

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2021-000557

Dwayne Thompson, ... Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are
the..... Petitioners.

APPENDIX
VOLUME THREE

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	DEFENDANT LG CHEM,
vs.	)	AMERICA, INC.'S REPLY
	)	MEMORANDUM IN SUPPORT OF
ROLLING FOG VAPOR COMPANY,	)	ITS RENEWED MOTION TO
LLC, LG CHEM, LTD., AND LG	)	DISMISS PLAINTIFF'S
CHEM AMERICA, INC.,	)	COMPLAINT FOR LACK OF
	)	PERSONAL JURISDICTION
Defendants.	)	

Defendant LG Chem America, Inc. ("LGCAI") respectfully submits this brief Reply Memorandum of Law in Further Support of its Renewed Motion to Dismiss, requesting an Order dismissing Plaintiff's Amended Complaint against it for lack of personal jurisdiction.

INTRODUCTION

Plaintiff has the burden of proving jurisdiction, and the Honorable J. Cordell Maddox previously found that the same information Plaintiff now submits in opposition to LGCAI's renewed motion to dismiss was insufficient to establish personal jurisdiction. Plaintiff now contends that he does not need any discovery, and instead asks this Court to deny LGCAI's motion based on the same facts and the same law that were presented to Judge Maddox.

"There is a long-standing rule in this State that one judge of the same court cannot overrule another." *See Charleston Cnty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995); *see also Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950). The fact that other South Carolina circuit court judges have ruled differently in other, similar cases cannot not change this well-settled rule.

And Judge Maddox was correct in determining that the pleadings and facts Plaintiff previously submitted, and now submits again, were insufficient to establish specific jurisdiction over LGCAI. As discussed below, LGCAI's position is that the decisions by other South Carolina circuit courts were, respectfully, erroneous, and the constitutional Due Process analysis required by controlling United States Supreme Court precedent requires dismissal on the facts alleged and presented with Plaintiff's opposition. The Court need look no further than the decision in the Florence County Circuit Court *Ranae Moore* case (C.A. No. 2018-cp-44-00054), cited by Plaintiff, in which the Court failed to address the "arising out of" element of the specific jurisdiction test to see that the decision cannot stand the test of any appeal. Not only that, but Plaintiff had already submitted that decision to Judge Maddox before he ruled. And numerous appellate courts in other states, including the Supreme Court of Missouri and the Ninth Circuit Court of Appeals, have recognized that the same constitutional principles cited in LGCAI's motion support only the conclusion that constitutional due process cannot be satisfied by the exercise of general or specific jurisdiction over LGCAI here.

But this Court need not, and should not, engage in any such determination, because it is wholly improper for Plaintiff to ask this Court to set aside Judge Maddox's decision.

Having failed to serve any discovery on LGCAI since the prior order was issued, the facts stand as they did before Judge Maddox, and LGCAI's Motion must be granted.

FACTS

Plaintiff alleges that he purchased an LG Brown Hg2 INR 18650 3000mAh battery from Defendant Rolling Fog Vapor Company, LLC ("Rolling Fog") to use in his vaping device. (See Compl., ¶¶ 2, 8–9.) Plaintiff alleges that Rolling Fog Vapor did not provide him with a case for the HG2 cell. (*Id.*, ¶ 10). Plaintiff alleges that he was injured when the battery combusted while

in his pants pocket. (*Id.*, ¶ 12.) Plaintiff alleges that LGCAI designed, manufactured, supplied, sold, imported, and distributed the battery. (*Id.*, ¶ 5.)

LGCAI is a Delaware corporation with its principal place of business in Atlanta, Georgia; it is not incorporated in South Carolina, it is not headquartered in South Carolina, it has never owned or rented any property in South Carolina, and it has never had any employees in South Carolina. (**Exhibit A**, Affidavit of HyunSoo Kim, dated April 24, 2019, ¶¶ 4–9.)

Plaintiff also incorrectly alleges, without evidentiary support, that LGCAI is “in the business of manufacturing, fabricating, designing, assembling, distributing, selling, inspecting, warranting, retailing, wholesaling, and advertising the e-cigarette products that the Plaintiff purchased and used.” (Compl., ¶ 6.) To the contrary, LGCAI could not have manufactured the battery cell at issue in this case because it does not have any manufacturing plants. (**Ex. A**, Kim Aff., ¶ 11.) In addition, LGCAI has never conducted any business with Rolling Fog Vapor and does not direct or control its actions. (*Id.*, ¶ 12). LGCAI has never designed, distributed, advertised, or sold any lithium-ion battery cell for use by individual consumers as replaceable, rechargeable batteries in e-cigarette or vaping devices. (*Id.*, ¶ 10.)

RELEVANT PROCEDURAL HISTORY

LGCAI previously moved to dismiss Plaintiff’s complaint for insufficient service of process and, in the alternative, for lack of personal jurisdiction. LGCAI’s motion was supported by admissible evidence. (**Exhibit A**.) Plaintiff opposed the motion, relying on his allegations and the same inadmissible chart he now offers in opposition to LGCAI’s motion, and the same law.

The Honorable J. Cordell Maddox heard LGCAI’s Motion on September 19, 2019 and ruled from the bench. In his oral ruling, Judge Maddox stated: “whether or not they’ve subjected themselves to jurisdiction . . . factually, there’s not enough information to grant or deny at this

point.” Plaintiff later submitted a written order, which Judge Maddox signed, and then took the position that the written order did not limit discovery to jurisdictional issues.

LGCAI then moved for reconsideration, or in the alternative, clarification of Judge Maddox’s December 2019 written order. Over Plaintiff’s opposition, Judge Maddox granted LGCAI’s motion for clarification with regard to the jurisdictional issue, entering a written order on July 20, 2020 that expressly confirmed that the Court’s prior ruling was that the Court “needs more information before ruling on the issue of personal jurisdiction, an issue that should be decided before proceeding with the merits of the case.” (*Id.* at 3.) Judge Maddox then allowed 90 days of jurisdictional discovery regarding “whether the battery at issue in this lawsuit was designed, manufactured, and sold by LG Chem or LGCAI and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina.”

Plaintiff served no discovery requests of any kind on LGCAI, and at the expiration of the jurisdictional discovery period, LGCAI filed its renewed motion to dismiss. Plaintiff now instead continues to rely on the same allegations and facts which Judge Maddox had already found were insufficient to satisfy the Plaintiff’s burden to establish personal jurisdiction over LGCAI. Therefore, under the above stated rule, LGCAI’s Motion must now be granted.

ARGUMENT

I. JUDGE MADDOX PREVIOUSLY RULED THAT PLAINTIFF HAD NOT MET HIS BURDEN OF ESTABLISHING A PRIMA FACIE SHOWING OF PERSONAL JURISDICTION.

A. It cannot be disputed that Plaintiff has the burden of establishing a prima facie case of personal jurisdiction.

“The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage, the plaintiff meets his burden of

proving personal jurisdiction over a nonresident defendant by a prima facie showing of jurisdiction either in the complaint or in affidavits. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005); *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012).

Judge Maddox previously ruled in his July 20, 2020 Order that Plaintiff had not met his burden though either the allegations of the complaint or the facts submitted. Nothing has changed since Judge Maddox ruled that “the allegations in the Complaint and the parties’ submissions do not provide enough information” to determine whether jurisdiction exists. Having informed the Court that he intends to rely on the same information that he previously presented to Judge Maddox, Plaintiff has effectively conceded that LGCAI’s motion must be granted, because (1) it is undisputed that Plaintiff bears the burden of proving jurisdiction and (2) Judge Maddox already held that the information Plaintiff now relies on was insufficient.

B. It is improper to ask this court to overturn Judge Maddox’s order.

“There is a long-standing rule in this State that one judge of the same court cannot overrule another.” *See Charleston Cnty. Dep’t of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995); *see also Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950). Specifically, as the South Carolina Supreme Court has held:

[T]he prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge, except in cases where the right to do so has been reserved to the succeeding Judge, when it is allowed by rule or statute, or when the subsequent order does not substantially affect the ruling or decision represented by the previous order.

Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 410, 581 S.E.2d 161, 168 (2003) (quoting *Dinkins v. Robbins*, 203 S.C. 199, 202, 26 S.E.2d 689, 690 (1943)).

Earlier in this case, the Honorable J. Cordell Maddox previously ruled, in pertinent part, as follows:

[T]he allegations in the Complaint and the parties' submissions do not provide enough information upon which to base a decision as to whether the battery at issue in this matter was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information still remains an issue that prevents a decision on personal jurisdiction. . . . [T]he Court needs more information before ruling on the issue of personal jurisdiction, an issue that should be decided before proceeding with the merits of the case.

See **Exhibit B**, 7/20/20 Order Granting Def. LG Chem, Ltd. & LGCAI's Joint Mot. for Clarification & Denying Recons., at 3 (citing *Bridges v. Wyandotte Worsted Co.*, 243 S.C. 1, 9, 132 S.E.2d 18, 22 (1963), *overruled in part on other grounds*, *Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002); *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 538–39, 783 S.E.2d 839, 842 (Ct. App. 2016)). The Order allowed 90 days to conduct jurisdictional discovery. (7/20/20 Order, at 2.)

Now, however, with Plaintiff having presented no additional evidence to support a finding of personal jurisdiction over LGCAI, Plaintiff argues in his opposition that “this Court has adequate information to rule on LGCAI’s motion” and asks for the Court to find that it has personal jurisdiction based on the same allegations and the same facts that Judge Maddox found to be insufficient.¹ (Pl.’s Opp’n, at 1.)

¹ Plaintiff’s jurisdictional arguments and exhibits are virtually identical to those Plaintiff had already presented to Judge Maddox. The only additional exhibit that Plaintiff submits in opposition to LGCAI’s renewed motion is a copy of orders in *Holtzendorff v. Pirate’s Cove Vapor Lounge, LLC, et al.*, No. 2019-CP-07-02270) (Aiken County) and *Williamson v. Pirates Cove Vapor Lounge LLC*, 2019CP702270 (S.C.C.P., Beaufort Cty.). Plaintiff also submits a shorter version of the same inadmissible chart he had already previously submitted to Judge Maddox in opposition to LGCAI’s first motion.

Because Plaintiff has presented no additional evidence beyond what he presented to Judge Maddox to support a finding of personal jurisdiction over LGCAI, and none of the exceptions to the rule apply,² this Court should grant LGCAI's motion to dismiss based on Plaintiff's failure to meet his prima facie showing of jurisdiction because—as Judge Maddox has previously ruled—Plaintiff has not “provide[d] enough information upon which to base a decision as to whether the battery at issue in this matter was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants.”

