat warnings that the store was illegally allowing straw purchases and despite the fact that the store was on notice, since at least 2014, that some of its guns were headed to Illinois. *See supra* at 12-15. Westforth's persistence in selling firearms to obvious straw purchasers, and ignoring ATF warnings not to do so, make clear that the store was not a hapless dupe: it knew, or reasonably should have known, that it was selling guns into the criminal market.

The fact that these sales occurred through middlemen, and not directly to Illinois consumers, does not deprive this Court of jurisdiction. In *World-Wide Volkswagen Corp. v. Woodson*, the Supreme Court rejected the argument that only *direct* sales by the defendant into a market establish jurisdiction. The Court held that "if the sale of a product of a manufacturer or distributor . . . arises from the efforts of the manufacturer or distributor to serve *directly or indirectly*, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States." 444 U.S. 286, 297 (1980) (emphasis added). Illinois courts have also recognized that a defendant's indirect exploitation of a market is sufficient for jurisdiction. In *Schaefer v. Synergy Flight Center, LLC*, the First District held that a Texas aircraft maintenance company was subject to jurisdiction for injuries arising from a plane crash in Illinois, even though defendant's work on the faulty part was performed in Texas, and the part only reached Illinois through an Indiana middleman. 2019 IL App (1st) 181779, ¶¶ 4, 5. The court explained that where

a defendant traffics in “products presumably sold in contemplation of use [in Illinois], it should not matter that the purchase was made from an independent middleman or that someone other than the defendant shipped the product into this State.” *Id.* at ¶ 14. Like the defendant in *Schaefer*, the fact that Westforth Sports’ guns reach Illinois via middlemen does not defeat jurisdiction.

Moreover, under one stream of commerce theory recognized in cases like *Levy* and *Russell*, a defendant whose products reach Illinois through an intermediary need not have specific knowledge of the products’ destination if the defendant has other contacts with the state. Thus, in *Russell*, the French aerospace part manufacturer was subject to jurisdiction in Illinois even though it denied knowing whether any aircraft containing its parts were being sold in the state. *Russell*, 2013 IL 113909, ¶ 19. Instead, jurisdiction was proper because the manufacturer knew that its parts could be resold nationwide, and had the requisite “something more” in the form of a business relationship with an Illinois company involving a separate product line. *Id.* ¶ 80; *see also Levy*, 2020 IL App (1st) 192264, ¶ 55 (California company subject to jurisdiction in Illinois under stream of commerce theory where it (1) knew that intermediary resold its product nationwide and (2) “engaged in the requisite additional conduct” by labeling its products for resale in Illinois and making limited direct sales to other Illinois customers). Westforth Sports thus cannot dodge jurisdiction in Illinois by claiming not to know precisely where straw purchasers take its guns. It knows that straw purchasers could resell its guns anywhere, and at the same time has the requisite “something more”—namely, more than 500 gun sales directly to Illinois customers.

This is also one of the principal bases for distinguishing *Williams v. Beemiller, Inc.*, 33 N.Y.3d 523 (2019), and *Patterson v. Chiappa Firearms, USA, Ltd.*, 2021 WL 4287431 (S.D. Ind. Sept. 21, 2021), which Westforth Sports relies on in its November 2021 motion to compel briefing as examples of FFLs that were not subject to cross-border jurisdiction. *See* MTC Opp’n

Br. at 8-9, 12. The comparison to *Chiappa* might be apt if the City were basing jurisdiction on sporadic e-commerce across state lines. *See* 2021 WL 4287431, at *3 (Indiana contacts limited to a “website [that] merely gives contact information for Indiana gun dealers” through which to order defendant’s products). Or *Beemiller*, if Westforth’s only link to Illinois were a single straw purchaser taking its guns across state lines. *See* 33 N.Y.3d 523 at 530 (“[T]he record is devoid of evidence supporting plaintiffs’ theory that, merely by selling handguns to [one trafficker], [Ohio defendant] intended to serve the New York market.”). But here, by contrast, the City cites hundreds of transactions with Illinois customers, shipments of guns by Westforth across state lines, online marketing that specifically targets Illinois, store procedures designed to facilitate Illinois sales, and business relationships with Illinois gun stores to further this cross-border business.

