

No. 1-23-1908

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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

REPLY BRIEF OF PLAINTIFF-APPELLANT

Mary B. Richardson-Lowry
Myriam Zreczny Kasper
Stephen Kane
City of Chicago Dept. of Law
2 North LaSalle Street, Suite 580
Chicago, Illinois 60602
(312) 744-3564
myriam.kasper@cityofchicago.org
appeals@cityofchicago.org

Janet Carter* (ARDC #6347051)
James E. Miller* (ARDC #6338015)
Priyanka Gupta Sen (ARDC #6320720)
Everytown Law
450 Lexington Avenue, P.O. Box 4184
New York, NY 10163
(646) 324-8201
jmillier@everytown.org

Michael A. Scodro
Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606
(312) 782-0600
Firm No. 43948
mscodro@mayerbrown.com

*Admitted pro hac vice

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

ARGUMENT.....1

POINTS AND AUTHORITIES

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985).....1

Walden v. Fiore,
571 U.S. 277 (2014).....2

I. This Court should reverse the circuit court’s dismissal of the City’s original
complaint for lack of jurisdiction.3

A. Westforth has minimum contacts with Illinois through its knowing and
intentional sales to straw purchasers.3

Walden v. Fiore,
571 U.S. 277 (2014).....3

1. Westforth had actual and constructive knowledge that it was
accessing the criminal market in Illinois.4

Levy v. Gold Medal Prods. Co.,
2020 IL App (1st) 192264.....4

Barone v. Rich Bros. Interstate Display Fireworks Co.,
25 F.3d 610 (8th Cir. 1994)5

Kollmorgen Corp. v. Yaskawa Elec. Corp.,
169 F. Supp. 2d 530 (W.D. Va. 1999)5

2. *Walden v. Fiore* offers no basis to set aside the foreseeable
consequences of Westforth’s sales to straw purchasers.5

Walden v. Fiore,
571 U.S. 277 (2014).....5, 6, 7

Ford Motor Co. v. Montana Eighth Judicial District Court,
592 U.S. 351 (2021).....6

Khan v. Gramercy Advisors, LLC,
2016 IL App (4th) 1504357

<i>Kowal v. Westchester Wheels, Inc.</i> , 2017 IL App (1st) 152293.....	7
<i>Cisco Systems, Inc. v. Dexon Computer, Inc.</i> , 541 F. Supp. 3d 1009 (N.D. Cal. 2021)	7
3. Westforth need not have a formal contractual relationship with straw purchasers for those sales to constitute contacts with Illinois.....	8
<i>Hernandez v. Oliveros</i> , 2021 IL App (1st) 200032.....	8, 9
<i>Schaefer v. Synergy Flight Ctr., LLC</i> , 2019 IL App (1st) 181779.....	8, 9
<i>Williams v. Beemiller, Inc.</i> , 33 N.Y.3d 523 (2019)	8
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985).....	9
<i>Russell v. SNFA</i> , 2013 IL 113909.....	9, 10
<i>Khan v. Gramercy Advisors, LLC</i> , 2016 IL App (4th) 150435	9, 10
<i>Flipside Wallets LLC v. Brafman Grp. Inc.</i> , No. 2:19-cv-05356, 2020 WL 1330742 (E.D. Pa. Mar. 19, 2020)	10
<i>Companion Prop. & Cas. Ins. Co. v. U.S. Bank Nat’l Ass’n</i> , No. 3:15-cv-01300-JMC, 2016 WL 6781057 (D.S.C. Nov. 16, 2016)	10
<i>Accident Ins. Co., Inc. v. U.S. Bank Nat’l Ass’n</i> , No. 3:16-cv-2621, 2017 WL 4238231 (D.S.C. Sept. 25, 2017)	10
<i>Maxitrate Tratamento Termico e Controles v. Super Sys., Inc.</i> , 617 F. App’x 406 (6th Cir. 2015)	10, 11
<i>Campinha-Bacote v. Wick</i> , No. 1:15-cv-00277, 2015 WL 7354014 (S.D. Ohio Nov. 20, 2015)	11

B.	Westforth has minimum contacts with Illinois through its direct and undisputed long gun and handgun sales to Illinois residents, which “relate to” the City’s claims.	11
1.	Westforth’s direct sales constitute purposeful availment.	11
	<i>Illinois v. Hemi Grp. LLC,</i> 622 F.3d 754, 758 (7th Cir. 2010)	12
	<i>Kothawala v. Whole Leaf, LLC,</i> 2023 IL App (1st) 210972	12
	<i>Curry v. Revolution Labs. LLC,</i> 949 F.3d 385, 400 (7th Cir. 2020)	12
2.	Westforth’s direct sales “relate to” the City’s claims.	12
	<i>Ford Motor Co. v. Montana Eighth Judicial District Court,</i> 592 U.S. 351 (2021)	12, 13, 14, 15
	<i>Russell v. SNFA,</i> 2013 IL 113909	13, 14
	<i>Delahanty v. Hinckley,</i> 686 F. Supp. 920 (D.D.C. 1986)	14
	<i>Harding v. Cordis Corp.,</i> 2021 IL App (1st) 210032	14
	<i>Morrison v. JSK Transportation, Ltd.,</i> 2022 IL App (4th) 210542-U	15
	<i>Hepp v. Facebook,</i> 14 F.4th 204, 208 (3d Cir. 2021)	15
	<i>Sambrano v. United Airlines, Inc.,</i> No. 4:21-cv-01074, 2021 WL 5178829 (N.D. Tex. Nov. 8, 2021)	15, 16
	<i>Murphy v. Viad Corp.,</i> No. 3:21-cv-10897, 2021 WL 4504229 (E.D. Mich. Oct. 1, 2021)	15, 16
	<i>Zurich Am. Life Ins. Co. v. Nagel,</i> 571 F. Supp. 3d 168 (S.D.N.Y. 2021)	15, 16
	<i>O’Neil v. Somatics, LLC,</i> No. 1:20-cv-00175, 2021 WL 4395115 (D.N.H. Sept. 24, 2021)	15, 16

