

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

JOSHUA EVERETT BUSHMAN
Administrator for the Estate of
Calvin Van Pelt, et al.,

Case No: 2023-06260

Plaintiffs,

v.

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

Defendants.

DEFENDANT BUL USA’S OBJECTIONS TO PLAINTIFFS’ AMENDED COMPLAINT

Defendant BUL USA LLC (“BUL USA”), a now-dissolved North Carolina corporation, respectfully moves, by special appearance, to dismiss all claims against it for lack of personal jurisdiction. Virginia’s long-arm statute does not reach BUL USA as a matter of law, and, even if it did, due process would not allow Plaintiffs to hale BUL USA into this Court. BUL USA, furthermore, never operated the “80P Builder” website—the only concrete factual allegation (besides the alleged sole shipment of the product at issue) on which personal jurisdiction over BUL USA is predicated. *See* Am. Compl. (“AC”) at ¶¶ 19-21; Ex. 1 (Supp. Decl. of Jesse Sousana) (“Sousana Supp. Decl.”) at ¶ 5. BUL USA therefore respectfully asks this Court to dismiss the Amended Complaint as to any claims against it.

I. BACKGROUND

This case arises out of a tragic shooting, by Zackary Burkard, a Virginia resident, in Fairfax, Virginia, on April 25, 2021. That shooting resulted in the deaths of two young men. Mr. Burkard was convicted of manslaughter by a jury. AC at ¶ 14. Plaintiffs in this matter are the administrators of the victims’ estates. Plaintiffs allege that the handgun Mr. Burkard used was

one that he assembled from parts that he purchased from a website known as 80P Builder on or around February 1, 2021. *Id.* at ¶ 91.

In addition to suing Mr. Burkard, Plaintiffs have sued Salvo Technologies (“Salvo”), the Florida corporation that currently owns the 80P Builder website and (according to the Amended Complaint) does business as the entity that manufactured some of the parts allegedly used to build the weapon. *Id.* at ¶ 18. Plaintiffs have also sued Polymer80, the Nevada corporation that manufactured certain other parts allegedly used to build the weapon. *Id.* at ¶ 23.

And, finally, Plaintiffs have further sued BUL USA and Okori, alleging that they “operated” the “80P Builder” website through which Mr. Burkard purchased the kit he used to construct the firearm at issue. *Id.* at ¶¶ 4, 19, 20. The Amended Complaint’s sole basis for the allegation that BUL USA operated the website is that “80PBuilder” was “registered . . . as an assumed business name for BUL” and was a “registered trade name” for BUL. *Id.* at ¶ 19. Based solely on those registrations, the Amended Complaint alleges that BUL USA “transacted business in the Commonwealth of Virginia through its operation of the 80P Builder website.” *Id.* Operation of that website, and the sole shipment to Mr. Burkard, are the only facts alleged in the Amended Complaint that go to the question whether this Court has personal jurisdiction over BUL USA.

BUL USA is, in fact, a dissolved North Carolina corporation. Sousana Supp. Decl. at ¶ 2. However, throughout its existence, BUL USA served solely as a distributor for BUL Armory, an Israeli firearms manufacturer. *Id.* at ¶ 4. BUL USA never operated the 80P Builder website, and it never sold the parts alleged in the Amended Complaint. *Id.* at ¶ 5.