At bottom, Westforth Sports’ argument that “it cannot have minimum contacts with Illinois because third parties distributed and sold its products in this state,” would “allow [Westforth Sports] to have its cake and eat it, too.” *Hernandez v. Oliveros*, 2021 IL App (1st) 200032, ¶ 24. Westforth Sports could enjoy the “benefits of the Illinois market while” avoiding “being haled into the Illinois court system . . . merely because [its] product had been distributed and sold through a third party.” *Id.* Although Westforth Sports may insist that its actions were above-board, and that it was simply ignorant of straw purchasers’ true intentions, those issues are to be resolved following full discovery. At this stage, the City need only “establish a *prima facie* basis to exercise personal jurisdiction” over Westforth Sports, and any “conflicts in the pleadings and affidavits must be resolved in [the City’s] favor.” *Russell*, 2013 IL 113909, ¶ 28. The City has more than met this burden, and Westforth has not overcome the City’s *prima facie* case with “uncontradicted evidence that defeats jurisdiction.” *Campbell*, 2018 IL App (1st) 173051, ¶ 10.

II. THIS SUIT ARISES OUT OF AND RELATES TO WESTFORTH'S CONTACTS WITH ILLINOIS

The second prong of specific jurisdiction requires “that the suit arise out of or relate to the defendant’s contacts with the forum.” *Ford*, 141 S. Ct. at 1026 (internal quotation marks omitted). While *arise out of* “asks about causation,” *relate to* “contemplates that some relationships will support jurisdiction without a causal showing.” *Id.* The prong may thus be satisfied by another “activity or [] occurrence involving the defendant that takes place in the State.” *Id.* The Illinois Supreme Court describes this standard as “lenient or flexible.” *Russell*, 2013 IL 113909, ¶ 83. This suit arises out of and relates to all of Westforth Sports’ sales of firearms to Illinois residents, including sales through straw purchasers, direct sales to Illinois residents in violation of Chicago and Illinois law, and sales to Illinois residents via in-state FFL intermediaries.

First, the harms to Chicago “arise out of” Westforth’s efforts to serve the criminal market for firearms in Chicago indirectly by selling guns to customers it knew, or reasonably should have known, were straw purchasers planning to resell the guns. Chicago police have already recovered at least 48 of the 266 firearms that Westforth sold to straw purchasers. *Sgt. Nichols Aff.* ¶ 11. That these firearms entered Illinois through middlemen does not defeat this Court’s jurisdiction over Westforth Sports. *See supra* at 20-22.

Second, the harms to Chicago “relate to” Westforth Sports’ other contacts with Illinois—namely, intentionally selling hundreds of long guns and handguns to Illinois residents—many times through illegal sales. Westforth Sports does not deny it directly served the Illinois market by selling guns to Illinois residents who visited its store (until the filing of this lawsuit) or by “transfer[ing] [] firearms directly to other FFLs” in Illinois. MTD at 2-4. Instead, it insists that its extensive history of selling firearms to Illinois residents does not matter, and that its longstanding business relationships with numerous Illinois gun shops—which served as intermediaries in

Westforth Sports' sales of both handguns and rifles to Illinois residents—" are irrelevant for assessing specific jurisdiction" because "[p]laintiff's claims do not relate to transfers by Illinois FFLs who obtained firearms from Westforth[.]" MTD at 9-10.

