

Report of Proceedings  
September 28, 2023

STATE OF ILLINOIS )

) SS:

COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT - CHANCERY DIVISION

CITY OF CHICAGO, an Illinois )

municipal corporation, )

Plaintiff, )

vs. ) No. 2021 CH 01987

WESTFORTH SPORTS, INC., )

Defendant. )

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REPORT OF PROCEEDINGS taken in the  
above-entitled cause before the Honorable  
Clare J. Quish, Judge of said Court, and reported  
stenographically by Patricia M. Stone, a Certified  
Shorthand Reporter of the State of Illinois, at  
Room 2301, 50 West Washington Street, Chicago,  
Illinois, on the 28th day of September, 2023, at  
10:30 o'clock a.m.

REPORTED BY: PATRICIA M. STONE, CSR  
LICENSE NO: 084-002880  
JOB NO: 6433076-001

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1 A P P E A R A N C E S :

2

3 EVERYTOWN LAW

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21 On behalf of Plaintiff;

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1 THE COURT: All right. This is the case of

2 City of Chicago versus Westforth Sports, 21 CH 1987.

3 If the parties want to approach. Good

4 morning.

5 MS. LEFKOWITZ: Good morning.

6 Alla Lefkowitz for the City of Chicago; and with me,

7 I have James Miller and Chelsey Metcalf.

8 THE COURT: Good morning.

9 MS. METCALF: Good morning.

10 THE COURT: Can you tell me those names one

11 more time.

12 MS. LEFKOWITZ: Sure, Alla Lefkowitz.

13 THE COURT: Let me see. Maybe I have them

14 in the brief.

15 MS. LEFKOWITZ: Yeah.

16 THE COURT: I'm so used to Zoom where

17 everyone's names are nicely written out that you get

18 sort of spoiled by that.

19 Okay. And then your name again?

20 MS. METCALF: Chelsey Metcalf.

21 THE COURT: All right.

22 MR. RUDD: Tim Rudd for Westforth Sports.

23 THE COURT: Okay. Thank you.

24 All right. So we're here today for

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1 A P P E A R A N C E S : (Continued)

2

3 BRAUM RUDD

4 BY: MR. TIMOTHY R. RUDD

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1 argument on plaintiff's motion to modify the

2 May 25th, 2023 order and for leave to file an amended

3 complaint.

4 So I have reviewed the motion, the

5 response, and the reply, and the attachments.

6 Obviously I am familiar with the case and with the

7 May 25th order.

8 Ms. Lefkowitz, do you have any argument

9 you wish to make on your motion?

10 MS. LEFKOWITZ: I would, yes, your Honor.

11 And as your Honor just indicated, we are dealing

12 here with two separate motions; the motion to

13 modify the dismissal order as well as the motion

14 to amend. I will start with the motion to modify

15 first.

16 I think there's two facts that are not

17 in dispute here which is that the Court's May 25th

18 dismissal order was with prejudice even though it

19 pertained to a motion, a jurisdictional motion, and

20 notably Westforth neither in its papers nor in oral

21 argument ever asked for dismissal with prejudice and

22 that is because the law in Illinois and throughout

23 the country on this is clear that once the Court

24 determines that it has no jurisdiction to hear the

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1 matter it cannot dismiss the case with prejudice.  
2 THE COURT: Well, what case says it cannot  
3 dismiss the case with prejudice? Because there are  
4 many cases cited by Mr. Rudd in his response brief  
5 where the Court does dismiss it with prejudice for  
6 lack of personal jurisdiction.  
7 MS. LEFKOWITZ: So those cases -- I think  
8 there were two or three cases that he indicated where  
9 it is absolutely right that it was a jurisdictional  
10 motion that was dismissed with prejudice. But in  
11 those cases, the -- sorry, the plaintiffs never took  
12 issue with the prejudice designation.  
13 So that particular question was never  
14 put forward or discussed by the appellate courts  
15 whereas the cases that we have cited specifically  
16 address that very issue. And, you know, one of  
17 the cases, for example, that we mention is the  
18 Norris v. Estate of Norris case from the  
19 First District, and that's a case where I think it's  
20 helpful to walk through the procedural posture of  
21 that case.  
22 It was dismissed on subject matter  
23 jurisdiction by the trial court. It went up to the  
24 First District. The First District affirmed that

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1 And even if that was the case, you know,  
2 what we have argued in this motion is that dismissing  
3 the case with prejudice was an error for a second  
4 separate reason which is that the plaintiff is able  
5 to put forth evidence that would cure the deficiency  
6 that the Court identified.  
7 I think one of the cases that we point  
8 to here is Lake Point Tower Association from the  
9 First District, and it says, "A complaint should be  
10 dismissed with prejudice under Section 2-619 only,"  
11 and that, of course, is talking about merits there,  
12 "where it is clear that the plaintiff can move no set  
13 of facts that would entitle it to a relief."  
14 THE COURT: But, I guess, to get to your  
15 point where you said they're talking about the merits  
16 there, every single one of your cases is where  
17 there was an issue on the merits, and I think it's  
18 undisputed honestly. I think Mr. Rudd doesn't  
19 dispute this in his response brief that a dismissal  
20 for lack of personal jurisdiction is not on the  
21 merits, right?  
22 MS. LEFKOWITZ: That's right.  
23 THE COURT: And Lake Point and these other  
24 cases are about dismissals on other grounds.

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1 dismissal but sent it back to the trial court to  
2 indicate whether the dismissal should be with  
3 prejudice or not with prejudice.  
4 The trial court affirmed that it was  
5 with prejudice, and then that very question went up  
6 to -- went back up to the First District, and the  
7 Court held that because -- that the decision had to  
8 be without prejudice because it was a jurisdictional  
9 motion, and the Court had not gotten to the merits of  
10 the issue.  
11 And I think the Seventh Circuit actually  
12 says it best. I think the case is Murray v. Conseco  
13 where it says no jurisdiction and with prejudice are  
14 mutually exclusive, and that's something that can  
15 be found in the statement, in a number of other  
16 appellate cases as well, and I can go through  
17 them.  
18 You know, I think what Westforth's main  
19 argument that they are really relying on here is  
20 that the Court's order wasn't intended to be with  
21 prejudice as to the entire case but just with the  
22 issue of jurisdiction, but respectfully that's not --  
23 that's not what the decision says. It just says it  
24 was with prejudice.