II. LEGAL STANDARD

A plaintiff has the burden of establishing a prima face case of personal jurisdiction to survive a motion to dismiss. *See Massey Energy Co. v. UMW*, 69 Va. Cir. 118, 120, 2005 WL 3476771, at *2 (Va. Cir. Ct. 2005); *Talenthunter LLC v. S. Co. Servs.*, 87 Va. Cir. 363, 2014 WL 3972897, *2 (Va. Cir. Ct. 2014) (“[O]nce jurisdiction has been challenged, the question is one for the judge with the burden on the plaintiff ultimately to prove the existence of a ground for jurisdiction by the preponderance of the evidence.”). In resolving the issue, a two-step inquiry is required: “The first step [...] is to determine whether Virginia’s long-arm statute reaches the non-resident defendant given the cause of action alleged and the nature of the defendant’s Virginia contacts.” *Id.* at *3. “The second step is to ensure that the exercise of *in personam* jurisdiction over a non-resident Defendant complies with the due process requirements of the Fourteenth Amendment to the United States Constitution.” *Id.* Both steps must be satisfied for there to be personal jurisdiction. *See, e.g., DeSantis v. Hafner Creations, Inc.*, 949 F. Supp. 419, 423 (E.D. Va. 1996) (Virginia’s long-arm statute “must be satisfied even in those situations where it could plausibly be argued that a lesser standard would meet due process.”) (quotation marks omitted). Dismissal is appropriate “if all of the alleged facts taken together fail to establish the existence of personal jurisdiction.” *Id.*

III. ARGUMENT

The Amended Complaint fails to establish personal jurisdiction over BUL USA for three reasons. *First*, the conduct plausibly alleged about BUL USA—the sale of a single firearm kit and the operation of the 80P Builder website—fails to satisfy any of the prongs of the long-arm statute. *Second*, the Amended Complaint also fails to plead facts that satisfy due process. And,

third, as a factual matter, BUL USA never operated the 80P Builder website and thus it never made the sale of firearm parts alleged in the Amended Complaint.

A. The Amended Complaint Fails to Plead Facts That Satisfy the Long-Arm Statute.

The Virginia Code identifies five bases on which a Virginia court may exercise personal jurisdiction over a non-Virginia defendant. Va. Code Ann. § 8.01-328.1(A). Only two are arguably relevant here:

- “Transacting any business in this Commonwealth”; and
- “Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth[.]”

Va. Code Ann. § 8.01-328.1(A)(1) and (A)(4).¹ The allegations about BUL USA—that it shipped one kit to Mr. Burkard, and that it operated a website—fail to establish jurisdiction under either of those prongs.

1. Even Taking the Allegations of the Amended Complaint as True, BUL USA Did Not “Transact Business” in Virginia.

The Amended Complaint appears to rest its jurisdictional claim chiefly, if not exclusively, on the contention that BUL USA transacted business in Virginia. *See* AC at ¶ 19. But the sum total of the concrete facts alleged are that BUL USA operated a national website and made a

¹ A third—“[c]ausing tortious injury by an act or omission in this Commonwealth,” Va. Code Ann. § 8.01-328.1(A)(3)—only applies when the “Defendant was in Virginia” when “the tortious conduct occurred.” *Cent. Virginia Aviation, Inc. v. N. Am. Flight Servs., Inc.*, 23 F. Supp. 3d 625, 629 (E.D. Va. 2014); *DeSantis*, 949 F. Supp. at 425–26 (“This provision requires that an out-of-state defendant be physically present in Virginia when committing the act or omission giving rise to the tort at issue.”); *see also Nathan v. Takeda Pharms. Am. Inc.*, 83 Va. Cir. 216 (2011) (sending defamatory letters from Illinois into Virginia insufficient to establish personal jurisdiction because the wrongdoing happened in Illinois). The Amended Complaint does not allege that BUL USA had a physical presence in Virginia when the alleged conduct occurred.

single shipment to Virginia, specifically to Mr. Burkard. And it's well-settled that those things do not amount to "transacting business" in Virginia under the statute.

