

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

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

Case No.: 3-32CH-1987  
Judge: Clare J. Quish

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**DEFENDANT’S REPLY MEMORANDUM IN SUPPORT OF ITS  
SECTION 2-619 MOTION TO DISMISS  
FOR LACK OF PERSONAL JURISDICTION**

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Attorneys for Defendant, Westforth Sports, Inc.

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Now comes Defendant, Westforth Sports, Inc., by and through counsel, and submits the following reply memorandum in support of its motion to dismiss for lack of personal jurisdiction.

### **INTRODUCTION**

While this case involves guns, Plaintiff's claims are not about the guns sold by Westforth. The manufacturer, model, caliber, or any other factor is irrelevant and Plaintiff does not allege injury resulting from gun defects or any other such theory. Rather, as Plaintiff itself decided when it sued Westforth, Plaintiff's claims are about specific firearm transactions involving specific purchasers consisting of what Plaintiff characterizes as "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." Thus, Plaintiff's claims center on a subset of firearm transactions identified in Appendix 3 to Exhibit A attached to Plaintiff's response memorandum, each of which involved an over-the-counter sale in the State of Indiana at Westforth's licensed Indiana premises to an individual providing identification issued by the State of Indiana indicating the purchaser's Indiana residency.

Rather than focus its argument on the transactions upon which its claims are based as the law requires, Plaintiff now seeks to establish jurisdiction through other alleged contacts with Illinois unrelated to its claims. While Westforth has transferred firearms to Illinois FFLs and made in-store sales of long guns to Illinois customers, none of Plaintiff's claims relate to those transactions. Where the matter is one of specific personal jurisdiction, the question is simple: does Plaintiff prove that the alleged straw purchase transactions arise out of or relate to Westforth's contacts with Illinois? Absent such, Plaintiff has not met its burden, and the case must be dismissed.

## REBUTTAL FACTS<sup>1</sup>

Plaintiff's response memorandum identifies 53 specific individuals that Plaintiff represents to the Court as having been charged with crimes relative to their purchase of firearms from Westforth. *See*, 9/15/2022 Response, pg. 7. Plaintiff summarized the transactions with these individuals in the table attached as Appendix 3 to Exhibit A (Miller Affidavit) submitted with its response memorandum. *Id.*, Ex. A, pg. 17. Notably – and understandably – Plaintiff did not present the actual documents relating to those transactions, claiming that they were “voluminous” and instead offered only its chart to “assist the Court.” Miller Aff., ¶ 17.

Westforth's actual records behind Appendix 3 are central to any assessment of whether those transactions involved Illinois contacts on the part of Westforth. Specifically, Westforth produced 556 pages of ATF Form 3 transaction records, multiple sale reports, receipts, acquisition and disposition records, and other documents relative to the individuals identified in Plaintiff's complaint as the “straw purchasers.” Exhibit A (Rudd Affidavit), Ex. A-1. Additionally, Westforth produced 561 pages of ATF Form 3 transaction records, multiple sale reports, receipts, acquisition and disposition records, and other documents relative to the individuals identified by Plaintiff as “additional straw purchasers.” *Id.*, Ex. A-2.

Westforth's records relative to the transactions about which Plaintiff complains show that they all involved sales in Indiana to individuals indicating an Indiana residence and providing Indiana-issued identification affirming such. Rudd Aff, Ex. A-1 and A-2. Likewise, multiple handgun sales were reported to ATF and Indiana State Police. *Id.*

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<sup>1</sup> Plaintiff's memorandum attempts to paint a picture of Westforth that is designed to present it in a negative light relative to its operations in general and the specific transactions at issue. When the merits of Plaintiff's substantive claims are before the Court, Westforth will address those issues.

## ARGUMENT

The question before the Court is whether Plaintiff has met its burden of proving that its claims arise out of or relate to Westforth's contacts with Illinois. To the extent that Westforth has contacts with Illinois, no matter how extensive, they are irrelevant unless Plaintiff's claims arise out of or relate to them. Conversely, to the extent that Plaintiff presents any evidence of the unilateral actions of others, even if foreseeable, such are irrelevant if they do not relate to Westforth's own, purposeful contacts with Illinois. Thus, while Plaintiff would blur these lines, the law will not.