Not so. As the Supreme Court made clear in *Russell*, courts need not "ignore one of [defendant's] contacts with Illinois based on a categorical distinction within its general product line." 2013 IL 113909, ¶ 84; *see also Ford*, 141 S. Ct. at 1026-28 (rejecting Ford's argument that additional contacts with the forum states "do not sufficiently connect to the suits" because the particular cars at issue were sold elsewhere). In *Russell*, the court's jurisdictional analysis included the defendant's contacts with Illinois from the defendant's custom-made bearings for airplanes, even though the claim stemmed from their custom-made bearings for helicopters. This case is easier: the long guns and handguns that Westforth sold to straw purchasers and the ones it sold and shipped to Illinois customers are not merely similar, *they are identical*. Compare Miller Aff. App 3 (listing firearms sold to straw purchasers) *with id.* Apps. 1 & 2 (listing firearms sold to Illinois customers). Westforth Sports' attempts to hand-wave the significance of its hundreds of sales to Illinois residents are thus unavailing, as "jurisdiction can be based on a combination of the sales of the offending product *and other sales of similar products* that, in total, provide evidence that . . . the plaintiff's claim *sufficiently relates* to the defendant's varied contacts with the forum state." *Harding v. Cordis Corp.*, 2021 IL App (1st) 210032, ¶ 44 (emphasis added, internal quotation marks omitted); *see also Russell*, 2013 IL at ¶ 84 ("[D]efendant's proposed distinction between subcategories of its primary product, custom-made aerospace bearings, is too restrictive and narrow for purposes of our jurisdictional inquiry."); *cf. Ford*, 141 S. Ct. at 1028 (efforts to market and sell the same models of car in the forum state as were involved in plaintiffs' crashes create "a

strong relationship among the defendant, the forum, and the litigation”) (internal quotation marks omitted).

In any case, many of Westforth Sports’ firearm sales to Illinois residents are also illegal and contribute to the public nuisance in Chicago. From 2018-April 2021, Westforth Sports sold at least 47 assault weapons to Chicago residents in violation of a City ordinance that prohibits the possession, purchase, or sale of assault weapons. CHI. IL. MUN. CODE § 8-20-075. Lickenbrock Aff. ¶ 8. These sales also violated the federal Gun Control Act, which requires cross-border sales of rifles and shotguns to “fully comply with the legal conditions of sale in both such States” including all “State laws and published ordinances.” 18 U.S.C. § 922(b)(3);⁹ *see also In Re Academy, Ltd.*, 625 S.W.3d 19, 27-30 (Tex. 2021) (accepting that the state law of the buyer’s residence should govern but concluding that there was no GCA violation because the state law only regulated large-capacity magazines and not firearms). And Westforth Sports sold at least five guns that violate Illinois’ “Melting Point Law.” Lickenbrock Aff. ¶ 14.

These illegal sales implicate the “relate to” prong of the jurisdictional test because they compromise public safety in Chicago, necessitate a diversion of resources to recover illegal weapons, and constitute a public nuisance. They also demonstrate Westforth Sports’ intent and willingness to serve the Illinois market through illegal gun transactions.¹⁰ In sum, Westforth Sports has a long history of selling firearms that wind up in the hands of Illinois residents—sometimes via straw purchasers, sometimes via over-the-counter sales in Indiana, and sometimes via FFL transfers. The City’s claims arise from and relate to that history of flooding the state with weapons.

⁹ Chicago’s assault weapons ordinance is listed in ATF Publication 5300.5, State Laws and Published Ordinances, available at <https://www.atf.gov/file/133796/download>.

¹⁰ The City intends to amend its complaint to include allegations pertaining to these illegal sales.

III. THE EXERCISE OF PERSONAL JURISDICTION OVER WESTFORTH IS REASONABLE AND COMPORTS WITH TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE.

To satisfy the final prong, a court must determine if exercising specific jurisdiction “would comport with fair play and substantial justice.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (internal citations omitted). To do so, courts “evaluate [1] the burden on the defendant, [2] the forum State’s interest in adjudicating the dispute, [3] the plaintiff’s interest in obtaining convenient and effective relief, [4] the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and [5] the shared interest of the several States in furthering fundamental substantive social policies.” *Id.* at 477 (internal citation and quotation marks omitted).

