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APPELLATE COURT 1ST DISTRICT

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITY OF CHICAGO, an Illinois)	Appeal from the Circuit Court of
municipal corporation,)	Cook County, Illinois
)	County Department, Chancery
Plaintiff-Appellant,)	Division
)	
v.)	No. 21 CH 01987
)	
WESTFORTH SPORTS, INC.,)	The Honorable
)	CLARE J. QUISH,
Defendant-Appellee.)	Judge Presiding.

OPENING BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT

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ORAL ARGUMENT REQUESTED

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NATURE OF THE ACTION

The City of Chicago (“the City”) sued Westforth Sports, Inc. (“Westforth”), a firearms dealer located in Gary, Indiana. C34 ¶ 16.¹ The City alleged that Westforth accessed the criminal market for firearms in Chicago by engaging in unlawful sales practices that contributed to a public nuisance in Chicago, harming the health, safety, and well-being of Chicago residents and damaging the City directly. C62-67 ¶¶ 96-125. The City sought injunctive and monetary relief. C68-69. Following jurisdictional discovery, the circuit court dismissed the City’s original complaint with prejudice for lack of personal jurisdiction. A7. The court then modified its dismissal to be without prejudice but denied the City’s motion for leave to file an amended complaint. A8. This appeal followed. All questions are raised on the pleadings.

¹ “C__” denotes the nine-volume record on appeal, “R__” denotes the report of proceedings, and “A__” denotes the appendix attached to this brief.

ISSUES PRESENTED FOR REVIEW

1. Whether the circuit court erred in dismissing the City's original complaint for lack of personal jurisdiction, where the City's allegations and jurisdictional discovery established that Westforth purposefully sold firearms into the Illinois market and that the City's claims arose out of or related to those sales.

2. Whether the circuit court abused its discretion when it denied the City leave to file a first amended complaint.

JURISDICTIONAL STATEMENT

On May 25, 2023, the circuit court granted Westforth's motion to dismiss the City's complaint with prejudice for lack of personal jurisdiction. A7. Because Illinois law provides that dismissal on jurisdictional grounds must be without prejudice, *see People v. Smith*, 2017 IL App (3d) 150265, ¶ 19, the City moved on June 23, 2023, to modify the court's dismissal order to be without prejudice and for leave to file an amended complaint, C4694. That motion tolled the period for filing a notice of appeal from the dismissal order because it was timely filed within thirty days of that order and, given the modification request, it was "directed against" the order. Ill. Sup. Ct. R. 303(a)(1); *see Muirfield Vill.-Vernon Hills, LLC v. K. Reinke, Jr. & Co.*, 349 Ill. App. 3d 178, 185-86 (2d Dist. 2004) (motion to modify order to be without prejudice tolls time to file notice of appeal).

On September 29, 2023, the court entered an order modifying its dismissal order to be without prejudice but denying the City leave to file an amended complaint. A8. That order constituted a final, appealable judgment. "The appealability of an order is determined by its substance rather than its form," *Boonstra v. City of Chicago*, 214 Ill. App. 3d 379, 385 (1st Dist. 1991), and an order is not rendered nonfinal merely because it states that dismissal is "without prejudice," *In re V.S.*, 2022 IL App (2d) 210667, ¶ 17. Rather, an order is final when it "dispose[s] of the case completely and end[s] the litigation in the trial court." *Boonstra*, 214 Ill. App. 3d at 385. Here, the September 29, 2023 order ended the litigation in the circuit court. Within thirty days, on October 18, 2023, the City filed a timely notice of appeal from both the circuit court's May 25 and September 29, 2023, orders. A9; *see* Ill. Sup. Ct. R. 303(a)(1). This Court, therefore, has jurisdiction over this appeal under Illinois Supreme Court Rule 301.

STATEMENT OF FACTS

Westforth is a retail firearms dealer located in Gary, Indiana, a little under 10 miles from the Illinois border and a short drive from Chicago. C34 ¶¶ 16, 18.² For many years, the store has been one of the principal sources of firearms recovered at crime scenes in Chicago. *See* C39 ¶ 30. Between 2009 and 2016 (the last year for which data is publicly available), the Chicago Police Department (“CPD”) traced at least 856 crime guns back to Westforth. *See id.* This is exponentially more than the average dealer, making Westforth the single largest out-of-state source for crime guns in Chicago over this period. *See* C39 ¶¶ 29-30. More recently, federal prosecution records show that more than 40% of all federal prosecutions for illegal gun purchases in the Northern District of Indiana between December 2014 and April 2021 involved transactions at Westforth. C29 ¶ 2; *see also* C939-42 ¶ 15.

The City filed a public nuisance and negligence lawsuit against Westforth, alleging that the retailer intentionally engaged in a pattern of illegal sales that resulted in the flow of hundreds, if not thousands, of illegal firearms into Chicago. C29 ¶ 1; C62-67 ¶¶ 96-125. The original complaint alleged a series of deliberate choices by Westforth to sell firearms in ways that violate state and federal law so that it could access the illegal market for firearms in Illinois and Chicago. Specifically, the complaint detailed Westforth’s sales to individuals whom the store knew, or deliberately avoided knowing, were straw purchasing—meaning that they were buying firearms to supply to others (often criminals

² The factual record includes the City’s unrebutted allegations, which are taken as true for determining personal jurisdiction. *Levy v. Gold Medal Prods. Co.*, 2020 IL App (1st) 192264, ¶ 26.

or others who are prohibited by law from purchasing firearms themselves). *See, e.g.*, C29-30 ¶¶ 1-4.

Westforth moved to dismiss the complaint for lack of personal jurisdiction, C113, and the circuit court allowed the parties to engage in jurisdictional discovery, C749. As detailed below, the City obtained evidence in jurisdictional discovery concerning its allegations that Westforth deliberately cultivated and profited from the Illinois and Chicago market for illegal firearms through its straw sales. But jurisdictional discovery also established that Westforth fed this market for illegal firearms in another way: by selling directly to Chicago residents (at its retail counter or through Illinois retailers) weapons that are prohibited within City limits, including 47 assault weapons. C3393-97 ¶¶ 6-8. The circuit court, however, concluded that it lacked personal jurisdiction over Westforth, dismissed the City's original complaint, and denied the City leave to file a first amended complaint. A1, 8. The City appeals both the circuit court's dismissal of its original complaint and the court's denial of the City's motion to amend.

Westforth's history of firearms sales and interactions with Illinois is set forth below. Except as noted on pages 14-15, *infra*, record citations are taken from the original complaint and the factual record adduced during jurisdictional discovery.

I. Westforth's Sales to Straw Purchasers

Straw purchasing is against the law. C41-42 ¶ 37; *see also* 18 U.S.C. § 922(a)(6). It is also against the law for a firearms dealer to complete a transaction that it knows or has reason to believe is an illegal straw purchase. C42 ¶ 38; *see also* C40-43 ¶¶ 33-42. Citing specific examples of Westforth's sales to straw purchasers, the City alleged that Westforth knowingly proceeded with illegal straw sales, and thereby "access[ed] the lucrative

criminal market for firearms in Chicago” that it could not have accessed directly. C46 ¶¶ 52-53; C46-61 ¶¶ 54-95 (describing other straw sales).

Westforth’s transaction records confirmed these sales and demonstrated that the sales were made when there were red flags indicating straw purchasing, including customers buying multiple handguns at a time, purchasing identical and near-duplicate guns, buying guns in a concentrated period, paying in cash, and staggering visits to elude multiple-sale reporting requirements. *See, e.g.,* C967-76; *see also* C3406-07 ¶¶ 15-16 (affidavit of former Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) agent describing common indicators of straw purchasing).³ A comparison of the store’s transaction records to federal prosecution records showed that Westforth sold at least 266 firearms to at least 53 different people from 2013-2021 who were later charged with straw

³ Westforth’s transaction records consist principally of: (1) ATF Form 4473 Firearms Transaction Records (“Form 4473s”) (*e.g.*, C2528-30), (2) excerpts of its Acquisition and Disposition book (“A&D book”) (*e.g.*, C2014-44), (3) sales receipts (*e.g.*, C2588), and (4) multiple-handgun-sale report forms (*e.g.*, C2557). Because these records are voluminous, they are summarized in tables located at C945-60 (handgun sales to Illinois residents), C961-66 (rifle and shotgun sales to Illinois residents), and C967-76 (sales to straw purchasers). *See also* C936-42 ¶¶ 8-9, 11-12, 16-17 (describing creation of transaction summary tables).

In a typical transaction, the dealer and customer each fill out portions of Form 4473, with the customer affirming that their statements are “true, correct, and complete,” *see, e.g.*, C2528-29 (Section A), and the dealer certifying its belief that the transaction is “not unlawful,” *see, e.g.*, C2529-30 (Sections B and D). The dealer reviews the customer’s ID and runs a background check and records the sale in its A&D book, which is a bound logbook with rows that correspond to individual firearms passing through the store’s inventory. The rows are read across pairs of facing pages, as explained at C937-38 ¶ 8. Westforth also creates a handwritten receipt showing the purchase price, any accessories and ammunition bought, and the payment form. *See, e.g.*, C2588. If the customer has bought more than one handgun within a 5-day period, the dealer must report this to ATF and local law enforcement using a separate, multiple-sale report form. *See, e.g.*, C2557. Transactions with out-of-state customers follow different versions of this procedure, as explained at pages 12-13, *infra*.

purchasing. C2015-526 (Westforth purchaser transaction records); C967-76 (summarizing transaction records); C939-41 ¶ 15 (identifying straw purchasing prosecutions). At least 48 guns that Westforth sold in illegal straw transactions during that period have already been recovered in Chicago in connection with a variety of crimes. *Compare* C3387-88 ¶ 11 (itemizing CPD recoveries by serial number) *with* C967-76 (summarizing Westforth sales to straw purchasers).

For example, Westforth sold a dozen handguns to a straw purchaser named Marqwan Blasingame in the span of eleven days in December 2016. C967 (summarizing Blasingame’s purchases, including firearm serial numbers), 2029-50 (transaction records). At least eight of these handguns were duplicative, all were purchased in multiple-sale transactions, and all but one was bought with cash. C967. In his first transaction at the store, Blasingame indicated on his Form 4473 that the guns were not for him. C2528 (“No” answer to question 11a). This is a “major indicator” of straw purchasing, according to a former ATF agent. C3406 ¶ 14. But instead of stopping the transaction, Westforth’s employees instructed Blasingame to change his answer to “yes” to complete the sale. *See* C2528 (changed answer to question 11a); *see also* C1066 (store owner testifying that salesperson “definitely” instructed Blasingame to change answer). At least two of Blasingame’s guns have been recovered by CPD, one of which was recovered from a felon during a CPD gang-suppression operation. C3387-88 ¶ 11 (serial numbers AAL063181 & TMC11968); C3389 ¶ 17.⁴

⁴ For the Court’s convenience, the City identifies serial numbers and other purchaser information where useful for reviewing the voluminous record.

Another example is Westforth's sale of 15 guns to straw purchaser Levar Reynolds in 2018. C975-76 (summarizing Reynolds's purchases, including firearm serial numbers); C2451-80 (transaction records). Reynolds bought five of these guns, all Glocks, in one day, along with five laser sights, five large capacity magazines, and a large amount of ammunition. C2758. Initially, Reynolds indicated on his Form 4473 that he resided in "IL" but then crossed that out to write "IN," C2553 (response to question 2), and each time that he came to the store, he provided a Chicago phone number. C2755-64. Five of the 15 guns purchased by Reynolds have already been recovered by CPD. C3387-88 ¶ 11 (serial numbers SJY11640, BGHC759, BCXV993, BGHC760, and FFTC709⁵).

A third example is the 19 handguns that Westforth sold to straw purchaser Darryl Ivery Jr. in six months in 2020. C970-71 (summarizing Ivery's purchases, including firearm serial numbers); *see also* C2220-57 (transaction records). To acquire handguns more quickly, Ivery made seven separate multiple-sale transactions at the store—so many that Earl Westforth, the store's long-time owner, admitted that the store should have asked "Hey Darryl, what are you doing with all these guns?" C1059. Instead, Westforth kept selling to Ivery, even after two handguns that it sold to him were recovered in Chicago less than a month after purchase (one in the possession of a juvenile, and the other in connection with an aggravated assault). C3387-88 ¶ 11 (recovery of firearms FBL7406 and DDU662US). Beyond these examples, Westforth's records reflect at least six other straw purchasers to whom the store sold at least 10 guns each—and in one instance as many as 21 guns. *See* C967-76.

⁵ This firearm is believed to be reflected in Westforth's A&D books as serial number FFTC70.

In addition to evidence that the store knew that it was selling to straw purchasers, the City adduced evidence that Westforth knew these customers were trafficking guns from its store into Illinois—and Chicago in particular. According to a former ATF agent, the fact that guns are trafficked from places with weaker gun laws (like Indiana) to places with stricter gun laws (like Illinois and Chicago) is “a well-known phenomenon ... and something that federal firearms licensees (‘FFLs’) [like Westforth] should know based on their knowledge of firearms regulations, ATF trainings and interactions with ATF inspectors.” *See* C3406 ¶ 13.