1. It is far too late for Plaintiff to seek reconsideration of Judge Maddox's July 20, 2020 order.

To the extent that Plaintiff may instead seek to characterize his position as seeking reconsideration of Judge Maddox's order, it is far too late to do so. A party may seek reconsideration of an order under Rule 59(e) to correct factual or legal errors in an order by way of a Motion to Alter or Amend. *See Doe v. Doe*, 324 S.C. 492, 502, 478 S.E.2d 854, 859 (Ct. App. 1996); *see also* James F. Flanagan, *South Carolina Civil Procedure* 494 (3d ed. 2010) (“A Rule 59(e) motion provides an opportunity for the trial court to correct errors in the findings and perhaps change the result.”). However, under Rule 59(e), the motion must be made not later than ten days after written notice of entry of the order, and under Rule 59(g), a copy of the motion must be furnished to the judge within ten days after filing the motion. That was not done, and it is too late for seeking reconsideration of the July 20, 2020 Order.

² None of the exceptions to the rule set forth in *Sauner* apply to Judge Maddox's Order. The right to overrule his 7/20/20 Order so has not been reserved to a succeeding judge; reversal of the prior order is not allowed by rule or statute; and a subsequent order would substantially affect the ruling or decision represented by the previous order if it were to hold that the same evidence presented to Judge Maddox does constitute a prima facie showing of jurisdiction.

II. JUDGE MADDOX WAS CORRECT WHEN CONCLUDING THAT PLAINTIFF'S ALLEGATIONS AND "CHART" WERE NOT SUFFICIENT TO SUPPORT A FINDING OF JURISDICTION.

A. LGCAI did not consent to jurisdiction in South Carolina.

Plaintiff argued that by registering to do business with the South Carolina Secretary of State and having a registered agent in this state, LGCAI had consented to jurisdiction. However, registering to do business or having a registered agent in South Carolina does not confer jurisdiction. Plaintiff incorrectly argues that statutory language in § 33-15-105 gives a blanket consent to personal jurisdiction for all South Carolina courts for every purpose. The statute specifically gives jurisdiction that is limited to one issue: determination of tax liability. The statute states as follows: "By obtaining a certificate of authority, the foreign corporation agrees to be subject to the jurisdiction of the Department of Revenue and the courts of this state to determine its South Carolina tax liability, including withholding and estimated taxes, together with related interest and penalties, if any." S.C. Code Ann. § 33-15-105 (emphasis added).

Plaintiff cites no authority for his argument that plain language of the code section should be expanded to provide unlimited personal jurisdiction for all purposes, and there is none. All authority is to the contrary. *See* S.C. Code Ann. § 33-15-101 (establishing the requirement that foreign corporations transacting business in the state obtain a certificate of authority) & S.C. Reporter's Comments to § 33-15-101, at § 2 ("A corporation can be qualified to do business in South Carolina and have appointed an agent for service of process *but still not be conducting sufficient activities to be subject to suit here.*") (emphasis added); *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 563 S.E.2d 352 (Ct. App. 2002), *overruled in part on other grounds by Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003) (holding that a North Carolina bank was not subject to personal jurisdiction in South Carolina simply because it had registered

with the South Carolina Board of Financial Institutions and appointed an agent for service of process); *see also* *Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 143 (4th Cir. 2020) (rejecting plaintiff's argument that under S.C. Code § 33-15-105, a non-resident defendant's registration to do business in South Carolina was a consent to personal jurisdiction in this state).

Even if South Carolina law could be construed to reach the result Plaintiff argues, which it cannot, any such interpretation would be inconsistent with controlling United States Supreme Court precedent, which precludes the exercise of general jurisdiction over a corporation in states other than its state of incorporation or principal place of business, except in exceptional circumstances not present here. *See, e.g., Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). It is unclear whether Plaintiff is arguing that general jurisdiction exists, but if so, any such conclusion would be foreclosed by the above authorities.

In addition, Plaintiff already presented this argument to Judge Maddox and, based on the same facts and law, Judge Maddox already concluded this was insufficient to support the exercise of jurisdiction.

B. This Court cannot exercise specific jurisdiction over LGCAI consistent with due process.

Under South Carolina law, “[t]he determination of whether the requirements of due process are satisfied involves a two-prong analysis: (1) the ‘power’ prong, in which minimum contacts provide courts the ‘power’ to adjudicate the action; and (2) the ‘fairness’ prong, which requires the exercise of jurisdiction to be ‘reasonable’ or ‘fair.’” *See Southern Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992).

To meet the power prong, the suit must arise out of or relate to the defendant's contacts with the forum. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–94, 611 S.E.2d 505, 509–10 (2005); *see also Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017).

Specifically, the court must “find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *Southern Plastics*, 310 S.C. at 260, 423 S.E.2d at 131 (emphasis added).

1. As Judge Maddox found, the allegations in Plaintiff's complaint were not sufficient to meet his burden of proving a prima facie case of personal jurisdiction.

Under South Carolina law, a plaintiff must allege specific facts, not just conclusory allegations, to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 433, 434, 436, 665 S.E.2d 660, 665–67 (Ct. App. 2008).

Plaintiff's Complaint does not set forth specific facts. To the contrary, Plaintiff's jurisdictional allegations are set forth in conclusory fashion, devoid of specific supporting facts, and states that LGCAI is "engaged in the business of . . . manufacturing, designing, testing, marketing, certifying, supplying, selling, importing, and distributing lithium ion rechargeable batteries" (Compl. ¶ 3) and that LGCAI "ha[s] continuing contacts with South Carolina by transacting substantial business in the state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state." (*Id.* ¶ 7.)

Further, even if these conclusory allegations were true, they would still be insufficient to establish specific personal jurisdiction in this case, because Plaintiff does not allege any nexus between his claims and any action allegedly directed by LGCAI to South Carolina specifically, as required by constitutional due process. Therefore, the complaint itself is insufficient to meet

Plaintiff's prima facie burden. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 151, 723 S.E.2d 835, 839 (Ct. App. 2012) (affirming trial court's granting of Rule 12(b)(2) motion for plaintiff's failure to allege any facts to show that defendants had regular transactions of business or solicitation, engaged in a persistent course of conduct, derived substantial revenue, or consumed goods or services rendered in South Carolina); *Sonoco Prods. Co. v. ACE INA Ins.*, 877 F. Supp. 2d 398, 407 (D.S.C. 2012) (dismissing case against a Canadian insurance company for lack of jurisdiction when plaintiffs "offer nothing more than a conclusory statement to show that ACE INA solicited business in South Carolina."); *see also Gault v. Thacher*, 367 F. Supp. 3d 469, 474 (D.S.C. 2018).

Here, the allegations in Plaintiff's complaint are pleaded in the same conclusory fashion that the *Sullivan* and *Sonoco* court found to be insufficient to meet a prima facie showing of personal jurisdiction. These legal conclusions cannot meet the fact-pleading standard required by South Carolina courts.

2. Nothing in the record shows that Plaintiff's claims arose out of any activities LGCAI directed to South Carolina, as required by binding United States Supreme Court and South Carolina precedent.

Presumably realizing that his complaint did not meet the requirements of meeting his jurisdictional burden through allegations in the complaint, Plaintiff has attempted to reintroduce facts from his opposition to the original motion to dismiss by way of exhibits attached to his Opposition. Other than orders from different cases—none of which are evidence to show that Plaintiff's claims in this case arose out of LGCAI's alleged contacts with South Carolina—Plaintiff's only facts outside of his insufficiently pleaded complaint to meet his prima facie burden is a chart (attached to his opposition as Exhibit 2) purporting to show imports and exports through the Port of Charleston. That exhibit, however, is inadmissible for purposes of this motion because

it is inadmissible hearsay and lacks authentication and an adequate foundation. *See Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153, 268 S.E.2d 42, 43 (1980); S.C. R. Evid. 901, Note (citing *State v. Jeffcoat*, 279 S.C. 167, 303 S.E.2d 855 (1983)).

Moreover, even if admissible, the shipping records and other documents Plaintiff submitted in opposition to LGCAI's renewed motion to dismiss do not support the conclusion that his claims arose from contacts formed by LGCAI with South Carolina and were therefore insufficient to satisfy Plaintiff's burden. Instead, the proffered import data, even if it were accurate and admissible, at best illustrates that raw chemicals were shipped to the port and that batteries were shipped to car and automotive component manufacturers such as Volvo and other automotive component manufacturers. Plaintiff does not argue that his claims had anything to do with raw chemicals or any automotive components.

On the other hand, LGCAI introduced admissible evidence through the sworn affidavit of Hyunsoo Kim confirming that it has never sold or authorized anyone else to sell LG 18650 battery cells to consumers for use as standalone, removeable batteries with e-cigarette devices (or for any other purpose) and has never done any business with the South Carolina retailer that sold the subject battery to the Plaintiff or other entities allegedly in the chain of distribution supplying lithium ion cells into a consumer market for standalone batteries. (**Exhibit A.**) Regardless of whether raw chemicals, automotive batteries, or even LG 18650 battery cells were shipped to South Carolina, Plaintiff has still failed to make any connection between those alleged shipments and his claims against LGCAI when the subject battery was brought to South Carolina and sold in a South Carolina retail store as the result of the unilateral actions of third parties.

In sum, it would be error to deny LGCAI's motion to dismiss when: Plaintiff has not submitted any affidavits to contradict LGCAI's affidavit; Plaintiff has not submitted any

admissible evidence supports any finding of the required connection between LGCAI, South Carolina, and the claims at issue; and Plaintiff has waived any right to engage in further jurisdictional discovery.

3. Plaintiff's allegations of stream of commerce and nationwide contacts cannot support the exercise of jurisdiction here.

The South Carolina Supreme Court addressed the “stream of commerce” theory of jurisdiction most recently in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008). There, the Supreme Court held that a foreign tobacco manufacturer was subject to personal jurisdiction in South Carolina based on its analysis that the foreign defendant purposefully availed itself of the privilege of doing business in each of the fifty U.S. States, including South Carolina.

Sumatra does not support the exercise of jurisdiction over LGCAI in South Carolina based on Plaintiff's claims, for two reasons. First, the decision has not been reviewed since the United States Supreme Court's clarifying pronouncements in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011) and *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017). To the extent the Court may interpret *Sumatra* to allow the exercise of personal jurisdiction based solely on allegations that a defendant placed a product into the stream of commerce with knowledge or awareness or expectation it might make its way to South Carolina, that reading would be inconsistent with the United States Supreme Court's decisions.