All five factors favor exercising jurisdiction over Westforth Sports, which does not even bother to address three factors and makes only conclusory arguments regarding the first. Such a paltry showing cannot constitute the “compelling case” required for this prong to weigh against jurisdiction. *Curry v. Revolution Lab’s, LLC*, 949 F.3d 385, 402 (7th Cir. 2020).

A. Exercising Jurisdiction Over Westforth Will Impose A Minimal Burden.

Westforth Sports asserts (without elaboration) that “[r]equiring it to litigate this case in Illinois . . . imposes an unreasonable burden.” MTD at 15. But Westforth Sports offers no authority to support its claim that traveling to a state *less than 10 miles away* from its principal place of business somehow imposes an “unreasonable burden.” In fact, Illinois courts have found the burden associated with traveling such short distances to be trivial. *See, e.g., Qualizza v. Fischer Fine Home Bldg., Inc.*, 2021 IL App (1st) 201242-U, ¶ 45 (“Here, the burden on [Wisconsin defendant] of defending an action in Chicago, Illinois (less than two hours away from Wisconsin) is not too onerous[.]”); *see also McNally v. Morrison*, 408 Ill. App. 3d 248, 260 (2011).

B. Illinois Has A Paramount Interest In Adjudicating This Case.

Westforth Sports does not dispute that Illinois has a paramount interest in providing a forum for this litigation. Nor could it—it is black-letter law that a “State generally has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.” *Rios v. Bayer Corp.*, 2020 IL 125020, ¶ 20 (internal citation omitted); *see also Felland*, 682 F.3d at 677. Here, Illinois’ interest in the litigation, and the severity of the injuries inflicted by Westforth Sports’ actions could not be greater.

C. Chicago Has A Strong Interest In Relief.

The third factor is the sole one to which Westforth Sports devotes any significant attention, but its arguments are unavailing. Westforth Sports does not dispute that Chicago’s interest in obtaining *convenient* relief favors jurisdiction, and that a plaintiff has a strong interest in obtaining relief in its home forum. *See e.g., Golbert v. Aurora Chi. Lakeshore Hosp., LLC*, 2022 WL 595362, at *6 (N.D. Ill. Feb. 28, 2022). Rather, it argues that this Court is powerless to grant *effective* relief, as any judgment “would almost certainly be unenforceable” in Indiana because “Plaintiff is not a private individual and the award obtained is penal in nature.” MTD at 15.

Westforth Sports cites no Illinois authority to support this, and otherwise offers only a smattering of cases from foreign jurisdictions. In contrast, the Seventh Circuit has described a clear standard for determining whether a legal claim is penal: “if the amount sought to be recovered is arbitrarily exacted for some act or omission of defendant, the action is essentially penal, but if the action is to recover compensation based on a loss sustained by plaintiff, it is remedial.” *Schaefer v. H. B. Green Transp. Line, Inc.*, 232 F.2d 415, 418 (7th Cir. 1956); *see also* REST. (2D) CONFLICT

OF LAWS § 89 (cmt. a) (Am. Law Inst. 1971) (rule against enforcement of foreign penal laws “does not apply to actions brought by a . . . public body to recover compensation for a loss.”).¹¹

Any judgment in Chicago’s favor would not be penal. The City does not seek an arbitrary, statutorily determined fine from Westforth Sports; it seeks instead to recover “a sum of money that will allow the City to abate the nuisance that Westforth has created” and “a reasonable sum of money that will fairly compensate the City for its damages.” Compl. at 41. Even if Westforth Sports could show that that the City’s underlying causes of action were somehow penal, it would only render those causes of action *themselves* unenforceable in an Indiana court—but not a judgment of this Court based upon those causes of action. Westforth’s contrary view misstates the law. It argues that any judgment would be penal because the City “is not a private individual,” but a state actor. MTD at 15. That view is impossible to square with the Supreme Court’s decision in *Milwaukee County v. M.E. White Co.*, which held that an Illinois court may enforce a Wisconsin judgment against an Illinois corporation for delinquent taxes owed to Wisconsin. *See* 296 U.S. 268, 271 (1935) (“[T]he obligation to pay taxes is not penal” and is “enforceable . . . in the civil courts[.]”); *see also*, REST. (2D) CONFLICT OF LAWS § 120 (cmt. b) (Am. Law Inst. 1971) (“A State may not . . . refuse to recognize or enforce the judgment of a sister State on the ground that the judgment was rendered in favor of a state or state agency on a non-penal claim.”).