Westforth had specific knowledge, too. In 2014, the Department of Justice conducted a sting operation at Westforth, and informed the store that it was targeting a Westforth customer who was part of “a firearms trafficking organization in Indiana trafficking firearms to Vice Lord and Gangster Disciple street gang members on the west side of Chicago.” C2829; *see also* C1040-41 (explaining store’s retention of email). Earl Westforth admitted that this put him on notice that straw purchasers were attempting to traffic guns from the store to Chicago. C1039-40. Along similar lines, Earl Westforth also acknowledged that Illinois law enforcement agencies contacted him at least seven times in recent years, as they conducted gun investigations. C1038. When asked which law enforcement agencies, Earl Westforth responded: “Chicago, of course, all the different—ATF, all the local police departments.” *Id.*

II. Westforth’s Knowledge and Violation of Federal Requirements for Preventing Straw Sales

Westforth persisted in these straw sales even though it is a sophisticated commercial actor, with a lengthy history of ATF compliance violations and warnings for making straw sales and subsequent remedial trainings for Earl Westforth and his

employees. C31 ¶ 6; C43-45 ¶¶ 43-51. In fact, ATF cited Westforth in 2002, 2006, and 2010 for “REPEAT VIOLATION[s]” related to straw sales, and then cited the store again in 2012 and 2017 for additional violations relating to straw purchasing. *See* C2789-90, 2814.

To address these (and other) violations, ATF reviewed the applicable regulations with Earl Westforth after each inspection. *See* C2790-93, 2799, 2811-12. ATF also required Earl Westforth to attend at least four separate warning conferences and twice almost revoked the store’s license. C2821-27, 2790. ATF also provided remedial training to Westforth’s employees and management about “identifying suspicious purchasers and preventing straw purchases.” C2812; *see also* C1031 (acknowledging training); C1002 (same); C3417-28 (ATF training presentation).

Jurisdictional discovery revealed that despite these trainings, Westforth did not adopt safeguards to prevent straw purchasing at its retail counter. For example, the store has no policy for identifying customers who buy large numbers of handguns over time (outside of multiple-sale transactions) beyond the possibility that a “staff member[] recognizes the person.” C1018-19, 1059. It has no procedure for checking whether law enforcement has already contacted the store to trace a customer’s gun when that customer tries to buy more guns. C1028. It illegally destroys records of attempted transactions that result in a failed background check, even though these often presage a straw purchase by an associate of the denied purchaser. C980-81; *see also* C2822 (ATF recommending that Westforth record and review denied transactions to “quickly identify possible straw purchases”).

Store employees repeatedly testified that they “don’t have a concern in the world” when a customer buys half a dozen or more handguns in a month. C1061; *see also* C999 (employee denying that a customer buying “ten of the same guns” would be concerning); C2012 (another employee denying that it would be unusual for the store to sell “any number of guns” at once). In Earl Westforth’s own words, the store views it as solely the responsibility of law enforcement—rather than the store—to identify and stop straw purchasers: “A customer can buy as many [guns] as they want. ... It’s not our job to tell him no.” C1028.

III. Westforth’s Direct Sales to Illinois Customers

In addition to its straw sales, Westforth sold hundreds of firearms directly to Illinois customers, a significant portion of which—as established by jurisdictional discovery—were illegal in Illinois. Between January 2018 and April 2021, the timeframe for which records were produced, Westforth sold 381 handguns to Illinois residents, accounting for 2.7% of the store’s handgun sales by volume over this period. *See* C945-60 (summarizing handgun sales to Illinois residents); C1749 (14,215 total handgun sales for 2018-2021); *see also* C1125-747. Westforth also sold at least 157 long guns (rifles or shotguns) to Illinois residents over this same period, accounting for 4.2% of the store’s long gun sales by volume. *See* C961-66 (summarizing long gun sales to Illinois residents); C1749 (3,707 total long gun sales for 2018-2021); *see also* C1751-993. Combined, these direct sales to Illinois residents generated at least \$320,390.74 in revenue for the store, or about 2.7% of the store’s total revenue. *See* C945-66 (summarizing sales to Illinois residents); C2831 (\$11,584,699.89 in total revenue for 2018-2021); *see also* C2839-3382. Many of the makes and models of pistols, rifles, and shotguns that Westforth sold to Illinois

residents are the same makes and models that the store sold to straw purchasers. *Compare* C967-76 (straw purchases) *with* C945-66 (direct Illinois customer sales).

Westforth took affirmative steps to solicit, facilitate, and fulfill its transactions with Illinois customers. On the store's Google Business listing, the store answered questions about how Illinois customers could obtain firearms at the store, C1004-05, which Earl Westforth testified was intended to facilitate sales to Illinois residents, C1049. The store's other online advertising, such as its sale flyers on Facebook, reached customers in Illinois and advertised discounts that they could redeem. C1044-45, 1047.

Westforth also implemented special procedures for employees to process transactions with Illinois customers. Because federal law prohibits FFLs from selling handguns to out-of-state customers at their retail counters, the FFL must conduct the sale through a store in the purchaser's home state. *See* 18 U.S.C. §§ 922(a)(3), (b)(3). Accordingly, to sell a handgun directly to an Illinois resident, Westforth would check the customer's ID and Firearm Owner's Identification Card, take their money and write a sales receipt, and then ship the handgun across state lines for delivery to the customer at an FFL in Illinois. C1050. These steps differed from the process for selling handguns to Indiana residents, and Westforth specially trained its employees to handle Illinois sales. C1050, 1055. To facilitate this interstate shipment of handguns, Westforth cultivated relationships with Illinois gun dealers to whom it would direct transfers in exchange for a mutual recommendation if a customer wanted a gun the Illinois dealer did not stock, or a better deal when purchasing from the Illinois dealer's inventory. *See* C1053.

Westforth also intentionally implemented special processes for selling long guns to Illinois residents. Federal law permits FFLs to sell long guns to out-of-state customers at

their retail stores but requires these sales to comply with the state laws in both the dealer's and the customer's states of residence. *See* 18 U.S.C. § 922(b)(3). Because Illinois has a mandatory waiting period for firearm sales, Westforth adapted its procedures and trained its staff to implement this requirement when selling rifles and shotguns to Illinois residents. C1057. Westforth did not adopt similar procedures for any other state, but it undertook this effort for Illinois because of the volume of sales to that state. *Id.* According to one Westforth employee, the store's sales to Illinois residents were so frequent that they were "just a normal part of [their] daily operations." C1001; *see also* C985 (ATF observation during a 2021 compliance inspection that "[t]here were always vehicles present with [Illinois] license plates" at Westforth).

Westforth's routine direct sales to Illinois residents included sales of firearms prohibited by Illinois and local law. Specifically, even though federal law requires Westforth's long gun sales to Illinois customers to comply with both Indiana and Illinois law, *see* 18 U.S.C. § 922(b)(3) (incorporating "published ordinances"), Westforth sold at least 47 assault weapons to Chicago residents and 23 additional assault weapons to residents in other Illinois jurisdictions that prohibited them, in violation of local law (and by extension, federal law), *see* C3393-99 ¶¶ 6-11. Additionally, Westforth sold at least five cheap low-quality alloy handguns to Illinois residents, even though these are prohibited by Illinois law. C3400 ¶ 14.

IV. Procedural History of the City's Lawsuit

To address the harms from Westforth's supply of illegal guns into Chicago, the City sued the store in April 2021. *See generally* C29-70. The City brought four causes of action: (i) public nuisance, (ii) recovery of municipal costs, (iii) negligence, and (iv) negligent entrustment, C62-67 ¶¶ 96-125, and sought damages, abatement, and injunctive relief,

C67-69. The City's claims focused on Westforth's conduct of feeding the market for illegal firearms in Illinois through straw sales and the resulting harms to the City and its residents. *See* C62-67 ¶¶ 96-125.

In August 2021, Westforth moved under section 2-619 of the Illinois Code of Civil Procedure to dismiss the City's complaint for lack of personal jurisdiction. C113-30. To resolve factual issues raised by this motion, the City sought and the circuit court granted limited discovery on the issue of personal jurisdiction. C522-32; C749-57. Jurisdictional discovery revealed, among other things, that Westforth was on notice that straw purchasers were trafficking firearms from its store to Chicago and that Westforth directly sold illegal firearms to Illinois residents. C1040, 2829; C3393-400, ¶¶ 6-14. After a hearing on January 31, 2023, R684, the circuit court granted Westforth's motion to dismiss with prejudice, A1. It held that Westforth's transactions with straw purchasers did not constitute purposeful activity by the store directed at Illinois, and that the store's direct sales to Illinois residents were not related to the City's claims. A4-7.

The City timely moved to modify this order to be without prejudice and for leave to file an amended complaint. C4694-706; *see also* R759 (requesting leave to replead at May 25, 2023 hearing where court dismissed complaint, and being invited to file motion). The City included a proposed amended complaint with this motion, which added details of Westforth's intentional sales to straw purchasers who resold firearms to Illinois residents and included allegations about Westforth's direct illegal sales to Illinois residents as another basis for its claims. *See generally* C4711-61; *see also* C4763-824 (redline to original pleading). For example, regarding straw sales generally, the City added allegations, based on statements from a former Westforth employee, that "employees

[were] discouraged from asking questions about potential straw purchasers' intent for the guns." C4786 ¶ 60. And regarding the single-day sale of five Glockes, five laser sights, five large-capacity magazines, and a large amount of ammunition to Levar Reynolds, *see supra* p. 8, the City alleged that the Westforth employee handling the sale told Earl Westforth that he believed Reynolds intended to traffic these firearms to Chicago for resale in the criminal market. C4796 ¶¶ 82-83. Earl Westforth, however, said that this was not the store's concern and directed another employee to finalize the sale and provide a discount. *Id.* CPD recovered two of those guns the following day from a Chicagoan indicted on multiple felonies. C4766 ¶ 4. Regarding the sale of 538 firearms directly to Illinois residents, the City alleged that "[s]ome of these guns have been recovered in crimes in Chicago (including homicide, assault and robbery), [while] many others are still in circulation." C4812 ¶ 103.

Following oral argument, the circuit court granted the City's motion in part, modifying its dismissal order to be without prejudice. A8. But the circuit court denied the City leave to file an amended complaint, recognizing that the proposed amendment would not surprise Westforth but concluding that it was untimely and would not establish personal jurisdiction over Westforth. *Id.*; R819-24.⁶

⁶ In July 2023, Westforth's counsel represented by email that Earl Westforth was retiring and that the store was liquidating its inventory. While the City does not have further information about the current status of store operations, as of the date of this filing, Westforth remains listed as an active corporation with the Indiana Secretary of State and retains its federal firearms license. In any event, store closure would not fully vindicate the City's claims, which seek both injunctive relief and damages. *See* C68-69.

ARGUMENT

Illinois courts may exercise personal jurisdiction over an out-of-state defendant when that defendant has “minimum contacts” with Illinois and maintenance of the suit “comport[s] with ‘fair play and substantial justice.’” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-76 (1985). In the context of specific jurisdiction, “minimum contacts” means that the defendant “purposefully directed” its activities at the forum state and that the plaintiff’s injuries “arise out of or relate to” those activities. *Id.* at 472 (quotations omitted).

Westforth’s intentional and decades-long cultivation of the illegal market for firearms in Chicago more than meets this test. As jurisdictional discovery demonstrated, Westforth—an experienced firearms store located ten miles from the Illinois border—knew that straw purchasers were coming to its store to purchase guns and traffic them to Chicago. Yet, despite repeated warnings and trainings from federal regulators on precisely this topic, Westforth refused to adopt policies to prevent straw-purchasing, choosing instead to stick its head in the sand so that it could profit from the lucrative market for illegal firearms just across the border. Westforth’s defense—that it was a hapless dupe, routinely fooled by the steady stream of straw purchasers who frequented its store—flies in the face of common sense, frequent inquiries from Chicago-area law enforcement regarding guns sold at Westforth, and the store owner’s admission that he knew straw purchasers were attempting to traffic firearms from Westforth into Illinois.

But the circuit court incorrectly concluded that the hundreds of straw sales that occurred at Westforth did not constitute purposeful availment of the Illinois market because—according to the court—the straw sales were based purely “on the unilateral

activity of third parties, the straw purchasers, and not the actions of the nonresident defendant, Westforth.” A6. This holding was incorrect because it impermissibly decided a factual dispute in favor of the defendant, and because it ignored the reality that Westforth stood to make a lot of money by knowingly serving the underground market for firearms in Chicago. Selling many guns to an illegal distributor is more profitable than selling a single gun to a legitimate purchaser.

Jurisdictional discovery also demonstrated that Westforth further availed itself of the Illinois market by selling hundreds of guns *directly* to Illinois residents. Many of these sales were also illegal and harmed the City. Yet the circuit court held that these sales did not “relate to” the claims in the City’s original complaint, *see* A4-5, essentially requiring a causal showing between the Illinois-directed activity and the City’s claims. But this rigid view of the “relating to” test has been rejected both by the U.S. Supreme Court, *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 362 (2021), and the Illinois Supreme Court, *Russell v. SNFA*, 2013 IL 113909, ¶ 83 (describing this test as “lenient or flexible”). It should be rejected here as well.

After dismissing the City’s complaint, the circuit court further erred by denying the City leave to amend, even though the City’s proposed amended complaint cured the supposed defects identified by the circuit court. First, the City added allegations, including ones based on statements from a former Westforth employee, that addressed the court’s concern that Westforth’s participation in hundreds of straw sales was not a “bilateral activity” by the store. Second, the amended complaint incorporated Westforth’s direct (and often illegal) sales to Illinois residents, and alleged that those sales, like Westforth’s straw sales, harmed Chicago. Thus, the City’s amended claims both “related to” and “arose out

of’ its direct sales to Illinois residents. Contrary to this Court’s instruction to allow amendments liberally, however, the circuit court denied the City leave to file an amended complaint. For these reasons and those below, this Court should reverse the circuit court’s orders.