<i>Cox v. HP Inc.</i> , 492 P.3d 1245 (Or. 2021)	16
II. The circuit court incorrectly denied the City leave to file a first amended complaint.	16
<i>Bangaly v. Baggiani</i> , 2014 IL App (1st) 123760.....	16, 17
A. The liberal policy of allowing amendments before final judgments applies to the City’s motion.	17
735 ILCS 5/2-616	17
<i>Richter v. Prairie Farms Dairy, Inc.</i> , 2016 IL 119518.....	17
<i>Loyola Acad. v. S & S Roof Maint., Inc.</i> , 146 Ill. 2d 263 (1992)	17
<i>Muirfield Vill.-Vernon Hills, LLC v. K. Reinke, Jr. & Co.</i> , 349 Ill. App. 3d 178 (2d Dist. 2004).....	17
<i>Cnty. of Peoria v. Couture</i> , 2022 IL App (3d) 210091	17
<i>Saia v. Scripto-Tokai Corp.</i> , 366 Ill. App. 3d 419 (1st Dist. 2006)	18
<i>Dickie v. Cannondale Corp.</i> , 388 Ill. App. 3d 903 (1st Dist. 2009).....	18
B. The circuit court abused its discretion in denying leave to amend.	18
<i>Loyola Acad. v. S & S Roof Maint., Inc.</i> , 146 Ill. 2d 263 (1992)	18, 20
<i>Sojka v. Bovis Lend Lease, Inc.</i> , 686 F.3d 394, 399 (7th Cir. 2012)	18
735 ILCS 5/2-616	18
<i>Jeffrey M. Goldberg & Assocs., Ltd. v. Collins Tuttle & Co.</i> , 264 Ill. App. 3d 878 (1st Dist. 1994).....	20

CONCLUSION20

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF FILING AND SERVICE

ARGUMENT

In its opening brief, the City presented evidence demonstrating that Westforth:

- Knew that straw purchasers, i.e., individuals who illegally buy guns for others, frequently came to its store;
- Knew that these straw purchasers were trafficking guns to Chicago;
- Knew or had reason to know, for each specific transaction in the complaint, that the customer was a straw purchaser;
- Had a financial incentive to consummate these straw purchases;
- Received repeated citations for facilitating illegal straw sales, along with remedial training to detect straw purchasers, but refused to implement recommended safeguards; and
- Deliberately adopted a “head in the sand” approach to profit from the illegal firearms market in Chicago.

See City Br. 5-11.¹ This record establishes that Westforth, through its sales to straw purchasers, purposefully availed itself of the Illinois market. Yet, in its response brief, Westforth fails to address the vast majority of this evidence and does not dispute that the City’s claims arise from these contacts and that litigating in Illinois would be reasonable. Specific jurisdiction is thus established. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73, 476-77 (1985).

Instead, Westforth focuses on assertions that each straw purchaser presented Indiana identification and passed a background check, and that, in its view, straw purchasers should not be treated the same as distributors when there is no contractual relationship. These arguments should be rejected. To begin, when a gun store knows that

¹ This brief denotes the record and other filings as follows: “C__” for the record, “R__” for the report of proceedings, “City Br. __” for the City’s opening brief, “A__” for the appendix attached to that brief, and “Westforth Br. __” for Westforth’s response.

someone is a straw purchaser, that person’s residence and ability to pass a background check are immaterial because they are not keeping the gun for themselves. Furthermore, the City is not suing Westforth over the unilateral conduct of these straw buyers, but because the store intentionally adopted “a business model that ignores federal laws and regulations” to “access the lucrative criminal market for firearms in Chicago[.]” C30-32 ¶¶ 3, 7. Thus, this case is nothing like *Walden v. Fiore*, 571 U.S. 277 (2014), or other decisions holding that the unilateral conduct of the plaintiff or a third party cannot be the sole basis for jurisdiction over the defendant. Lastly, there is no requirement that a defendant have a contractual relationship with distributors of its products before these efforts can constitute contacts with the forum state. Such a rule would immunize non-resident defendants who access cross-border markets through illicit distribution channels.

Westforth also accessed the illegal market for firearms in Illinois in a second way: by selling guns that cannot legally be possessed in Chicago or Illinois directly to city and state residents. These direct sales include 47 assault weapons that the store sold in violation of the City’s municipal code, and by extension federal law. City Br. 5. These direct sales show Westforth’s disregard for firearms laws generally, as well as its intentional efforts to profit from Illinois’s stricter gun laws. The sales therefore “relate to” the City’s public nuisance and negligence claims and are an independent ground for jurisdiction.

The circuit court erred in dismissing the City’s claims for lack of jurisdiction. It further abused its discretion by denying the City leave to amend its pleading to address the court’s jurisdictional concerns. This denial was contrary to Illinois’s preference for liberal amendment—particularly given that this was the City’s first attempt to amend. Westforth’s

repeated and mistaken reference to “post judgment” proceedings ignore that the circuit court modified its dismissal to be without prejudice.

For all these reasons, Westforth’s arguments should be rejected, and the circuit court’s orders reversed.