Finally, Westforth Sports does not even address the City’s claim for injunctive relief, which Illinois courts have recognized may be asserted against non-resident defendants without offending

¹¹ Westforth’s reliance on *Cap Gemini America, Inc. v. Judd* and *City of Oakland v. Desert Outdoor Advertising, Inc.* is misplaced, as both involved statutorily calculated penalties, rather than remedial compensation for harm suffered. *See Cap Gemini*, 597 N.E.2d 1272, 1285-86 (Ind. Ct. App. 1992) (applying “penalty” for late payment of wages, calculated as employee’s wage rate multiplied by length of tardiness); *City of Oakland*, 267 P.3d 48, 50 (2011) (judgment penal in nature where its amount was “calculated by adding the statutory penalty of \$10,000, plus \$75 per day for 1,520 days of violation”). Moreover, because *Cap Gemini* involved a private plaintiff, the court was not called upon to determine whether a municipal entity might enforce a remedial tort judgment in Indiana courts. Thus Westforth’s argument rests on dicta.

due process. *E.g., Cap. Assocs. Dev. Corp. v. James E. Roberts-Ohbayashi Corp.*, 138 Ill. App. 3d 1031, 1037 (1985) (“[W]e believe that requiring [California defendant] to defend against [plaintiff’s] injunction request in an Illinois court does not offend traditional notions of fair play and substantial justice.”) (internal quotation marks omitted).

D. Exercising Jurisdiction Over Westforth Serves The Interstate Judicial System’s Interest In Efficiently Resolving This Case.

The City’s claims arise under Illinois law and relate to injuries suffered within Illinois, making Illinois the most efficient forum to resolve those claims. “[T]he interstate judicial system’s interest in obtaining the most efficient resolution of controversies [] supports an exercise of jurisdiction” by Illinois courts where “the effects of [Defendant’s] acts and omissions occurred in Illinois.” *McNally v. Morrison*, 408 Ill. App. 3d 248, 260 (2011). Westforth Sports offers no reason to doubt that an Illinois court is the most efficient place to try claims arising under Illinois law, from injuries suffered within Illinois.

E. Exercising Jurisdiction Over Westforth Sports Serves The States’ Shared Interest In Furthering Fundamental Social Policies.

Litigating these claims in Illinois will advance the States’ interest in furthering fundamental social policy. Illinois courts recognize “it is in the interest of the several states to hold citizens of one state accountable for their actions that have a substantial impact on citizens of another state.” *Id.* Moreover, jurisdiction “serve[s] the state’s interest in furthering social policies in that” it ensures that the City is “able to perform its statutory mandate” by protecting the safety of its residents from foreign actors. *Ill. Com. Comm’n v. Entergy-Koch Trading, LP*, 362 Ill. App. 3d 790, 801 (2005).

CONCLUSION

For the foregoing reasons, the City of Chicago respectfully requests that this Court deny Westforth Sports’ motion to dismiss for lack of personal jurisdiction.

Dated: September 15, 2022

Respectfully submitted,

By: /s/ Michael J. Gill

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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. 21 CH 01987

Judge: Clare J. Quish

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies under penalties provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109) that he caused copies of the foregoing Plaintiff City of Chicago's Opposition to Defendant's Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction to be served electronically upon the counsel of record listed in the below Service List via Odyssey eFileIL.

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