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1 MS. LEFKOWITZ: The Lake Point case, yes,  
2 with regard to the second error. But with regard to  
3 the cases that we cite for the first error, those  
4 are -- all of the cases that we cite are  
5 jurisdictional motions.  
6 So our argument here is that there were  
7 two separate errors. One is that a jurisdictional  
8 motion cannot be dismissed with prejudice, and the  
9 second one is, you know, where we're talking about a  
10 merits motion, if it can be cured, the plaintiff  
11 should be given the opportunity to cure.  
12 And I think the case actually of  
13 Ruklick v. Julius Schmidt is helpful here. That's a  
14 case that was dismissed on the merits. I think it  
15 was a statute of limitations issue, and the plaintiff  
16 then sought to amend -- wanted to amend the complaint  
17 and argue that the 2-616(a) factors -- and this is  
18 going a little bit toward the second issue --  
19 applied, and the defendant argued no, no, it's the  
20 2-616(c) factors, the post-judgment factors, that  
21 apply, and the Court specifically rejected that and  
22 said because the plaintiff could have cured its  
23 deficiencies the decision -- the case should never  
24 have been dismissed with prejudice. And because it

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1 should never have been dismissed with prejudice, it  
2 was 2616(a) that applied.

3 THE COURT: It was dismissed on the merits  
4 on a statute of limitations issue.

5 MS. LEFKOWITZ: Exactly, exactly.

6 And then, you know, just to point to  
7 another case that I think is helpful here on this  
8 issue which I think is the case of Cohen v. Salata.  
9 There I think we have a subject matter case, and the  
10 Court says, "Absent subject matter jurisdiction, the  
11 Court's only function is to announce the fact that  
12 it lacks jurisdiction and dismiss the case -- the  
13 cause."

14 In there, the Court vacated the order  
15 dismissing the plaintiff's complaint with prejudice  
16 and remanded the case with directions that it dismiss  
17 the plaintiff's complaint against the defendants for  
18 want of jurisdiction.

19 The Court said such dismissal, by its  
20 very nature, is not an adjudication on the merits and  
21 is, therefore, without prejudice.

22 So, you know, here just getting to the  
23 second error on the motion to modify which is the,  
24 you know, the fact that we are able to cure this

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1 MS. LEFKOWITZ: Yes, yes, absolutely.

2 THE COURT: Okay.

3 MS. LEFKOWITZ: And for that reason, we  
4 sought, you know, as soon as the Court entered the  
5 dismissal order, we sought leave to replead on this  
6 issue, but we had indicated to the Court that we  
7 wanted -- that we intended to do that, and we had put  
8 forward those facts.

9 There was no finding that we could not  
10 cure the deficiency, and I think so that would be the  
11 second error. I mean, unless the Court --

12 THE COURT: Sorry. That's not how you  
13 argued that in the motion though.

14 In your motion -- like I said, I  
15 understand your first part of the motion is arguing  
16 that I made an error in the dismissal as opposed to  
17 without prejudice in the order, but you don't argue  
18 that there was error not to give you leave to amend  
19 when you didn't seek leave to amend.

20 MS. LEFKOWITZ: The precise error that we  
21 are discussing on that second point is that there  
22 should not be a dismissal with prejudice when it is  
23 not -- I think the exact quote is, "A complaint  
24 should only be dismissed with prejudice only where it

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1 deficiency --

2 THE COURT: How is that an error? I  
3 understand your argument on the first error when you  
4 said that I should have made it without prejudice,  
5 and that's the error that you're raising.

6 But with respect to this motion for  
7 leave to amend, you never sought leave to amend in  
8 response to your motion to dismiss or at any time  
9 before I ruled on the motion to dismiss. Is that  
10 right?

11 MS. LEFKOWITZ: That is absolutely right.

12 THE COURT: Okay. So how is that an error  
13 that I made in the dismissal with prejudice?

14 MS. LEFKOWITZ: The error -- the error there  
15 is because we had presented the Court with evidence  
16 that we could amend based on the very fact -- on  
17 the very issue that was the heart of the motion to  
18 dismiss which was sales directly to Illinois by  
19 Westforth that contributed to the public nuisance,  
20 and the Court, you know, stated that it couldn't  
21 consider those because it wasn't part of the  
22 complaint, but we had indicated --

23 THE COURT: And you agreed or your  
24 co-counsel agreed with that analysis.

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1 is clear that the plaintiff can prove no set of facts  
2 that would entitle it to a relief," and here it was  
3 clear that we could -- it wasn't clear -- sorry, I'm  
4 getting the -- we had put forward facts that we could  
5 cure the deficiency. So that is the error that we  
6 are alleging that it should not have been dismissed  
7 with prejudice.

8 THE COURT: Okay.

9 MS. LEFKOWITZ: And then on the motion to  
10 amend, as the city, you know, has outlined in its  
11 brief, the general policy of the Illinois Code of  
12 Civil Procedure is to allow amendment liberally and  
13 freely so that cases can be decided on their merits  
14 as opposed to on procedural deficiencies.

15 THE COURT: So lack of personal jurisdiction  
16 is a procedural deficiency?

17 MS. LEFKOWITZ: It is. A lack of personal  
18 jurisdiction is not a finding on the merits.

19 THE COURT: Okay. But again how is it a  
20 procedural deficiency? I don't think anyone disputes  
21 that it's not a finding on the merits. So I do see a  
22 lot of your cases talk about procedural deficiencies  
23 or barriers to prevent the resolution of the case on  
24 the merits.

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1 How is lack of personal jurisdiction a  
2 procedural technicality?  
3 MS. LEFKOWITZ: Well, I think once a Court  
4 does not have jurisdiction, you know, determines  
5 that it has no power to hear the case, anything  
6 that, you know, a judgment that comes after it  
7 becomes void because, you know, a final judgment  
8 according to the Illinois Supreme Court has to be on  
9 the merits.  
10 So I think, you know, here the  
11 procedural deficiencies that I would identify is that  
12 we put forward the facts, but we didn't put them into  
13 our complaint that would be necessary to have the  
14 personal jurisdiction, you know, that is required for  
15 the Court to hear this case.  
16 THE COURT: Do you have any case that  
17 allowed leave to amend the complaint after the trial  
18 court had dismissed the case for lack of personal  
19 jurisdiction?  
20 MS. LEFKOWITZ: So I do have a case. It's  
21 an unpublished case. So we didn't cite it.  
22 THE COURT: Right. From when?  
23 MS. LEFKOWITZ: From 2011.  
24 THE COURT: Okay. So I can't rely on that

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1 We are nowhere near trial. This is really, you know,  
2 at the beginning of the case. Of course, these  
3 records come from Westforth itself. So it hasn't  
4 argued any kind of unfair surprise.  
5 I think where Westforth is really  
6 hanging its hat is the timeliness of the amendment.  
7 But here, of course, there's no dispute that we  
8 submitted our motion to amend within 30 days of the  
9 order, that it's very early on in the case, and that  
10 no substantive discovery has taken place.  
11 And it is true that this case, at the  
12 time that your Honor entered the decision, this case  
13 had been pending for approximately two years. We  
14 filed this case in April of 2021; but prior to this  
15 case being reassigned to your Honor, there had been a  
16 year's worth of delays such that the motion to compel  
17 the discovery that's at the very heart of this matter  
18 wasn't actually granted until April of 2022. And at  
19 that point --  
20 THE COURT: But the parties had been  
21 engaging in some jurisdictional discovery before the  
22 motion to compel was decided.  
23 MS. LEFKOWITZ: Not on the issue of any of  
24 the Illinois sales. The motion to compel was -- we