I. This Court should reverse the circuit court’s dismissal of the City’s original complaint for lack of jurisdiction.

A. Westforth has minimum contacts with Illinois through its knowing and intentional sales to straw purchasers.

Westforth’s firearm sales to straw purchasers constitute the first of two independent bases for specific jurisdiction. Westforth does not address most of the City’s evidence that the store knowingly, intentionally, and repeatedly sold firearms into the criminal market through straw purchasers. *See, e.g.* C46-61 ¶¶ 52-95; *see also* City Br. 5-11 (summarizing evidence relating to straw sales). Nor does Westforth address the evidence of its constructive and actual knowledge that this conduct was supplying the criminal market in Illinois. *See, e.g.*, C1039-40; C2829; C1038; C3406 ¶ 13; *see also* City Br. 9.

Instead, Westforth contests only whether the in-store transactions count as contacts with Illinois.² First, it argues that the straw transactions cannot constitute contacts with Illinois because each of the straw purchasers presented Indiana identification. Second, it argues that *Walden* forecloses consideration of the straw purchasers’ downstream actions. Third, it contends the actions of the straw purchasers are irrelevant to jurisdiction, absent a formal distribution contract. Westforth is incorrect on all three points.

² Westforth repeatedly concedes that the City’s claims arise out of the store’s straw transactions. *See, e.g.*, Westforth Br. 23 (acknowledging that “all of the City’s claims are about alleged straw purchasers trafficking firearms”); *see also id.* at 1, 26.

1. Westforth had actual and constructive knowledge that it was accessing the criminal market in Illinois.

Westforth spends much of its brief repeating that each of its straw purchasers presented Indiana identification, claiming that this somehow precludes personal jurisdiction. *See, e.g.*, Westforth Br. 17, 26. But Westforth’s argument has a critical flaw: the straw purchasers’ supposed proof of residence is meaningless when store personnel knew that they intended to distribute—not retain—the guns. As the City’s expert explained in unrebutted testimony, the whole object of a straw purchase is for someone to present the requisite in-state identification and pass a background check *on behalf of someone who cannot*. *See* C3406 ¶ 13. The store cannot justify relying on identification from people it knew were not the actual buyers.

Indeed, the evidence shows Westforth knew its firearms were being diverted to Illinois despite the Indiana pretense. The store had actual knowledge based on specific information provided in an explicit ATF warning and from repeated outreach by Illinois law enforcement. *See* C2829, C1038-40. As explained in the opening brief, *see* City Br. 9, 13, 25-26, Westforth also had constructive knowledge from industry practice, common sense, press coverage, and the omnipresence of Illinois license plates in its parking lot. *See* C3406 ¶ 13; C39 ¶ 30; C917 n.8; C985. Against this evidence, even if there were some way to justify relying on a straw purchaser’s Indiana identification, that would at most raise a contested issue of fact that must be resolved in the City’s favor. *Levy v. Gold Medal Prods. Co.*, 2020 IL App (1st) 192264, ¶ 26.³

³ The record also contradicts Westforth’s assertions that (a) the store’s sales to straw purchasers “fully complied with all applicable law” (Westforth Br. 6), (b) the store “properly completed and submitted” all necessary forms for each transaction (*id.* at 7), and

Westforth makes a passing attempt to distinguish cases holding that a defendant's intent to contact a forum state can be inferred through constructive knowledge or the defendant's willful blindness to the jurisdictional implications of its conduct. Westforth Br. 25. But Westforth merely quibbles with factual details and fails to engage with or limit the cases' operative legal principles. It also overstates the purported distinctions. For example, it describes *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610 (8th Cir. 1994), and *Kollmorgen Corp. v. Yaskawa Electric Corp.*, 169 F. Supp. 2d 530 (W.D. Va. 1999), as cases "where [a] manufacturer contracted with [a] distributor to reach [a] market." *Id.* But *Barone* explicitly held that the defendant manufacturer could not claim ignorance simply because it had not formally contracted to distribute its products within the forum state. 25 F.3d at 613-14; *see also Kollmorgen*, 169 F. Supp. 2d at 536-37 ("It is enough that [foreign defendant] and [forum-state entity] work together—contractually *or otherwise*—to get [foreign defendant's] products into the stream of commerce." (emphasis added)). These decisions make clear that a defendant cannot avoid jurisdiction by sticking its head in the sand.

2. *Walden v. Fiore* offers no basis to set aside the foreseeable consequences of Westforth's sales to straw purchasers.

With no good answer to the City's evidence that its straw transactions were knowing and intentional efforts to reach the Illinois market, Westforth asks the Court to set aside the downstream consequences of those sales. Specifically, Westforth contends that under *Walden* the actions of straw purchasers are "not of jurisdictional significance." *See*,

(c) Westforth's customer "underwent FBI background checks" for each sale (*id.* at 4, 7). None of these claims holds true if the store knowingly transacted with straw purchasers. *Cf.* City Br. 9-10 (summarizing Westforth's citations by ATF in 2002, 2006, 2019, 2012, and 2017 for violations of law relating to straw purchasing).

e.g., *Westforth* Br. 16. But *Westforth* misreads *Walden*, relies on dicta, and overlooks obvious factual distinctions that limit its applicability in cases like this involving products moving in the stream of commerce.

First, *Walden* did not hold that a court must ignore third parties' actions when evaluating a defendant's contacts with the forum state. Rather, *Walden* involved a Georgia police officer who seized money from Nevada residents traveling through Atlanta's airport. 571 U.S. at 280. There were no relevant third parties and no products moving in the stream of commerce. The defendant's search of plaintiffs in Atlanta was in no sense an effort to form a contact with Nevada. *See id.* at 288-90. Indeed, the sole connection to Nevada was that the plaintiffs claimed to feel the loss of funds there, prompting the Supreme Court to hold that "the plaintiff cannot be the only link between the defendant and the forum." *See id.* at 285. In contrast, the basis for jurisdiction here is not the City's presence in Illinois but rather *Westforth*'s conscious decision to access the Illinois market by supplying firearms to people that it knew were reselling them there.