### **I. SPECIFIC JURISDICTION REQUIRES 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, only Westforth’s contacts with the forum must lead it to “reasonably anticipate being haled into court there” relative to those specific transactions. *World-Wide Volkswagen Corp.*, 444 U.S. 286, 295-297 (1980); *Walden v. Fiore*, 134 S. Ct. 1115 (2014).

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

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

*Ford Motor Company v. Montana Eighth Judicial District Court* involved a question of whether personal jurisdiction could be held over it in a state where it sold vehicles but did not sell the specific defective vehicle at issue; it re-emphasized the disjunctive nature of the “arise out of or relate to” standard for specific jurisdiction minimum contacts. 141 S. Ct. 1017 (2021). Observing 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 if the claims related 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.

*Id.* at 1033.

Unlike here, 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.<sup>2</sup>

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.

**2. Contacts unrelated to the litigation 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 defendant unless the plaintiff’s claims relate to those contacts. *Ford*, 141 S. Ct. at 1028. In fact, *Ford* expressly stated that the “essential foundation of specific jurisdiction” is “a strong relationship among the defendant, the forum, and the litigation.” *Id.* (citing *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414 (1983) (internal quotations omitted) (emphasis added)); *Walden*, 571 U.S. at 284 . 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*, 141 S. Ct. at 1026.

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<sup>2</sup> *Ford* analysis can only be used to permit specific personal jurisdiction where contacts are extensive and the injury relates to those contacts. *See, e.g., Esquivel v. Airbus Ams.*, 2021 U.S. Dist. LEXIS 193344 (N.D. Ill. 2021).

The approach of the *Ford* Court, however, is not new, and such 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.”).

Courts recognize that *Ford* does not open the floodgates to specific personal jurisdiction. 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] does 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.”); *O’Neil v. Somatics, LLC*, 2021 U.S. Dist. LEXIS 183730 (D. N.H. 2021) (relying on *Goodyear* in the *Ford* analysis to decline to exercise specific personal jurisdiction where the claims were unrelated to the defendant’s contacts with the forum state).<sup>3</sup>

It is Plaintiff’s burden to prove Westforth’s intentional, knowing contacts with Illinois that relate to its claims, and nothing in *Ford* changes that.

## **II. TRANSFERS OF FIREARMS TO ILLINOIS FFLS AND LONG GUN SALES TO ILLINOIS RESIDENTS ARE UNRELATED TO PLAINTIFF’S CLAIMS.**

As Plaintiff notes, Westforth has transferred firearms to Illinois FFLs and sold long guns to Illinois residents at its store in Indiana.<sup>4</sup> While these transfers and sales may involve Illinois customers,<sup>5</sup> they are irrelevant to the Court’s analysis. Specifically, Plaintiff’s claims are not about those sales. Rather, Plaintiff’s claims are about alleged straw purchasers traveling to Indiana to acquire and traffic firearms, not Illinois State Police approved FOID card holders purchasing firearms for themselves or transfers to Illinois FFLs. Plaintiff has neither alleged nor provided evidence of any such customer being a “straw purchaser” or otherwise involved in any alleged third-party criminal trafficking activity at the heart of its claims against Westforth.

An Illinois Appellate Court in the Fourth District recently rejected an attempt by a plaintiff to bootstrap claims to unrelated forum contacts as Plaintiff is attempting to do here:

<sup>3</sup> While Plaintiff offers the *Qualizza* case as a ruling applying *Ford* and finding jurisdiction, that 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.

<sup>4</sup> Also noted in Plaintiff’s memorandum and supporting documentation, Westforth confirms the purchasers’ FOID card prior to transferring a long gun to an Illinois resident over the counter or shipping a handgun to an Illinois FFL on behalf of an Illinois customer.



While defendant admits it has service facilities in Illinois, it argues plaintiff never alleged that its one-time service on her vehicle occurred at, or has anything to do with, any of its Illinois service centers, nor does plaintiff allege she ever had any contact with one of defendant's Illinois service centers.