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1 under Rule 23.  
2 MS. LEFKOWITZ: I understand.  
3 THE COURT: Okay.  
4 MS. LEFKOWITZ: I'm just going through it.  
5 I actually do think -- no, that's also a merits case,  
6 but I do think in either case the standard that  
7 applies here is the 2-616(a) standard, not the  
8 2-616(c) standard that Westforth proposes.  
9 Under that standard, there are four  
10 questions that are asked; whether the -- whether the  
11 amendment would cure the deficiency, whether the  
12 amendment is a surprise, whether the amendment is  
13 timely, and whether there had been previous  
14 opportunities to amend, and I think on the first --  
15 when you look at those two factors or those four  
16 factors, I believe that the city meets those  
17 factors.  
18 On the first two that we can cure the  
19 deficiency, Westforth has made no argument that we  
20 can't because, of course, what we're talking about  
21 here is exactly sales into the state that caused harm  
22 in Chicago.  
23 Then there's no, of course, dispute that  
24 this wouldn't cause any undue surprise to Westforth.

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1 had sought that discovery, but we had not received  
2 any discovery with respect to the Illinois  
3 transactions.  
4 So all of the Illinois transactions  
5 started only coming in as of May, 2022, and it  
6 ended up being a rolling production that wasn't  
7 finished until September which is when our brief was  
8 due.  
9 So at that point, you know, we had two  
10 options neither of which were great which was to  
11 proceed with the motion to dismiss or to stop  
12 everything and try to amend the motion, you know,  
13 the complaint then. You know, we chose to go forward  
14 given the previous delays, but I don't think, you  
15 know, that qualifies as gamesmanship.  
16 We were trying to, you know, push  
17 forward the case, and we took the precautionary  
18 measure of notifying both the Court and the defendant  
19 that we did intend to amend the complaint in this  
20 way. I don't think that that should be held  
21 against the city that we were upfront with our  
22 intentions.  
23 And then the just the last point, of  
24 course, is the previous opportunities to amend. The

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1 Court -- you know, the courts that evaluate this  
2 look at how many times before the complaint has been  
3 amended.  
4 THE COURT: But those courts look at it in  
5 terms of how many times it has been amended to try to  
6 state a claim, right, on the merits. That's what the  
7 cases are about.  
8 MS. LEFKOWITZ: Yes. That's right.  
9 THE COURT: Were there any cases that give  
10 a party multiple -- a plaintiff multiple chances to  
11 amend the complaint where there's a lack of  
12 jurisdiction that's been alleged or decided?  
13 I didn't see any in the cases that you  
14 cite but...  
15 MS. LEFKOWITZ: I'm not 100 percent sure.  
16 That may not be the case.  
17 THE COURT: Okay. Sorry. Go ahead with  
18 your argument.  
19 MS. LEFKOWITZ: But I think, you know,  
20 regardless of whether it's, you know, on personal  
21 jurisdiction grounds or on the merits, the factors  
22 still end up being the same, you know, and those are  
23 the four factors. I think we meet those factors; and  
24 for those reasons, we would submit that we have --

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1 effect on this case. Westforth would stipulate and  
2 had it been asked would happily stipulate to the fact  
3 that we will not raise res judicata should they seek  
4 to file those claims in Indiana where there is  
5 arguably jurisdictional compliance.  
6 Supreme Court Rule 273 expressly states  
7 that a dismissal relative to jurisdiction does not  
8 operate to create res judicata effect, and so we  
9 don't believe it was error. Their were numerous  
10 cases cited to the Court wherein the Court  
11 dismissed -- the lower court dismissed it for lack of  
12 personal jurisdiction and did so with prejudice. We  
13 don't think that that's an error on the part of the  
14 Court.  
15 THE COURT: What about Ms. Lefkowitz's  
16 argument that some of the cases that you rely on --  
17 Rios doesn't say either way whether it's dismissed or  
18 not.  
19 MR. RUDD: Correct.  
20 THE COURT: With or without I mean.  
21 And that the other two cases don't --  
22 the issue wasn't raised, and I have the names of  
23 those but jut not off the top of my head.  
24 MR. RUDD: Sure.

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1 especially, you know, given how early we are in the  
2 case, given that this is our first attempt to amend,  
3 given that we can put forth facts that would, you  
4 know, that would cure the deficiency, I think that  
5 it's appropriate for the Court to allow the amendment  
6 if for no other reason than if we were to ultimately  
7 lose on a second motion to dismiss then at least the  
8 Appellate Court would have the entire set of facts  
9 before it.  
10 THE COURT: Okay. Anything else you want to  
11 add?  
12 MS. LEFKOWITZ: No. That's it.  
13 THE COURT: Okay. Mr. Rudd.  
14 MR. RUDD: Thank you, your Honor.  
15 A couple of things. Going first to the  
16 motion for leave to modify. Our position is that it  
17 was not error for the Court to dismiss for lack of  
18 personal jurisdiction with prejudice.  
19 The Court's ruling, for all intents and  
20 purposes, laid to rest that question which was the  
21 only question before the Court was whether there is  
22 personal jurisdiction.  
23 No one is operating under the belief  
24 that it has -- that that ruling has a res judicata

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1 THE COURT: One that I know I won't be able  
2 to pronounce correctly is Sheikholeslam.  
3 MR. RUDD: Your Honor, your guess is as good  
4 as mine.  
5 THE COURT: Yes and then Longo. So in  
6 those, the trial court dismissed it with prejudice  
7 but it wasn't discussed on appeal.  
8 MR. RUDD: Sure and I would argue that the  
9 fact that it wasn't discussed on appeal speaks  
10 volumes as to the merits of the argument that were  
11 being put forward by plaintiff in this case.  
12 This is not something that anyone would  
13 think carries the consequence that the city seems to  
14 be putting forth before the Court that it would  
15 think. The lack of discussion of that I think weighs  
16 in Westforth's favor in that context.  
17 Motion for leave to modify fails because  
18 there is no error. There is no error in terms of the  
19 ruling with prejudice, and there's no error in the  
20 Court not inferring and imagining pleadings that  
21 aren't there at the time of the presentation of any  
22 argument.  
23 Westforth is in the position -- I mean,  
24 frankly at this point Westforth -- he's retired. The

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1 store isn't open anymore. Westforth is in a position  
2 where it is going to argue and address the claims  
3 that are raised.

4 The claims that were raised -- and the  
5 City of Chicago did its homework. They presented  
6 to the Court a long complaint of two years ago that  
7 identified specific sales and specific firearms  
8 recovered in Chicago. That's what we are here to  
9 talk about, and all of those were in Indiana.