I. This Court should reverse the circuit court’s order dismissing the original complaint for lack of personal jurisdiction.

A. This Court reviews the circuit court’s dismissal order *de novo*.

When, as here, a circuit court decides the existence of personal jurisdiction without an evidentiary hearing and instead based only on documentary evidence, this Court reviews that decision *de novo*. *Schaefer v. Synergy Flight Ctr., LLC*, 2019 IL App (1st) 181779, ¶ 8. On *de novo* review, this Court, like the circuit court, considers all documents in the record, including the complaint, any affidavits submitted by the parties, and discovery depositions. *Fisher v. HP Prop. Mgmt., LLC*, 2021 IL App (1st) 201372, ¶ 18; *Saia v. Scripto-Tokai Corp.*, 366 Ill. App. 3d 419, 422 (1st Dist. 2006).

Based on the record, the Court determines whether the plaintiff has made a *prima facie* showing of personal jurisdiction over the nonresident defendant. *Fisher*, 2021 IL App (1st) 201372, ¶ 18. This burden is “minimal.” *TCA Int’l, Inc. v. B & B Custom Auto, Inc.*, 299 Ill. App. 3d 522, 532 (1st Dist. 1998). If the plaintiff makes a *prima facie* showing of jurisdiction, then “the inquiry ends” unless the defendant provides “uncontradicted evidence defeating jurisdiction.” *Fisher*, 2021 IL App (1st) 201372, ¶ 18. Any unrebutted allegations are taken as true, and documentary conflicts must be resolved in the plaintiff’s favor. *Levy*, 2020 IL App (1st) 192264, ¶ 26; *see Saia*, 366 Ill. App. 3d at 427 (drawing reasonable inferences in plaintiff’s favor). Importantly, the Court “should not dismiss the complaint for want of personal jurisdiction if documents in the record can support a finding

of jurisdiction.” *Saia*, 366 Ill. App. 3d at 423. Instead, if documents in the record “show that [the plaintiff] could allege grounds for personal jurisdiction,” but “the complaint does not include such allegations, [this Court] should remand to permit the plaintiff to amend the complaint.” *Id.* at 422.

B. The circuit court has personal jurisdiction over Westforth.

Illinois courts have personal jurisdiction over a nonresident defendant on “any ... basis ... permitted by the Illinois Constitution and the Constitution of the United States.” 735 ILCS 5/2-209(c). That is, personal jurisdiction exists when a nonresident’s contacts with Illinois satisfy federal and Illinois due process requirements. *Russell*, 2013 IL 113909, ¶ 30. Where, as here, the defendant has not argued that the Illinois Constitution imposes any greater due process requirements than the Due Process Clause of the Fourteenth Amendment, a court considers only federal constitutional principles. *Id.* ¶ 33.

Federal due process requirements are satisfied when a defendant has “minimum contacts within the forum State” and maintaining a suit there “comport[s] with ‘fair play and substantial justice.’” *Burger King*, 471 U.S. at 476. The relevant standard for this inquiry turns on whether the plaintiff invokes general or specific jurisdiction. *Russell*, 2013 IL 113909, ¶ 36. Here, the City relies only on specific jurisdiction as the basis for its claims, *see* A3, which requires a two-part analysis. First, the court determines whether a nonresident defendant has minimum contacts by examining whether (1) the defendant “‘purposefully directed’” its activities at the forum state and (2) “the litigation results from alleged injuries that ‘arise out of or relate to’ those activities.” *Burger King*, 471 U.S. at 472. Second, the court determines whether it would be reasonable to require the defendant to litigate in the forum state. *Id.* at 476-77.

These requirements are critical for “protecting ‘interstate federalism.’” *Ford Motor*, 592 U.S. at 360. Forum states have “significant interests at stake” when “out-of-state actors” harm their residents, including in “providing their residents with a convenient forum for redressing [those] injuries.” *Id.* at 368 (cleaned up). Specific jurisdiction safeguards these interests by preventing defendants from benefiting from interstate activities but then improperly invoking “the Due Process Clause ... as a territorial shield” for the repercussions of their actions. *Burger King*, 471 U.S. at 474.

1. Westforth has the requisite minimum contacts with Illinois via its direct sales and its straw sales.

The City has made a *prima facie* showing on both prongs of the minimum-contacts analysis, and Westforth has failed to rebut this showing with uncontradicted evidence. The purposeful availment inquiry centers on whether the defendant “should reasonably anticipate being haled into court [in the forum state].” *Burger King*, 471 U.S. at 474 (quotations omitted). While a defendant is not subject to personal jurisdiction for “‘random,’ ‘fortuitous,’ or ‘attenuated contacts,’” *id.* at 475, a plaintiff need only show that the defendant intentionally “directed some commercial activity at Illinois,” *Kothawala v. Whole Leaf, LLC*, 2023 IL App (1st) 210972, ¶¶ 28-29, 33. For example, a defendant that “exploit[s] a market in the forum State,” *Ford Motor*, 592 U.S. at 359 (cleaned up), or is otherwise “ready and willing to do business with Illinois residents,” has purposefully directed its activities at Illinois, *Illinois v. Hemi Grp. LLC*, 622 F.3d 754, 758 (7th Cir. 2010); see *Wilson v. Cnty. of Cook*, 2012 IL 112026, ¶ 30 (federal lower court decisions analyzing federal constitutional principles are persuasive). The defendant need not interact directly with the ultimate consumer or plaintiff, or foresee that its product will reach that party. *Kothawala*, 2023 IL App (1st) 210972, ¶¶ 27-29, 33

(concluding that whether product reached consumer “by unforeseeable happenstance” was “too narrow” a “view” of the “purposeful-availment inquiry”). Instead, this factor is met as long as the defendant “deliberately reache[s] out beyond its home” to the forum state. *Ford Motor*, 592 U.S. at 359 (quotations omitted). To make this determination, Illinois courts ask whether a defendant knew, or reasonably should have known, that it was availing itself of the forum state. *See, e.g., Allerion, Inc. v. Nueva Icacos, S.A. de C.V.*, 283 Ill. App. 3d 40, 50 (1st Dist. 1996); *People ex rel. Morse v. E & B Coal Co., Inc.*, 261 Ill. App. 3d 738, 747 (5th Dist. 1994).

The second prong—whether the complaint “arises out of” or “relates to” the activity directed at the forum state—involves “two distinct tests,” and a plaintiff need satisfy only one. *Kothawala*, 2023 IL App (1st) 210972, ¶ 25. The “arises out of” test “asks about causation,” whereas the “relates to” inquiry does not require a “causal showing.” *Ford Motor*, 592 U.S. at 362. Instead, a claim “relates to” the defendant’s conduct when there is “an affiliation between the forum and the underlying controversy, principally, an activity or occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Id.* at 359-60 (cleaned up). Regardless of which test governs, “several courts have determined that the applicable standard is lenient or flexible.” *Russell*, 2013 IL 113909, ¶ 83 (collecting cases).

The City’s allegations in its original complaint and facts ascertained in jurisdictional discovery confirm that Westforth established minimum contacts with Illinois in two ways. First, Westforth knowingly conducts sales to the Illinois market through straw purchasers. Second, Westforth makes direct sales to Illinois residents, *i.e.*, over-the-counter and through Illinois FFLs. Each category of sales independently satisfies the minimum-

contacts requirement, and taken together, they underscore Westforth's lengthy and intentional exploitation of the Illinois market.

a. Westforth established minimum contacts with Illinois through sales to straw purchasers.

The City showed that Westforth had minimum contacts with Illinois through its sales to straw purchasers: Westforth purposefully availed itself of the Illinois market through straw sales, and, as is undisputed, the City's claims arise out of these sales. To hold otherwise would be to accept Westforth's improbable defense that it was an innocent bystander when selling guns to straw purchasers who were trafficking the guns to Chicago, and to reject the City's evidence that Westforth's decision to engage in these sales was purposeful and knowing. This kind of factual determination is impermissible at the pleadings stage.

The City's original complaint alleged that Westforth purposefully directed commercial activity to Illinois by selling firearms to straw purchasers, who then illegally trafficked the firearms to Illinois residents. C46-61 ¶¶ 52-95. Jurisdictional discovery confirmed, and strengthened, these allegations. The record demonstrated that Westforth sold at least 266 firearms to people who were charged with illegally purchasing guns for others, at least 48 of which already have been recovered by CPD. C967-76, 3387-88. That many of these firearms were resold for illegal possession and use was not unforeseeable or even surprising. Westforth continued to sell firearms to customers despite telltale signs of straw purchasing, including multiple purchases of identical or near-identical weapons, frequent purchases over a short timeframe, cash purchases, and customers' admissions that they were purchasing guns for others. C967-76 (straw sales chart); C2528, 2539, 2543, 2546, 2549 (transaction forms where customer initially disclosed they were not the actual

buyer); C3406-07 ¶¶ 13-16 (former ATF agent declaration describing common indicators of straw purchasing); C3417, 3423-25 (description of such common indicators in ATF training and sign-in sheet showing attendance by Earl Westforth and another Westforth employee).

Westforth was also repeatedly alerted that it was making straw sales, but it continued to intentionally make these sales. Starting in 2002, ATF repeatedly cited Westforth for allowing straw purchases, C2789-90, 2814, and it almost revoked Westforth's license on two occasions after identifying straw sales, C2790, 2821-22, 2826. Further, ATF required Earl Westforth to attend four separate warning conferences regarding straw sales, C2821-27, and required Westforth employees to attend remedial training on "[i]dentifying and preventing straw transactions," C2818; *accord* C1031; *see* C3419-28 (ATF training deck). Nonetheless, Westforth continued making straw sales and took affirmative steps to accommodate straw purchasers. For instance, Westforth encouraged customers to "correct" store transaction forms if they initially disclosed that they were purchasing firearms on others' behalf. C1065-66; *see* C1000; *see also* C2528, 2539, 2543, 2546, 2549. Additionally, contrary to ATF instructions, Westforth declined to adopt procedures for identifying and stopping straw purchases, such as a policy for tracking customers who purchased large numbers of handguns (beyond recognizing the person), C1059, or a procedure for checking whether law enforcement has already contacted the store to trace a customer's gun, C1028.

In other words, the original complaint and evidence uncovered in jurisdictional discovery more than sufficiently made out a *prima facie* case that Westforth adopted a head-in-the-sand approach so that it could continue profiting from these illegal and

dangerous sales, knowing that a large criminal market for such weapons was nearby in Chicago. *See Strabala v. Zhang*, 318 F.R.D. 81, 111 (N.D. Ill. 2016) (defendant cannot “escape jurisdiction simply by turning a blind eye to the natural consequences of [its] actions”) (quotations omitted); *Kollmorgen Corp. v. Yaskawa Elec. Corp.*, 169 F. Supp. 2d 530, 534-35 (W.D. Va. 1999) (defendant cannot “escape [personal] jurisdiction” by “professing ignorance” and “deliberately tak[ing] steps to keep itself in the dark” about the destination of its goods (quoting *Honeywell, Inc. v. Metz*, 509 F.2d 1137, 1144 (7th Cir. 1975))); *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 613-14 (8th Cir. 1994) (where manufacturer claimed that it did not know that its South Dakota-based distributor delivered its products into the neighboring state of Nebraska, the court found that “such ignorance defies reason and could aptly be labeled ‘willful’”); *see also Delahanty v. Hinckley*, 686 F. Supp. 920, 923-24 (D.D.C. 1986) (finding purposeful availment and rejecting gun manufacturer and distributor’s argument that illegal transport into and use of their handguns in D.C. was the “unforeseen, fortuitous acts of criminals” where defendants intentionally served the surrounding metropolitan area, stood “ready” to serve customers in D.C., and failed to prevent distribution of their firearms to criminals). Earl Westforth’s deposition provides a crystal-clear example of this deliberate ignorance. When asked directly: “Is purchasing a large volume of firearms, in your view, ever an indicator of potential straw purchasing?,” he responded: “No.” C1035. This remarkable answer stands in stark contrast to the numerous trainings that he attended that taught him precisely the opposite. *See, e.g.*, C3423 (ATF training identifying “bulk purchases” as a common indicator of straw purchasing).

The evidence further revealed that Westforth—located just a few miles from the Illinois border—knew, or reasonably should have known, that many of the firearms purchased through straw sales were headed to Illinois, and even to Chicago specifically. As ATF inspectors visiting the store in 2021 observed, “[t]here were always vehicles present with out of State, Illinois, license plates,” C985, which, per the ATF training that Westforth employees received, is a common indicator of straw purchasing, C3424. Earl Westforth himself admitted that, after receiving an e-mail from the Department of Justice in 2014 regarding a sting operation scheduled to occur at Westforth, he was aware that straw purchasers were attempting to purchase guns at Westforth to traffic them to Chicago. C1040, 2829. He further acknowledged that Illinois law enforcement, including CPD, contacted him seven times in recent years in connection with ongoing criminal cases. C1038-39; *see* C3406 ¶ 15 (former ATF agent explaining that a “common indicator[]” of straw purchasing is that “guns sold to a customer are recovered by law enforcement”).

Earl Westforth’s admissions on this front are unsurprising. As a former ATF agent attested, trafficking guns from places with weaker gun laws (like Indiana) to places with stricter gun laws (like Illinois and Chicago) is “a well-known phenomenon ... and something that federal firearms licensees (“FFLs”) [like Westforth] should know based on their knowledge of firearms regulations, ATF trainings and interactions with ATF inspectors.” C3406 ¶ 13. Indeed, this phenomenon is widely and publicly documented. In 2014 and 2017, the City publicly reported that Westforth was the top out-of-state supplier of crime guns recovered in Chicago. C39 ¶ 30. There was widespread press coverage of

these reports, C917 n.8,⁷ alongside other public discussion of the high number of guns purchased in Indiana and then illegally resold in Chicago, C38 ¶ 28.

