

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Joshua Everett Bushman, Admin. for the Estate of Calvin Van Pelt, et al.

Plaintiff

vs.

2023 JUL 28 PM 12:16

Civil Action No. CL 2023-06260

Salvo Technologies, Inc. d/b/a 80 P Builder, et al.

Defendant

Previous Chancery No. CH

SERVE:

FRIDAY MOTIONS DAY – PRAECIPE/NOTICE

Moving Party: [ ] Plaintiff [X] Defendant [ ] Other

Title of Motion: Defendant BUL USA LLC's Motion By Special Appearance to Dismiss for Lack of Personal Jurisdiction [X] Attached [ ] Previously Filed

DATE TO BE HEARD: To be Determined by Consent of all parties Time Estimate (combined no more than 30 minutes): 30 Min

Time to be Heard: [ ] 9:00 a.m. with a Judge

[X] 10:00 a.m. (Civil Action Cases) Does this motion require 2 weeks notice? [X] Yes [ ] No

[ ] 11:30 a.m. (DOMESTIC/Family Law Cases) Does this motion require 2 weeks notice? [ ] Yes [ ] No

Case continued from: (Date) continued to: (Date)

Judge must hear this motion because (check one reason below):

- [ ] The matter is on the docket for presentation of an order reflecting a specific ruling previously made by that Judge.
[ ] This Judge has been assigned to this entire case by the Chief Judge; or,
[ ] The Judge has advised counsel that all future motions, or this specific motion, should be placed on this Judge's Docket; or,
[ ] This matter concerns a demurrer filed in a case where that Judge previously granted a demurrer in favor of demurrant.

PRAECIPE by: William Pittard / BUL USA, LLC KaiserDillon PLLC
Printed Attorney Name/ Moving Party Name Firm Name

1099 14th Street NW; 8th Floor West / Washington, DC 20005
Address

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CERTIFICATIONS

I certify that I have in good faith conferred or attempted to confer with other affected parties in an effort to resolve the subject of the motion without Court action, pursuant to Rule 4:15(b) of the Rules of the Supreme Court of Virginia; and, I have read, and complied with, each of the Instructions for Moving Party on the reverse side of this form.

Handwritten signature of William Pittard

Moving Party/Counsel of Record

CERTIFICATE OF SERVICE

I certify on the 28 day of July, 2023, a true copy of the foregoing Praecipe was

[ ] mailed [ ] faxed [X] delivered to all counsel of record pursuant to the provisions of Rule 4:15(e) of the Rules of the Supreme Court of Virginia.

Handwritten signature of William Pittard

Moving Party/Counsel of Record

## INSTRUCTIONS FOR MOVING PARTY

**DATE/TIME:** All motions should be noticed for the 10:00 a.m. Civil Action Docket or the 11:30 a.m. Domestic/Family Law Docket (All Divorce cases, adoptions and Juvenile & Domestic Relations Court Appeals) unless the moving party believes the motion will be uncontested. All motions believed to be uncontested should be noticed for 9:00 a.m.. **A minimum of two weeks' notice is required for all motions for Summary Judgment, Demurrers, Pleas in Bar, motions pertaining to discovery disputes and other motions for which any party desires to file a memorandum.** A memorandum of points and authorities of five pages or less must accompany any of these pleadings and any other motion placed on the Two-Week Docket. If either party believes it necessary to file a memorandum exceeding five double-spaced pages, then the parties must utilize the Briefing Schedule procedure: contact opposing counsel or the opposing party and by agreement conduct a telephone conference call with the Calendar Control Judge, (703) 246-2221; or, if agreement is not possible, give advance notice of an appearance before the Calendar Control Judge to establish a Briefing Schedule.

**Each side should bring a draft proposed order to Court on the day of the hearing, as the ruling must be reduced to an order that day, absent leave of Court.** Cases may only be removed from the docket by the Court or by counsel for the moving party or the moving party. One Week Motions may be removed from the docket up until 4:00 p.m. on the Thursday preceding the hearing date, by contacting the Motions Clerk: (703) 246-4355. Two Week Motions may not be continued or removed from the docket after 4:00 p.m. on the Friday preceding the hearing date, without leave granted by the Judge assigned to hear the motion, for good cause shown.