Since *Sumatra* was decided in 2008, the United States Supreme Court has spoken several times on issues of personal jurisdiction. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Walden v. Fiore*, 571 U.S. 277 (2014); *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Taken together, these cases reinforce the two principles that must guide this Court's decision: (1) a non-resident defendant

cannot be subject to personal jurisdiction in a state based on the unilateral actions of third parties; and (2) the exercise of specific jurisdiction requires a plaintiff to establish that his claims are sufficiently related to minimum contacts formed by the defendant with the forum state to satisfy due process.

Further, the U.S. Supreme Court rejected “nationwide” stream of commerce jurisdiction in *J. McIntyre*, decided three years after *Sumatra*. Not only did *J. McIntyre* make clear in 2011 that mere awareness that a product might be sold in all fifty states was not sufficient to support the exercise of jurisdiction, the Supreme Court in 2017 again spoke, reiterating that specific jurisdiction requires “a connection between the defendant's contacts with the forum and the specific claims at issue.” *Bristol-Myers*; see also *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

Also, in *Eriksen v. ECX, LLC, et al.*, No. 79473-I, 2020 WL 6395534 (Wash. Ct. App. Nov. 2, 2020), for example, the Court of Appeals of Washington affirmed a trial court’s order dismissing LG Chem, Ltd. from a case involving similar claims about a re-wrapped and re-branded lithium ion battery cell for lack of personal jurisdiction. Washington follows Justice Breyer’s view of “stream of commerce” jurisdiction. See *State v. LG Elecs., Inc.*, 186 Wash. 2d 169, 181, 375 P.3d 1035, 1042 (2016).

Regardless of whether *Sumatra* can withstand constitutional scrutiny after these decisions, it is distinguishable because in this case, the subject product arrived in South Carolina through the unilateral actions of third parties, not as the result of any action of LGCAI directed to South Carolina. The “stream of commerce” metaphor, even if applied broadly, is not a substitute for establishing the constitutionally required connection among the non-resident defendant, the forum, and the plaintiff’s claims. The South Carolina Supreme Court itself in *Sumatra* recognized that

“[t]he question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case,” 379 S.C. at 88, 666 S.E.2d at 221 (emphasis added) (citing *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005)).

The facts of the case before this Court are more similar to *Cockrell*, in which the South Carolina Supreme Court held that our state courts had no specific personal jurisdiction over a Massachusetts baseball center and its director, which had certified aluminum baseball bats that caused injury in South Carolina. The court found that the bats did not arrive in South Carolina through the non-resident defendants’ efforts, but instead through the unilateral efforts of third parties. *Id.* at 492, 611 S.E.2d at 508–09; *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). Here, similar to *Cockrell*, the 18650 battery arrived in South Carolina as the result of the unilateral actions of third parties and not as the result of any conduct by LGCAI directed to South Carolina. (*See Kim Aff.*, ¶ 13.)

In another recent case involving similar constitutional principles, the South Carolina federal district court addressed the issue of whether the court had specific jurisdiction over a German car manufacturer in a products liability action. In *Alexander v. Bayerische Motoren Werke AG*, No. 7:18-CV-03065-DCC, 2020 WL 2098108, at *7 (D.S.C. May 1, 2020), the manufacturer BMW showed that the plaintiff’s vehicle was not manufactured or marketed by BMW in South Carolina. Therefore, BMW contended that the plaintiff was unable to establish that her claims arose out of any contact between BMW and this state. *Id.* In response, the plaintiff contended that the lawsuit arose out of the manufacturer’s decision to build a manufacturing plant, open dealerships, and sell cars in South Carolina, which put the defendant on notice that it could be haled into court for products liability claims for defects in any of its models. *Id.* The court disagreed, finding that the product was manufactured in Germany and then sold to its American

subsidiary for distribution and that the manufacturer did not control the distribution. *Id.* The court held that “Plaintiff must show that Defendant BMW AG did ‘something more’ than place Plaintiff’s vehicle in a stream of commerce which might bring the vehicle into South Carolina for the Court to have specific personal jurisdiction.” *Id.* (citing *Asahi Metal Indus. Co., Ltd. v. Superior Ct. of Cal., Solano Cty.*, 480 U.S. 102, 111 (1987)). As in the case before this Court, the *Alexander* plaintiff failed to articulate what affirmative step the German defendant allegedly took to purposefully direct any activity toward South Carolina.

The uncontroverted evidence in this case shows that the subject battery arrived in South Carolina through the unilateral actions of third parties, not as a result of any action that LGCAI directed to South Carolina. (*See Kim Aff.*, ¶ 13.)³ Here, the subject battery came to South Carolina through unrelated third parties that were not authorized by LGCAI.

4. Plaintiff has offered no other authorities that support a finding that due process is satisfied by the exercise of jurisdiction, and courts around the country recognize that due process principles do not permit the exercise of jurisdiction over LGCAI based on the record before this Court

Plaintiff asks this Court to reverse the ruling entered by a prior judge in this very case, to follow instead circuit judges in three other South Carolina cases, *Moore v. Planet Vapor Inc., et al.*, No. 2018-CP-02884 (Florence County); *Holtzendorff v. Pirate’s Cove Vapor Lounge, LLC, et al.*, No. 2019-CP-07-02270 (Aiken County); and *Williamson v. Pirates Cove Vapor Lounge, LLC*, No. 2019-CP-07-02270 (Beaufort Cty.). (*See Pl.’s Opp’n*, at 7–8 & exs. 3, 4, 5.) However, LGCAI

³ This important fact distinguishes *Sumatra* from the case before this Court, and *Sumatra* itself recognized that “[t]he question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case,” 379 S.C. at 88, 666 S.E.2d at 221 (citing *Cockrell*). *Cockrell* found jurisdiction lacking because the product arrived in South Carolina through the unilateral acts of third parties. *Id.* at 492, 611 S.E.2d at 508–09 (“[T]he focus must center on the contacts generated by the defendant, and not on the unilateral actions of some other entity.”); *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984).

respectfully submits that these decisions are inconsistent with the above-cited controlling authorities, and Plaintiff offers no authority that would allow this court to reverse Judge Maddox's decision in favor of these decisions rendered by other circuit court judges in other cases.

Plaintiff also asks this Court to follow a circuit judge in a different South Carolina case that did not involve LGCAI and, despite Plaintiff's claim to the contrary, was based on significantly different facts. In *Estate of Sheppard v. Mercedes-Benz USA, LLC, et al.* (2010-CP-38-1558), it was undisputed that the foreign defendant designed and manufactured the subject vehicle in Germany with the specific intent that it be sold and driven within the U.S., including South Carolina, through the sale by the foreign defendant's wholly owned U.S. subsidiary that acted as the exclusive distributor of the subject vehicle throughout this country. By contrast, here there is no evidence that LGCAI undertook any effort to serve a consumer market for replaceable, rechargeable e-cigarette batteries in South Carolina, or anywhere in the United States. On the contrary, the uncontroverted evidence in this case reflects that the subject battery came to South Carolina through the unilateral actions of unrelated and unauthorized third parties.

Plaintiff's reliance on other cases from other jurisdictions are similarly unavailing. (*See* Pl.'s Opp'n at 7–9.) These cases from other jurisdictions were decided decades ago, long before the United States Supreme Court's recent decisions clarifying the issues of personal jurisdiction in *J. McIntyre* (2011), *Walden* (2014), and *Bristol-Myers* (2017), which have reiterated the "arising out of" requirement and confirmed that unilateral actions of third parties cannot establish jurisdiction over a nonresident defendant.

Plaintiff also does not inform the Court of the numerous state and federal courts in other jurisdictions have applied the same bedrock principles of constitutional due process cited in this brief to find that jurisdiction is lacking over LG Chem, Ltd. in cases involving similar claims to

those at issue here. In *State ex rel. LG Chem, Ltd. v. McLaughlin*, No. SC 97991, 2020 WL 2845764 (Mo. banc June 2, 2020), for example, the Supreme Court of Missouri recognized that due process does not allow the exercise of jurisdiction where a product arrives in the forum state as the result of the unilateral actions of third parties, and not by any action the defendant directed to the forum state. Many of those cases also involved claims against LGCAI, and those courts applied similar principles to conclude that personal jurisdiction was also lacking over LGCAI, including courts in Arizona, New York, North Carolina, Texas, and New Jersey. In *Carman Daniel Empson*, 2020, No. CV 2019-051737 (**Exhibit C**), for example, the Superior Court of Arizona, Maricopa County granted LGCAI's Motion to Dismiss for Lack of Personal Jurisdiction in a detailed 33-page order that found no jurisdiction even after allowing far-ranging and extensive discovery from LG Chem, Ltd. (*See Empson* Ariz. Super. Ct. Order (Sept. 23, 2020) and *Eric Miller v. LG Chem, Ltd.*, No. CVS 1721 (N.C. Superior Ct. Apr. 20, 2020) (**Exhibit D**). This is the very same principle supporting the outcome in *Cockrell*, which LGCAI showed was more analogous to this case than *Sumatra*, and LGCAI respectfully submits this is the result mandated by application of controlling United States Supreme Court authority.

C. As Plaintiff has failed to satisfy the power prong, the fairness prong need not be considered.

The Court need not reach the fairness prong because Plaintiff did not meet the power prong. Further, even if the Court did consider the fairness prong, the exercise of specific jurisdiction over LGCAI is neither constitutionally reasonable nor fair, and Plaintiff has not addressed any of the factors for making that determination. *See S. Plastics Co. v. S. Commerce Bank*, 310 S.C. at 263, 423 S.E.2d at 132 (setting forth the factors such as “the burden on the defendant[;] . . . the forum state's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient solution to

controversies; and the shared interest of the several states in furthering fundamental substantive social policies”); *Grayson Consulting, Inc. v. Cathcart*, Nos. 2:07-cv-00593, 2013 WL 5755400, at *3 (D.S.C. Oct. 23, 2013) (“The weaker the contacts . . . the less likely it is that jurisdiction is reasonable.”). [T]he “primary concern” is “the burden on the defendant.” *Bristol-Myers*, 137 S. Ct. at 1780. Consideration of these factors affirms that it would be unfair and unreasonable to subject LGCAI to personal jurisdiction in South Carolina when LGCAI has no contacts with South Carolina related to the claims at issue. Accordingly, even if the power prong were satisfied, the exercise of specific jurisdiction over LGCAI would not comport with fundamental fairness.

WHEREFORE, for the foregoing reasons, LGCAI respectfully requests that the Court enter an Order dismissing LGCAI from this action for lack of personal jurisdiction and such other and further relief the Court deems just and proper.

Respectfully submitted,

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Attorneys for Defendant LG Chem America, Inc.