In addition to showing that Westforth intentionally engaged in straw sales and knew, or reasonably should have known, that these illegal guns were headed just over the border to Illinois, the record demonstrates that these sales enabled Westforth to benefit financially. The City alleged that Westforth engaged in these sales so it could access the nearby lucrative criminal market for firearms in Chicago, without selling to prohibited persons directly. C46 ¶¶ 52-53. Jurisdictional discovery confirmed Westforth’s financial incentives, showing that Westforth gained access to a market (prohibited buyers across the Illinois border) that it could not access directly, and it unloaded firearms into this market in large quantities for large profits. For instance, Westforth sold large numbers of firearms to multiple straw purchasers—e.g., 19 guns each to just two straw purchasers for a total of \$22,845.28 (C2639-52, 2663-76)—as opposed to one or two firearms to legitimate purchasers who intended to keep the guns for themselves. *See* C969-72. This extensive record evidence demonstrates that Westforth purposefully and knowingly engaged in these illegal sales.

Illinois courts (before the circuit court in this case) have not yet examined personal jurisdiction in the context of sales to straw purchasers, but a recent federal decision, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511 (1st Cir. 2024), helps illustrate Westforth’s purposeful availment. That decision did not address personal jurisdiction, but its analysis is nevertheless instructive because the court held that Mexico

⁷ This Court may take judicial notice of press coverage. *People v. Peterson*, 2022 IL App (3d) 220206, ¶ 58.

had plausibly alleged that several U.S.-based gun manufacturers and one distributor *knowingly* aided and abetted straw sales to Mexico, *see id.* at 529, much like this Court must determine whether Westforth *purposefully* benefitted from straw sales to Illinois.

In so holding, the court emphasized that the defendants knew that straw purchasers were reselling their guns to Mexican cartels based on allegations similar to the record here—general knowledge about American guns commonly being trafficked into Mexico (which has stricter gun laws), and specific knowledge that the defendants’ customers were engaged in trafficking based on government warnings and reports. *See id.* at 516-17, 530. The court, moreover, determined that the defendants were not simply “knowing[ly] indifferen[t] to the downstream illegal trafficking of their guns into Mexico,” because the defendants did not refuse the sales or “take[] measures” to prevent them and instead “facilitate[d]” the sales by designing and marketing their guns to attract the gun traffickers, *id.* at 529-31—just like Westforth intentionally facilitated straw sales instead of refusing them or adopting required safeguards.

Westforth may insist that it was ignorant of the fact that straw purchasers were taking firearms to Illinois because the straw purchasers provided Indiana identification. But, as a former ATF agent explained, that is precisely how straw purchasing works: an individual who can provide in-state identification and pass background checks purchases a firearm on behalf of someone else who could not satisfy those requirements. C3406 ¶ 13. This process is “well-known” to FFLs, like Westforth, “based on their knowledge of firearms regulations, ATF trainings and interactions with ATF inspectors,” *id.*, and, indeed, Westforth employees received specific trainings on preventing straw purchases, C1031, 2818, 3419-28. Westforth, moreover, has not overcome the evidence (including Earl

Westforth's admission) that it was well-aware that straw purchasers were trafficking firearms from Indiana (including from its store) to Illinois. *See supra* pp. 25-26.

Finally, it is undisputed that the City's claims "arise out of" Westforth's sales to straw purchasers because those sales cause, in part, the public nuisance of illegal firearms in Chicago. Indeed, the record establishes a direct connection between these sales and the flooding of illegal firearms into Chicago. Firearms sold by Westforth to straw purchasers have been associated with a broad range of criminal activity in Chicago, including homicides, assaults and batteries, and domestic violence. C3388 ¶ 12. Some were converted to fully automatic firearms, which are prohibited in Chicago. *Id.* And many were possessed by prohibited persons, including individuals with felony convictions and minors. *Id.* This evidence demonstrates that Westforth's sales to straw purchasers have contributed to a flow of illegal firearms into Chicago that harms the health, safety, and well-being of Chicagoans.

b. Westforth's direct sales to Illinois residents constitute minimum contacts.

Westforth's undisputed direct sales to Illinois residents, at its retail counter and through Illinois FFLs, also satisfy the minimum-contacts analysis. Westforth has purposefully benefited from the Illinois market through these sales, a significant portion of which resulted in the presence of illegal firearms in Chicago. These sales, moreover, relate to the City's allegations that Westforth flooded Chicago with illegal firearms.

Initially, there is no serious dispute that these direct sales constitute purposeful availment. Below, Westforth conceded that "there's no question that Westforth has ... Illinois contacts" through these sales. R688. Indeed, the City's complaint and the record show that Westforth took affirmative steps to conduct and profit from these transactions.

Most basically, Westforth sold firearms to Illinois residents: long guns at its retail counter, C34 ¶ 17, and handguns through Illinois FFLs, C35 ¶ 21. Westforth’s business records revealed that it sold at least 538 firearms directly to Illinois residents between January 2018 and April 2021. C945-66. Westforth profited from these sales, generating more than \$320,000, or 2.7% of the store’s total revenue, during that time. *See supra* p. 11. And a significant portion of these transactions involved illegal sales of assault weapons and other firearms prohibited in Illinois. C3394-401 ¶¶ 6-14.

Notwithstanding these records, Earl Westforth, in an affidavit, sought to characterize the sales via FFLs as “occasional” and stated that his store no longer sold firearms to Illinois customers as of August 2021, C184-85 ¶¶ 21, 27—a policy he implemented at about the time the City initiated this action, out of concern that his store, as “one of the largest [firearms] dealers,” could “contribute” to shootings in Chicago, C1049-50. But this policy change cannot defeat jurisdiction that was established by the store’s direct sales to Illinois residents over many years. Moreover, Earl Westforth’s insistence that any revenue from Illinois customers was not “substantial,” C182 ¶¶ 6, 8, does not help him. The revenue that Westforth generated from its direct sales to Illinois residents (2.7% of its total earnings) is higher than that obtained by other nonresident defendants over which this Court has exercised specific jurisdiction. *See Schaefer*, 2019 IL App (1st) 181779, ¶ 12 (Texas company obtained 2% of its revenue from Illinois customers); *Harding v. Cordis Corp.*, 2021 IL App (1st) 210032, ¶ 37 (Delaware company made 0.5% of its sales to Illinois).

Additionally, the record shows that these direct sales to Illinois residents—which a former Westforth employee called a “normal part of [the store’s] daily operations,”

C1001—were no accident. As detailed above, *supra* p. 12, Westforth solicited Illinois customers via online postings and advertisements, and maintained business relationships with Illinois FFLs, which would recommend Illinois customers to Westforth. It is no wonder, then, that Earl Westforth was “inundated with a slew of inquiries ... about what is required for Illinois residents to purchase firearms and/or ammunition.” C184 ¶ 21. This evidence contradicts Earl Westforth’s statement that the store “has never targeted advertising to Illinois” or “conducted or solicited business or engaged in any other persistent course of conduct in the State of Illinois.” C182 ¶ 6; C185 ¶ 24.

Further, once Illinois customers were interested in Westforth’s products, the store took multiple steps to complete the sales. For instance, it implemented procedures for sales to Illinois customers, trained employees on these processes, shipped handguns (more than 380) into Illinois, and cultivated interstate business relationships with Illinois FFLs to complete these sales. C945-60, 1050, 1053, 1055, 1057, 1127-747. This substantial evidence leaves no question that Westforth satisfied the purposeful availment requirement. *See Hemi Grp.*, 622 F.3d at 758 (finding purposeful availment where nonresident defendant was “ready and willing to do business with Illinois residents,” and, in fact, “knowingly did do business with Illinois residents”).

This extensive history of intentional firearm sales to Illinois residents “relates to” the public nuisance and negligence claims in the City’s original complaint. Again, this inquiry requires no causal connection, and is instead satisfied when there is “an affiliation between the forum and the underlying controversy.” *Ford Motor*, 592 U.S. at 360 (quotations omitted). That affiliation is present here in two respects.

For one, as jurisdictional discovery established, Westforth funnelled illegal firearms into Illinois via both its straw sales and direct sales, similarly endangering Chicago residents with both types of sales. *See* C3394-401 ¶¶ 6-14. This willingness to engage in illegal sales, and the resulting harm that comes from such sales, goes to the heart of the City’s complaint. Additionally, even setting aside whether the firearms were legal in Illinois, Westforth sold many of the same makes and models of firearms through both methods. *Compare* C945-66 (firearms sold directly) *with* C967-76 (firearms sold through straw purchasers). In these ways, Westforth’s direct sales are related to the firearms proliferating illegally in the City’s neighborhoods and at issue in the City’s claims; they simply involved a different method of sale. *See Delahanty*, 686 F. Supp. at 924 (court had specific jurisdiction over gun manufacturer and distributor where claims concerned firearm illegally brought to Washington, D.C. but defendants also sold firearms that were legally used in D.C.).

Below, Westforth did not deny that it directly served the Illinois firearms market, but instead sought to discount those sales as jurisdictionally irrelevant because they did not involve sales to straw purchasers. *See* C122-23. But Illinois courts have rejected similar efforts to distinguish among a defendant’s contacts with the state in the stream-of-commerce context, in which personal jurisdiction exists over a “nonresident defendant that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State[.]” *Russell*, 2013 IL 113909, ¶ 43 (quotations omitted).⁸ For instance, in *Russell*, the Illinois Supreme Court held that specific jurisdiction

⁸ The Illinois Supreme Court has recognized that there are two competing versions of the stream-of-commerce theory but declined to adopt a particular version. *Russell*, 2013 IL

existed over SNFA, a French company that sold custom-made aerospace bearings, for a helicopter crash in Illinois. 2013 IL 113909, ¶ 85. SNFA did not directly sell *helicopter* bearings to any Illinois customers and argued that its sale of *airplane* bearings to a company that processed payments in Illinois were irrelevant. *Id.* ¶ 82. The Court rejected SNFA’s “proposed distinction between subcategories of its primary product, custom-made aerospace bearings, [as] too restrictive and narrow for purposes of [the] jurisdictional inquiry” and relied on SNFA’s sales of airplane bearings in exercising jurisdiction. *Id.* ¶ 84; *see Harding*, 2021 IL App (1st) 210032, ¶ 44 (explaining “jurisdiction can be based on a combination of the sales of the offending product and other sales of similar products that, in total, provide evidence [of minimum contacts]”). Here, too, the Court should decline any invitation to make “restrictive” or “narrow” distinctions, *Russell*, 2013 IL 113909, ¶ 84, among Westforth’s firearms sales to Illinois.

2. The circuit court erroneously concluded that Westforth lacks minimum contacts with Illinois.

The circuit court dismissed the City’s complaint for lack of personal jurisdiction based on a failure to make a *prima facie* showing of minimum contacts. *See* A7. The court’s analysis of minimum contacts was incorrect.

a. The circuit court wrongly concluded that Westforth did not purposefully avail itself of the Illinois market through straw sales.

The circuit court determined that Westforth did not purposefully avail itself of the Illinois market through straw sales because any contacts with Illinois were based on “the unilateral activity of third parties, the straw purchasers,” rather than Westforth’s own

113909, ¶ 71. Because the principles applicable to this case do not turn on that distinction, this Court need not delve into those differences.

activity. A6. The court recognized that a party's purposeful availment can occur via a third party, but it concluded that such availment did not occur here because there was no evidence of a "business relationship or contractual understanding which contemplates the straw purchasers acting for the benefit of both the straw purchasers and Westforth in Illinois." A6-7. This analysis was incorrect.

That Westforth's firearm sales reached Illinois through straw purchasers, or middlemen, does not deprive the court of jurisdiction. A defendant can "serve [a market] directly or indirectly." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *see id.* at 298 (assessing whether defendant served Oklahoma market "indirectly, through others"). This Court has repeatedly recognized as much. *See, e.g., Hernandez v. Oliveros*, 2021 IL App (1st) 200032, ¶ 23 (explaining that a defendant's "purposeful availment need not be direct" and "can be achieved through another entity" (citation omitted)); *Schaefer*, 2019 IL App (1st) 181779, ¶¶ 4-5, 14-15 (holding Texas aircraft maintenance company was subject to jurisdiction for injuries arising from a plane crash in Illinois, where defendant's work was performed in Texas and part reached Illinois through Indiana middleman). Otherwise, a defendant could "avail itself of the benefits of the Illinois market while simultaneously exempting it from being haled into the Illinois court system" by relying on a "third party" to sell the products into Illinois. *Hernandez*, 2021 IL App (1st) 200032, ¶ 24.

To be clear, when an intermediary is involved, there still must be "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State." *Burger King*, 471 U.S. at 475 (quotations omitted). This Court has framed this analysis as a requirement that the intermediary "makes contact with the forum

state *bilaterally* rather than *unilaterally*.” *Hernandez*, 2021 IL App (1st) 200032, ¶ 23. Put differently, a defendant’s contacts with the forum state cannot be based solely on the “unilateral activity of another party or a third person.” *Burger King*, 471 U.S. at 475 (quotations omitted). But whether that third party is acting unilaterally or bilaterally “will vary with the quality and nature of the defendant’s activity.” *Id.* at 474-75 (quotations omitted).