In *Ford Motor Co. v. Montana Eighth Judicial District Court*, the Supreme Court highlighted this same limitation in *Walden*, rejecting the kind of broad reading that *Westforth* advances. 592 U.S. 351, 370-71 (2021). The Court explained that "[i]n *Walden*, only the plaintiffs had any contacts with the [forum state, and] the defendant[] had never taken any act to 'form a contact' of his own." *Ford* at 370. Similarly, here the basis for jurisdiction is not the location of plaintiff's injury, but rather the defendant's deliberate efforts to access the forum state's markets. Consequently, "*Walden* has precious little to do with the case[] before us." *Id.*

Moreover, *Walden* did not hold that a defendant's contacts with the forum state can never involve an intermediary. Instead, to the extent *Walden* mentioned indirect contacts, it spoke of them approvingly, acknowledging that "relevant contact[s]" can be "either by the defendant in person *or through an agent, goods, mail, or some other means.*" 571 U.S. at 285 (emphasis added). Consequently, cases applying *Walden* in the context of third-party relationships and cross-border commerce have acknowledged the jurisdictional significance of intermediaries' actions. *See Khan v. Gramercy Advisors, LLC*, 2016 IL App (4th) 150435, ¶ 190 (noting, after lengthy discussion of *Walden*, that "minimum contacts do not have to be direct. A person can purposefully make minimum contacts with the forum state through someone else." (citation omitted)); *see also Kowal v. Westchester Wheels, Inc.*, 2017 IL App (1st) 152293, ¶ 35 (affirming, post-*Walden*, continued viability of stream-of-commerce theory of jurisdiction, and finding jurisdiction over Taiwanese company that distributed products via Virginia company). This Court should do likewise.

Westforth pivots from *Walden* to *Cisco Systems, Inc. v. Dexon Computer, Inc.*, 541 F. Supp. 3d 1009, 1015 (N.D. Cal. 2021), for the proposition that contacts with a forum state must not be "random, isolated, or fortuitous." Westforth Br. 27. While this is an accurate statement of the law, it does not help Westforth. In *Cisco*, the defendant argued that its contacts with California were "random, isolated or fortuitous" because its sales there made up only a tiny percentage of its overall sales. 541 F. Supp. 3d at 1017. The court rejected that argument, explaining that the fact that defendant "sold many more products elsewhere" did not render its contacts with the forum random, isolated, or fortuitous. *Id.* Here, Westforth's *hundreds* of intentional sales to straw purchasers only ten miles from the Illinois border, repeated violations of straw-purchasing laws, and refusal to adopt

safeguards to prevent straw-purchasing in the face of frequent visits from Illinois law enforcement and widespread reporting about its contribution to the illegal gun market in Chicago can hardly be described as random, isolated, or fortuitous.⁴

3. Westforth need not have a formal contractual relationship with straw purchasers for those sales to constitute contacts with Illinois.

Westforth’s final argument against jurisdiction via straw purchases is that these transactions do not count as contacts with the forum state absent a formalized, contractual distributor relationship. This misreads Illinois caselaw and ignores the U.S. and Illinois Supreme Courts’ repeated rejection of formalistic, mechanical tests.

Westforth relies principally on *Hernandez v. Oliveros*, 2021 IL App (1st) 200032, and *Schaefer v. Synergy Flight Ctr., LLC*, 2019 IL App (1st) 181779. These two decisions, Westforth asserts, show that a manufacturer and distributor must have “actually contracted” before efforts to reach the forum state can be considered “bilateral.” Westforth Br. 27-28. This is incorrect. Neither *Hernandez* nor *Schaefer* says that a contractual relationship is *required*; instead, they show only that a contract is *one way* to demonstrate bilateral outreach. *Hernandez* states that “[b]ilateral acts *can* occur when two parties have a business relationship *or* contractual understanding....” 2021 IL App (1st) 200032 at ¶23 (emphasis added). The disjunctive “or” contemplates that some relationships besides

⁴ *Williams v. Beemiller, Inc.*, 33 N.Y.3d 523, 527 (2019), which Westforth cites alongside *Cisco*, is likewise distinguishable. Westforth Br. 27. In *Beemiller*, the gun seller’s only contact with New York was a single gun trafficker and his two associates—unlike the dozens of straw purchasers and hundreds of illicit transactions at issue here. *See* 33 N.Y.3d at 530. Nor was there any indication in *Beemiller* that the gun dealer had intentionally refused to establish policies to identify and prevent straw purchasing so as to access the criminal market. To the contrary, the evidence in *Beemiller* indicated that the gun seller had “consulted with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to ensure [the] legality” of the gun sale that ultimately caused plaintiff’s injury. *Id.* at 527.

“contractual understandings” will suffice, and the phrase “can occur” (not “can *only* occur”) means that these are illustrative, not exhaustive. The words “contract” and “agreement” do not even appear in *Schaefer*, and the court spent little time discussing the relationship between the defendant and two downstream parties to whom it sold refurbished airplane parts other than to describe their interactions as “sales.” 2019 IL App (1st) 181779, ¶¶ 4-5.