If a hearing on any motion must take longer than thirty (30) minutes, the moving and responding parties, or their counsel, should appear before the Calendar Control Judge to request a hearing for a day other than a Friday. See, "Motions Requiring More than 30 Minutes" in "Friday Motions Docket Procedures" on the Court's website at <https://www.fairfaxcounty.gov/circuit/sites/circuit/files/assets/documents/pdf/civil-friday-motions-docket-procedures.pdf>

**MOTIONS TO RECONSIDER:** Do not set a Motion to Reconsider for a hearing. (See Friday Motions Docket Procedures, available from the Clerk's Office, the Bar Association office or on the Court's website at the address above.

**CERTIFICATIONS OF MOVING PARTY/COUNSEL:** Rule [4:15](#) (b) of the Rules of the Supreme Court of Virginia provides in pertinent part that "Absent leave of court, and except as provided in paragraph (c) of this Rule, reasonable notice shall be in writing and served at least seven days before the hearing. Counsel of record shall make a reasonable effort to confer before giving notice of a motion to resolve the subject of the motion **and to determine a mutually agreeable hearing date and time.**"

**CERTIFICATE OF SERVICE:** Pursuant to Rule [4:15](#) (e), a motions pleading shall be deemed served when it is actually received by, or in the office of, counsel of record through delivery, mailing, or facsimile transmission; not when it is mailed or sent.

## INFORMATION FOR MOVING PARTY

**CONCILIATION PROGRAM:** The Fairfax Circuit Court strongly encourages use of conciliation procedures to resolve motions. The Fairfax Bar Association's Conciliation Program conducts conciliation without charge by experienced litigators, who meet in person or by telephone with all interested parties. To request conciliation, fax a Request for Conciliation form to the Fax Hotline, (703) 273-1274; e-mail a request for conciliation to: [ffxconciliation@aol.com](mailto:ffxconciliation@aol.com); or leave a voice mail message at (703) 627-1228. You will be contacted before the hearing date by a representative of the Conciliation Program.

FILED  
MOTIONS DOCKET

2023 JUL 28 PM 12:16

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

JOSHUA EVERETT BUSHMAN, ADMINSTRATOR :  
FOR THE ESTATE OF CALVIN VAN PELT, et al., :

Plaintiffs, :

v. :

SALVO TECHNOLOGIES, INC. :  
d/b/a 80 P BUILDER, et al., :

Defendants. :

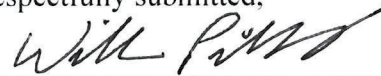
Case No: CL2023-06260

**DEFENDANT’S MOTION BY SPECIAL APPEARANCE  
TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Pursuant to Supreme Court Rules 3:8 and 4:15, Defendant BUL USA LLC moves by special appearance to dismiss all claims against it for lack of personal jurisdiction, for the reasons stated in the accompanying brief which will be served upon all parties to this action contemporaneous with its filing.

July 28, 2023

Respectfully submitted,



William Pittard (VSB No. 47294)  
Amelia J. Schmidt (\**pro hac* motion pending)  
Noah Brozinsky (\**pro hac* motion pending)  
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*Counsel for Defendant BUL USA, LLC by special appearance*

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CLERK, CIRCUIT COURT  
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d/b/a 80 P BUILDER, et al., :

Defendants. :

Case No: CL2023-06260

**BRIEF IN SUPPORT OF MOTION TO DISMISS, BY SPECIAL APPEARANCE, FOR  
LACK OF PERSONAL JURISDICTION**

Defendant BUL USA LLC (“BUL USA”), a now-dissolved North Carolina corporation, respectfully moves, by special appearance, to dismiss all claims against it for lack of personal jurisdiction.

**I. BACKGROUND**

This case arises out of a tragic shooting in Fairfax, Virginia, on April 25, 2021, by Zackary Burkard, a Virginia resident, which resulted in the deaths of two young men. Mr. Burkard was convicted of manslaughter by a jury. Compl. ¶ 14. Plaintiffs in this matter (“Plaintiffs”) are the administrators of the victims’ estates. Plaintiffs allege that the handgun Mr. Burkard used was one that he assembled from parts that he purchased from a website known as 80P Builder “on or about February 1, 2021.” Compl. ¶¶ 89, 94.

In addition to suing Mr. Burkard, Plaintiffs have sued Salvo Technologies (“Salvo”), the Florida corporation that currently owns the 80P Builder website and (according to the

Complaint) “does business as” the entity that manufactured some of the parts allegedly used to build the weapon. The Plaintiffs have also sued Polymer80, the Nevada corporation that manufactured certain other parts allegedly used to build the weapon. Plaintiffs have also named BUL USA as a defendant. Plaintiffs allege that BUL USA did business as 80P Builder, that it operated the 80P Builder website, and that it sold and shipped certain parts to Mr. Burkard in Virginia “on or about February 1, 2021.” Compl. ¶¶ 89, 94. According to the Complaint, BUL USA was a North Carolina corporation which “formerly did business” as 80P Builder and was dissolved effective June 13, 2020. Compl. ¶¶ 19.