The circuit court, however, overlooked this case-specific inquiry and, citing *Hernandez*, demanded evidence of a “business” or “contractual” relationship between Westforth and the straw purchasers. A6. No such requirement exists. *Hernandez* simply observed that “[b]ilateral acts *can* occur” through a business or contractual relationship. 2021 IL App (1st) 200032, ¶ 23 (emphasis added). Consistent with the case-specific inquiry, this Court never said that such relationships are required in all contexts. And for good reason: such a “mechanical test” would contravene the U.S. Supreme Court’s direction that personal jurisdiction must turn on a “highly realistic” approach. *Burger King*, 471 U.S. at 478-79 (quotations omitted). Where, as here, illicit conduct is alleged, it is unlikely that the parties’ understandings will be contractual or otherwise formalized, which would leave a paper trail for authorities to discover the illegal behavior. Requiring a formal relationship would allow illicit actors to avoid litigation in the proper forum by informally relying on third parties to contact the forum, while still benefiting from the forum market.

And here, there is ample evidence that Westforth’s relationships with straw purchasers are “bilateral” in the sense that both parties were intentionally benefitting from the ultimate sales to the Illinois market. This evidence demonstrates that Westforth took “some act” to purposefully avail itself of the Illinois market, *Burger King*, 471 U.S. at 475

(quotations omitted), and alleviates any concern that the straw purchasers' contacts with Illinois were solely unilateral. As explained, the record demonstrates that Westforth was well-aware that individuals were trafficking firearms from its store to Illinois, yet the store sold large quantities of firearms to straw purchasers while overlooking obvious signs of illegality, ignoring ATF warnings, failing to implement required safeguards, and encouraging customers to modify their answers on transaction forms if they disclosed that they were purchasing firearms for others. *See supra* pp. 22-23. Earl Westforth's professed ignorance about the basic indicators of straw-purchasing, despite decades of training on the subject, and refusal to adopt policies to prevent straw purchasing is further evidence that the store's "head in the sand" approach was part of a deliberate effort to create a welcoming environment for illegal distributors. *See supra* pp. 23-24. And Westforth's actions gave the straw purchasers a trusted source for making these illicit transactions, so the straw purchasers returned to Westforth time and again to buy firearms for others. *See supra* pp. 22-23; C967-76. Jurisdictional discovery thus demonstrates that Westforth purposefully benefitted from the right-over-the-border Illinois market, even though the ultimate sale to that market happened through straw purchasers.

b. The circuit court incorrectly determined that Westforth's direct sales to Illinois residents do not "relate to" the City's claims.

The circuit court's analysis of Westforth's direct sales to Illinois was partially flawed, as well. Initially, the circuit court correctly recognized that these sales constituted purposeful availment, noting Westforth's "agree[ment] that it transacts business with Illinois customers" through these sales and that "some of its advertising reaches Illinois customers." A4. The court, however, then wrongly concluded that the City's claims did not

“relate to” these sales. *See* A4-7. The court principally reasoned that Westforth’s contacts with Illinois were through *direct* sales (over the counter and through Illinois FFLs) but the City’s claim of public nuisance of illegal firearms in Chicago was based on *straw* sales. A7. In making this distinction between subcategories of Westforth’s firearm sales, the circuit court deemed stream-of-commerce cases—which reject categorical distinctions among a defendant’s products sent to a forum state, *see supra* pp. 31-32 (discussing *Russell* and *Harding*)—inapposite for two reasons: because Westforth is a retailer, rather than a manufacturer or distributor, and because its products were not defective. A5-6.

Both distinctions are unpersuasive. First, retailers are just as capable as manufacturers and distributors of placing products in the stream of commerce. For just this reason, the Illinois Supreme Court has recognized that a retailer, like a manufacturer or distributor, can be held liable for products it places in the stream of commerce. *Hammond v. N. Am. Asbestos Corp.*, 97 Ill. 2d 195, 206 (1983); *see also Slyce Acquisition Inc. v. Syte - Visual Conception Ltd.*, 422 F. Supp. 3d 1191, 1200 (W.D. Tex. 2019) (finding jurisdiction over retailer under stream-of-commerce theory). And, even if stream-of-commerce cases were limited to manufacturers and distributors, Westforth essentially acted as an interstate distributor here: by selling to straw purchasers who would cross state lines, it reached a broader market and sold more firearms.

Second, courts have applied the stream-of-commerce theory to a range of situations beyond the defective products context, including when firearms are illegally transported into the forum state. *Delahanty*, 686 F. Supp. at 923; *see also, e.g., Polar Electro Oy v. Suunto Oy*, 829 F.3d 1343, 1350 (Fed. Cir. 2016) (patent infringement); *Ruiz de Molina v. Merritt & Furman Ins. Agency, Inc.*, 207 F.3d 1351, 1358 (11th Cir. 2000) (insurance

fraud); *Hershey Pasta Grp. v. Vitelli-Elvea Co.*, 921 F. Supp. 1344, 1349 (M.D. Pa. 1996) (falsely labeled products). Doing so is warranted where “the same public policy concerns that justify use of the stream-of-commerce principle in the products liability context are present.” *Luv N’ care, Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 473 (5th Cir. 2006) (quotations omitted). Those policy concerns—that a defendant has availed itself of a forum’s market, even if “indirectly,” and the defendant’s activity injures someone in that forum, *World-Wide*, 444 U.S. at 297—are at play here. Westforth has purposefully benefitted from the firearms market in Illinois through all of its firearms sales, whether direct or downstream through straw purchasers. The Illinois Supreme Court explained in *Russell* that it would not “ignore one of [the defendant’s] contacts with Illinois based on a categorical distinction within its general product line.” 2013 IL 113909, ¶ 84. By the same logic, this Court should not ignore one method of Westforth’s firearms sales (direct) when determining whether they “relate to” another method of its firearms sales (straw sales).

3. Exercising specific jurisdiction over Westforth comports with traditional notions of fair play and justice.

The circuit court did not reach the final prong of the specific jurisdiction standard—whether exercising jurisdiction over Westforth accords with traditional notions of fair play and justice—but that inquiry is satisfied here. The analysis turns on five factors: “[1] the burden on the defendant, [2] the forum State’s interest in adjudicating the dispute, [3] the plaintiff’s interest in obtaining convenient and effective relief, [4] the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and [5] the shared interest of the several States in furthering fundamental substantive social policies.” *Burger King*, 471 U.S. at 477 (cleaned up). At bottom, the question is whether the exercise of specific jurisdiction is reasonable. *Id.*

This inquiry is central to the specific jurisdiction analysis. Where a plaintiff has made a *prima facie* showing of minimum contacts, the defendant must “present a compelling case” that an exercise of jurisdiction is “unreasonable” to defeat jurisdiction. *Id.* This is a demanding standard: any concerns on these factors “usually may be accommodated through means short of finding jurisdiction unconstitutional.” *Id.* Below, Westforth did not meaningfully contest the bulk of these factors, let alone carry this heavy burden. And indeed, all five factors demonstrate that exercising specific jurisdiction accords with traditional notions of fair play and justice.⁹

In the circuit court, Westforth made no argument about the three factors involving state interests (factors two, four, and five), which, as the City explained below, C929-31, demonstrate the reasonableness of exercising personal jurisdiction over Westforth for similar reasons. Starting with factor two, “as is almost always the case, [Illinois] has a strong interest in providing a forum for its residents to seek redress for [injuries] inflicted by out-of-state actors” and “suffered within the state.” *Felland v. Clifton*, 682 F.3d 665, 677 (7th Cir. 2012); *accord Burger King*, 471 U.S. at 473 (emphasizing that a state “frequently will” have a “manifest interest in providing effective means of redress for its residents” (quotations omitted)). Illinois’s interest is particularly manifest here because this case implicates public health, safety, and well-being—with the lives of countless

⁹ Where the factors demonstrate the reasonableness of exercising specific jurisdiction, they can “militate in favor of jurisdiction” even if a “defendant’s minimum contacts with the forum are relatively weak (although existent).” *Curry v. Revolution Labs.*, 949 F.3d 385, 402 (7th Cir. 2020); *accord Burger King*, 471 U.S. at 477 (these considerations can support jurisdiction upon a “lesser showing” of minimum contacts). Thus, to the extent this Court has any concerns about the strength of Westforth’s minimum contacts with Illinois (which it should not, *see supra* Sections I.B.1-2), it should nevertheless conclude that specific jurisdiction exists based on these factors.

Chicagoans disrupted and endangered by Westforth's misconduct, *see* C32-33 ¶¶ 8-10; C35-40 ¶¶ 22-32.

Relatedly, the “substantial effect” of Westforth's actions on Illinois residents and their communities demonstrates that “Illinois is the most efficient forum to litigate this suit” (factor four) and serves the states' shared interest in “hold[ing] citizens of one state accountable for their actions that have a substantial impact on the citizens of another state” (factor five). *McNally v. Morrison*, 408 Ill. App. 3d 248, 260 (1st Dist. 2011). Westforth has presented no reason to conclude otherwise, which is unsurprising given the importance of allowing Illinois to “advanc[e] the substantive social policy” of “ensuring the safety” of its residents by providing a forum for such injuries. *Soria v. Chrysler Canada, Inc.*, 2011 IL App (2d) 101236, ¶ 37.

The final two factors—the City's interest in obtaining convenient and effective relief and the burden on Westforth—likewise favor the exercise of specific jurisdiction. Below, Westforth did not dispute the City's interest in obtaining convenient relief, which is served when a plaintiff is allowed to pursue its claims in its home forum. *See, e.g., Golbert v. Aurora Chi. Lakeshore Hosp., LLC*, No. 1:19-cv-08257, 2022 WL 595362, at *6 (N.D. Ill. Feb. 28, 2022). Instead, Westforth submitted that the City cannot obtain effective relief, claiming that a judgment from an Illinois court would be penal and thus unenforceable in Indiana because the City is not a private party and the award sought is “penal in nature.” C128-29. This Court need not decide that issue: at the hearing on the motion to dismiss, Westforth acknowledged that whether a judgment in this case would be enforceable in Indiana “would be a decision made by an[] Indiana court, and so [the parties] would address it there.” R698.

At any rate, Westforth's argument is unpersuasive. Punitive damages are based on the "character of the defendant's conduct" and "actually improve the position of the complaining party," whereas "all other damages simply return the plaintiff to the position he held before the wrong" and are thus "focus[ed] ... on the plaintiff's losses." *Crittenden v. Cook Cnty. Comm'n on Hum. Rts.*, 2012 IL App (1st) 112437, ¶ 84 (quotations omitted). Here, the City seeks "a sum of money that will allow [it] to abate the nuisance that Westforth has created" and "a reasonable sum of money that will fairly compensate the City for its damages." C69. The relief sought thus turns on, and seeks to remediate, the harms suffered by the City. And Westforth provides no reason that the City's status as a public, rather than a private, party transforms the relief sought into a penalty. To the contrary, the U.S. Supreme Court has recognized that government actors can seek out-of-state enforcement of non-penal, monetary awards against private parties. *See Milwaukee Cnty. v. M.E. White Co.*, 296 U.S. 268, 271 (1935) (holding court in Illinois could enforce Wisconsin judgment for delinquent taxes obtained by Wisconsin county against Illinois corporation where judgment was not "penal").

Finally, exercising specific jurisdiction would not unfairly burden Westforth. "[C]ases in which it is unreasonable to assert jurisdiction over a defendant ... are limited to the rare situation in which the plaintiff's interest and the state's interest in adjudicating the dispute in the forum are so attenuated that they are clearly outweighed by the burden of subjecting the defendant to litigation within the forum." *Keller v. Henderson*, 359 Ill. App. 3d 605, 618 (2d Dist. 2005) (cleaned up). This dispute does not present that "rare situation." Below, Westforth insisted that it would be unduly burdened because it is headquartered in Indiana and would need to call out-of-state witnesses. C128. Courts,

however, routinely compel such witnesses and, in any case, that general explanation could be offered in every case involving a nonresident. *See Burger King*, 471 U.S. at 483 (finding no support for defendant’s claim that it would be unable to call out-of-state witnesses); *Felland*, 682 F.3d at 677 (finding no undue burden on defendant where it provided “no suggestion that [its] hardship would be greater than any routinely tolerated by courts exercising specific jurisdiction against nonresidents”).

In short, far from presenting a compelling case that facing jurisdiction in Illinois would be unreasonable, Westforth seeks the “unfair” result that it can “purposefully derive[] benefit from its interstate activities in [Illinois]” and then “avoid any legal consequences” in Illinois related to those activities. *Russell*, 2013 IL 113909 ¶ 41. But this result would leave Illinois and its residents to endure the consequences, no matter how severe. For these reasons, this Court should reverse the circuit court’s dismissal of the City’s complaint.

II. The circuit court should have granted the City leave to file a first amended complaint.

In addition to erroneously dismissing the City’s complaint, the circuit court erred by denying the City leave to file a first amended complaint. Westforth completed jurisdictional discovery less than a week before the City’s opposition to the motion to dismiss was due. *See* C895, 4933. The City timely filed its opposition but noted that it would seek leave to amend its complaint based on discovery showing that Westforth *directly* sold prohibited firearms (including assault weapons) to Illinois residents, C927 n.10, and affirmed this intent at the motion-to-dismiss hearing, R700-02. The circuit court determined that it could not consider these potential allegations when ruling on the motion to dismiss and dismissed the City’s complaint. A4 n.1, 7.