In addition, Westforth does not meaningfully address the City’s argument that both the federal and state Supreme Courts have repeatedly rejected “mechanical” jurisdictional tests in favor of “highly realistic” approaches that consider the great variety of potential contacts. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478-79 (1985); *see also Russell v. SNFA*, 2013 IL 113909. In *Russell*, for example, the court held that an Italian aircraft manufacturer and its U.S. subsidiary “*effectively* operated as an American distributor for defendant’s tail-rotor bearings in the United States market.” 2013 IL 113909, ¶ 72 (emphasis added); *see also id.* ¶ 74. In doing so, the court focused on the practical aspects of the parties’ relationship—like the foreign defendant’s knowledge and intent that the downstream entity would deliver its product to new markets—rather than contractual formalities between them. *Khan v. Gramercy Advisors, LLC*, another case Westforth cites, likewise rejected a “checklist” of “common-law elements” as “too mechanical,” citing *Burger King*. 2016 IL App (4th) 150435, ¶¶ 170-71 (“[T]he question before us is whether a sufficient relationship existed under the Due Process Clause to permit the exercise of jurisdiction, not whether a partnership, joint venture, or other particular agency relationship between them existed.” (cleaned up)). In both *Russell* and *Khan*, the outreach to Illinois was thus “bilateral” in the sense that both parties intended it, and the defendant took

deliberate steps to bring it about. The same is true of Westforth's sales into the Illinois market through straw purchasers.

Another problem with Westforth's approach is that it would effectively insulate actors that engage in illegal interstate activities from accountability outside the state where they are physically present, since illicit relationships are rarely memorialized in contracts. In other words, Westforth's approach would give black-market actors greater protection than those who follow the rules. Nothing in the Due Process Clause mandates that incongruous result.

Finally, Westforth cites several cases as examples of courts purportedly rejecting a constructive-knowledge theory of personal jurisdiction in the absence of a formal distributor relationship. Westforth Br. 28-29. But with one exception,⁵ these cases all involve attempts to assert jurisdiction over a defendant based solely on the location of the plaintiff's harm. *See Companion Prop. & Cas. Ins. Co. v. U.S. Bank Nat'l Ass'n*, No. 3:15-CV-01300-JMC, 2016 WL 6781057, at *10 (D.S.C. Nov. 16, 2016) (foreign bank not subject to jurisdiction simply because its valuation of investment vehicle would negatively impact accounts insured by company in forum state); *Accident Ins. Co., Inc. v. U.S. Bank Nat'l Ass'n*, No. 3:16-cv-2621, 2017 WL 4238231, at *2 (D.S.C. Sept. 25, 2017) (same); *Maxitrate Tratamento Termico e Controles v. Super Sys., Inc.*, 617 F. App'x 406, 409 (6th Cir. 2015) (Brazilian insurer not subject to jurisdiction in Ohio simply because effects of

⁵ The one exception, *Flipside Wallets LLC v. Brafman Grp. Inc.*, is unpersuasive for a different reason: it declined to recognize the validity of a stream-of-commerce theory for personal jurisdiction, which is inconsistent with controlling Illinois precedent. *Compare* No. 2:19-cv-05356, 2020 WL 1330742, at *3 (E.D. Pa. Mar. 19, 2020) *with Russell*, 2013 IL 113909, ¶ 43 (“[O]ne way to satisfy the requirements for specific jurisdiction is under the ‘stream of commerce’ theory.”).

coverage denial were felt by parties who elected to litigate in Ohio); *Campinha-Bacote v. Wick*, No. 1:15-cv-00277, 2015 WL 7354014, at *4 (S.D. Ohio Nov. 20, 2015) (defendant who allegedly infringed copyright in Washington not subject to jurisdiction in Ohio simply because copyright holder felt effects there). Westforth, by contrast, is subject to jurisdiction in Illinois because it deliberately supplied the criminal marketplace for firearms there, not because the City feels the effects of the store’s misconduct there.

B. Westforth has minimum contacts with Illinois through its direct and undisputed long gun and handgun sales to Illinois residents, which “relate to” the City’s claims.

Westforth’s direct sales to Illinois residents provide an additional basis for specific personal jurisdiction. The bulk of Westforth’s response on this issue is that these sales do not “relate to” the City’s claims. But Westforth misunderstands the relevant legal standard, fails to grapple with the City’s arguments, and ignores the record. The City’s claim of harm from illegal firearms flooding its streets “relates to” Westforth’s direct sales to Illinois consumers—some of which are firearms that are illegal to possess within City limits. These sales furnish an independent basis for jurisdiction.

1. Westforth’s direct sales constitute purposeful availment.

As the City explained, Westforth took several steps to benefit from the Illinois market, including selling firearms to Illinois residents, soliciting Illinois customers, cultivating relationships with Illinois FFLs, and training its staff on special procedures to complete Illinois sales. City Br. 29-30. In total, Westforth sold 538 firearms to Illinois residents from 2018 through 2021. C945-66. These actions demonstrate that Westforth stood “ready and willing to do business with Illinois residents,” and, in fact, “knowingly

did [so].” *Illinois v. Hemi Grp. LLC*, 622 F.3d 754, 758 (7th Cir. 2010). This constitutes purposeful availment, as the circuit court recognized. A5.

Westforth admits that it made handgun and long gun sales to the Illinois market. Westforth Br. 4, 20, 23.⁶ It is thus uncontested that Westforth intentionally “directed some commercial activity at Illinois.” *Kothawala v. Whole Leaf, LLC*, 2023 IL App (1st) 210972, ¶¶ 27-29, 33. Below, Westforth also “agree[d] that some of its advertising reaches Illinois customers.” A4. It now argues that its advertising is directed only at Indiana residents and is jurisdictionally irrelevant. Westforth Br. 5, 17-18. Because Westforth’s undisputed long gun and handgun sales to the Illinois market alone are sufficient to demonstrate purposeful availment, this Court need not address these assertions. If the Court chooses to do so, it should reject Westforth’s new assertions, because the record does not support them.⁷

2. Westforth’s direct sales “relate to” the City’s claims.

The record also shows that Westforth’s direct sales to Illinois customers relate to the City’s claims in its original complaint, satisfying the second prong of the minimum-contacts analysis. In *Ford*, the U.S. Supreme Court explained that a claim “relates to” the defendant’s conduct when there is “an affiliation between the forum and the underlying

⁶ Westforth repeatedly refers to the handgun sales as “transfers” to Illinois FFLs. Westforth Br. 6, 15, 20, 23. “Transfer” is a term of art for a firearm retailer selling a handgun to an out-of-state resident. C1050; *see also* City Br. 12-13 (explaining Illinois sales). As Earl Westforth conceded, the Illinois resident purchasing the handgun for delivery at an Illinois FFL was Westforth’s customer for that transaction. C1050-51.