Columbia, SC
February 1, 2021

EXHIBIT A

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	
vs.	)	<u>AFFIDAVIT OF HYUNSOO KIM</u>
	)	
ROLLING FOG VAPOR COMPANY,	)	
LLC, LG CHEM, LTD., and LG CHEM	)	
AMERICA, INC.,	)	
	)	
Defendants.	)	

Personally appeared before me, HyunSoo Kim, who first being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and am competent to testify to the matters contained in this Affidavit.

2. I am the Compliance Manager and authorized representative for LG Chem America, Inc. ("LGCAI"). I have personal knowledge of the facts described in this Affidavit, and I have been authorized by LGCAI to make this Affidavit. If called upon as a witness, I could and would testify competently under oath as to all such facts based upon my personal knowledge and the business records of LGCAI.

3. This affidavit is submitted in support of LGCAI's Motion to Dismiss for Lack of Personal Jurisdiction.

4. LGCAI sells and distributes various petrochemical materials and products including ABS resin, Engineered Plastic (EP), Rubbers, Acrylate, Super Absorbent Polymer (SAP), and Specialty Polymers. LGCAI does not have any manufacturing plants, and it focuses on sales and/or distribution only.

5. LGCAI is a Delaware incorporated entity with its principal place of business in the State of Georgia. It was incorporated in the State of Delaware on March 1, 2009.

6. LGCAI does not presently, nor has it ever owned, leased, rented, purchased, or controlled any property in the State of South Carolina.

7. LGCAI does not presently, nor has it ever maintained a bank account in the State of South Carolina.

8. LGCAI does not presently, nor has it ever maintained a mailing address, telephone, or telefax number in the State of South Carolina.

9. LGCAI has no employees that reside or work in South Carolina.

10. LGCAI does not and has never designed, manufactured, distributed, advertised, or sold any lithium-ion power cell for use by individual consumers as replaceable, rechargeable batteries in electronic cigarette devices.

11. Plaintiff Dwayne Thompson alleges he was injured while carrying a battery in his pants pocket. Compl., ¶ 11. Plaintiff identifies the subject battery as an "LG Brown Hg2 INR 18650 3000mAh." *Id.*, ¶ 2. If the subject battery identified in Plaintiff's Complaint was, in fact, an LG brand 18650 lithium-ion cell, the cell could not have been manufactured by LGCAI, as LGCAI does not have any manufacturing plants.

12. The Complaint alleges that Plaintiff Dwayne Thompson "purchased the subject battery . . . from Defendant [Rolling Fog Vapor Company, LLC]'s store located at 958 East Main Street in Spartanburg, South Carolina." Compl., ¶ 9. LGCAI has never conducted any business with Rolling Fog Vapor Company, LLC ("Rolling Fog"), and does not direct or control the actions of Rolling Fog. LGCAI has never authorized Rolling Fog to distribute or sell LG brand lithium ion battery cells for any purpose, and did not authorize Rolling Fog to distribute or sell LG branded lithium ion battery cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices.

13. LGCAI has never authorized any distributor, retailer, or re-seller to distribute or sell any lithium ion battery cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices.

I, HyunSoo Kim, hereby declare under penalty of perjury that the foregoing statements made by me are true and correct. I am aware that if any foregoing statements made by me are willfully false, I am subject to punishment.

Executed this 24th day of April, 2019.

HyunSoo Kim

SWORN to and subscribed before me

this 24th day of April, 2019.

David Hyun Kwak (L.S.)

Notary Public for _____

My Commission Expires: _____

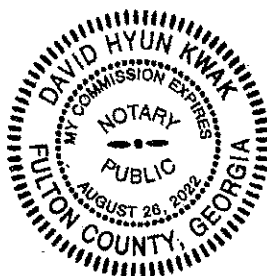


EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	
vs.	)	<u>ORDER GRANTING DEFENDANT</u>
	)	<u>LG CHEM, LTD. AND LG CHEM</u>
ROLLING FOG VAPOR COMPANY, LLC,	)	<u>AMERICA, INC.'S JOINT MOTION</u>
LG CHEM, LTD., and LG CHEM	)	<u>FOR CLARIFICATION AND</u>
AMERICA, INC.,	)	<u>DENYING RECONSIDERATION</u>
	)	
Defendants.	)	

This matter is before the Court on Defendants LG Chem, Ltd. ("LG Chem") and LG Chem America, Inc.'s ("LGCAI") Joint Motion for Clarification or, Alternatively, Reconsideration. After considering all submissions and arguments of counsel, and for the reasons stated below, the Court (1) grants LG Chem and LGCAI's Joint Motion for Clarification to clarify that only limited discovery is permitted at this time, limited to the threshold issues of whether LG Chem or LGCAI designed, manufactured, or sold the subject battery and the extent of LG Chem's and LGCAI's jurisdictional contacts with South Carolina, and (2) denies the Motion for Reconsideration of the Court's December 12, 2019 and December 23, 2019 Orders.

FACTS

In this products liability action, Plaintiff seeks recovery for injuries allegedly sustained when a lithium-ion battery cell exploded in his pocket. (Compl. ¶¶ 11–12.) Plaintiff alleges he purchased the battery cell, an "LG Brown Hg2 INR 18650 3000mAh" model cell allegedly manufactured by LG Chem, from Defendant Rolling Fog Vapor Company, LLC ("Rolling Fog"), a South Carolina retailer of e-cigarettes and accessories. (*Id.* ¶¶ 2, 9.) Plaintiff filed this action on

March 4, 2019, asserting claims of negligence, strict liability, and breach of warranty against LG Chem, LGCAI, and Rolling Fog.

On April 24, 2019, LG Chem filed a Motion to Dismiss and Quash Service of Process, and LGCAI filed a separate Motion to Dismiss. Defendants and Plaintiff filed memoranda in support of and opposing the motions on September 18, 2019. The parties appeared for a hearing on September 23, 2019, and the Court gave its oral ruling and thereafter entered written orders denying LG Chem's and LGCAI's motions on December 6 and December 21, 2019 respectively (hereinafter referred to as the "written orders").

Following entry of the written orders, LG Chem and LGCAI filed this Motion for Clarification or, Alternatively, Reconsideration on December 16, 2019. The Motion has been fully briefed by both parties, and all submissions have been considered by the Court.

LEGAL STANDARD

Under Rule 54(b) of the South Carolina Rules of Civil Procedure, this Court has the authority to clarify, or reconsider, its written orders denying LG Chem's Motion to Quash and denying both LG Chem's and LGCAI's motions to dismiss for lack of personal jurisdiction. Under Rule 54(b), "any order . . . which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." *See Broom, Jr. v. Andrews*, 2017 WL 10701535, at *2 (S.C. Ct. Com. Pls. Nov. 2, 2007) ("Rule 54(b) . . . instructs that unless the Court expressly directs the entry of judgment, any intermediate order is subject to revision, at any time, until a final judgment is issued."). Courts may also clarify their prior orders under Rule 54(b). *See, e.g., Carpenter v. Measter*, 2010 WL 4219701 (S.C. Ct. Com. Pls. Feb. 23,

2010) (issuing a revised order under Rule 54(b) clarifying its previous order granting partial summary judgment).

ANALYSIS

A. Motion for Reconsideration

Having carefully considered the arguments and submissions by LG Chem, LGCAI, and Plaintiff supporting and opposing LG Chem and LGCAI's Joint Motion for Reconsideration, the Court denies the motion to the extent it seeks reconsideration. As set forth in the Court's oral rulings at the September 23, 2019 hearing, the allegations in the Complaint and the parties' submissions do not provide enough information upon which to base a decision as to whether the battery at issue in this matter was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information still remains an issue that prevents a decision on personal jurisdiction. Therefore, Defendants' Motion for Reconsideration of the motions to dismiss for lack of personal jurisdiction is denied.

B. Motion for Clarification

Defendants requested clarification of the written orders, which did not directly address whether the issue of jurisdiction should be decided before proceeding with the merits of the case, including the parties engaging in any merits-related discovery. As stated above, the Court needs more information before ruling on the issue of personal jurisdiction, an issue that should be decided before proceeding with the merits of the case. *See Bridges v. Wyandotte Worsted Co.*, 243 S.C. 1, 9, 132 S.E.2d 18, 22 (1963) ("The decision of the question of whether the court has jurisdiction is a preliminary one to the determination of the merits of the cause"), *overruled in part on other grounds, Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002); *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 538–39, 783 S.E.2d 839, 842 (Ct. App. 2016) (explaining the trial court's decision

to “permit[] the parties to conduct discovery on the jurisdictional issues raised in [the defendant’s] motion to dismiss” and to hold “its ruling on the motion to dismiss in abeyance pending completion of the jurisdictional discovery”). Discovery must first determine whether the battery at issue in this lawsuit was designed, manufactured, and sold by LG Chem or LGCAI and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina. Therefore, the written orders are clarified to hold that the parties may conduct discovery for a period of 90 days following entry of this Order limited to these issues.

CONCLUSION

For the foregoing reasons, the Court allows the parties 90 days from the date of entry of this Order to conduct discovery limited to the specific issues of whether LG Chem or LGCAI designed, manufactured, or sold the subject battery and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina. After the close of jurisdictional discovery, LG Chem and LGCAI may refile motions to dismiss. LG Chem and LGCAI shall have no obligation to file a responsive pleading until 15 days after the jurisdictional discovery period ends.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Judge, Sixteenth Judicial Circuit

Union, South Carolina

_____, 2020



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al
Case Number: 2019CP4400054
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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EXHIBIT C

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-051737

09/14/2020

HONORABLE THEODORE CAMPAGNOLO

CLERK OF THE COURT
G. Chavez
Deputy

CARMAN DANIEL EMPSON

RICHARD P TRAULSEN

v.

OASIS VAPE, et al.

MATTHEW D KLEIFIELD
ADAM J KRESS
KENNETH W. PEARSON
RACHEL ATKIN HEDLEY
DILLON JAMES STEADMAN
JUDGE CAMPAGNOLO

UNDER ADVISEMENT RULING

An Oral Arguments Hearing was held on August 19, 2020, in regard to LG Chem America, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction, filed on August 26, 2019, and LG Chem America, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint for Lack of Personal Jurisdiction, filed July 6, 2020. The matter was taken under advisement at the conclusion of the Oral Arguments Hearing.

The Court has reviewed and considered Defendant LG Chem America, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction; Plaintiff's Response to Defendant's Motion to Dismiss; Defendant's Reply; Defendant's Motion to Dismiss Plaintiff's First Amended Complaint for Lack of Personal Jurisdiction; Plaintiff's Response to Defendant's Motion to Dismiss Plaintiff's First Amended Complaint, Motion for Leave to Amend Complaint, and Request for Jurisdictional Discovery; Defendant's Reply Brief in Further Support of Its Motion to Dismiss, and Opposition to Plaintiff's Untimely Request for Leave to Amend; Defendant's Notice of Filing Supplemental Authority; Plaintiff's Notice of Filing Supplemental Authorities;

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MARICOPA COUNTY

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the Complaint; the First Amended Complaint; the affidavits and exhibits attached to the foregoing pleadings; all other relevant filings; the oral arguments; and the applicable law.