Beginning with the latter, no Virginia court has gone so far as to hold that a single shipment into Virginia qualifies as transacting business in Virginia under the long-arm statute. And federal courts interpreting Virginia law—in cases upon which Virginia courts have relied—have held that isolated shipments are not sufficient to qualify as transacting business in Virginia. For example, in *Ajax Realty Corp. v. J.F. Zook, Inc.*, 493 F.2d 818, 821 (4th Cir. 1972), cited in *Khan v. Ranjha*, 53 Va. Cir. 530, 1999WL 33117233 at *3 (Dec. 28, 1999), the Fourth Circuit held that a non-resident corporation did not "transact business" in Virginia merely by shipping a window frame to Virginia that proved defective. The court noted:

[I]f Virginia can assert jurisdiction here under § (a)(1), the rule of the case would be that where a non-resident manufacturer ships its products directly to the ultimate purchaser, [...] then it has transacted business in Virginia. The Virginia Supreme Court has not gone so far in construing § (a)(1) [...] and therefore we choose not to[.]

(Emphasis added; citing *John G. Kolbe v. Chromodern Chair Co.*, 211 Va. 736 (1971)). See also *DeSantis*, 949 F. Supp. at 425 ("Numerous courts have held that a single shipment of goods to Virginia, without more, does not constitute the transacting of any business under § 8.01-328.1(A)(1)."); cf. *Unidyne Corp. v. Aerolineas Argentinas*, 590 F. Supp. 391, 396 (E.D. Va. 1984) (holding that "mere telephone conversations, telex messages and letters negotiating a transaction are insufficient to form a basis for *in personam* jurisdiction" under § 8.01-328.1(A)(1)).

Similarly, for a website to amount to "transacting business" in Virginia, it is not enough that the website simply "may be accessed in Virginia." *RZS Holdings AVV v. PDVSA Petroleos S.A.*, 293 F. Supp. 2d 645, 649 (E.D. Va. 2003). Rather, "[a] website provides a basis for

jurisdiction only if, as has not been shown here, the website’s creator ‘(1) directs electronic activity into the State, (2) with the manifested intent of engaging in business or other interactions within the State, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State’s courts.’” *Id.* at 649-50 (quoting *ALS Scan Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 714 (4th Cir. 2002)); *cf. DeSantis*, 949 F. Supp. at 426 (“the placement of a national advertisement, even if repeated, does not constitute a persistent course of conduct” under fourth prong of long-arm statute; defendant instead must “maintain[] some sort of ongoing interaction with the forum state”) (internal citation omitted). The Amended Complaint alleges nothing like that; it alleges only—and baldly—that 80P Builder sold firearm kits “to consumers in Virginia, including Defendant Burkard.” AC at ¶ 81. Even if the Amended Complaint had pled specific facts that made that allegation plausible (as opposed to merely speculative), it does not amount to an allegation that the operator of the site “direct[ed] electronic activity into the State” rather than simply operating a website that could “be accessed in Virginia.” *RZS Holdings AVV*, 293 F. Supp. 2d at 649.

For both of those reasons, the Amended Complaint fails to make a prima facie case that BUL USA “transacted business” in Virginia.

2. The Amended Complaint Fails to Establish That BUL USA “Engaged in Any Other Persistent Course of Conduct” in Virginia.

For those same reasons, the Amended Complaint fails to establish that BUL USA “engaged in any other persistent course of conduct” or “derived substantial revenue from” Virginia, as required to find jurisdiction under the fourth prong of the long-arm statute. Va. Code Ann. § 8.01-328.1(A)(4). The only allegation that even comes close is the bald assertion that 80P Builder sold products to other consumers in Virginia. That allegation says *nothing* about how often such sales were made, what their volume was, or what time period they covered—nothing,

in other words, by which anyone could even begin to gauge whether the sales were “persistent” or resulted in “substantial revenue.” See *Nathan v. Takeda Pharms. Am. Inc.*, 83 Va. Cir. 216, 2011 WL 8947650, at *11 (Fairfax Cty. Circ. Ct. 2011) (“The jurisdictional significance of the contacts outlined under (A)(4) is not merely the number of contacts, but the continuing or ongoing nature of these contacts.”) (internal citation omitted); cf. *Carter v. Wake Forest Univ. Baptist Med. Ctr.*, 76 Va. App. 756, 767, 883 S.E.2d 693, 699 (2023) (“Relevant to” personal jurisdiction analysis “are the *quality* and *nature* of the defendant’s connections, not merely the number of contacts between the defendant and the forum state.”) (emphases in original), *appeal granted* (Sept. 15, 2023). This allegation is pure speculation, accompanied by zero supporting facts. It does not provide a basis for jurisdiction.