⁷ Earl Westforth testified that Illinois customers were eligible for some discounts advertised on Westforth’s Facebook page, C1047, and that one of the store’s print advertisements was circulated in Illinois, C1045. He further testified that—in answering questions from Illinois residents on the store’s Google business page—Westforth sought to sell firearms to Illinois residents. C1049. For jurisdictional purposes, it is enough that Westforth’s general advertising was “accessible” and applicable in Illinois, as Earl Westforth admitted it was, C1047. *See Curry v. Revolution Labs. LLC*, 949 F.3d 385, 400 (7th Cir. 2020); *see also Hemi Grp.*, 622 F.3d at 758.

controversy, principally, an activity or occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” 592 U.S. at 359-60 (citation omitted). This test is “lenient or flexible.” *Russell*, 2013 IL 113909, ¶ 83. Importantly, it does not require a “causal . . . relationship between the defendant’s in-state activity and the litigation.” *Ford*, 592 U.S. at 362.

Here, the City’s original complaint sought relief for the harms attributable to the “unlawful proliferation of firearms” in its neighborhoods, C63 ¶ 101, which it alleged were caused, in large part, by Westforth’s firearm sales to individuals that it knew, or should have known, were straw purchasers, C62-67 ¶¶ 96-125. The question is thus whether Westforth’s undisputed other contacts with Illinois—including direct firearms sales to Illinois residents—related to these claims.

They do, in two ways. *See City Br.* 30-32. *First*, jurisdictional discovery established that these direct sales included assault weapons and certain low-quality handguns, both of which were illegal for Chicago residents to possess. *See C3394-401 ¶¶ 8-14*. Thus, although these direct sales involve a different group of customers (and some violate a different subpart of the Gun Control Act), they are nonetheless *connected* to the harm at the core of the City’s claims (the influx of illegal firearms into Chicago).

Second, even setting aside that Westforth’s direct sales included illegal sales, those sales are connected to the City’s claims because Westforth sold the same makes and models of firearms to Illinois residents through both its direct and straw sales. *See City Br.* 31 (comparing C945-66 with C967-76); *see also Delahanty v. Hinckley*, 686 F. Supp. 920 (D.D.C. 1986) (non-resident gun manufacturer and its distributor could reasonably anticipate facing litigation in Washington, D.C. after one of their firearms was illegally

brought to D.C. and criminally used there since they also served the legitimate market for firearms in D.C.).

Rather than directly respond to the City's arguments, Westforth simply repeats the assertion that its direct sales are not related *enough* to the City's claims to satisfy *Ford*. Westforth Br. 11-15. Westforth appears to argue that *only straw sales* could possibly "relate to" the City's claims, because the claims in the original complaint center on straw sales. *See id.* at 14-15, 20, 22. This argument conflates "arising out of" and "relating to" into the same inquiry, when they are indisputably distinct. *See Ford*, 592 U.S. at 362 ("[T]he suit [must] 'arise out of *or relate to* the defendant's contacts with the forum.' The first half of that standard asks about causation; but the back half, after the 'or,' contemplates that some relationships will support jurisdiction without a causal showing." (citations omitted)). The City has maintained that the claims in its original complaint "relate to," rather than "arise out of," Westforth's direct sales to Illinois. *See, e.g.*, R723.⁸

Westforth also fails to meaningfully distinguish Illinois cases holding that, under the stream-of-commerce theory, courts should avoid drawing "restrictive" or "narrow" distinctions when deciding whether claims concerning one aspect of a defendant's business "relate to" contacts made through another line of the business. City Br. 31-32 (quoting *Russell*, 2013 IL 113909, ¶ 84; *Harding v. Cordis Corp.*, 2021 IL App (1st) 210032, ¶ 44). Westforth deems these cases inapplicable simply because they involved defective-products claims. *See* Westforth Br. 24-25. But as the City explained, courts have applied the stream-

⁸ In any case, the City sought leave to amend its complaint to make clear that its public nuisance and negligence claims also arise out of Westforth's direct sales of illegal firearms, which the circuit court incorrectly denied. *See* City's Br. 45, 47; *infra* pp. 17-20.

of-commerce theory outside the defective-products context. *See* City Br. 36-67. Westforth has no answer for this point and simply ignores it.

Ford presented an analogous array of business activities, ranging from sales of different vehicles to advertising to repairs. The Court found it “predictable” that Ford could be haled into the forum states where Ford served the markets for “the very vehicles that the plaintiffs allege malfunctioned and injured them in those States.” 592 U.S. at 365, 368. Likewise, Westforth served Illinois’s market for illegal firearms through its direct sales of prohibited firearms, and the influx into Chicago of those illegal firearms was the source of the City’s injuries. Westforth can hardly claim surprise that its undisputed sales of firearms to Illinois residents subject it to specific personal jurisdiction in Illinois for claims based on the “unlawful proliferation of firearms” in Chicago, C63 ¶ 101.