Plaintiff contended that the First Amended Complaint stated sufficient grounds to exercise personal jurisdiction over Defendant LG Chem America, Inc. (LGCA) under the theory of specific jurisdiction. LGCA contended that Plaintiff has failed to provide a sufficient basis to allow this Court to exercise personal jurisdiction over LGCA. Plaintiff conceded that this Court does not have general jurisdiction over LGCA.

Factual Background

On or about May 19, 2017, Plaintiff Carman Daniel Empson (Plaintiff or Mr. Empson) purchased an "LG HG2 18650" battery from Defendant Oasis Vape ("Oasis"), whose retail store was in Mesa, Arizona. Oasis Vape is a dba of Defendant Oueis Gas, Inc. Mr. Empson used the battery to power his electronic cigarette device. On or about May 27, 2017, Mr. Empson suffered burn injuries when the battery, which he was carrying in his pants pocket, burst into flames. There is no dispute that Mr. Empson purchased the "LG HG2 18650" battery from Oasis, and that his injuries occurred in Arizona. The Court will sometimes refer to the lithium-ion batteries as "batteries" or "battery cells."

LGCA does not manufacture any products. It markets and sells certain products for LG Chem, Ltd. (LGCL). LGCL manufactures 18650 lithium-ion battery cells, which it distributes and sells to specifically authorized companies that incorporate the battery cells into finished products. Those manufacturers then sell their finished products to retailers and/or consumers. LGCL does not and did not market or sell any lithium-ion batteries to Arizona companies or to Arizona consumers. LGCA marketed or sold a relatively small number of LGCL petrochemical products in Arizona, but it did not market or sell any lithium-ion batteries in Arizona.

The 18650 lithium-ion battery cells manufactured by LGCL were obtained by unknown or unnamed third parties, and subsequently sold to Oasis for use as e-cigarette batteries. There is no evidence that LGCL sold its battery cells to these unknown or unnamed companies. The sale of its battery cells to retailers or consumers is not authorized by LGCL. LGCL does not intend for its battery cells to be sold to or used by consumers to power e-cigarettes. These batteries can cause injuries if they are used for improper purposes not allowed nor sanctioned by LGCL or LGCA.

Procedural Background

Mr. Empson filed his lawsuit on May 21, 2019. The First Amended Complaint was filed on June 17, 2020. In addition to Oueis, Mr. Empson also sued LGCL and LGCA. In its Motions

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to Dismiss, LGCA contended that the allegations in the Complaint and the Amended Complaint were insufficient for the Court to exercise personal jurisdiction over LGCA.

LGCL also filed motions to dismiss under Rule 12(b)(2) in this case. The Court has issued a separate ruling as to LGCL's Motion to Dismiss in this case. Mr. Empson's counsel in this case filed a similar lawsuit in the Superior Court of Arizona against LGCA and LGCL on behalf of different plaintiffs in *Christopher Tague, et al. v. Hi-Tec Vapor, LLC, et al.*, in CV 2018-055863 (the *Tague* case). By stipulation, LGCA was dismissed from the *Tague* case. The remaining non-resident defendant in the *Tague* case was LGCL. The Court has issued a separate ruling as to LGCL's Motion to Dismiss in the *Tague* case.

In his Response to LGCA's original Motion to Dismiss, Mr. Empson made an alternative request to conduct jurisdictional discovery. In a Minute Entry filed on January 13, 2020, the Court denied Mr. Empson's request to conduct jurisdictional discovery, but allowed Mr. Empson to rely on jurisdictional discovery that was conducted against LGCL in the *Tague* case. The Court did not believe that jurisdictional discovery was necessary as to Mr. Empson's claim against LGCA. To the extent that it was relevant to LGCA, Mr. Empson was allowed to rely on any jurisdictional discovery against LGCL in the *Tague* case.

In his Response to LGCA's Motion to Dismiss the Amended Complaint, Mr. Empson again made an alternative request to conduct jurisdictional discovery. The Court denied LGCA's renewed request for jurisdictional discovery in a Minute Entry filed on July 27, 2020. During oral arguments on August 19, 2020, Mr. Empson's counsel requested that the Court reconsider its Minute Entry of July 27, 2020. The Court finds that Mr. Empson's counsel failed to provide sufficient reasons to support a reconsideration of its earlier decision to deny jurisdictional discovery as to LGCA. The Court finds that there is no valid reason to change its ruling, which remains the law of the case.

The Court ordered that the LGCL Motions to Dismiss in both cases would be held in abeyance pending the completion of jurisdictional discovery in the *Tague* case, which was initially ordered to end on September 13, 2019. Due to numerous jurisdictional discovery disputes in the *Tague* case, the time for completing the jurisdictional discovery, and to file supplemental briefings on the *Tague* Motion to Dismiss, was extended to May 6, 2020. This was later extended to May 27, 2020 by stipulation of the parties. The *Tague* parties timely filed their supplemental briefs in regard to LGCL's Motion. The matter was then taken under advisement as of May 28, 2020 in the *Tague* case. That was later extended to August 19, 2020.

Mr. Empson filed his Response to the Amended Complaint on July 16, 2020, and LGCA filed its Reply on July 28, 2020, which were similar to Plaintiffs' Supplemental Response and LGCL's Reply in the *Tague* case. Mr. Empson's Response to the Motion to Dismiss the

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Amended Complaint in this case contained the same exhibits as the Plaintiffs' Supplemental Response in the *Tague* case. After reviewing the additional pleadings, the Court determined that oral arguments in both cases would be helpful for the Court's consideration and determination of the Motions.

Discussion

Mr. Empson contended that LGCL manufactured, sold, marketed and distributed lithium-ion batteries in the United States that were ultimately sold in Arizona by some third party to Oasis, which resulted in the injury to Mr. Empson. Mr. Empson contended that the Court has specific jurisdiction over LGCA, because LGCA is a marketer, seller and/or distributor of LGCL's lithium-ion batteries. Mr. Empson contended that LGCA is a wholly-owned subsidiary of LGCL, and it, therefore, had sufficient contacts with Arizona, by virtue of the unnamed and unrelated third parties' sales and distributions of the lithium-ion batteries in Arizona. There was no evidence that LGCA marketed or sold LGCL's lithium-ion batteries to Oasis or to anyone else in Arizona.

Rule 12(b)(2)

In ruling on a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, the Court looks to whether the plaintiff has made a *prima facie* showing of jurisdiction. *Arizona Tile, L.L.C. v. Berger*, 223 Ariz. 491, ¶8 (App. 2010). The plaintiff has the burden of establishing personal jurisdiction. The burden then shifts to the defendant to rebut this showing. *Id.* When a defendant sufficiently challenges personal jurisdiction, the plaintiff cannot merely rest on the bare allegations in the complaint. *Armstrong v. Aramco Services Co.*, 155 Ariz. 345, 348 (App. 1987). At that point, the plaintiff must present facts, by affidavit or otherwise, supporting personal jurisdiction. *Id.* Conflicts in the affidavits and pleadings must be resolved in a plaintiff's favor in determining whether a *prima facie* case has been established. *Macpherson v. Taglione*, 158 Ariz. 309, 312 (App. 1988).

Separate Corporate Identities

Before discussing the jurisdictional issues, the Court believes it necessary to address the parent-subsidary issue. The Court noted that portions of Mr. Empson's Response to LGCA's Motions to Dismiss lumped separate and independent actions by LGCA and LGCL into concerted actions. Both the Amended Complaint and Mr. Empson's Responses to LGCA's Motions to Dismiss conceded that LGCL, rather than LGCA, solely conducted some of the challenged activity. But then, Mr. Empson seemed to attribute LGCL's separate actions to LGCA, based upon the allegation that LGCL is LGCA's parent company. There are instances in the Amended Complaint and in Mr. Empson's Responses that generically refer to the

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“Defendants,” even though the activities in those instances were clearly not performed by LGCA.

Mr. Empson provided no basis, other than “upon information and belief,” to support the allegation that LGCA is a wholly-owned subsidiary of LGCL. Both parties, however, cited to unreported federal district court cases in which evidence was apparently admitted that LGCA was a wholly-owned subsidiary of LGCL. *See Yamashita v. LG Chem, Ltd.*, 2020 WL 4431666, *1 (D. Haw. July 31, 2020) (referring to LGCA as LGCL’s “wholly-owned marketing subsidiary”); *Celgard, LLC v. LG Chem, Ltd.*, 2015 WL 2412467, *26 (W.D.N.C. May 21, 2015) (stating that LGCA was a wholly-owned subsidiary of LGCL that was responsible for marketing LGCL petrochemicals, information and electronic materials, and batteries to customers in the United States, and for sales and program management to U.S. customers, with no direct involvement in the manufacture of LGCL products). Even though Mr. Empson provided no independent evidence on this issue, LGCA did not dispute the allegation. The Court will presume that LGCA is a wholly-owned subsidiary of LGCL for marketing purposes.

Having made such presumption, this Court notes that there were no allegations that LGCA’s corporate activities were intertwined with those of LGCL, or that one was the alter ego of the other. The Court in *Celgard, supra*, stated that LGCA did not share any officers with LGCL. *Id.* at *26. There were no allegations that the two corporations had committed fraud, or some other wrongful act, such that their separate corporate identities should be disregarded.

A corporation is not liable for the acts of its subsidiary, even if the subsidiary is wholly owned and financed by the parent company, or has the same officers. *Bischofshausen, Vashbinder, and Luckie v. D.W. Jaquays Mining and Equipment Contractors Co.*, 145 Ariz. 204, 209 (App. 1985). The concept of a corporation as a separate entity is a legal fact, not a fiction. *Id.*

There are no allegations that would support a disregard of LGCA’s and LGCL’s separate corporate identities. There are simply no allegations that the alleged acts of LGCL should be imputed to LGCA. The Court will, therefore, not impute Mr. Empson’s general allegations against LGCL to the alleged independent actions of LGCA. Even though some court cases involving LGCA and LGCL have lumped the two corporations together as the “LG Chem Defendants,” this Court does not believe that is an appropriate title for the reasons stated herein.