B. Jurisdiction over BUL USA Would Not Comport with Due Process.

Even if one of the provisions of the long-arm statute applied here, due process would still prohibit the exercise of personal jurisdiction over BUL. *Massey*, 69 Va. Cir. at 121 (even when long-arm statute applies, court must separately “ensure that the exercise of in personam jurisdiction over a non-resident defendant complies with the due process requirements of the Fourteenth Amendment to the United States Constitution”) (cleaned up). Both the Supreme Court of the United States and the Virginia Supreme Court have made clear that, to comport with due process, “it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Kolbe*, 21 Va. at 738-39 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). And, when “a suit does not arise out of the defendant’s activities in the forum state, [...] the requisite ‘minimum contacts’ between the defendant and the

forum state are ‘fairly extensive.’” *Bay Tobacco, LLC v. Bell Quality Tobacco Prod., LLC*, 261 F. Supp. 2d 483, 497 (E.D. Va. 2003) (quoting *Nichols*, 991 F.2d at 1199) (citation omitted).

Plaintiffs’ allegations do not meet this standard. They plead none of the facts that traditionally “have been considered helpful in determining whether a defendant has purposefully availed themselves” of Virginia:

- (1) whether the defendant maintained offices or agents in the State;
- (2) whether the defendant maintained property in the State;
- (3) whether the defendant reached into the State to solicit or initiate business;
- (4) whether the defendant deliberately engaged in significant or long-term business activities in the State;
- (5) whether a choice of law clause selects the law of the State;
- (6) whether the defendant made in-person contact with a resident of the State regarding the business relationship;
- (7) whether the relevant contracts required performance of duties in the State; and
- (8) the nature, quality, and extent of the parties’ communications about the business being transacted.

Carter, 883 S.E.2d at 699 (2023) (citing *Sneha Media & Ent., LLC v. Associated Broad. Co. P. Ltd.*, 911 F.3d 192, 198-99 (4th Cir. 2018)). The Supreme Court, consistent with those factors, has made clear that “isolated or sporadic transactions” do not amount to the fairly extensive contacts required to support jurisdiction under the Due Process Clause. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1028 n. 4 (2021) (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). And Virginia state courts and federal courts interpreting Virginia state law have similarly held that, when shipments into a state are the asserted basis for jurisdiction, more than a single shipment of a product is required. For example, in *Andrews v. Shandong Linglong Tyre Co. LTD.*, No. 3:21CV794 (DJN), 2023 WL 1967945, at *7-*9 (E.D. Va. Feb. 13, 2023), the court held that a nonresident defendant’s use of Virginia ports to import ten shipments of tires was not “purposeful availment” that would support jurisdiction. *See also, e.g., Volkswagen “Clean Diesel” Litig.*, 2018 WL 9393018, at *2

(jurisdiction attached where official from German corporate defendant physically traveled to Virginia to disseminate false advertising and hired employees to assist in false advertising).

The Amended Complaint pleads no facts showing that any BUL USA contact with Virginia was “fairly extensive,” *Bay Tobacco, LLC*, 261 F. Supp. 2d at 497, rather than “isolated or sporadic,” *Ford Motor Co.*, 141 S. Ct. at 1028 n.4. As noted above, it merely asserts in conclusory fashion that 80P Builder sold to other Virginia consumers, without (1) providing any basis for that assertion, (2) specifying the frequency, (3) specifying the volume, or (4) specifying the time period. Plaintiffs have not shown that personal jurisdiction over BUL USA would satisfy due process.²