Westforth’s cited cases do not suggest otherwise. *Morrison v. JSK Transportation, Ltd.*, 2022 IL App (4th) 210542-U, is inapposite because the plaintiff’s claim that the defendant negligently serviced her vehicle in Arkansas had nothing to do with service centers in Illinois that the plaintiff had never visited. *Id.* ¶¶ 9, 41. Thus, the plaintiff’s unrelated action of traveling through Illinois was “the only thing connecting defendant to Illinois.” *Id.* ¶ 42. Here, by contrast, Westforth’s *own* actions of selling illegal firearms directly to Illinois residents connect Westforth to the City’s claim of harms stemming from illegal firearms. As for Westforth’s remaining cases, *see* Westforth Br. 13-14, it does not explain how they can be analogized to this situation, and all are factually inapposite.⁹

⁹ *See Hepp v. Facebook*, 14 F.4th 204, 208 (3d Cir. 2021) (claim that image had been misappropriated did not relate to social media companies’ marketing and advertising efforts in Pennsylvania, where those activities did not involve the image); *Sambrano v. United Airlines, Inc.*, No. 4:21-cv-01074, 2021 WL 5178829, at *7 (N.D. Tex. Nov. 8,

Westforth also cites *Cox v. HP Inc.*, 492 P.3d 1245 (Or. 2021) (en banc), for the notion that the exercise of specific jurisdiction should be reasonably foreseeable. *See* Westforth Br. 13. As just explained, that consideration is met here. And *Cox* should not otherwise alter this Court’s analysis because it is also factually dissimilar. *See* 492 P.3d at 1259-61 (claims regarding equipment tester’s evaluation of product that malfunctioned in Oregon were unrelated to tester’s “minimal” Oregon contacts, where there was no evidence that services tester provided in Oregon involved similar products or were aimed at similar clients).

In short, Westforth’s undisputed direct sales to Illinois residents relate to the City’s claims of harm from the flood of illegal firearms. These sales constitute minimum contacts with Illinois sufficient to support specific jurisdiction.

II. The circuit court incorrectly denied the City leave to file a first amended complaint.

The circuit court abused its discretion by denying the City leave to file a first amended complaint. Westforth admits that amendment would cause it no prejudice, Westforth Br. 33 n.12, and does not dispute that the amendment would serve the ends of justice—the “primary consideration.” *Bangaly v. Baggiani*, 2014 IL App (1st) 123760,

2021) (no specific jurisdiction over employer in Texas for one plaintiff’s claims where harm from its policy would not be felt nor directed there); *Murphy v. Viad Corp.*, No. 3:21-cv-10897, 2021 WL 4504229, at *6-7 (E.D. Mich. Oct. 1, 2021) (claim of illness caused by product that was never sold or marketed in Michigan was unrelated to sale of separate product to that forum); *Zurich Am. Life Ins. Co. v. Nagel*, 571 F. Supp. 3d 168, 179-81 (S.D.N.Y. 2021) (no specific jurisdiction over parent and subsidiary companies for employee discrimination claims where there was no evidence that their forum contacts “related to these claims in some less than trivial way”); *O’Neil v. Somatics, LLC*, No. 1:20-cv-00175, 2021 WL 4395115, at *4-5 (D.N.H. Sept. 24, 2021) (product liability claims did not relate to defendant’s “remote and infrequent contacts” with New Hampshire, which included product repair work unconnected to the alleged defect).

¶ 200. Instead, Westforth resists amendment by mischaracterizing the applicable legal standard, the procedural history of this action, and the City’s proposed claims.

A. The liberal policy of allowing amendments before final judgments applies to the City’s motion.

Contrary to Westforth’s misreading of the law, Westforth Br. 30-31, the City’s request to amend its complaint is a pre-judgment motion that should be evaluated under section 2-616(a), not section 2-616(c). This is because the circuit court first modified its May 25, 2023 Order to be a dismissal *without prejudice* before considering the City’s motion to amend. C4938; R815, 819. Generally, “a dismissal ‘without prejudice’ signals that there was no final decision on the merits.” *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 24. Accordingly, the circuit court applied section 2-616(a)’s pre-judgment standard, R819, and declined to adopt Westforth’s argument that the post-judgment standard governs, C4900-01; *see also, e.g., Loyola Acad. v. S & S Roof Maint., Inc.*, 146 Ill. 2d 263, 273-76 (1992) (applying 2-616(a) standard where trial court had dismissed plaintiff’s remaining claim on a motion to dismiss); *Muirfield Vill.-Vernon Hills, LLC v. K. Reinke, Jr. & Co.*, 349 Ill. App. 3d 178, 195-97 (2d Dist. 2004) (applying *Loyola* factors to motion to amend after determining that case should have been dismissed without prejudice). This Court should likewise apply section 2-616(a)’s pre-judgment standard, which mandates that amendment be freely and liberally allowed. *Cnty. of Peoria v. Couture*, 2022 IL App (3d) 210091, ¶ 46.

Below, the circuit court incorrectly disregarded Illinois’s policy favoring liberal amendment because the alleged pleading defect involved personal jurisdiction. R824-27. This overlooks cases permitting amendment when facing dismissal for lack of personal jurisdiction. *See City Br. 50* (citing *Saia v. Scripto-Tokai Corp.*, 366 Ill. App. 3d 419, 422-

23 (1st Dist. 2006); *Dickie v. Cannondale Corp.*, 388 Ill. App. 3d 903, 904 (1st Dist. 2009)). Westforth likewise ignores these cases. *See* Westforth Br. 35 n.13.