During the hearing at which the circuit court announced its dismissal decision, the City asked for leave to file an amended complaint, but the court directed the City to file a motion. R759. The City did so less than one month later. C4694. It attached a proposed amended complaint, which alleged that Westforth directly sold prohibited firearms to Illinois residents and responded to other concerns that the circuit court identified in its dismissal order. C4763-822. But the circuit court denied the City leave to file a first amended complaint, based largely on jurisdictional discovery that the court had permitted. A8. That decision was an abuse of discretion and should be reversed.

A. This Court reviews for an abuse of discretion a trial court’s decision whether to grant leave to amend, which should be freely given.

The law allows a party to amend its pleadings “on just and reasonable terms” prior to final judgment. 735 ILCS 5/2-616(a) (“section 2-616”). This statute reflects the General Assembly’s “policy ... to ‘remove barriers which prevent the resolution of a case on its merits.’” *Cnty. of Peoria v. Couture*, 2022 IL App (3d) 210091, ¶ 46. “To that end, permission to amend pleadings should be freely and liberally given.” *Id.*; see *Bangaly v. Baggiani*, 2014 IL App (1st) 123760, ¶ 214 (noting same).

This Court reviews a trial court’s decision to deny leave to amend for an abuse of discretion. *Loyola Acad. v. S & S Roof Maint., Inc.*, 146 Ill. 2d 263, 273 (1992). A trial court has broad discretion in deciding motions to amend pleadings, but its discretion “must be exercised within the bounds of the law.” *Id.* at 274 (quotations omitted); see *Myrick v. Union Pac. R.R. Co.*, 2017 IL App (1st) 161023, ¶ 21 (“It is always an abuse of discretion to base a decision on an incorrect view of the law.”).

In reviewing a denial of leave to amend, this Court considers four factors: (1) whether the proposed amendment would cure the defective pleading; (2) whether

amendment would prejudice the other party; (3) whether the proposed amendment is timely; and (4) whether the plaintiff has been given prior opportunities to amend. *Loyola*, 146 Ill. 2d at 273. Given the liberal policy favoring resolution on the merits, “[a]ny doubts” as to these factors “should be resolved in favor of allowing amendments.” *Bangaly*, 2014 IL App (1st) 123760, ¶ 200 (quotations omitted). The “primary consideration” is not whether a particular factor has been met, but whether allowing amendment “would further the ends of justice.” *Id.* (quotations omitted). Thus, a court “abuses its discretion if allowing the amendment furthers the end of justice.” *Id.* ¶ 199.

B. The circuit court abused its discretion in denying the City leave to file an amended complaint.

This Court should reverse the circuit court’s order denying the City leave to file a first amended complaint because the court abused its discretion on multiple fronts. While the circuit court correctly determined that allowing the City to amend its complaint would not prejudice Westforth, it denied the City leave to amend based on its view of the other three *Loyola* factors. R820-24; *see* A8 (order incorporating reasons stated at hearing). However, contrary to the circuit court’s decision, all four *Loyola* factors support allowing the City’s amended complaint. The court, moreover, misunderstood and misapplied the appropriate legal framework, finding the liberal policy favoring amendments inapplicable when the pleading deficiency goes to personal jurisdiction. And—most fundamentally—the circuit court’s decision cannot stand because an amendment here would further the ends of justice.

1. The four *Loyola* factors favor amendment.

a. Amendment would not prejudice Westforth.

The circuit court correctly decided that an amendment would cause Westforth no prejudice. This factor concerns whether the movant “unfairly surprised the opposing party” and thereby left it “insufficient preparation time to rebut the new matter raised in the amendment.” *Couture*, 2022 IL App (3d) 210091, ¶ 44. Although not dispositive, this factor is considered “the most important” of the four factors, and “substantial latitude to amend will be granted when there is no prejudice or surprise to the nonmovant.” *Paschen Contractors, Inc. v. City of Kankakee*, 353 Ill. App. 3d 628, 638 (3d Dist. 2004).

The circuit court concluded (and Westforth conceded, *see* R803), that there was “no surprise here because [the City] had suggested ... that it would plan to seek leave to amend at some point.” R822. Indeed, the City’s opposition to Westforth’s motion to dismiss explicitly stated that it “intend[ed] to amend its complaint to include allegations pertaining to ... illegal sales” based on information obtained during jurisdictional discovery, C927 n.10, and the City restated this intent at the motion to dismiss hearing, R700-02. So this is not a case in which “an amendment leaves a party unprepared to respond to a new theory at trial.” *Couture*, 2022 IL App (3d) 210091, ¶ 44 (quotations omitted). The circuit court, however, incorrectly declined to give this factor due weight. The undisputed lack of surprise to Westforth militates strongly in favor of allowing amendment.

b. The City’s proposed amendment would remedy any deficiencies in the original complaint.

In considering this factor, the court examines whether “it is clear that the defect cannot be cured” through the amendment, with “[a]ny doubts ... resolved in favor of allowing amendments.” *Bangaly*, 2014 IL App (1st) 123760, ¶ 200 (quotations omitted).

Absent such clarity, “amendment of defective pleadings should be permitted.” *Id.*; *Cantrell v. Wendling*, 249 Ill. App. 3d 1093, 1095 (1st Dist. 1993) (circuit court abused discretion by denying leave to amend where this Court “[could not] say on the record before [it] that no amendment could cure the defects in the original complaint”). Here, the City went beyond this threshold, proposing amendments that were supported by extensive jurisdictional discovery and cured any defects in its original complaint.

It did so in two ways. For one, the City cured any deficiencies in the original complaint by addressing the court’s determination that the City’s harms did not arise out of or relate to Westforth’s *direct* sales to Illinois residents because the original complaint centered on firearms illegally transmitted to Illinois through straw purchases. *See* A4-5. The City clarified the basis for its public nuisance and negligence claims to include Westforth’s direct sales to Illinois residents of illegal firearms (assault weapons and cheap low-quality alloy guns) and the harms caused by those sales, C4813-18 ¶¶ 110, 113-14, 125, and by adding detailed supporting allegations, C4763-64 ¶¶ 1, 3; C4767-68 ¶¶ 8, 11; 4782 ¶¶ 46-47; C4811-13 ¶¶ 102-07. The City also alleged that some of the directly sold firearms have already been recovered in crimes in Chicago. C4812 ¶ 103. These proposed amendments make clear Westforth’s purposeful exploitation of the Illinois market through the direct sales of illegal firearms, and the connection between those sales and the harms caused by illegal guns in Chicago.

Further, the City’s proposed complaint addressed the circuit court’s conclusion that the allegations concerning straw sales failed to show purposeful availment. *See* A5-7. The City added allegations establishing Westforth’s knowledge that straw purchasers at its store were distributing guns into Illinois, and showing that Westforth cultivated mutually

beneficial relationships with straw purchasers to ensure these sales. For instance, the proposed complaint alleges that, per a former Westforth employee, “employees [were] discouraged from asking questions about potential straw purchasers’ intent for the guns so that the store [could] go through with—and profit from—these sales.” C4786 ¶ 60. The proposed complaint also points to Westforth’s practice of illegally destroying transaction forms for purchases that were not completed, C4784 ¶ 51; providing false information to ATF about straw purchasers at the store, C4792 ¶ 73; and selling firearms to straw purchasers that provided phone numbers with Chicago area codes. C4787 ¶ 63; C4811 ¶ 100.

In one particularly egregious instance, a Westforth employee refused to complete a sale to a customer that he recognized was engaged in the straw purchase of five Glockes, five laser sights, five large capacity magazines, and a large amount of ammunition to resell in Chicago for a significant profit on the black market. C4765-66 ¶ 4; C4795-96 ¶¶ 81-82. The employee relayed his concerns to Earl Westforth, who responded that he was not responsible for what the customer did with the firearms after leaving the store and directed another employee to complete the transaction and provide the customer with a significant discount for the large number of guns purchased. C4765-66 ¶ 4; C4796 ¶¶ 82-83. Two days later, law enforcement uncovered two of these guns in Chicago in the custody of a man under multiple felony indictments. C4766 ¶ 4.

The circuit court, however, ruled that both categories of proposed amendments would not cure any deficiencies in the City’s complaint. R821-22. In doing so, it incorrectly declined to resolve its doubts in the City’s favor and made two specific errors of law. *Myrick*, 2017 IL App (1st) 161023, ¶ 21 (legal error constitutes abuse of discretion).

First, the circuit court determined that the City’s proposed amendments about direct illegal firearm sales could not cure any defect because they concerned new allegations and claims. R822. But these amendments merely added support for the City’s original claims, which contended that Westforth caused a public nuisance and acted negligently by flooding Chicago with illegal firearms. C4813-15 ¶¶ 109-13; C4818 ¶ 125. They did not add new causes of action. And there was good reason for these additions: they were based on jurisdictional discovery that did not exist at the time of the original complaint, and they directly responded to the circuit court’s motion-to-dismiss ruling, which found a lack of connection between Westforth’s direct sales to Illinois residents and the alleged harms from illegal firearms, *see* A4-5. The Illinois Supreme Court has determined that far more substantive amendments to a complaint, including “new counts,” “various theories,” and “specific allegations,” can cure deficiencies in the original complaint. *Loyola*, 146 Ill. 2d at 274-75. In any event, the circuit court’s concern that the City may have added additional claims—in addition to supplementing its original allegations on straw purchasing—was not a proper basis for denying leave to amend. Section 2-616(a) permits parties to “chang[e]” or “add[] new causes of action” prior to final judgment. 735 ILCS 5/2-616(a).

Second, the court disregarded the City’s additional details about straw purchasers because, in its view, they did not show that the straw purchasers “had a business relationship or contractual understanding” such that they were “acting for the benefit of both the straw purchasers and Westforth in Illinois.” R821. As explained, however, specific jurisdiction does not require such a formalized relationship, and indeed such a requirement is unworkable in the context of illicit activities, which are unlikely to be memorialized.

All told, the City's proposed complaint cured any deficiencies in its original complaint, and the circuit court incorrectly concluded otherwise. At minimum, however, it was not clear that the proposed complaint failed to cure the identified deficiencies, so the circuit court should have resolved any doubts in the City's favor.

c. The proposed amended complaint was timely.

The City's proposed amended complaint was timely for similar reasons that it, undisputedly, would not surprise Westforth. The City orally requested leave to amend immediately after the circuit court announced its dismissal order, R758-59, and filed a motion for leave within thirty days of that order, C4694. Additionally, the action was in the initial pleading stage with the bulk of discovery outstanding. The circuit court faulted the City for seeking leave to amend only after its original complaint was dismissed, but it appeared to recognize that the City did not receive complete jurisdictional discovery until six days before the City's opposition to the motion to dismiss was due. R822-23. Given that timing, the City appropriately elected to defend its original complaint first, then (promptly) seek leave to amend. Indeed, Illinois courts have reversed circuit courts' denials of leave to amend in other situations where the plaintiff did not seek leave to amend until after it defended against, but lost, a dispositive motion—including when the plaintiff waited longer than the City did here. *See, e.g., Loyola*, 146 Ill. 2d at 275 (request for amendment was timely where plaintiff first litigated, and lost, summary judgment and then sought amendment two months after that decision); *Jeffrey M. Goldberg & Assocs., Ltd. v. Collins Tuttle & Co.*, 264 Ill. App. 3d 878, 882, 886 (1st Dist. 1994) (plaintiffs' request to file third amended complaint was timely, where it was filed after the trial court dismissed parts of its second amended complaint and denied reconsideration, but case was in pleading

stage and only limited discovery had been completed). A contrary rule would require plaintiffs to abandon—or at least needlessly delay—their defense against a long-pending dispositive motion in the hopes that amendment will be permitted.

d. The City has been afforded no prior opportunities to amend.

The final *Loyola* factor is easily satisfied here. Although there is no right to amend, “[a] court should typically give a plaintiff at least one opportunity to cure the defects in his or her complaint.” *Norabuena v. Medtronic, Inc.*, 2017 IL App (1st) 162928, ¶ 39 (quotations omitted). But the City has been given no opportunities to amend its complaint. In similar cases, the denial of leave to amend amounted to an abuse of discretion. *See Cantrell*, 249 Ill. App. 3d at 1095 (circuit court abused discretion where plaintiff was provided no opportunity to amend complaint); *Bank of N. Ill. v. Nugent*, 223 Ill. App. 3d 1, 13 (2d Dist. 1991) (circuit court abused its discretion in denying leave to amend where “sufficiency of the complaint was considered only once, and it was not clear that the defect could not be cured”).

The circuit court misunderstood this factor as “promptness,” duplicating its analysis on the timeliness factor. R823-24. In any case, that the court thought the City could have sought permission to amend “significantly sooner,” R824, does not negate the fact that this was the City’s first attempt to amend its complaint. In *Loyola*, the Illinois Supreme Court explained that it was reasonable to allow the plaintiff, who sought leave to amend two months after the adverse summary-judgment ruling, a first opportunity to amend its complaint, even if the plaintiff may have missed earlier opportunities to do so. 146 Ill. 2d at 276. The City should be afforded the same chance here.

In sum, all four *Loyola* factors support amendment here, and the circuit court's denial can be reversed on that basis alone.

2. The circuit court abused its discretion by misapplying the legal framework.

The circuit court also misstated, and misapplied, the legal framework governing amended complaints. Specifically, the court acknowledged that, to effectuate the General Assembly's purpose behind section 2-616(a), "permission to amend pleadings should be liberally and freely given," but it disregarded this liberal policy because, in its view, "lack of personal jurisdiction is not a procedural technicality nor is it a barrier preventing resolution of a case on the merits." R826.