Personal Jurisdiction

The seminal case on personal jurisdiction over a non-resident defendant is *International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement*, 326 U.S. 310 (1945). In that case, the United States Supreme Court held that in order for a State to have personal jurisdiction over a non-resident defendant, the non-resident defendant must have

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certain minimum contacts with that State, such that the maintenance of the lawsuit does not offend traditional notions of fair play and substantial justice. *Id.* at 316

A State court may exercise long-arm personal jurisdiction over a non-resident defendant to the fullest extent allowed by the Due Process Clause of the United States Constitution. *A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 569 (1995), citing ARIZ. R. CIV. P. 4.2(a). The personal jurisdiction requirement represents a restriction on judicial power, not as a matter of sovereignty, but as a matter of individual liberty. *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1121 (9th Cir. 2002). Accordingly, the jurisdictional issue hinges on federal law. *A. Uberti & C. v. Leonardo*, 181 Ariz. at 569.

Absent actual consent, which does not exist in this case, personal jurisdiction can exist through general or specific jurisdiction. Mr. Empson contended that this Court has the authority to exercise specific jurisdiction over LGCA. Mr. Empson conceded that this Court does not have general jurisdiction over LGCA.

Specific Jurisdiction

Technically, specific jurisdiction requires an initial two-step analysis. The first step is to determine whether the State's long-arm statute extends to the permissible limits under the Due Process Clause. The Arizona Supreme Court, however, determined that the interpretation of the language of Rule 4(e)(2) is coextensive with due process requirements. *Batton v. Tennessee Farmers Mutual Insurance Co.*, 153 Ariz. 268, 270 (1987). Therefore, the Arizona Supreme Court has directed that the second step regarding minimum contacts is all that needs to be analyzed to insure that a defendant's due process rights are met. *Id.*

The United States Supreme Court has held that specific jurisdiction over an out-of-state defendant is appropriate when that defendant has "minimum contacts" with the forum state. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). As part of the minimum contacts analysis, the Supreme Court has also included a reasonableness component. As stated by the Arizona Supreme Court in *Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Properties*, 226 Ariz. 262, ¶25 (2011):

Considering all of the contacts between the defendants and the forum state, did those defendants engage in purposeful conduct for which they could reasonably expect to be haled into that state's courts with respect to that conduct? If such minimum contacts exist, the defendant can fairly be expected to respond to all claims arising out of those contacts, whatever the plaintiff's theory of recovery.

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Therefore, Arizona may exercise specific personal jurisdiction over a non-resident defendant when the aggregate of the defendant's contacts with Arizona demonstrates (1) purposeful conduct by the defendant targeting the forum, rather than accidental or casual contacts or those brought about by the plaintiff's unilateral acts; (2) a nexus between those contacts and the claim asserted; and (3) that exercise of jurisdiction would be reasonable. *Beverage v. Pullman & Comley, LLC*, 232 Ariz. 414, ¶¶8-9 (App. 2013), *affirmed as clarified*, *Beverage v. Pullman & Comley, LLC*, 234 Ariz. 1, ¶¶2-4 (2014). *Accord, Amba Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784, 789 (9th Cir.1977)

However, both the Supreme Courts of the United States and Arizona have tended to divide the 3-prong minimum contacts analysis into an initial determination as to a defendant's minimum contacts under the first and second prong, and then into a subsequent determination of whether it would be reasonable to exercise jurisdiction under the third prong. *See, e.g., Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 114-6 & 121-2 (1987) (determining the issue of minimum contacts separately from determining the issue of reasonableness); *A. Uberti & C. v. Leonardo*, 181 Ariz. at 569 (requiring a trial court to first consider: (1) the defendant's "minimum contacts" with the forum state; and then (2) the reasonableness of exercising jurisdiction over the foreign defendant).

This separation is an issue in this case. Mr. Empson contended that this Court should consider the issue of reasonableness regardless of the Court's findings as to the first and second prongs of minimum contacts. Conversely, LGCA argued that a finding of no minimum contacts removes the need to consider the reasonableness factor. To avoid further confusion, the Court will analyze the first two prongs under the heading of "minimum contacts," and then address the third prong of reasonableness.

Minimum Contacts

Under the first two prongs of the specific jurisdiction analysis, the Court must analyze (1) purposeful conduct by LGCA targeting Arizona, rather than accidental or casual contacts or those brought about by Mr. Empson's unilateral acts; and (2) a nexus between those contacts and the claim asserted. Put succinctly, the analysis should focus on the relationship between the defendant, the State, and the claim. *Williams v. Lakeview Co.*, 199 Ariz. 1, ¶17 (2000).

A foreign defendant must have "purposefully directed" its activities at residents of the forum State, and the alleged injuries had to arise out of or relate to those activities. *Armstrong v. Aramco Services Co.*, 155 Ariz. at 349, *citing to Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985). Jurisdiction is proper only if the contacts proximately resulted from actions by the non-resident defendant that created a substantial connection with the forum State. *Batton v. Tennessee Farmers Mutual Insurance Co.*, 153 Ariz. at 271. When a non-resident defendant has

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purposely directed its activities at the residents of the forum state, it cannot avoid jurisdiction merely because it did not physically enter the State. *Macpherson v. Taglione*, 158 Ariz. 309, 312 (App. 1988).

When there is no such connection between the specific claims and the forum, specific jurisdiction is lacking, even if the non-resident defendant has unconnected activities in the forum State. *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, ___ U.S. ___, 137 S. Ct. 1773, 1781 (2017). “The requirements of *International Shoe* must be met as to each defendant over whom a state court exercises jurisdiction. A defendant’s relationship with a third party, standing alone, is an insufficient basis for jurisdiction.” *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1783. *Accord, Coast to Coast Marketing Co., Inc. v. G & S Metal Products Co., Inc.*, 130 Ariz. 506, 508 (App. 1981) (holding that the unilateral activity, standing alone, of a third party who claims some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state).

Similarly, the United States Supreme Court refused to find specific jurisdiction over a non-resident defendant that had sold products and presented training to the plaintiff in the forum State, because the cause of action was not related to those sales transactions and training activities. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 418 (1984). *See also Van Heeswyk v. Jabiru Aircraft Pty., Ltd.*, 229 Ariz. 412, ¶16 (App. 2012) (holding that a non-resident defendant’s “accidental or casual contacts” include those not directly related to the asserted cause of action).

This concept is further highlighted in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011). In *Nicastro*, a British manufacturer of shearing machines contracted with an American distributor to sell its machines in the United States. The British manufacturer did not sell or advertise its machines in the United States. The British manufacturer had no control over where its machines were sold in the United States, although the American distributor conferred with the manufacturer on sales direction and guidance. Although the American distributor advertised the machines in the United States, it did not do so in New Jersey, the State in which the injury occurred. The evidence showed that only four machines were ever sold in New Jersey. Based on these facts, the Supreme Court found there was insufficient evidence that the British manufacturer had availed itself in New Jersey, and that specific jurisdiction could not be exercised in that State. *Id.* at 886.

The mere fact that a non-resident defendant could foresee that its product could cause injury in a jurisdiction has never been a “sufficient benchmark” for exercising personal jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) [citation omitted]. *Accord, Williams v. Lakeview Co.*, 199 Ariz. 1, ¶15 (2000).

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Application of the Facts to the Law

Mr. Empson's Response to LGCA's Motion to Dismiss the First Amended Complaint argued that specific jurisdiction relied, in large part, if not entirely, on the "stream of commerce plus" theory. In that same Response, as he did in his original Response, Mr. Empson also relied on *Berven v. LG Chem, Ltd.*, 2019 WL 4687080 (E.D. Cal., Sep. 26, 2019), an unreported case out of the Eastern District of California. *Berven* found specific jurisdiction against LGCL regarding similar injuries caused by the use of its battery cells in e-cigarettes.

During oral arguments, Mr. Empson shifted his primary focus away from the stream-of-commerce-plus theory to a theory that it is reasonable to exercise specific jurisdiction over a non-resident defendant when it knows that its products are being improperly used by third parties in the forum State. Mr. Empson's counsel stated that this shift was based on *Berven* and two recently-decided cases: *Collett v. Olympus Medical Systems Corp.*, 437 F. Supp. 3d 1272 (M.D. Ga. 2020), and *Fields v. South Georgia Vapor, LLC*, 2020 WL 4731077 (Fla. Cir., Apr. 24, 2020). The Court will discuss these three decisions in a different section of this Ruling.

During oral arguments, the Court inquired if Mr. Empson was withdrawing his reliance on the stream-of-commerce-plus theory. Mr. Empson's counsel stated that the theory still remained a ground for relief, although it was no longer the primary ground for relief. Because that theory remains a ground for relief, the Court needs to address it. Stated simply, the Court finds that this theory is not available to Mr. Empson. Due to the legal twists and turns that engendered and perpetuated this theory, however, the Court will need to spend some time on this discussion to explain the Court's finding.

"Stream of Commerce Plus" Theory to Show Minimum Contacts

The "stream of commerce plus" theory (the Theory) has never been adopted by an Arizona appellate court or the United States Supreme Court, which would be the only precedential authorities on this issue. It would not be appropriate for this Court to rely on the differing conclusions that other State federal courts have reached under their various interpretations of the Theory.

Mr. Empson apparently agreed that the Theory has not been adopted by the United States Supreme Court. Nonetheless, he argued that the Theory should apply in this case. Mr. Empson argued that LGCA's knowledge of the misuse of its battery cells by unrelated third parties that were placed in the stream of commerce and caused injury in Arizona is the "plus" that allows for specific jurisdiction.

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The law is clear that the issue of personal jurisdiction hinges on federal law. Therefore, this Court has no authority to create new law on specific jurisdiction. Nonetheless, the Court will still discuss the inapplicability of the Theory, out of an abundance of caution.

The term “stream of commerce” was used in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–8 (1980). The issue in that case was whether a local New York Audi dealership could be subject to personal jurisdiction in Oklahoma, simply because the New York purchasers were involved in a vehicle accident in Oklahoma on their way to their new residence in Arizona. The Court in *World-Wide Volkswagen* applied the minimum contacts and reasonableness rules in determining that Oklahoma did not have personal jurisdiction over the New York dealership.

The Court in *World-Wide Volkswagen* noted that “[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State....” *Id.* The use of “stream of commerce” did not appear to create a new theory, or modify the tried and true tests for specific jurisdiction. It seemed clear from the context that the reference to “stream of commerce” was more of a descriptive turn of phrase that highlighted the need for a non-resident defendant to have a purposeful contact with the forum State. There was no discussion about the Theory.

Subsequent to *World-Wide Volkswagen*, certain members of the high court discussed the Theory in *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 106 (1987). In *Asahi*, the question before the Court was whether a non-resident defendant’s mere awareness that the components it manufactured, sold, and delivered to tire tube companies could reach the forum State (California) through the “stream of commerce,” sufficient to meet “minimum contacts.” In an extremely divided decision, the judgment of the Court simply held that it was not reasonable to allow California to assert specific jurisdiction. Nothing more.