\* \* \* \*

Here, we find plaintiff's cause of action (negligence) did not arise out of or relate to defendant's contacts with Illinois, specifically, defendant's service centers in Illinois. Defendant performed maintenance work on plaintiff's vehicle in Arkansas. Thus, the only thing connecting defendant to Illinois as it relates to plaintiff's cause of action is the fact that plaintiff chose to drive to Illinois and was subsequently injured in Illinois. However, a "plaintiff cannot be the only link between the defendant and the forum." *Walden*, 571 U.S. at 285. Our case is distinguishable from *Ford Motor Co.*, where plaintiff, not defendant, established a relationship among the forum and the litigation. Accordingly, where plaintiff's cause of action did not arise out of or relate to defendant's contacts with Illinois, plaintiff failed to meet her burden of establishing a *prima facie* basis to exercise specific personal jurisdiction over defendant.

*Morrison v. JSK Transp., Ltd.*, 2022 IL App (4th) 210542-U, ¶¶ 41-42.

Numerous other Courts have rejected jurisdictional bootstrapping arguments as well. “Simply serving the forum state’s market – even serving the relevant product to the market – is not alone enough of a relationship to meet the minimum contacts requirement.” *Tyler v. Ford Motor Co.* 2021 U.S. Dist. LEXIS 221863 (M.D. Ala. 2021) (no specific personal jurisdiction over Ford Motor Co. even applying *Ford* as “[i]t is clear that mere purposeful availment remains insufficient to impart personal jurisdiction if the contacts are not related to the controversy at suit.”);<sup>6</sup> *see also Colluci v. Whole Foods Mkt. Servs.*, 2021 U.S. Dist. LEXIS 64063 (N.D. Ill. 2021) (even where contacts with Illinois are related to the type of product at issue, there is no jurisdiction if the claim is unrelated to those contacts).

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<sup>5</sup> Whether they are sufficiently “extensive” may be debatable, but such is inapposite to the Court’s analysis here.  
<sup>6</sup> *Tyler* relied upon *Walden* to find that “[i]t is well-settled that the actions of a plaintiff or a third party cannot alone constitute a basis for personal jurisdiction over a defendant.” *Tyler*, *supra*, at \*12

Unlike here, specific jurisdiction over a defendant is justified only where the defendant's own contacts are at the center of the dispute rather than unilateral contacts of third parties. *Houlihan Trad. Co. v. CTI Foods*, 2021 U.S. Dist. LEXIS 231819 (E.D. Mo. 2021) (claims "relate to" the forum state under *Ford* where "[the defendant's] contacts [] lie 'at the heart of this contract dispute'"); *Kosar v. Columbia Sussex Mgmt.*, 2021 U.S. Dist. LEXIS 221913 (N.D. Ill. 2021) (applying *Ford*, even where "lawsuit undoubtedly would not have occurred" had the third-party defendant not hired a particular Illinois resident, that employment relationship "did not cause or relate to the alleged injury" and could not serve as a basis for specific personal jurisdiction.); *Dental Health Prods. v. Coleman*, 2022 U.S. Dist. LEXIS 90914 (E.D. Wisc. 2022) ("Plaintiff has not offered any evidence of litigation-specific conduct ... to establish specific jurisdiction."). Thus, even where a defendant has otherwise sufficient minimum contacts to a forum state, specific personal jurisdiction does not arise against that defendant unless the plaintiff's claims relate to those specific contacts. *Steel Warehouse v. Leech*, 154 F.3d 712, 714-715 (7th Cir. 1998) ("Specific jurisdiction cannot lie without a connection between the defendants' [in-state] activity and the claims alleged in the complaint."); *Dugger v. Horseshoe* 2005 U.S. Dist. LEXIS 61582, \*5 (N.D. Ill. 2005) (Illinois contacts insufficient where plaintiff showed no connection between those contacts and the claimed injuries).

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

Retail long gun sales to Illinois residents at Westforth's place of business in Indiana cannot confer specific jurisdiction over Westforth. 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 Complaint, ¶ 1, 28; see also Comp. ¶ 97 (Count I); ¶ 105 (Count II); ¶¶ 112, 114 (Count III); ¶ 122 (Count IV). That is, all of Plaintiff’s claims are about alleged straw purchasers trafficking firearms.