This reasoning was legally erroneous, and thus constituted an abuse of discretion. Courts should "not make any determination that will construe an act of the legislature so as to lead to absurd, inconvenient or unjust consequences." *Loyola*, 146 Ill. 2d at 273 (discussing application of section 2-616). The circuit court's analysis does exactly that. The General Assembly has made no indication that its strong policy in favor of adjudication on the merits, codified in section 2-616, is inapplicable when a case is dismissed for lack of personal jurisdiction. And there is no such exception in the case law. To the contrary, this Court has recognized that a plaintiff facing dismissal of its action for lack of personal jurisdiction should be permitted to amend its complaint when doing so would cure deficiencies in the original, *Saia*, 366 Ill. App. 3d at 422-23, and circuit courts have allowed plaintiffs to file amended complaints after their initial complaints were dismissed for lack of personal jurisdiction, *see, e.g., Dickie v. Cannondale Corp.*, 388 Ill. App. 3d 903, 904 (1st Dist. 2009) (circuit court granted motion to dismiss first amended complaint for lack of personal jurisdiction without prejudice and allowed leave to file a second amended

complaint). For good reason: any such exception would shield nonresident defendants from adjudications on the merits in Illinois when there is a curable pleading deficiency on personal jurisdiction. This special treatment for nonresident defendants—based on pleading insufficiencies rather than constitutional concerns—would be nonsensical and unjust.

It is no answer to suggest that the City could simply obtain an adjudication on the merits in another jurisdiction. *See* R826-28. The General Assembly is concerned with, and thus its enacted policy addresses, adjudications on the merits in Illinois—not other states. Indeed, Illinois has a “manifest interest” in providing its residents with a convenient forum for these adjudications. *Burger King*, 471 U.S. at 473. Additionally, bringing this lawsuit in Indiana may prove infeasible, as the Indiana legislature has passed, and the Indiana Governor is expected to sign, a bill generally prohibiting municipalities from suing the gun industry, reserving that right exclusively to the state of Indiana.¹⁰ In any event, “[i]n *personam* jurisdiction is not a contest between two states,” *Viktron Ltd. P’ship v. Program Data Inc.*, 326 Ill. App. 3d 111, 118 (2d Dist. 2001), so the possibility of relief in Indiana does not diminish Illinois’s significant interest in providing a forum for a resolution on the merits.

The circuit court’s focus on whether personal jurisdiction is a “procedural technicality” was likewise misplaced. *See* R826. The City is not asking the court to treat the existence of personal jurisdiction as a “procedural technicality” that can be overlooked, but rather to allow any failure to properly plead personal jurisdiction to be cured. *See Saia*,

¹⁰ H.B. 1235, 123rd Gen. Assemb. (Ind. 2024), *available at* <https://iga.in.gov/pdf-documents/123/2024/house/bills/HB1235/HB1235.01.INTR.pdf>; *see* Actions for House Bill 1235, IND. GEN. ASSEMB., <https://iga.in.gov/legislative/2024/bills/house/1235/actions>.

366 Ill. App. 3d at 422 (referring to failure to properly allege personal jurisdiction as a “pleading defect[]” and explaining that plaintiff should be given leave to amend complaint where it can demonstrate personal jurisdiction); *see also Bangaly*, 2014 IL App (1st) 123760, ¶ 214 (Section 2-616’s liberal policy should be “liberally construe[d] ... to avoid elevating questions of form over substance.” (quotations omitted)).

At bottom, the circuit court erroneously determined that section 2-616’s liberal policy favoring amendments is inapplicable where a party seeks to cure a lack of personal jurisdiction, and thus abused its discretion in denying the City leave to file a first amended complaint.

3. Allowing the City’s amended complaint would further the ends of justice.

Most basically, though, the circuit court’s denial of leave to amend cannot stand because it “will work a substantial injustice.” *Loyola*, 146 Ill. 2d at 274-75; *see Bangaly*, 2014 IL App (1st) 123760, ¶ 199 (court abuses its discretion if amendment would further ends of justice). The City seeks to remediate harms to its residents caused by an entity that, for many years, was the largest out-of-state supplier of crime guns in Chicago, C759 ¶ 1, and to do so in the state in which those harms have unfolded and reverberated. While ultimately the City will need to prove Westforth’s liability on these claims, it should have an opportunity to amend its complaint and pursue those claims in an Illinois court.

CONCLUSION

For these reasons, Plaintiff-Appellant requests that this Court reverse the circuit court's orders.

Respectfully submitted,

/s/ Priyanka Gupta Sen

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February 28, 2024

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Ill. Sup. Ct. R. 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to this brief under Rule 342, is 14,937 words.

/s/ Priyanka Gupta Sen
Priyanka Gupta Sen

CERTIFICATE OF FILING AND SERVICE

I hereby certify under penalties provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109) that I caused copies of the foregoing and attached **Opening Brief and Appendix of Plaintiff-Appellant** to be served electronically via Odyssey eFileIL upon Defendant-Appellee's counsel of record listed below.

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

CITY OF CHICAGO, an Illinois Municipal
Corporation,

Plaintiff,

v.

WESTFORTH SPORTS, INC.,

Defendant.

No. 2021 CH 01987

Calendar 14

MEMORANDUM OPINION AND ORDER

This matter comes for ruling on Defendant Westforth Sports, Inc.'s Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction ("Motion to Dismiss"). The Court considered Defendant's Motion to Dismiss, Plaintiff City of Chicago's Opposition to Defendant's Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction, City of Chicago's Unopposed Motion to Supplement the Record and to Extend the Date for Defendant's Reply, and Defendant's Reply Memorandum in Support of its Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction and all attached exhibits, Plaintiff's complaint, and relevant authorities as well as the parties' oral arguments on January 31, 2023. For the following reasons, the Court grants Defendant's Motion to Dismiss with prejudice.

BACKGROUND

The City's Complaint

In its complaint, Plaintiff The City of Chicago ("the City") alleges, in relevant part, the following: Westforth Sports, Inc. ("Westforth") is a federal firearms licensee ("FFL"), a retail dealer in firearms located in Gary, Indiana, approximately ten miles from Illinois. Westforth transacts business within Illinois and with Illinois residents by selling firearms (handguns and "long guns" (rifles and shotguns)), ammunition and other products directly to Illinois residents at its retail counter; advertising to out-of-state residents generally and Illinois residents in particular; selling firearms over the Internet to Illinois residents; and shipping firearms to other FFL Illinois dealers for transfer to Illinois residents.

The City further alleges that Westforth knows, or reasonably should know, that many of its gun trafficking customers are bringing Westforth's firearms to Chicago. The City alleges that Westforth creates a public nuisance by knowingly selling firearms to "straw purchasers," who purchase guns and subsequently resell them to other people, typically those who cannot legally purchase firearms themselves. The complaint alleges that Westforth sold firearms to "at least 40 separate purchasers who have since been charged with federal firearms crimes in connection with their transactions at the store."

The City alleges that Westforth engaged in a pattern of illegal sales resulting in the flow of hundreds, if not thousands, of illegal firearms into the City and that Westforth “feeds the market for illegal firearms” by knowingly selling its products to straw purchasers who transport Westforth’s guns from Indiana into Chicago where they are resold to individuals who cannot legally possess firearms. This allegation underlies the complaint’s four counts: Count I, Public Nuisance; Count II, Municipal Cost Recovery Ordinance (seeking to recover the City’s costs in investigating and responding to Westforth’s violations of federal law and litigation costs); Count III, Negligence; and Count IV, Negligent Entrustment.

The City alleges that this Court has personal jurisdiction over Westforth under 735 ILCS 5/2-209 because Westforth “transacts business within Illinois.” Westforth’s advertising targets out-of-state residents in general and Illinois residents in particular. The City cites Westforth’s Google.com business listing which includes a question-and-answer section with guidance specifically for Illinois residents interested in purchasing firearms from Westforth that informs prospective Illinois customers that they will be required to provide their FOID (Firearm Owners Identification) cards and follow Illinois-specific waiting periods. The City alleges that this indicates that Westforth “specifically targets Illinois residents as potential customers” and that Westforth “does regular business with Illinois residents at its retail store.” The City’s complaint seeks compensatory and exemplary damages as well as injunctive relief and attorney’s fees and costs.

Westforth’s Motion to Dismiss

Westforth filed this Motion to Dismiss, arguing that Illinois lacks personal jurisdiction, either general or specific, over Westforth. In sum, Westforth argues that all of the activity about which the City complains involves retail firearm sales in Indiana to Indiana residents who provided valid, government-issued photo IDs proving their Indiana residency. Westforth contends that its conduct was not purposefully directed toward Illinois, which would be necessary to establish specific jurisdiction. Westforth argues that the acts of anyone other than Westforth subsequent to Westforth’s sales of firearms in Indiana to Indiana residents (such as alleged straw purchasers) cannot create personal jurisdiction over Westforth in Illinois, and the City’s claims must be dismissed.

Westforth attaches the affidavit of Earl Westforth (“Mr. Westforth”), the president and secretary of Westforth. Mr. Westforth stated that Westforth is an Indiana corporation with its principal and only place of business in Gary, Indiana. He averred that every firearm Westforth sold at retail, including every one sold as part of the specific transactions cited in the City’s complaint, was sold in Indiana.

Mr. Westforth averred that “For each transaction specifically addressed in Plaintiff’s complaint, the purchasers, under penalty of perjury and other consequences, indicated on multiple lines that they were Indiana residents and provided valid, government-issued photo identification as required under the Gun Control Act to prove their Indiana residence.” The affidavit discusses each of the 14 purchasers named in the City’s complaint and attaches hundreds of pages of firearm transaction records related to those purchases.

Mr. Westforth also averred that Westforth has never sold handguns at retail to anyone other than Indiana residents. He denied that Westforth conducted or solicited business in Illinois. As for long guns, he testified that Westforth “is permitted to sell long guns legally at retail to residents of other states only within the State of Indiana and only if such sales are legal both in Indiana and the purchaser’s state of residence.” Mr. Westforth also averred that from January 2011 to the present, Westforth never targeted advertising to Illinois.

At the City’s request, the parties conducted extensive discovery on the issue of personal jurisdiction raised in Westforth’s Motion to Dismiss. After that discovery concluded, the City filed its response to the Motion to Dismiss.

The City responds that Westforth is subject to specific jurisdiction in this case because Westforth has minimum contacts with Illinois residents which relate to the City’s claims in three ways: (1) selling handguns to Illinois residents and delivering the firearms to Illinois via FFL intermediaries; (2) selling long guns to Illinois residents directly at Westforth’s retail store; and (3) knowingly selling guns to straw purchasers who present Indiana identification at Westforth’s Indiana store, but then those straw purchasers transfer or resell those guns to Illinois residents. The City supports its response with the affidavits of attorney James Miller, Sergeant Randolph Nichols, Gregory Lickenbrock and Joseph Bisbec, ATF records and reports, deposition transcripts, FFL transaction records and various other documents.

ANALYSIS

The plaintiff has the burden to establish a *prima facie* basis upon which to exercise personal jurisdiction over a nonresident defendant. *Russell v. SNFA*, 2013 IL 113909, ¶28. “Any conflicts in the pleadings and affidavits must be resolved in the plaintiff’s favor, but the defendant may overcome plaintiff’s *prima facie* case for jurisdiction by offering uncontradicted evidence that defeats jurisdiction.” *Russell*, 2013 IL 113909 at ¶28.

Illinois applies the minimum contacts test to determine whether personal jurisdiction, either general or specific, exists. *Russell*, 2013 IL 113909 at ¶36. The court considers whether the defendant has minimum contacts with Illinois and whether subjecting it to litigation in Illinois is reasonable under traditional notions of fair play and substantial justice. *Rios v. Bayer Corp.*, 2020 IL 125020, ¶18. The parties agree that Illinois has no general jurisdiction over Westforth. The issue, then, is whether Illinois has specific jurisdiction over Westforth in this case.

Specific jurisdiction is case-specific. *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281, ¶14. A defendant’s general connections with the forum are not enough for specific jurisdiction. *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 264 (2017). Specific jurisdiction exists when the plaintiff’s cause of action arises out of or relates to the defendant’s contacts with the forum state. *Aspen Am. Ins. Co.*, 2017 IL 121281 at ¶14.

“Specific jurisdiction requires a showing that the defendant purposefully 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. 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.” *Russell*, 2013 IL 113909 at ¶40 (internal citations omitted).

The City identifies two ways in which, it argues, Westforth purposefully directed its activities at Illinois and argues that the City’s causes of action arise out of or relate to these contacts with Illinois such that this Court should exercise specific jurisdiction over Westforth in this case.

1. Westforth’s sales of firearms to Illinois residents in Illinois.

First, the City points to Westforth’s advertising which targets Illinois residents and its sales to Illinois customers, either over the counter or through Illinois FFLs. The City alleges that the store’s business listing on Google includes a question-and-answer section directed toward Illinois residents, explaining the requirements for Illinois residents to purchase firearms from Westforth. This advertising relates to Westforth’s sales of handguns to Illinois residents through Illinois FFLs and long guns over the counter at Westforth’s store.

The City also analyzes the amount of revenue Westforth derives from its sales to Illinois customers over the counter or through Illinois FFLs intermediaries, citing that between 2018 and 2021, Westforth sold at least 538 handguns and long guns to Illinois residents, generating more than \$320,000, or 2.7% of the store’s total revenue. The City argues that through these sales and advertising, Westforth purposefully availed itself of the privilege of doing business in Illinois.