In *Asahi*, there were separate plurality opinions and concurrences. These pluralities and concurrences discussed whether the stream of commerce, plus something else, was necessary for specific jurisdiction, or whether the stream of commerce was sufficient, as long as the non-resident defendant was “aware” that the final product was being marketed in the forum State. Except for the portions of their concurrences that joined in the Judgment that exercising jurisdiction was not reasonable, none of those discussions comprised the Judgment of the Court. Justice O’Connor authored the Judgment of the Court, as well as a plurality that was not included as part of the Judgment.

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Justice O'Connor's plurality believed that the non-resident defendant had not committed sufficient acts of purposeful availment in the State of California to meet the minimum contacts test. Justice O'Connor's plurality, which was not joined by the other Justices, created the Theory that the placement of a product into the stream of commerce, without some additional act (the "plus"), is not an act of a foreign defendant purposefully directed toward the forum State. *Id.* at 112 (O'Connor, J.). This plurality believed that a non-resident defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product in the "stream" into an act purposefully directed toward the forum State. *Id.*

There was also a four-justice plurality, written by Justice Brennan. Justice Brennan's plurality disagreed with Justice O'Connor's Theory. Justice Brennan's plurality believed that the stream of commerce was sufficient without having to prove anything more, "as long as a participant in this process is aware that the final product is being marketed in the forum State." *Id.* at 117 (Brennan, J., concurring in the Judgment).

According to Justice Brennan's four-justice plurality, a component manufacturer would be subject to a forum State's jurisdiction, if it was aware that the finished product that contained the component was being marketed or sold in the forum State. This concurrence believed that there were minimum contacts under its stream of commerce theory, which was not joined by the other Justices. This plurality joined in the Judgment that it was not reasonable for California to exercise personal jurisdiction. *Id.* 117-118, 121 (Brennan, J., concurring in the Judgment).

Three justices joined in the judgment that it was simply not reasonable under traditional notions of fair play and substantial justice for California to assert personal jurisdiction. These three justices specifically declined to join in Justice O'Connor's plurality endorsing the Theory. These three justices believed that a minimum contacts test was not necessary to the decision, and, even if it was, they believed that Justice O'Connor's plurality created an artificial bright line differentiation between 1) the mere awareness that products could be swept up in the stream of commerce, and 2) the concept of purposeful availment. *Id.* at 121-2 (Stevens, J., concurring in Judgment only).

Because none of the pluralities or concurrences discussing the pros or cons of the Theory garnered five votes, the applicability *vel non* of the Theory was never decided. *See, e.g., Marks v. United States*, 430 U.S. 188, 193 (1977) (holding that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." [citations omitted]). Therefore, *Asahi* only held that it was not reasonable for California to exercise specific jurisdiction.

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In 2011, the Supreme Court attempted to revisit the alternative stream-of-commerce theories that were discussed in *Asahi*. In *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 877 (2011), the Opinion began by stating: “The rules and standards for determining when a State does or does not have jurisdiction over an absent party have been unclear because of decades-old questions left open in *Asahi*....” *Id.* at 877. For better or worse, the Judgment of the Court left the questions unanswered. The Court’s Judgment simply found that personal jurisdiction did not exist, because the evidence did not support purposeful availment by the non-resident defendant. *Id.* at 887, 893. Specifically, the Court’s Judgment held that a foreign defendant’s “transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.” *Id.* at 882.

The only discussion of the stream-of-commerce theories in *Nicastro* was contained in a four-Justice plurality authored by Justice Kennedy. Justice Kennedy’s plurality rejected both Justice O’Connor’s and Justice Brennan’s plurality opinions in *Asahi*, and believed that the “stream of commerce” theories cannot take the place of prior precedents on determining minimum contacts and reasonableness. *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. at 881-2.

Justices Breyer and Alito joined in the judgment that no purposeful availment had been shown, but specifically declined to join in the plurality’s discussion of the stream-of-commerce theories, because they believed it was unnecessary to the decision. *Id.* at 893 (Breyer, J., concurring in Judgment only).

The three-justice dissent in *Nicastro* criticized the dueling arguments in *Asahi* as being unnecessary to the decision, but believed that the evidence in *Nicastro* had shown sufficient minimum contacts. *Id.* at 908 (Ginsburg, J., dissenting). The dissent seemed to partially adopt, without so stating, the theory proposed by Justice Brennan’s concurrence in *Asahi* that specific jurisdiction exists when a foreign defendant knows that its finished product could end up in a forum State simply by being placed in the stream of commerce. As discussed below, Justice Ginsburg’s reasoning would not extend to a component parts manufacturer.

Therefore, rather than resolving the stream-of-commerce theories in *Asahi*, *Nicastro* continued to “sow confusion broadside.” (borrowing a phrase from Justice Rehnquist’s dissent in *Michigan v. Clifford*, 464 U.S. 287, 306 (1984), in which he criticized the Court’s failure to clarify a prior opinion on whether the Fourth Amendment applied to fire investigation scenes).

Mr. Empson was correct in ultimately not relying so heavily on the Theory. Had he continued to do so, the Court would have been inclined to paraphrase a passage from Alexander Dumas’ *The Count of Monte Cristo*: “On what slender threads do Mr. Empson’s claims hang.”

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Therefore, this Court will not rely on the “stream of commerce plus” theory in deciding this case. Instead, this Court will rely upon the actual reasoning of the judgments in *Asahi* and *Nicastro*, as well as other Supreme Court precedents, to determine whether LGCA had personal contacts with Arizona sufficient to comply with traditional notions of fair play and substantial justice.

Mr. Empson’s Specific Allegations of Minimum Contacts

The Amended Complaint alleged that LGCA purposefully availed itself of business in Arizona, and that there were sufficient minimum contacts with Arizona that would allow this Court to exercise personal jurisdiction over LGCA. Specifically, the Amended Complaint alleged, upon information and belief, that LGCA is or was engaged in the following “substantial, ongoing” commercial business activities in Arizona, with actual knowledge and/or the reasonable expectation that these activities would occur in Arizona:

1. Designing, manufacturing, marketing, distributing and selling the “LG HG2 18650” battery.
2. Supplying, selling, importing, distributing, and allowing the retail sale of products, including, but not limited to, the “LG HG2 18650” batteries, like the one that Mr. Empson purchased from Oasis;
3. Placing the “LG HG2 18650” batteries into its distribution chain;
4. Receiving substantial compensation from the sale of its products, including, but not limited to, the “LG HG2 18650” batteries;
5. Placing products, including, but not limited to, the “LG HG2 18650” batteries into the stream of commerce, resulting in the batteries being used in e-cigarettes;
6. Transacting business in Arizona, and regularly causing its products to be sold in Arizona, such that Mr. Empson’s lawsuit for damages arose out of these activities.

In its Motion to Dismiss, LGCA attached the affidavit of Hyunsoo Kim, who is the compliance manager and authorized representative of LGCA. Mr. Kim’s affidavit contained the following statements that LGCA:

1. Is incorporated in Delaware, with its principal place of business in Atlanta, Georgia;
2. Does not manufacture anything;

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3. Primarily sells and distributes petrochemical materials and products;
4. Is not registered to do business in Arizona, and does not have a registered agent in Arizona.
5. Does not own real property in Arizona;
6. Does not have any employees that live or work in Arizona;
7. Does not have a bank account in Arizona;
8. Sells only petrochemical materials and products in Arizona, which revenues amounted to 0.11% of LGCA's total revenues;
9. Has never sold, distributed, marketed, or advertised any lithium-ion battery cells in Arizona;
10. Has never designed, manufactured, distributed, advertised, or sold any lithium-ion battery cells for use by individual consumers as stand-alone, replaceable, or rechargeable for use in e-cigarettes or other vaping devices, nor authorized any wholesaler, distributor, retailer, or reseller to distribute or sell such battery cells;
11. Has never conducted business with Oasis or any other e-cigarette retailer;
12. Has never authorized Oasis or any other e-cigarette retailer to sell, market, distribute or advertise any lithium-ion batteries to consumers.

Analysis of Mr. Empson's Jurisdictional Claims

There is no dispute that LGCA does not manufacture lithium-ion batteries. There is no dispute that LGCL manufactures the 18650 lithium-ion battery cells, and that LGCL does not manufacture the battery cells in Arizona.

The evidence showed that LGCL markets, distributes and sells its battery cells to other manufacturers or companies that incorporate the battery cells into a finished product. Because there is an inherent danger that lithium-ion battery cells can ignite or explode, the companies that incorporate the battery cells into a finished product do so by including safeguards to prevent such occurrences. The evidence showed that LGCL does not sell the 18650 lithium-ion battery cells to

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consumers. LGCL's product is not meant for stand-alone use, and is certainly not marketed, advertised, or sold for use in e-cigarettes.

The evidence showed that LGCA markets and/or sells certain petrochemical and other non-battery products manufactured by LGCL, a miniscule portion of which occurred in Arizona. There was an indication that LGCA may market or sell lithium-ion batteries to authorized companies somewhere in the United States, but there was no evidence presented that LGCA has ever marketed or sold lithium-ion batteries in Arizona.

The evidence obtained during the jurisdictional discovery of LGCL in the *Tague* case, to which Mr. Empson was privy, showed the following:

- LGCL does not sell the 18650 lithium-ion battery cells to consumers.
- The 18650 lithium-ion battery cells are not meant for stand-alone use.
- LGCL does not market, advertise, or sell the 18650 lithium-ion battery cells for use in e-cigarettes.
- LGCL's two authorized distributors and four battery packers have not sold any 18650 lithium-ion battery cells in Arizona, and have not sold them to e-cigarette companies.
- The companies that have sold the 18650 lithium-ion battery cells to e-cigarette retailers in Arizona did not obtain them from LGCL or LGCA. Further, those companies had no business relationship with LGCL or LGCA.

No evidence was presented that LGCA has a website under its name. No evidence was presented that Oasis purchased the lithium-ion battery cells from LGCA or LGCL.

In his Responses to the Motions to Dismiss, Mr. Empson contended that Mr. Kim's affidavit only addressed general jurisdiction factors, and did not adequately address specific jurisdiction factors. The Court disagrees with Mr. Empson's contention. While a small portion of Mr. Kim's affidavit pertained to general jurisdiction factors, the bulk of his affidavit clearly addressed specific jurisdiction factors.

Adam J. Kress' Affidavit in support of the Response to LGCA's Motion to Dismiss the original Complaint, filed on September 3, 2019, attached several exhibits in support of Mr. Empson's claim that LGCA purposefully directed its business activities to Arizona. The Court will discuss each of the exhibits and Mr. Empson's arguments related thereto.