10 The Court we would argue made that  
11 decision correctly. Here they haven't even begun to  
12 allege that any of these new guns they want to talk  
13 about now after the Court has already ruled have even  
14 entered Chicago let alone have been used in a crime.  
15 I've looked at their complaint. All it is is about  
16 Indiana.

17 So I think the bigger issue --

18 THE COURT: The new proposed amended  
19 complaint?

20 MR. RUDD: Yes.

21 THE COURT: Okay.

22 MR. RUDD: The modification -- there simply  
23 was no error. I don't think there's anything to be  
24 added to that on that point.

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1 to the alleged straw purchases with firearms  
2 recovered in Chicago that were the basis of what  
3 we've been litigating for two years.

4 The second thing they've argued is that  
5 we sold firearms through FFLs in Illinois that they  
6 argue don't meet the melt point law and instead that  
7 a single one of those have been recovered in Chicago,  
8 and I don't understand how the City of Chicago would  
9 even begin to say that they have a claim for a  
10 nuisance without alleging at least that.

11 But even if they were to allege  
12 that --

13 THE COURT: Right because we're not getting  
14 into the merits as we've all agreed, right, just the  
15 jurisdictional issue.

16 MR. RUDD: Right.

17 Even if they were to allege that, that  
18 doesn't change the fact that those claims are not  
19 about the list of transactions and the claims they  
20 had before that we sell guns in Indiana under  
21 supposedly weaker laws that are trafficked across  
22 state lines and come to Illinois and are used in  
23 crime. That's what their claims were about.

24 The new things they want to talk

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1 The motion for leave to amend is  
2 squarely within the Court's discretion to decide  
3 whether it's going to allow a post-judgment  
4 amendment. The city could have sought leave to  
5 amend, and we would have addressed it. We would  
6 argue that the proposed amendment was futile, but  
7 that's a different argument for a different day or at  
8 least a different time of day.

9 They said they were going to amend, and  
10 they didn't. They waited until the Court ruled in  
11 favor of Westforth, and now they've attempted to  
12 complain about completely different transactions.

13 Specifically they've said that there are  
14 some people who have Chicago addresses that bought  
15 what the City of Chicago deems assault weapons. The  
16 rule -- the ordinance cited by the plaintiff says  
17 they are illegal to possess in Chicago. They are not  
18 illegal to be owned by people who happen to have a  
19 residence in Chicago. They haven't argued that they  
20 were possessed there. They haven't said that they  
21 were recovered in a crime there.

22 THE COURT: Are these new claims that  
23 they're raising with respect to assault weapons?

24 MR. RUDD: Yeah. They do not relate at all

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1 about -- and if you look at their amended complaint,  
2 your Honor, it is just a rehashing of Indiana  
3 transactions with a smattering of other things to try  
4 to tie it to Illinois.

5 The new things they want to talk about  
6 do not arise out of and they do not relate to any of  
7 the issues that were litigated before.

8 Your Honor, the Hehir (phonetic) versus  
9 Morgan case that we cited makes very clear that  
10 amendment, especially post-judgment amendment, is  
11 not to be used to raise new and different claims,  
12 and that's what they are trying to do here.

13 THE COURT: What if I were to find it to  
14 be -- if I were to grant the first part of the  
15 plaintiff's motion and say without prejudice?

16 What's your argument there with respect  
17 to Hehir and the Loyola factors and all of that?

18 MR. RUDD: I'm not sure that the granting of  
19 the first part really reaches the issues that the  
20 Hehir case was focused on. That's really dealing  
21 with an amendment.

22 Your Honor, if you granted the first  
23 part and made it without prejudice, I would -- I  
24 would still argue that the amendment is improper

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1 post judgment.  
2 Here we are five months down the road  
3 from when this Court issued its ruling. The day  
4 that this Court issued its ruling the city could have  
5 gone to Indiana and brought the claims that it's  
6 asking this Court to hear now. It could have. It  
7 didn't.  
8 Before this Court issued its ruling,  
9 the city could have gone to Indiana and brought the  
10 different claims, the ones it's trying to add now.  
11 It could have arguably done that in Illinois if it  
12 wanted to. It didn't. And so there's no judicial  
13 economy to be served here.  
14 What the city is attempting to do is  
15 they are attempting to take the original set of  
16 facts that they brought before this Court that  
17 they were upset about and somehow use them as  
18 momentum to attach something else and maybe stay in  
19 Illinois.  
20 Your Honor, I think it's easily seen for  
21 what it is. If this Court were to grant the leave to  
22 amend, we immediately become in a situation where  
23 we're arguing motions to strike literally 75 percent  
24 of the complaint which is about nothing but the

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1 THE COURT: If I were to apply the Loyola  
2 factors, are you arguing that there would be surprise  
3 or prejudice to Westforth by the motion for leave to  
4 amend or by the new amended -- proposed amended  
5 complaint?  
6 MR. RUDD: We're not arguing that there  
7 would be surprise. I mean, it would be hard to argue  
8 surprise because they said they were going to and  
9 didn't. So I'm not going to stand here in front of  
10 the Court and say that there would be surprise.  
11 There's prejudice. There's prejudice  
12 because we could have stopped what we were doing. We  
13 could have done some additional discovery. We could  
14 have fleshed out these issues. We could have argued  
15 both jurisdictional and substantive issues as to the  
16 new claims that are being proposed, and we would  
17 have -- we would have been in a position to where  
18 we're not fighting this multiple times in the same  
19 case.  
20 The simple solution, should the city  
21 wish to avail itself, would be to go to Indiana where  
22 there's not a jurisdictional question and bring all  
23 these claims.  
24 Instead they're asking the Court to add

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1 transactions that this Court said it doesn't have  
2 jurisdiction over.  
3 We enter into a jurisdictional or into a  
4 procedural morass that is unnecessary here. So our  
5 argument would be, especially where they haven't even  
6 alleged damage relative to their supposed new  
7 transactions that they want to talk about that they  
8 haven't alleged recovery in Chicago, that they're  
9 asking the Court to assume that which a pleading  
10 can't do that, that it's futile, that it doesn't  
11 change anything as to the Court's ruling as to the  
12 transactions that they initially complained about and  
13 have left in their proposed amended complaint, and  
14 that given that there's futility, given that it's  
15 obvious gamesmanship, given that it doesn't even  
16 cure what they're seeking to cure because those  
17 claims are not alleged in a way that they need to  
18 be which is premature but it relates to the argument  
19 at some point here, your Honor, I don't see how  
20 justice is served by allowing the city to sit on an  
21 amendment just to get a second bite at the apple  
22 especially when that amendment has nothing to do  
23 with the transactions they have issued a complaint  
24 about.