BUL USA is, in fact, a dissolved North Carolina corporation. Jesse Sousana Decl. ¶ 2. However, throughout its existence, BUL USA served solely as a distributor for BUL Armory, an Israeli firearms manufacturer. Sousana Decl. ¶ 4. It did not operate the 80P Builder website, and it did not sell the parts alleged in the Complaint. Sousana Decl. ¶¶ 5, 6.

## II. ARGUMENT

A plaintiff must establish a *prima facie* case of personal jurisdiction to survive a motion to dismiss. *See Massey Energy Co. v. UMW*, 69 Va. Cir. 118, 120, 2005 WL 3476771, at \*2 (Va. Cir. Ct. 2005). In resolving the issue, a two-step inquiry is required: “The first step [...] is to determine whether Virginia’s long-arm statute reaches the non-resident defendant given the cause of action alleged and the nature of the defendant’s Virginia contacts.” *Id.* at \*3. “The second step is to ensure that, the exercise of in personam jurisdiction over a non-resident Defendant complies with the due process requirements of the Fourteenth Amendment to the United States Constitution.” *Id.* “[O]nce jurisdiction has been challenged, the question is one for the judge with the burden on the plaintiff ultimately to prove the existence of a ground for jurisdiction by the preponderance of the evidence.” *Talenthunter LLC v. S. Co. Servs.*, 87 Va. Cir. 363, 2014 WL

3972897, \*2 (Va. Cir. Ct. 2014). Dismissal is appropriate “if all of the alleged facts taken together fail to establish the existence of personal jurisdiction.” *Id.*

Plaintiffs allege that BUL USA “transacted business in the Commonwealth of Virginia” along with Salvo (which, collectively, the Complaint refers to as the “80P Builder Defendants” and “80P Builder”), because BUL USA:

- Maintained a website that “sold Polymer80 pistol frame kits and complete handgun kits to customers in Virginia, including Defendant Burkard” (Compl. ¶ 79); and
- “[O]n or around February 1, 2021[,] . . . knowingly shipped a complete gun building kit,” which allegedly included “a Polymer80 pistol frame kit and a Zaffiri Precision slide and barrel,” “from a warehouse in North Carolina directly to Defendant Burkard’s home in Springfield, Virginia.” Compl. ¶¶ 89, 94.

These allegations, on which Plaintiffs’ personal jurisdiction contentions over BUL USA depend, are false as a factual matter, and even if they were taken as true, they are insufficient to establish personal jurisdiction.

**A. There is No Jurisdiction Over BUL USA Under Virginia’s Long-Arm Statute**

Virginia’s long-arm statute provides for general personal jurisdiction over anyone who “transact[s] any business” in the Commonwealth. Va. Code Ann. § 8.01-328.1(A)(1). The statute also requires that, for personal jurisdiction to exist over a nonresident, the cause of action against the nonresident must “aris[e] from acts enumerated in this section.” *Id.* § 8.01-328.1(C). Because BUL USA does not transact business in Virginia period, there is no general jurisdiction over it (and, even if BUL USA did transact some business in Virginia, the causes of action against it do not arise from any products that it may have shipped to Virginia—thereby continuing to preclude general jurisdiction).

First, Plaintiffs’ allegations do not establish that BUL USA transacted business in Virginia under the long-arm statute. All Plaintiffs allege is that BUL USA made a single