C. As a Factual Matter, BUL USA Never Operated 80P Builder.

The Amended Complaint should be dismissed as to BUL USA for a final reason as well: Despite the registered trade and business names, BUL USA simply never operated the 80P Builder website. Sousana Supp. Decl. at ¶ 5. BUL USA’s business had nothing to do with selling firearm kits; it existed to import products from a foreign company named BUL Armory. *Id.* at ¶ 4. Because the 80P Builder website is the primary basis on which Plaintiffs allege personal jurisdiction—and because BUL USA had nothing to do with that website and thus nothing to do with the sale of firearms parts alleged in the Amended Complaint—personal jurisdiction would not lie against BUL USA even if the allegations in the Amended Complaint were sufficient.

IV. CONCLUSION

For all of the foregoing reasons, BUL USA, by special appearance, respectfully requests that the Amended Complaint be dismissed as to it on the basis of lack of personal jurisdiction.

² The Amended Complaint also manifestly fails to plead general jurisdiction as to BUL USA, which typically applies only to nonresidents “who are essentially domiciled within the forum state.” *Corry v. CFN Majestic Inc.*, 16 F. Supp. 2d 630, 633 (E.D. Va. 1998).

Dated: December 15, 2023

/s/ William Pittard

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CERTIFICATE OF SERVICE

I certify that on this 15th day of December, 2023, I caused the foregoing to be served on the following parties by e-mail, and/or via File&ServeXpress:

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Exhibit 1:

Supplemental Declaration of Jesse Sousana

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

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

Plaintiffs,

v.

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

Defendants.

Case No: CL2023-06260

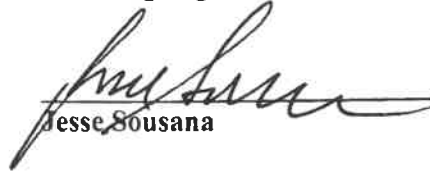
SUPPLEMENTAL DECLARATION OF JESSE SOUSANA

1. My name is Jesse Sousana. I live in Dunedin, Florida and am 47 years old. I am competent to testify to the information contained in this declaration.
2. In 2016, I founded, and at all times was the sole owner of, BUL USA LLC (“BUL USA”), a limited liability company located in North Carolina that has since been dissolved.
3. I was BUL USA’s sole employee and handled BUL USA’s business affairs by myself.
4. Throughout its existence, BUL USA operated solely as a distributor for BUL Armory, a firearms manufacturer located in Tel Aviv, Israel. BUL USA did no other business except to distribute items that BUL Armory sold directly to customers in the United States, which BUL Armory would then direct BUL USA to ship to those customers.
5. At no point during BUL USA’s existence did BUL USA operate the 80pbuilder.com website; a different company owned that domain and operated that website.
6. At no point during BUL USA’s existence did BUL USA sell—and therefore BUL USA did not ship—any products manufactured by Polymer 80 or Zaffiri Precision (whether into Virginia, or anywhere).
7. BUL USA did associate itself with the “doing business as” (“DBA”) of “80P Builder,” as follows: (a) after October 2019, BUL USA’s Federal Firearms License named “80P Builder” as a DBA name, and (b) on November 23, 2019, I registered “80P Builder” as a BUL USA assumed business name in the state of North Carolina. I associated BUL USA with the “80P Builder” DBA so that BUL USA could take over running the

80pbuilder.com website if and when the law ever required that the seller of products like those on the 80pbuilder.com website hold a federal firearms license—an eventuality that, at least as I understood it, never came to pass.

8. Critically, BUL USA never owned, controlled, maintained, operated, or otherwise had any involvement with the 80pbuilder.com website.
9. To the extent, then, that Zackary Burkard purchased any equipment from the 80pbuilder.com website, BUL USA had no involvement in that purchase. BUL USA never made any sale of any equipment through the 80pbuilder.com website.
10. I declare under penalty of perjury that the foregoing is true and correct.

DATE 11/15/2023


Jesse Sousa