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1 a couple claims about a couple transactions and  
2 somehow revive claims related to transactions that  
3 this Court already said don't arise out of or relate  
4 to contacts with Illinois. Your Honor, we don't  
5 see -- we don't see a value in that to the Court or  
6 to the lawyers.  
7 THE COURT: At one point in the plaintiff's  
8 reply brief, they argue that Westforth is saying they  
9 should be claim splitting bringing some claims in  
10 Illinois and some in Indiana.  
11 Is that what Westforth is arguing?  
12 MR. RUDD: Your Honor, that's not what we're  
13 arguing.  
14 THE COURT: Okay.  
15 MR. RUDD: It would seem -- it would make  
16 sense to me if I had claims over which Illinois  
17 didn't have jurisdiction and claims over which  
18 Illinois might have jurisdiction but over which  
19 Indiana would have jurisdiction no matter what it  
20 would seem to me that you would need not split  
21 claims and split courts, just go pursue them in  
22 Indiana.  
23 THE COURT: Without giving any legal advice  
24 or strategy to the plaintiff.



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1 MR. RUDD: I'd be happy to, your Honor.  
2 THE COURT: No but, I mean, that's one of  
3 the arguments that the plaintiff makes, and I didn't  
4 see you making that in your brief, and I just wanted  
5 to clear that up as to whether you were.  
6 MR. RUDD: No. Again we're not saying that  
7 the city couldn't pursue Illinois claims in Illinois  
8 and Indiana claims in Indiana. Should they decide  
9 to do that, we will think about it and decide what  
10 our response is. We don't waive anything, but I  
11 don't see any reason why they can't make whatever  
12 strategic decision that they want to make, but I  
13 don't think this is their decision. This is your  
14 decision.  
15 THE COURT: All right. Anything else,  
16 Mr. Rudd?  
17 MR. RUDD: No, ma'am.  
18 THE COURT: All right. Thank you.  
19 Ms. Lefkowitz?  
20 MS. LEFKOWITZ: Thank you. Just a few  
21 points.  
22 First, this assertion that the new  
23 transactions and the new allegations that we're  
24 making haven't resulted in any harm to the city and

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1 that people have of engaging in public conduct,  
2 engaging in public life, going on the streets, you  
3 know, using the Metra, all of that stuff, and I  
4 think, you know, we cite a case in Paragraph 107  
5 of our proposed amended complaint where the  
6 Seventh Circuit says specifically with respect to an  
7 assault weapon restriction, like what we're talking  
8 about, that such a restriction may reduce the  
9 perceived risk from mass shootings and make the  
10 public feel safer as a result. That is very much an  
11 element of a public nuisance.  
12 So this idea that the fact that  
13 Westforth has violated many, many laws in getting  
14 their guns to Chicago it doesn't mean we are alleging  
15 some kind of different claim. The claim is the same.  
16 It's a public nuisance claim that is causing the same  
17 harm here, and I do think that the appropriate time  
18 to have this like claim-splitting conversation is at  
19 a motion -- you know, if Westforth wants to file a  
20 motion to strike.  
21 I think looking at the factors for  
22 whether to allow a motion to amend, you know, in  
23 the numerous cases that we cite, one of them is  
24 Jeffrey M. Goldberg v. Collins Tuttle which says that

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1 haven't been used in crimes. I mean, that's just not  
2 accurate.  
3 I'm looking particularly at  
4 Paragraph 103 of our proposed amended complaint  
5 where we specifically say from 2018 to 2021 the  
6 store sold at least 538 firearms to Illinois  
7 residents both in person and by making deliveries  
8 to Illinois FELs. Some of these guns have been  
9 recovered in crimes in Chicago including homicide,  
10 assault, and robbery. Many others are still in  
11 circulation. And I do want to clarify this because I  
12 think this has gotten lost in this argument.  
13 The public nuisance that we are  
14 complaining of is the flooding of the City of Chicago  
15 with illegal guns from Westforth. Some of those guns  
16 are straw purchases, and I don't want to relitigate  
17 the motion to -- the jurisdictional motion again, but  
18 some of those guns come indirectly via purchasers in  
19 Illinois. Some of those illegal guns harm the City  
20 of Chicago through direct sales into Indiana, and the  
21 harm here is twofold. It is both the harm of the  
22 actual financial, you know, people getting shot, the  
23 city having to pay for ambulance services, et cetera,  
24 but it is also in public nuisance the very real fear

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1 any doubt that is in favor of -- any doubt on the  
2 question of whether this will actually cure the  
3 deficiency should go in favor of allowing the  
4 amendment.  
5 THE COURT: Is that a jurisdiction case?  
6 MS. LEFKOWITZ: That is not a jurisdiction  
7 case, no.  
8 But I do want to point, you know, to  
9 the case I cited before, the Cohen v. Salata case  
10 which is a personal jurisdiction case that the  
11 Appellate Court ultimately held had to be dismissed  
12 without prejudice, that it could not be dismissed  
13 with prejudice.  
14 The only reason to allow -- to say that  
15 it is with prejudice -- without prejudice is so that  
16 the plaintiff is free to then file an amended  
17 complaint.  
18 THE COURT: Hold on.  
19 Where does that come from? Because I  
20 thought the issue that you're raising in your brief  
21 is if it's with prejudice there's more of a concern  
22 about being on the merits, and your case like Cohen  
23 says if it's not on the merits it should be without  
24 prejudice.

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1 Your concern is if it's with  
2 prejudice it would mean on the merits and it has a  
3 res adjudicata effect. If it's without prejudice,  
4 what case says that means you automatically -- are  
5 you saying you automatically get leave to amend?  
6 MS. LEFKOWITZ: No, no. That's not what  
7 we're saying.  
8 THE COURT: Okay. All right.  
9 MS. LEFKOWITZ: What we're saying is that  
10 then the 2-616(a) factors apply that would allow --  
11 and we would move to amend the complaint.  
12 THE COURT: Did they do that in Cohen?  
13 MS. LEFKOWITZ: I don't -- I don't believe  
14 that that issue was discussed, but I do actually  
15 think -- I might be wrong. I do think when a case is  
16 dismissed without prejudice then there's nothing  
17 stopping a plaintiff from seeking -- from filing an  
18 amended complaint. I'm not aware of any laws to the  
19 contrary on that.  
20 And then one other thing that I wanted  
21 to mention, you know, is this idea of like no -- you  
22 know, of course, Westforth is not surprised but they  
23 claim to be prejudiced.  
24 Of course, we cite a case in our brief

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1 purpose.  
2 THE COURT: Okay. Were there any claims or  
3 allegations in the initial complaint related to these  
4 assault weapons that you raise here?  
5 MS. LEFKOWITZ: No. There were not, no.  
6 THE COURT: Mr. Rudd cited to Supreme Court  
7 Rule 273 --  
8 MS. LEFKOWITZ: Yes.  
9 THE COURT: -- which I know the parties  
10 discuss in their briefs as well which states,  
11 "Unless the order of dismissal or a statute of this  
12 state otherwise specifies, an involuntary dismissal  
13 of an action, other than a dismissal for lack of  
14 jurisdiction and other items, operates as an  
15 adjudication upon the merits."  
16 So the rule doesn't say whether it is  
17 with or without prejudice. It says, "An involuntary  
18 dismissal, other than a dismissal for lack of  
19 jurisdiction, operates as an adjudication on the  
20 merits."  
21 So how does that play into your  
22 argument?  
23 MS. LEFKOWITZ: So what the courts -- and  
24 I've learned a lot more about Illinois Civil