Plaintiff has identified the transfers that it alleges were straw purchases by alleged firearm traffickers, and there is no overlap whatsoever between that list of transfers and Westforth’s retail sale of long guns in Indiana to Illinois FOID card holders. Plaintiff has not alleged or proven such.

**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 has identified the transfers that it alleges were straw purchases by alleged firearm traffickers, and there is no overlap whatsoever between that list of transfers and Westforth’s transfers of firearms to Illinois FFLs. Plaintiff has not alleged nor proven such.

**C. Plaintiff’s Reliance Upon Product Defect Cases Is Misplaced.**

In an attempt to expand the “relate to” analysis, Plaintiff relies on a string of defective product cases where specific jurisdiction was found to apply where a supplier sold products into the state but not the specific unit alleged to be defective. For instance, *Russell* involved claims arising out of a helicopter crash allegedly resulting from defectively manufactured bearings and the manufacturer had sold other bearings into Illinois. *Russell v. SNFA*, 2013 IL 113909. As in *Ford*, where the Court did not require a specific defective product to have been sold into the state directly where the manufacturer sells the same or similar products, the Court in *Russell* likewise did not distinguish between specific subcategories of bearings sold for its jurisdictional analysis over the

bearing supplier. *Id.* Similarly, the court in *Harding*, applying both *Ford* and *Russell*, determined that a manufacturer in a product defect case was subject to jurisdiction in Illinois where the defendant “manufactured a nitinol filter that could *only* enter the stream of commerce through the marketing efforts” of a particular company whose Illinois sales constituted nearly 60% of its annual sales for the better part of a decade. *Harding v. Cordis Corp.*, 2021 IL App (1st) 210032 (reaffirmed applicability of *Ford* in a defect case against out-of-state manufacturer).

Here, of course, Plaintiff’s claims do not relate to an allegedly defective product, nor is Westforth’s defense a matter of units, models, or SKUs. Rather, Plaintiff’s claims relate to specific transactions that took place in Indiana involving sales to Indiana residents, and other contacts with Illinois cannot confer specific personal jurisdiction over Westforth relating to these transactions.

**III. WESTFORTH’S SALES TO ALLEGED STRAW PURCHASERS DO NOT RELATE TO ANY WESTFORTH CONTACTS WITH ILLINOIS.**

Because Plaintiff’s claims center on transactions involving sales to alleged straw purchasers, Plaintiff must prove Westforth’s purposeful contacts with Illinois as to those specific transactions. Plaintiff fails to do so. Each transaction involving an alleged “straw purchaser” took place in Indiana, each such transaction involved a purchaser providing an Indiana residential address, and each transaction involved a purchaser providing photo identification issued by the Indiana government attesting to Indiana residency. Plaintiff’s arguments as to these transactions boil down to essentially: 1) people sometimes straw purchase firearms and traffic them across state lines, 2) FFLs are aware of the existence of straw purchasing, and 3) Westforth is near the Illinois border. That, however, is woefully insufficient for Plaintiff to meet its burden.

**A. Plaintiff's Claims Do Not Involve Any Contact With Illinois Attributable To Westforth.**

Plaintiff has identified certain Indiana residents who 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. If Plaintiff were to sue these individuals, then perhaps they could show contacts with Illinois applicable to them. However, applying *Walden*, 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 as to Westforth.

"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)); see also *Williams v. Beemiller*, 33 N.Y.3d 533 (2019) (no jurisdiction despite was evidence that the FFL may have had reason to know that the purchaser may himself eventually take the guns to New York).

**B. Plaintiff's Distributor Theory Does Not Support Jurisdiction.**

Because the complained-of transactions do not involve any contacts of Westforth with Illinois, Plaintiff is left with relying on the actions of third parties as its basis for establishing jurisdiction in contravention of *Walden*. In fact, Plaintiff even goes so far as to fabricate a theory that the alleged straw purchasers are Westforth's "distributors" to Illinois for purposes of making a connection where there is none. Thus, in a clear attempt to circumvent *Walden* and somehow make the conduct of third parties attributable to Westforth, Plaintiff cites a slew of cases where jurisdiction

applied over manufacturers who actually contracted with distributors to supply product on their behalf to the forum state. *Hernandez v. Oliveros*, 2021 IL App. (1st) 2000032, ¶¶23-24 (distributor served market on defendant’s behalf); *Schaefer v. Synergy Flight Ctr., LLC*, 2019 IL App (1st) 181779, ¶ 4 (defective product sold through distributor into Illinois for a plane owned by an Illinois company).