shipment of parts to a Virginia resident in Virginia “on or about February 1, 2021.” Compl. ¶¶ 89, 94. No Virginia court has gone so far as to hold that a single shipment into Virginia qualifies as transacting business in Virginia under the long-arm statute. And federal courts interpreting Virginia law—in cases on which Virginia courts have relied—have held that isolated shipments are not sufficient to qualify as transacting business in Virginia. For example, in *Ajax Realty Corp. v. J.F. Zook, Inc.*, 493 F.2d 818, 821 (4th Cir. 1972), cited in *Khan v. Ranjha*, 53 Va. Cir. 530, 1999 WL 33117233 at \*3 (Dec. 28, 1999), the Fourth Circuit held that a nonresident corporation did not “transact business” in Virginia merely by shipping a window frame to Virginia that proved defective. The court noted, “[I]f Virginia can assert jurisdiction here under § (a)(1), the rule of the case would be that where a non-resident manufacturer ships its products directly to the ultimate purchaser, [...] then it has transacted business in Virginia. *The Virginia Supreme Court has not gone so far in construing § (a)(1)* [...] and therefore we choose not to[.]” (emphasis added; citing *John G. Kolbe v. Chromodern Chair Co.*, 211 Va. 736 (1971)). *See also DeSantis v. Hafner Creations, Inc.*, 949 F. Supp. 419, 425 (E.D. Va. 1996) (“Numerous courts have held that a single shipment of goods to Virginia, without more, does not constitute the transacting of any business under § 8.01–328.1(A)(1).”).

Second, even if BUL USA could be deemed to transact business in Virginia, none of its business relates to the causes of action in the Complaint. BUL USA never operated the 80P Builder website discussed in the Complaint, and it cannot have sold or shipped the items Plaintiffs allege that Mr. Burkard purchased to build his weapon. Sousana Decl. ¶¶ 5, 6. This makes general jurisdiction impossible under the long-arm statute.

## **B. Jurisdiction Over BUL USA Would Not Comport With Due Process**

Even if jurisdiction somehow existed under the long-arm statute, it would not comport with due process. Both the U.S. Supreme Court and Virginia Supreme Court have made clear that, to comport with due process, “it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Kolbe*, 211 Va. at 738-39 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). Plaintiffs’ allegations do not meet this standard.

The Supreme Court has made clear that “isolated or sporadic transactions” do not support jurisdiction under the Due Process Clause. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1028 n.4 (2021) (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). And Virginia state courts—and federal courts interpreting Virginia state law—have similarly held that more than a single shipment of a product is required. For example, in *Andrews v. Shandong Linglong Tyre Co., LTD.*, No. 3:21CV794 (DJN), 2023 WL 1967945, at \*7-\*9 (E.D. Va. Feb. 13, 2023), the court held that a nonresident defendant’s use of Virginia ports to import ten shipments of tires was not “purposeful availment” that would support jurisdiction. *See also, e.g., Volkswagen “Clean Diesel” Litig.*, 2018 WL 9393018, at \*2 (where official from German corporate defendant physically traveled to Virginia to disseminate false advertising and hired employees to assist in false advertising, jurisdiction existed over defendant in false advertising case). Here, because BUL USA, in fact, never shipped the products referenced in the Complaint to Virginia, specific jurisdiction cannot exist. *See* Sousana Decl. ¶ 6.

## **III. CONCLUSION**

For all of the foregoing reasons, BUL USA, by special appearance, respectfully requests that this Court dismiss Plaintiffs’ claims against it for lack of personal jurisdiction.



DATED: July 28, 2023



William Pittard (VSB No. 47294)  
Amelia J. Schmidt (\**pro hac* motion pending)  
Noah Brozinsky (\**pro hac* motion pending)  
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*Counsel for Defendant BUL USA by special appearance*

### CERTIFICATE OF SERVICE

I certify that on this 28th day of July, 2023, I caused the foregoing to be served on the following parties by e-mail (with verbal consent), and/or via File&ServeXpress:

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*Counsel for Defendant Polymer80 by Special Appearance*

*/s/ William Pittard*  
William Pittard



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**DECLARATION OF JESSE SOUSANA**

1. My name is Jesse Sousana. I live in Dunedin, Florida and am 48 years old. I am competent to testify to the information contained in this declaration.
2. In 2016 I founded, and at all times was the sole owner of, BUL USA LLC (“BUL USA”), a limited liability company located in North Carolina that has since been dissolved.
3. I was BUL USA’s sole employee and handled BUL USA’s business affairs by myself.
4. Throughout its existence, BUL USA operated solely as a distributor for BUL Armory, a firearms manufacturer located in Tel Aviv, Israel. BUL USA did no other business except to distribute items that BUL Armory sold directly to customers in the United States, which BUL Armory would then direct BUL USA to ship to those customers.
5. At no point during BUL USA’s existence did BUL USA operate the 80P Builder website.
6. At no point during BUL USA’s existence did BUL USA sell—and therefore BUL USA did not ship—any products manufactured by Polymer 80 or Zaffiri Precision (whether into Virginia, or anywhere).
7. I declare under penalty of perjury that the foregoing is true and correct.

Dated: 7/28/2023

Signed: 