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1 that says, you know, litigating cases cannot be  
2 prejudiced. What the Courts are really talking about  
3 is when you're really close to trial and you're  
4 really putting the defendant at a disadvantage, and  
5 that's just not, you know, that's not the case here  
6 at all. We're very far away from trial. There's no  
7 actual prejudice to Westforth.  
8 You know, I do take issue with  
9 Westforth's assertion that they are not saying that  
10 we should litigate the case in two different forums.  
11 That's exactly what they're arguing. If it wants to  
12 sue Westforth regarding sales of firearms in Indiana  
13 to Indiana residents, it can attempt to do so in a  
14 court that actually has jurisdiction over those  
15 claims.  
16 Moreover, if it wants to sue Westforth  
17 about something else in this court or somewhere else,  
18 it can attempt to do that as well. I mean, I think  
19 that's exactly what they're asking to do, and I don't  
20 think that serves judicial efficiency. And at the  
21 end of the day, the plaintiff is the master of their  
22 own complaint and, of course, it's up to the Court  
23 to determine whether there's jurisdiction or not,  
24 but having us split up the case doesn't serve any

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1 Procedure than I knew before this motion, but what  
2 the cases made clear is that with prejudice is  
3 equivalent to on the merits. Those two things are  
4 the same.  
5 We cite a case for this, Johnson v.  
6 DuPage Airport, where it says -- or which held the  
7 dismissal with prejudice was error because absent  
8 adjudication on the merits dismissal should be  
9 granted without prejudice as opposed to granting  
10 dismissal with prejudice.  
11 We cite another, Nichols Illinois Civil  
12 Procedure, for this. A dismissal with prejudice  
13 denotes an adjudication on the merits. So those two  
14 things are really one in the same when we're talking  
15 about that context. There's no difference.  
16 In the Norris v. Estate of Norris case  
17 that I cited, it talks about that Rule 273, and  
18 it interpreted -- so it looked at -- well, it  
19 interpreted Rule 273 to basically say where a case  
20 is dismissed for lack of jurisdiction the dismissal  
21 order does not operate as an adjudication on the  
22 merits and should have been dismissed without  
23 prejudice. Again it equates those two things.  
24 THE COURT: But Rule 273 doesn't make a

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1 distinction between whether it's with or without  
2 prejudice.

3 MS. LEFKOWITZ: It talks about -- let me  
4 pull that up.

5 Illinois Supreme Court Rule 273  
6 provides that unless an order of dismissal or statute  
7 otherwise specified an involuntary dismissal, other  
8 than a lack of dismissal for jurisdiction, operates  
9 as an adjudication on the merits and, I guess, the  
10 cases that I pointed to say that a motion that is  
11 with prejudice is an adjudication on the merits, that  
12 those two things are the same.

13 THE COURT: Okay. Anything else you wish to  
14 say?

15 MS. LEFKOWITZ: No, your Honor.

16 THE COURT: Okay. Anything else, Mr. Rudd?

17 MR. RUDD: Ten seconds.

18 THE COURT: Sure and then I'll let  
19 Ms. Lefkowitz have the last word because it is her  
20 motion.

21 MR. RUDD: Sure.

22 I would just have the Court look real  
23 closely. They cited Paragraph 103 of their amended  
24 complaint. It doesn't say that we made illegal sales

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1 doesn't deal with the second error in the motion  
2 which is that a case shouldn't be dismissed with  
3 prejudice when the deficiency can be cured.

4 THE COURT: Okay. All right. Thank you.

5 I am going to rule today but just give  
6 me about 10 or 15 minutes, and I'll come back out.  
7 So if you don't mind waiting, I'll be back.

8 MS. LEFKOWITZ: Thank you, your Honor.

9 (WHEREUPON, a brief pause was had  
10 in the proceedings.)

11 THE COURT: All right. So, as I mentioned,  
12 I reviewed all of the parties' briefs and pleadings,  
13 and I appreciate both parties' oral arguments this  
14 morning.

15 For the following reasons, I'm going to  
16 grant the motion in part and deny it in part. I'm  
17 going to grant the motion to modify to make the  
18 dismissal without prejudice, but I am denying leave  
19 to amend.

20 On May 25th, 2023, this Court granted  
21 Defendant Westforth's motion to dismiss and dismissed  
22 plaintiff's complaint with prejudice for lack of  
23 personal jurisdiction.

24 In its motion, plaintiff first argues

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1 and that those firearms were recovered in Chicago.

2 It says we sold firearms and some of them were  
3 recovered in Chicago, and that's a huge distinction.

4 THE COURT: Thank you. Ms. Lefkowitz?

5 MS. LEFKOWITZ: I think, first of all, we do  
6 in other parts of the proposed complaint say that  
7 these sales were illegal. We repeatedly talk about  
8 the melting point laws. Those guns were recovered in  
9 crimes. We make that very clear in our complaint,  
10 and I do think that that's not a jurisdictional  
11 issue. That's a merits issue, you know, whether  
12 ultimately those guns were illegally sold, but we are  
13 alleging that they were illegally sold and that they  
14 were recovered in crimes in Chicago.

15 THE COURT: Okay. Thank you. One more  
16 thing.

17 To Mr. Rudd's point, he said if he had  
18 been asked he would have stipulated that there would  
19 be no res adjudicata effect from the order as it  
20 currently stands, the May 25th order.

21 Is that something the plaintiff is  
22 interested in if it would resolve any of the issues  
23 in the motion?

24 MS. LEFKOWITZ: It wouldn't because that

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1 pursuant to Section 2-1203 that the Court erred in  
2 dismissing the complaint with prejudice and asks the  
3 Court to modify its order to provide the dismissal of  
4 the complaint was without prejudice.

5 Plaintiff argues that Illinois law is  
6 clear that a dismissal on jurisdictional grounds does  
7 not adjudicate the merits of a plaintiff's claims  
8 and, therefore, must be dismissed -- must be without  
9 prejudice.

10 After reviewing the cases cited by both  
11 parties, I agree that the dismissal of the case for  
12 lack of personal jurisdiction does not operate as a  
13 disposition on the merits for res adjudicata  
14 purposes.

15 Westforth appears to agree with the  
16 proposition although it obviously disagrees that  
17 the dismissal should be modified to be without  
18 prejudice.