B. The circuit court abused its discretion in denying leave to amend.

The circuit court correctly determined that the four factors in *Loyola Academy* governed its analysis, but then misapplied those factors to deny the City leave to amend. *See* R819-24. Westforth concedes that amendment would cause it no prejudice. Westforth Br. 33 n.12. The remaining factors also favor leave to amend: amendment would cure any jurisdictional deficiencies, the City timely sought leave, and this is the City's first request. City Br. 41-49. Westforth's contrary arguments are unpersuasive.

To start, Westforth is incorrect that the City's proposed amendments constitute "new and different claims about entirely different transactions." Westforth Br. 32. The City's proposed amendments did not add any new claims. *See* City Br. 45, 47. Instead, the City added support for its existing claims by explaining that Westforth's direct sales to Illinois residents contribute to the same harm of illegal firearms on City streets. C4813-15 ¶¶ 109-13; C4818 ¶ 125; *see also see Sojka v. Bovis Lend Lease, Inc.*, 686 F.3d 394, 399 (7th Cir. 2012) ("One claim supported by multiple theories does not somehow become multiple claims."). The proposed amendments do not alter the City's underlying injuries or claims. Even if they did, section 2-616(a) explicitly permits "changing...or adding new causes of action."

Further, Westforth's submission that "the City's brief is silent" on how its proposed amendments would "remedy its jurisdiction problem," Westforth Br. 32, overlooks the City's detailed explanation to that effect both on appeal and in the record below, *see* City Br. 45-46; *see also* C4701-03 ¶¶ 20-22. Specifically, these amendments establish that the

City's injuries from the influx of illegal firearms both arise out of, and relate to, Westforth's direct sales to Illinois residents. *See* C4763-64 ¶¶ 1, 3; C4767-68 ¶¶ 8, 11; C4782 ¶¶ 46-47; C4811-18 ¶¶ 102-07, 110, 113-14, 125. Additionally, the City's proposed amendments added detail about Westforth's knowing and intentional sales to straw purchasers who were distributing guns in Illinois. *See* City Br. 44-46 (adding, among other things, a former employee's statement that Earl Westforth insisted on completing a straw sale despite being told the customer was trafficking guns to Chicago). The City's proposed amendments therefore directly address the jurisdictional concerns the circuit court articulated.

As to timeliness and prior opportunities to amend, Westforth's arguments rest largely on a mischaracterization of the procedural timeline. The City did not delay for "well over a year" after obtaining jurisdictional discovery. Westforth Br. 33-34. To the contrary, Westforth completed its document production only on September 9, 2022—six days before the City's opposition to Westforth's motion to dismiss was due. C895, 4933. The City then promptly notified the circuit court, in its opposition brief, that it intended to seek amendment based on information learned during jurisdictional discovery. *See* C927 n.10; *see also* R700-02 (reiterating intent to amend). Far from demonstrating "gamesmanship," Westforth Br. 30, the record demonstrates that the City promptly stated its intent to amend.¹⁰

Westforth, moreover, identifies no case requiring a plaintiff to delay or abandon defense of its complaint and seek amendment instead. To the contrary, courts routinely

¹⁰ That two years passed between when the City filed its complaint and the circuit court granted Westforth's motion to dismiss, *see* Westforth Br. 34, was due to reasons outside the City's control. For example, jurisdictional discovery took 13 months—including a motion to compel (*see* C522) and a reassignment to a new circuit court judge (*see* C649, C749-57)—to complete.

permit amendment after dismissal. *See, e.g., Loyola*, 146 Ill. 2d at 275 (amendment was timely two months after summary judgment, where plaintiff previously indicated intent to amend); *Jeffrey M. Goldberg & Assocs., Ltd. v. Collins Tuttle & Co.*, 264 Ill. App. 3d 878, 882, 886 (1st Dist. 1994) (amendment was timely when filed after trial court dismissed parts of second amended complaint and denied reconsideration). And the rule demanded by Westforth would be particularly illogical here, where the City amassed considerable jurisdictional discovery and thus had a good-faith basis for arguing that the circuit court had personal jurisdiction over Westforth to adjudicate its original complaint. The City should not be penalized for defending its complaint before seeking leave to amend immediately after dismissal.

CONCLUSION

For these reasons and those in its opening brief, Plaintiff-Appellant requests that this Court reverse the circuit court's orders.

Respectfully submitted,

/s/ James E. Miller

Mary B. Richardson-Lowry
Myriam Zreczny Kasper
Stephen Kane
City of Chicago Dept. of Law
2 North LaSalle Street, Suite 580
Chicago, Illinois 60602
(312) 744-3564
myriam.kasper@cityofchicago.org
appeals@cityofchicago.org

Janet Carter* (ARDC #6347051)
James E. Miller* (ARDC # 6338015)
Priyanka Gupta Sen (ARDC #6320720)
Everytown Law
450 Lexington Avenue, P.O. Box 4184
New York, NY 10163
(646) 324-8201
psen@everytown.org

Michael A. Scodro
Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606
(312) 782-0600
Firm No. 43948
mscodro@mayerbrown.com

*Admitted pro hac vice

**ATTORNEYS FOR PLAINTIFF-APPELLANT
CITY OF CHICAGO, ILLINOIS**

May 1, 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 5,988 words.

/s/ James E. Miller

James E. Miller

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 **Reply Brief of Plaintiff-Appellant** to be served electronically via Odyssey eFileIL upon Defendant-Appellee's counsel of record listed below.

Scott L. Braum
Timothy R. Rudd
Madison M. Duff
slb@braumlaw.com
trr@braumlaw.com
mmd@braumlaw.com

Richard J. Leamy, Jr.
Rachel S. Nevarez
rjleamy@wmlaw.com
rsnevarez@wmlaw.com

James T. Nyeste
jnyeste@coveragelaw.com

/s/ James E. Miller

James E. Miller