Westforth agrees that it transacts business with Illinois customers, by legally selling handguns to Illinois residents via FFL intermediaries and long guns to Illinois residents directly at Westforth’s retail store and agrees that some of its advertising reaches Illinois customers. However, Westforth argues that none of the City’s claims arises out of or relates to Westforth’s sales of guns in Illinois or through FFLs in Illinois and thus, these transactions are not sufficient for specific jurisdiction purposes.

Rather, Westforth argues, all of the City’s claims arise out of or relate only to Westforth’s sales of guns directly to Indiana consumers in Indiana at its Indiana store. Specifically, Westforth points to the City’s allegations in the complaint 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” and that “guns are frequently brought into Chicago from Indiana and Wisconsin.” These claims, based on the City’s own allegations, all relate to alleged straw purchases, Westforth’s transfers of guns directly to Indiana consumers in Indiana, and not to Westforth’s transfers of guns to Illinois residents or to FFL’s in Illinois.

This Court agrees with Westforth. At oral argument, counsel for the City agreed that its complaint does not allege any claims based on Westforth’s direct sales of guns to Illinois customers, either through Illinois FFLs or at the counter.¹ The City admits that “as the complaint

¹ Although the City frequently mentions additional claims that it may later seek to add in an amended complaint to “create” jurisdiction, the City agreed that the Court cannot consider any such potential claims not pled in the current complaint to establish specific jurisdiction over Westforth. (Trans. of 1-31-23 hearing at p. 17-19).

is drafted, there's not a causal connection between [Westforth's] sales to Illinois customers and the City's claims." The City conceded that its injuries and claims do "not arise out of those Illinois sales."

The City argues, however, that even though the City's causes of action do not "arise out of" Westforth's direct sales of guns to Illinois residents or through Illinois FFL's, because Westforth sells the same guns through straw purchasers that it sells to Illinois residents, the City's causes of action "relate to" Westforth's direct sales of guns to Illinois residents and through Illinois FFL's and thus, those Illinois sales establish specific jurisdiction here.

In support of this argument, the City relies on *Russell and Harding v. Cordis Corp.*, 2021 IL App (1st) 210032. However, those cases are distinguishable. First, both cases involve defendant manufacturers of alleged defective products who placed their products into the stream of commerce through distributors who then sold the manufacturers' products in Illinois. Westforth is neither a manufacturer nor a distributor of any product: it is a retailer. Another important distinction between *Russell and Harding* and the present case is that the City does not allege that any of the products sold by Westforth are defective. The City cites no case where a court applied this stream of commerce theory to a retailer or a case involving the sale of a nondefective product.

While *arise out of* "asks about causation," *relate to* "contemplates that some relationships will support jurisdiction without a causal showing." *Ford Motor Co.*, 141 S.Ct. at 1026. Although this "relate to" standard is "lenient or flexible," (*Russell*, 2013 IL 113909 at ¶83), the Court finds that the City's argument to apply specific jurisdiction to Westforth in this case would stretch this standard beyond reasonable limits. Thus, the Court finds that the City's causes of action do not arise out of or relate to Westforth's sales of firearms to Illinois residents sufficient to exercise specific jurisdiction over Westforth in this case. *See Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S.Ct. 1017, 1021 (the "essential foundation" of specific jurisdiction is a strong "relationship among the defendant, the forum, and the litigation"); *Aspen Am. Ins. Co.*, 2017 IL 121281 at ¶14.

2. Westforth's sales of firearms to alleged straw purchasers in Indiana.

Second, the City argues that Westforth's sales of guns to straw purchasers in Indiana who then resold them to Illinois residents are sufficient to show that Westforth purposefully directed its activities at Illinois. The City cites evidence that Westforth persisted in selling guns even though those sales involved signs of straw purchasing and that it was on notice that some of its guns "were headed to Illinois." The City agrees that its claims against Westforth are based solely on these straw purchases and its theory that Westforth knew or should have known that guns sold by Westforth at its store in Indiana to Indiana residents would then be resold or transferred to Illinois residents not eligible to possess firearms who would then bring them into Illinois.

Westforth responds that all of the gun sales alleged in the City's complaint involve retail firearm sales made by Westforth in Indiana to Indiana residents who provided valid, government-issued photo IDs proving their Indiana residency. Westforth contends that the fact that these buyers may have been straw purchasers who resold the guns to Illinois residents and brought the guns into Illinois is the unilateral activity of third parties and is not sufficient to establish that

Westforth itself purposefully directed its activities at Illinois.

The Court agrees with Westforth. In a specific jurisdiction analysis, the focus is on the contacts that the “defendant *himself*” creates with the forum state, and not the plaintiff or third parties. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). *See also Walden v. Fiore*, 571 U.S. 277, 284 (2014). “The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant’s activity, but 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.” *Russell*, 2013 IL 113909 at ¶42, quoting *Burger King Corp.*, 471 U.S. at 474-75. “Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the ‘random, fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated with the State.” *Walden*, 571 U.S. at 286, citing *Burger King Corp.*, 471 U.S. at 475. *See also Russell*, 2013 IL 113909 at ¶42.

Here, the City’s claims are based on the unilateral activity of third parties, the straw purchasers, and not the actions of the nonresident defendant, Westforth. The City fails to cite to an act by which Westforth purposefully availed itself of the privilege of conducting activities within Illinois with these straw purchases. The City argues that the fact that these straw purchases occurred through “middlemen, and not directly to Illinois consumers,” does not deprive this Court of personal jurisdiction over Westforth. With this argument, the City equates illegal straw purchasers of guns from Westforth’s retail store in Indiana to “middlemen,” intermediaries and distributors of products.

As with its first theory of specific jurisdiction, the City relies solely on cases involving defective products and the stream of commerce theory of specific jurisdiction with defendants who were manufacturers or distributors of those allegedly defective products. *See, e.g., World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *Russell*, 2013 IL 113909 at ¶1; *Harding*, 2021 IL App (1st) 210032 at ¶1. Those cases also involve some kind of an intentional relationship, either contractual or otherwise, between the defendant and the “middleman” or intermediary. *See Hernandez v. Oliveros*, 2021 IL App (1st) 200032, ¶21 (defective product case where the defendant used authorized retailers to market and sell its products throughout Illinois); *Schaefer v. Synergy Flight Center, LLC*, 2019 IL App (1st) 181779, ¶4 (defendant overhauled a plane engine and shipped it to a company in Indiana which then shipped the parts to an Illinois company).

Although a party’s purposeful availment need not be direct, the “purposeful availment requirement can be achieved through another entity, as long as the other entity makes contact with the forum state *bilaterally* rather than *unilaterally*.” *Hernandez*, 2021 IL App (1st) 200032 at ¶23. “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, Westforth is a retailer, not a manufacturer or distributor. There is no evidence of a bilateral relationship between Westforth and the straw purchasers whereby Westforth uses the illegal straw purchasers to distribute its guns in Illinois. There is no evidence that both Westforth and various straw purchasers had a business relationship or contractual understanding which

contemplates the straw purchasers acting for the benefit of both the straw purchasers and Westforth in Illinois. Even if Westforth should know that some of the purchasers of guns at its retail store are straw purchasers, there is no evidence that Westforth works with these straw purchasers to distribute guns sold at its Indiana store to Illinois residents. The City's analysis is too attenuated to satisfy the requirements of due process necessary to subject Westforth to specific personal jurisdiction in Illinois based on the claims alleged by the City in this case.

Here, the City's claims alleged in its complaint relate solely to the actions of straw purchasers, Indiana residents who purchase guns from Westforth in Indiana. These claims do not arise out of or relate to the contacts Westforth has with Illinois (direct sales to Illinois residents either over the counter or through Illinois FFLs). There is no affiliation or connection between Westforth and the straw purchasers and Illinois sufficient to support the exercise of specific personal jurisdiction over Westforth. "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Bristol-Myers Squibb Co.*, 582 U.S. at 264, citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 931 (2019).

CONCLUSION

For the foregoing reasons, this Court holds that the City's causes of action do not arise out of or relate to Westforth's contacts with Illinois sufficient to exercise specific personal jurisdiction over Westforth in this case. Accordingly, the Court grants Defendant Westforth Sports, Inc.'s Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction with prejudice. Case disposed.

Entered: 

Judge Clare J. Quish
May 25, 2023

Judge Clare J. Quish
MAY 25 2023
Circuit Court - 2160

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

CITY OF CHICAGO, AN ILLINOIS
MUNICIPAL CORPORATION,

Plaintiff,

v.

WESTFORTH SPORTS, INC.,

Defendant.

No. 2021 CH 01987

Calendar 14

ORDER

This cause coming before the Court on September 28, 2023 for hearing with respect to the Plaintiff City of Chicago's Motion to Modify the May 25, 2023 Order and for Leave to File an Amended Complaint, both parties appearing by counsel, with due notice given, and the Court being fully advised in the premises,:

IT IS HEREBY ORDERED:

1. For the reasons stated on the record in open court and transcribed by a court reporter, the transcript of which is expressly incorporated herein, Plaintiff's Motion to Modify the May 25, 2023 Order and for Leave to File an Amended Complaint is **granted in part and denied in part**.
2. Plaintiff's Motion to Modify the May 25, 2023 Order is **granted**, and the Court hereby modifies its May 25, 2023 Order to be a dismissal without prejudice.
3. Plaintiff's Motion for Leave to File an Amended Complaint is **denied**.

ENTERED:



Judge Clare J. Quish

DATE: September 29, 2023

Judge Clare J. Quish

SEP 29 2023

Circuit Court - 2160

Judge Clare J. Quish

(312) 603-3733

ccc.chancerycalendar14@cookcountyil.gov

Zoom Meeting ID: 953 7174 9534

Zoom Password: 253498

Zoom Dial-In: (312) 626-6799

**APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CITY OF CHICAGO, an Illinois municipal corporation,)	
)	
Plaintiff-Appellant,)	Appeal from the Circuit Court of Cook
)	County, Illinois,
v.)	County Department, Chancery Division
)	
)	No. 21 CH 01987
)	
WESTFORTH SPORTS, INC.,)	The Honorable
)	Clare J. Quish,
Defendant-Appellee,)	Judge Presiding.
)	

NOTICE OF APPEAL

Plaintiff, CITY OF CHICAGO (“City”), by its attorneys, hereby appeals to the Appellate Court of Illinois, First Judicial District, from the judgment of the Circuit Court of Cook County, Illinois, entered May 25, 2023 and modified on September 29, 2023, granting Defendant WESTFORTH SPORTS, INC.’s Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction. The City further appeals from the circuit court’s order entered September 29, 2023, to the extent the court denied the City’s motion for leave to file an amended complaint.

By this appeal, the City will ask the appellate court to reverse the circuit court’s judgment and orders and grant such other relief as it may be entitled to on this appeal.

Respectfully submitted,

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of the City of Chicago

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**ATTORNEYS FOR PLAINTIFF
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**APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CITY OF CHICAGO, an Illinois municipal corporation,)	
)	
Plaintiff-Appellant,)	Appeal from the Circuit Court of Cook
)	County, Illinois,
v.)	County Department, Chancery Division
)	
)	No. 21 CH 01987
)	
WESTFORTH SPORTS, INC.,)	The Honorable
)	Clare J. Quish,
Defendant-Appellee,)	Judge Presiding.
)	

NOTICE OF FILING NOTICE OF APPEAL

<p>TO: Richard J. Leamy, Jr. Rachel S. Nevarez WIEDNER & MCAULIFFE, LTD. One North Franklin Street, Suite 1900 Chicago, Illinois 60606 (312) 855-1105 – Atty: #10524 rjleamy@wmlaw.com rsnevarez@wmlaw.com</p> <p>Mr. James T. Nyeste 820 Davis Street Evanston, IL 60201 (847) 242-0601 jnyeste@coveragelaw.com</p>	<p>Scott L. Braum Timothy R. Rudd Madison M. Duff SCOTT L. BRAUM & ASSOCIATES, LTD. 812 East Franklin Street, Suite C Dayton, Ohio 45459 (937) 396-0089 slb@braumlaw.com trr@braumlaw.com mmd@braumlaw.com</p>
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PLEASE TAKE NOTICE that on October 18, 2023, I electronically filed with the Clerk of the Circuit Court of Illinois, Civil Appeals Division, Richard J. Daley Center, Chicago, Illinois, a **Notice of Appeal**, a copy of which is attached hereto and herewith served upon you.

Corporation Counsel
of the City of Chicago

By: s/ SUZANNE M. LOOSE
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CERTIFICATE OF SERVICE/CERTIFICATE OF FILING

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct, and that the attached **Notice of Filing** and **Notice of Appeal** were filed and served electronically via *File & Serve Illinois* at the e-mail address(es) on the accompanying notice on October 18, 2023.

s/ SUZANNE M. LOOSE
SUZANNE M. LOOSE

FILED DATE: 10/18/2023 1:14 PM 2021CH01987

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

CITY OF CHICAGO

Plaintiff/Petitioner

v.

Reviewing Court No: 1-23-1908

Circuit Court/Agency No: 2021CH01987

Trial Judge/Hearing Officer: CLARE J. QUISH

WESTFORTH SPORTS, INC.,

Defendant/Respondent

E-FILED
Transaction ID: 1-23-1908
File Date: 12/20/2023 4:14 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

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CHICAGO, ILLINOIS 60602

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

CITY OF CHICAGO

Plaintiff/Petitioner

v.

Reviewing Court No: 1-23-1908

Circuit Court/Agency No: 2021CH01987

Trial Judge/Hearing Officer: CLARE J. QUISH

WESTFORTH SPORTS, INC.,

Defendant/Respondent

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