19 The plaintiff cites several cases  
20 including People versus Smith (2017 Ill. App. 3d  
21 150265), Cohen versus Salata (303 Ill. App. 3d 1060),  
22 a First District case from 1999, and Johnson versus  
23 DuPage Airport Authority (268 Ill. App. 3d 409),  
24 a Second District case from 1994. These cases all

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<p style="text-align: right;">Page 42</p> <p>1 hold that where there is no adjudication on the 2 merits the dismissal should be granted without 3 prejudice as opposed to with prejudice. 4           In People versus Smith, the Circuit 5 Court found that there was no personal jurisdiction 6 over the state, the defendant's Section 2-1401 7 petition, and then also reached the merits of the 8 petition finding it to be barred by res adjudicata. 9           The Appellate Court found that the 10 trial court erred in going beyond the jurisdictional 11 question in reaching the merits of 12 the 1401 petition. 13           The Court explained that, once the 14 Circuit Court determined there was no personal 15 jurisdiction over the state, the Court had no power 16 to dismiss the petition on the merits. It explained 17 that a dismissal on jurisdictional grounds is not 18 res adjudicata on the merits of the petition. 19           Accordingly the Appellate Court modified 20 the Circuit Court's order to reflect that the 2-1401 21 petition was dismissed without prejudice on the 22 grounds that the failure to properly serve the state 23 by certified mail deprived the Court of personal 24 jurisdiction. The Court also vacated the finding on</p>	<p style="text-align: right;">Page 43</p> <p>1 the merits. 2           The Appellate Court refused to vacate 3 the dismissal order entirely however and held that 4 the defendant could refile his position, comply 5 with the service requirements, and have his petition 6 heard. 7           In Cohen versus Salata, the Appellate 8 Court vacated the trial court's order dismissing 9 the case with prejudice for lack of subject matter 10 jurisdiction and remanded the case to the 11 Circuit Court with directions that it dismiss the 12 plaintiff's complaint against the defendants for want 13 of jurisdiction which the Court held, by its very 14 nature, was not adjudication on the merits and is, 15 therefore, without prejudice. 16           Westforth relies on Longo versus 17 AAA-Michigan and Sheikholeslam versus Favreau. In 18 both cases, the Appellate Court affirmed the trial 19 court's dismissal of complaints for lack of personal 20 jurisdiction with prejudice. However, as the 21 plaintiff points out in our case, the Appellate Court 22 in both of those two cases did not address whether 23 the dismissal should have been with or without 24 prejudice, and there's no indication in either of</p>
<p style="text-align: right;">Page 44</p> <p>1 those decisions that the plaintiff objected to the 2 dismissals being with prejudice. 3           In Westforth's third cited case, 4 Rios versus Bayer Corporation, the Supreme Court 5 reversed and remanded the action to the trial court 6 for entering orders granting the defendant's motion 7 to dismiss the claims for lack of personal 8 jurisdiction but did not indicate whether the 9 dismissal should be with or without prejudice. So I 10 find that those cases are not on point. 11           So based on People versus Smith, 12 Cohen versus Salata, and Johnson versus DuPage 13 Airport Authority, I will grant this portion of the 14 plaintiff's motion and modify my May 25th, 2023 15 order to make the dismissal for lack of personal 16 jurisdiction without prejudice. 17           The second part of plaintiff's motion 18 seeks leave to amend its complaint to add new 19 allegations which they claim addresses the 20 jurisdictional deficiencies. 21           Assuming that Section 16(a) applies 22 here, in that situation the Court, when considering a 23 motion for leave to amend, considers four factors 24 set forth in the Loyola Academy versus S &amp; S Roof</p>	<p style="text-align: right;">Page 45</p> <p>1 Maintenance, Inc. case; one, whether the proposed 2 amendment would cure the defective pleading; 3 two, whether other parties would sustain prejudice or 4 surprise by virtue of the proposed amendment; three, 5 whether the proposed amendment is timely; and, four, 6 whether previous opportunities to amend the pleading 7 could be identified. 8           No single factor is dispositive, and 9 the primary consideration is whether getting leave to 10 amend would further the ends of justice. All of that 11 was from the Loyola Academy case. 12           With respect to the first factor, 13 curative effect, the city argues that its proposed 14 amended complaint cures the lack of personal 15 jurisdiction deficiency in several ways. 16           Plaintiff adds allegations that 17 Westforth sold assault weapons and a number of 18 illegal melting-point guns directly to residents of 19 Chicago in violation of the city's municipal assault 20 weapons ban and the city's melting-point law. 21           However, in this proposed amended 22 complaint, the city doesn't allege these Chicago 23 residents who unlawfully purchased guns from 24 Westforth ever resold them or explain how they're</p>

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1 related to the alleged public nuisance of the  
2 straw purchase of guns which is the basis of the  
3 plaintiff's complaint.  
4           Additionally plaintiff adds more  
5 details about the convicted straw purchasers who  
6 bought Westforth guns in Indiana which were later  
7 recovered in Chicago, but none of these additional  
8 facts allege so that the purchasers may contact with  
9 Illinois bilaterally.  
10           There are no facts that the various  
11 straw purchasers had a business relationship or  
12 contractual understanding which contemplated that  
13 the straw purchases were acting for the benefit  
14 of both the straw purchasers and Westforth in  
15 Illinois.  
16           Plaintiff's counsel admits that  
17 plaintiff's original complaint, the only complaint,  
18 does not include any claims related at all to the  
19 sale of assault weapons. This proposed amended  
20 complaint includes numerous references to and claims  
21 based upon the sale of assault weapons allegedly  
22 in violation of Chicago Municipal Codes. These  
23 are new claims and new allegations that are not  
24 nearly attempting to correct a pleading

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1 discovery both from Westforth and the ATF before it  
2 responded to Westforth's motion to dismiss.  
3           Plaintiff learned of these new facts  
4 as early as May, 2022 or at the very latest by  
5 September. Yet plaintiff responded to the motion to  
6 dismiss on the merits of the motion.  
7           In their response brief, they simply  
8 ask the Court to deny the motion. It did not --  
9 plaintiff did not seek leave to amend in response to  
10 the motion to dismiss nor did they seek any such  
11 leave even in the alternative in response to the  
12 motion to dismiss.  
13           They at no point filed a motion for  
14 leave to amend until after the hearing on the motion  
15 to dismiss after the Court took that motion under  
16 advisement and then after the Court entered its  
17 order dismissing the complaint for lack of personal  
18 jurisdiction. So this factor weighs against leave to  
19 amend.  
20           The fourth factor of promptness also  
21 favors the denial of leave to amend in this case. If  
22 such a motion is presented as soon as possible at the  
23 first opportunity, it favors leave to amend. But if  
24 the amendment covers a matter which could have been