While a party's purposeful availment need not be direct, such indirect purposeful availment requirement can only be achieved through a third party if that third party “makes contact with the forum state *bilaterally* rather than *unilaterally*.” *Hernandez*, 2021 IL App. (1st) 2000032 at ¶23 (emphasis in original) (citing *Khan v. Gramercy Advisors, LLC*, 2016 IL App (4th) 150435, ¶ 171; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479, (1985)). “Bilateral acts can occur when two parties have a business relationship or contractual understanding that contemplates one party's acting for the benefit of both in the forum state.” *Id.* Here, Plaintiff has provided no evidence that Westforth contracted with anyone to take product to Illinois on its behalf.

Absent a distributor relationship, Courts have routinely rejected “knew or should have known” arguments for specific personal jurisdiction such as those put forth by Plaintiff here:

As *Walden* treats third parties and plaintiffs similarly, the court sees no reason to reject a corollary to the rule just expressed—a defendant's knowledge that a third party has strong connections to a state, such that harm to that third party or caused by that third party is likely to occur in the state, alone, does not amount to the defendant's purposefully availing himself of the privilege of conducting activities in that state. The same rationale that applies in the case of a plaintiff would apply in the case of a third party: focus on a defendant's knowledge regarding a third party's contacts allows the third party's contacts, rather than contacts created by the defendant, to control jurisdiction.

*Companion Prop. & Cas. Ins. Co. v. U.S. Bank Nat'l Ass'n*, 2016 U.S. Dist. LEXIS 158389, \*31-32 (D.S.C. 2016)(citing *Maxitrate Tratamento Termico E Controles v. Super Sys., Inc.*, 617 F. App'x

406, 408 (6th Cir. 2015)); *Campinha-Bacote v. Wick*, No. 1:15-cv-277, 2015 U.S. Dist. LEXIS 157372, 2015 WL 7354014, \*5 (S.D. Ohio 2015) ("[If] the allegations show, at best, that Defendant merely knew or should have known that her actions may have some effect in [the state, t]hat is not enough to show purposeful availment."); *see also Accident Ins. Co. v. U.S. Bank N.A.*, 2017 U.S. Dist. LEXIS 156301, \*7-8 (D.S.C. 2017); *Flipside Wallets LLC v. Brafman Group, Inc.*, 2020 U.S. Dist. LEXIS 50206, \*8 (E.D. Pa. 2020) ("Even if [defendant] knew or should have known that its [products] would end up in Pennsylvania though Amazon sales, that expectation is insufficient to establish specific jurisdiction.")

Plaintiff is asking this Court to assert specific jurisdiction based upon the notion that Westforth should have assumed that the customers presenting Indiana identification were really from somewhere else or that Westforth knew some firearms it sells in Indiana to Indiana customers may ultimately end up in Illinois. While Westforth rejects any notion that it knew or should have known that any transactions were straw purchases, even knowledge or suspicion of a third party's intentions is insufficient to establish specific personal jurisdiction as "it is the defendant's actions, not [its] expectations, that empower a State's courts to subject him to judgment." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 837, 882-883 (2011). Thus, if a firearm sold by Westforth in Indiana is trafficked illegally to another state by the unilateral act of a person over whom Westforth had no control, then *Walden* applies to prohibit the exercise of specific personal jurisdiction over Westforth, and Plaintiff's "distributor" theory should be rejected.

**CONCLUSION**

It is Plaintiff's burden to put forth evidence that the transactions that form the basis of its claims arose from or related to Westforth's own contacts with Illinois. Plaintiff has failed to do so, and Westforth's motion to dismiss for lack of personal jurisdiction should be granted.

Respectfully submitted,

By:

*/s/ Timothy R. Rudd*

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