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1 deficiency.  
2           The proposed amended complaint also  
3 adds new relief in that it's seeking, as a remedy in  
4 this lawsuit, an order requiring Westforth to take  
5 corrective action to identify and assist in  
6 recovering the firearms it sold and transferred in  
7 violation of the melting-point law and the assault  
8 weapons ban.  
9           All of these are new claims and new  
10 relief and new allegations not alleged in the  
11 complaint and that don't cure any jurisdictional  
12 issue. So this first factor of curative effect  
13 favors the denial of leave to amend.  
14           The second factor is prejudice or  
15 surprise to the defendant. Westforth agrees that  
16 there's no surprise here because the plaintiff had  
17 suggested or mentioned that it would plan to seek  
18 leave to amend at some point. This factor weighs  
19 in favor of granting the motion for leave to  
20 amend.  
21           The next factor is timeliness. Here I  
22 find the motion is not timely filed which weighs in  
23 favor of denying leave to amend. As plaintiff  
24 admits, it participated in substantial jurisdictional

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1 pled in the original pleading or at least  
2 significantly sooner than leave was brought, this  
3 factor favors the denial of leave to amend.  
4           Here the motion for leave to amend was  
5 not filed promptly at the first opportunity.  
6 Plaintiff admittedly had all of these additional  
7 facts long before it sought leave to amend and didn't  
8 do so.  
9           Plaintiff had many prior opportunities  
10 to amend but waited until after the Court ruled on  
11 the motion and dismissed the case before it filed the  
12 motion. So the balance of the Loyola factors weigh  
13 against allowing the plaintiff leave to amend their  
14 complaint to add new facts and new claims at this  
15 point.  
16           Plaintiff cites no case that allows a  
17 plaintiff leave to amend a complaint after the  
18 Court had dismissed the case for lack of personal  
19 jurisdiction regardless of whether that dismissal was  
20 with or without prejudice.  
21           Instead plaintiff relies on cases where  
22 the complaint contained a pleading deficiency which  
23 could be cured such that the complaint could state a  
24 cause of action, but that's not the situation present

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1 in this case.

2 For example, in Muirfield-Village of  
3 Vernon Hills versus Reinke (349 Ill. App. 3d 178),  
4 a Second District case from 2004, the defendant filed  
5 a Section 2-615 motion to dismiss which challenged  
6 the legal sufficiency of the complaint and argued  
7 that the plaintiff failed to allege sufficient facts  
8 to state a cause of action.

9 The present case, however, involves a  
10 2-619 motion to dismiss for lack of personal  
11 jurisdiction and is not the same situation. The  
12 Court in Muirfield held that quote, "When a cause  
13 of action can be stated, a trial court abuses its  
14 discretion if it refuses to allow the plaintiff to  
15 amend its complaint," end quote.

16 Yet here the issue presented in  
17 Westforth's motion to dismiss was not whether the  
18 plaintiff could state a cause of action but  
19 whether this Court had personal jurisdiction over  
20 Westforth.

21 Another case cited by the plaintiff is  
22 County of Peoria versus Couture (2022 Ill. App. 3d  
23 210091). In that case, the trial court allowed the  
24 plaintiff to amend the complaint to correct the name

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1 an issue in our case.

2 It's undisputed that the dismissal for  
3 lack of personal jurisdiction is not a decision on  
4 the merits nor does it have a res adjudicata effect  
5 to preclude the plaintiff from bringing the same  
6 claims against the same defendant in the proper  
7 jurisdiction. Westforth doesn't dispute that  
8 proposition either.

9 There's no doubt here that plaintiff can  
10 have a hearing on the merits of its claim. In its  
11 response brief, Westforth agrees that the plaintiff  
12 could sue Westforth, agrees that the plaintiff can  
13 sue Westforth regarding the sale of firearms in  
14 Indiana to Indiana residents in a court that has  
15 jurisdiction over those claims or it could sue  
16 Westforth for something else in this court or  
17 somewhere else.

18 I don't see the concern that the  
19 plaintiffs raise as to whether this would be claim  
20 splitting. I don't see that that's what Westforth  
21 is arguing. Westforth, I believe, clarified their  
22 argument this morning at the oral argument that  
23 they were just arguing that plaintiff has other  
24 jurisdictions in which to bring its claims.

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1 of the plaintiff and to add the correct citation  
2 to the Municipal Code on which the complaint was  
3 based.

4 On appeal, the defendant argued that  
5 the trial court erred in allowing the plaintiff leave  
6 to amend. The Appellate Court held that the policy  
7 in Illinois is to remove barriers which prevent the  
8 resolution of a case on its merits; and to that end,  
9 permission to amend pleadings should be liberally  
10 and freely given so that the cases are decided  
11 on their merits instead of on procedural  
12 technicalities.

13 However, in the present case, the lack  
14 of personal jurisdiction is not a procedural  
15 technicality nor is it a barrier preventing  
16 resolution of a case on the merits. It's a matter  
17 of due process which is not a procedural  
18 technicality.

19 Plaintiff also cites Jeffrey M.  
20 Goldberg & Associates versus Collins Tuttle & Company  
21 (264 Ill. App. 3d 878), a First District case from  
22 1974, for the proposition that there is a strong  
23 policy which favors an adequate hearing of a  
24 litigant's claim on the merits. However, that's not

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1 So the concerns raised by the courts  
2 in the cases cited by the plaintiff about procedural  
3 technicalities or making sure the litigant's claims  
4 can be heard on the merits are not at issue here  
5 where this Court dismissed the complaint for lack of  
6 personal jurisdiction.

7 So, for all of these reasons, I am  
8 denying the portion of plaintiff's motion that seeks  
9 leave to file amended pleadings.

10 And then for today's order I don't know  
11 if you want to handwrite something out or if you want  
12 to go back to the office and e-mail in an order. I  
13 know you're not going to put down everything that I  
14 said, but essentially for the reasons stated in open  
15 court and transcribed by the court reporter, the  
16 transcript of which is expressly incorporated herein,  
17 the Court, you know, grants the motion in part to  
18 modify and then denies the motion for leave to  
19 amend.

20 MS. LEFKOWITZ: If we can please submit the  
21 order tomorrow given that we are headed to the  
22 airport and may not be able to submit one today.


23 THE COURT: Yes. That's fine with me.  
24 Thank you. We're done. You are welcome to go and

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1 get to the airport.  
2 MS. LEFKOWITZ: Thank you.  
3 MR. RUDD: Thank you, your Honor.  
4 (Which were all the proceedings  
5 had in the above-entitled cause on  
6 this date.)  
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1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF DU PAGE )  
4 I, PATRICIA M. STONE, a Certified Shorthand  
5 Reporter of the State of Illinois, do hereby certify  
6 that I reported in shorthand the proceedings had at  
7 the hearing aforesaid, and that the foregoing is a  
8 true, complete, and correct transcript of the  
9 proceedings of said hearing as appears from my  
10 stenographic notes so taken and transcribed under my  
11 personal direction.  
12 IN WITNESS WHEREOF, I do hereunto set my hand at  
13 Chicago, Illinois, this 4th day of October, 2023.  
14  
15  
16   
17  
18 Patricia M. Stone, CSR  
19 CSR Certificate No. 084-002880  
20  
21  
22  
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