Exhibits A through D are copies of unreported orders from trial courts in various foreign jurisdictions that have allegedly found LGCA to be subject to personal jurisdiction in those States. None of these exhibits qualified as precedential authority under Rule 111 (c) and (d) of the Rules of the Supreme Court.

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Exhibit A is copy of an Order entered on April 30, 2019 by the Circuit Court of Florence County, South Carolina in *Moore v. Planet Vapor, Inc., et al.*, 2018-CP-21-02884. In that case, which had similar facts to Mr. Empson's case, the circuit court found that South Carolina could exercise specific jurisdiction over LGCA. An important factor in the South Carolina case that is missing in this case is that LGCA had a certificate of authority to transact business in South Carolina, and had a registered agent in South Carolina. Additionally, the plaintiff in that case produced "hundreds of import records" for the Port of Charleston, South Carolina related to LGCA. It appeared, however, that none of those import records pertained to battery cells.

In the *Moore* case, LGCA had submitted an affidavit of Mr. Kim. Although not contained in the *Moore* ruling, it appeared that the affidavit was similar to the one in this case. The South Carolina judge took issue with Mr. Kim's affidavit, because it failed to state that part of LGCA's business included marketing of LGCL battery cells. Lacking any evidence that LGCA had marketed battery cells in South Carolina, the court relied on a statement in an unreported 2015 North Carolina federal district court order in *Celgard, LLC v. LG Chem, Ltd.*, 2015 WL 2412467 (W.D. N. Car., May 21, 2015), which found that LGCA marketed batteries somewhere in the United States. *Celgard* at *26.

Celgard involved a patent infringement-breach of contract case, in which both LGCL and LGCA were defendants. The *Celgard* plaintiff claimed that North Carolina should exercise general, not specific, jurisdiction over LGCA. *Id.* at *16. The *Celgard* plaintiff also relied upon the "stream of commerce plus" theory.

In *Celgard*, LGCA's affidavit, signed by Juan Oh, stated that LGCA marketed batteries in the United States. The *Celgard* Order, however, found that LGCA had not marketed lithium-ion battery cells in North Carolina, and that its business activities in North Carolina were unrelated to the plaintiff's claim. *Id.* at **23, 28. There was nothing in *Celgard* that indicated that LGCA had sold battery cells in South Carolina.

Therefore, *Moore's* reliance on *Celgard's* finding that LGCA marketed battery cells somewhere else in the United States was nothing more than a red herring to justify specific jurisdiction in South Carolina. This fact substantially weakens Mr. Empson's claim that Arizona should exercise specific jurisdiction over LGCA based on the fact that LGCA markets battery cells in other States. First, whether LGCA marketed batteries somewhere in the United States should have been irrelevant to a finding of specific jurisdiction in *Moore*, when there was no evidence that such marketing was targeted at South Carolina. Second, Mr. Kim's affidavit in our case, which the Court assumes was similar to Mr. Kim's affidavit in *Moore*, never denied that LGCA did not market battery cells in the United States.

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Mr. Kim's affidavit in our case was carefully, and perhaps craftily, worded to avow that LGCA "primarily" markets and sells petrochemical products. The use of the adverb "primarily" does not exclude the fact that LGCA may market or sell battery cells elsewhere in the United States. Mr. Kim's affidavit avowed that LGCA does not market, distribute, or sell lithium-ion batteries **in Arizona**. The evidence before this Court substantiates that avowal. Therefore, whether LGCA markets or sells lithium-ion battery cells elsewhere in the United States, the issue here is whether LGCA targeted Arizona for the sales of lithium-ion battery cells.

In our case, Mr. Empson conceded that general jurisdiction does not apply. The *Celgard* case found that North Carolina had general jurisdiction over LGCA. This renders *Celgard*, and in turn *Moore*, irrelevant in our case. As mentioned above, the *Celgard* plaintiff also sought jurisdiction against LGCA under the stream-of-commerce-plus theory. Although the *Celgard* Order discussed the Theory, it ultimately did not reach the issue of whether the stream-of-commerce-plus theory applied. *Celgard* at *18. Nonetheless, this Court has ruled that Mr. Empson cannot avail himself of the Theory.

The true basis for *Celgard's* finding of general jurisdiction was based on LGCA's substantial business presence in North Carolina, although none of that business pertained to battery cells. In both *Celgard* and *Moore*, unlike in Mr. Empson's case, LGCA was registered to do business in both States, and had a registered agent for service of process in both States. *Moore* at 5; *Celgard* at *26. Further, LGCA had stored undefined "inventory" in one of its customer's consignment warehouses in North Carolina two years before the *Celgard* Order was entered. *Celgard* at *26. The *Celgard* Order further found that LGCA had paid taxes to the state of North Carolina three years before the Order. *Id.* LGCA admitted that it had conducted business in North Carolina by selling products for its petrochemical and toner businesses. *Id.*

Based on all of this, the *Celgard* court found that LGCA's physical presence in North Carolina, plus its participation in North Carolina's economic markets through its sales to companies in North Carolina (for petrochemical products), were continuous and systematic such that the Court could exercise **general** jurisdiction over LGCA. *Id.* at *28. The fact that LGCA may have marketed batteries somewhere else in the United States was not the basis of the *Celgard* Order.

For the reasons stated above, the Court finds that *Moore's* reliance on *Celgard* as a specific jurisdiction factor was misplaced. Further, the *Celgard* Order was inapplicable and irrelevant to the facts and law of this case, such that it has no persuasive value. The facts in *Celgard* clearly showed that the only activities involving lithium-ion battery cells were solely between the plaintiff in that case and LGCL.

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The bottom line on Exhibit A is that even if LGCA markets or marketed battery cells in the United States, the only evidence before this Court is that LGCA did not do so in Arizona. The case upon which *Moore* relied was a general jurisdiction decision, which does not apply here. The other grounds upon which *Moore* relied are not present in this case. The Court finds that Exhibit A has no persuasive value.

Exhibit B is a copy of an Order entered on June 24, 2019 by the Circuit Court of Baldwin County, Alabama in *Kenneth v. LG Chem, Ltd., et al.*, CV-2018-900998.00. Nearly all but one line of the Order pertained to a contempt action against LGCL and LGCA for violations of the discovery rules. The one line referring to jurisdiction appeared to find that if the defendants had not been contumacious by not fully and timely disclosing documents, those documents would presumably have contained sufficient evidence to demonstrate personal jurisdiction. The Court's finding of personal jurisdiction did not appear to review or analyze any legal authority on the factors necessary to find specific jurisdiction. Exhibit B has no persuasive value.

Exhibit C is a copy of an Order entered on April 1, 2019 by the Circuit Court of St. Louis County, Missouri in *Bishop v. LG Chem, Ltd., et al.*, No. 17SL-CC00708. LGCA was not a party in the case. Exhibit C, therefore, has no persuasive value.

Exhibit D is a copy of an Order entered on December 7, 2018 in the Circuit Court of Kings County, Washington, in *Szelachowski v. ECX, LLC, et al.*, No. 18-2-13208-8 SEA. LGCA was not a party in this case. Exhibit D, therefore, has no persuasive value.

Exhibit E is a copy of a two-page PDF printout taken from the "LG Chem" webpage. Exhibit E states that the battery cells are intended for use in laptops, power tools, electric bicycles, smartphones, tablets, and digital cameras. None of the intended uses includes electronic cigarettes or power cells for electronic cigarettes.

Nonetheless, the generic use of "LG Chem" in the webpage does not, in and of itself, show that LGCA designed or manufactured the 18650 battery cells. The jurisdictional discovery conducted in the *Tague* case as to LGCL showed that the 18650 lithium-ion batteries are designed and manufactured by LGCL, not LGCA. As noted above, the only evidence that LGCA sells lithium-ion battery cells somewhere in the United States was taken from the *Moore* Order in Exhibit A. Mr. Empson has failed to produce any evidence that LGCA has ever marketed or sold battery cells in Arizona.

Exhibit F is a copy of an "e-cig and vape products" warning from the "LG Chem" website. For the same reasons as Exhibit E, this fails to link LGCA with marketing lithium-ion battery cells in Arizona.

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Exhibits G through J are proposed jurisdictional discovery requests. Because the Court has denied jurisdictional discovery as to LGCA's Motion to Dismiss, these exhibits are all deemed moot.

The Kress Declaration to Mr. Empson's Second Response

As part of Mr. Empson's Response to the Motion to Dismiss the Amended Complaint, filed on July 16, 2020, Mr. Kress provided a Declaration to which nine exhibits were attached.

Exhibits A was a copy of the Mr. Empson's proposed Second Amended Complaint. Exhibit B was a copy of an invoice from a retailer of the *Tague* vape shop Defendant. Because it does not pertain to Oasis, the Court gives minimal weight to Exhibit B.

Exhibit C was a copy of the Third Amended Complaint in a class action lawsuit filed on March 18, 2016, in the United States District Court for the Northern District of California in *In re Lithium Ion Batteries Antitrust Litigation*, Case No. 13-MD-02420 YGR (DMR). Exhibit D was a copy of the settlement agreement filed on August 19, 2019 in the same case as Exhibit C. This class action lawsuit alleged that the defendant corporations had conspired to fix the prices of lithium-ion batteries to the detriment of consumers.

LGCA was one of many major corporate defendants that either manufactured, marketed, and/or sold lithium-ion battery cells, or incorporated them into finished products. Specifically, LGCA was alleged to be "a wholly owned subsidiary of Defendant LG Chem, Ltd....[who] either directly or through a wholly owned subsidiary, participated in the conspiracy alleged in [the class action complaint] and manufactured, marketed and/or sold Lithium Ion Batteries that were purchased throughout the United States...." (Exhibit C to the Affidavit of Adam J. Kress).

The federal class action lawsuit did not involve negligence allegations, nor any allegations involving injuries caused by e-cigarettes. Mr. Empson contended that the inclusion of three Arizona plaintiffs in this class action lawsuit supported his jurisdictional claim, because the three Arizona plaintiffs purchased lithium-ion batteries in Arizona.

There were no allegations that the three Arizona class action plaintiffs had purchased stand-alone 18650 lithium-ion battery cells. In fact, none of the three Arizona plaintiffs was alleged to have purchased anything from LGCA or LGCL. The Arizona residents were alleged to have purchased the following devices that contained lithium-ion batteries: a Blackberry Curve cell phone, a Toshiba laptop, a Sony GRZ660 Laptop, two COMPAQ laptops, and an Apple MacBook Pro laptop. (Exhibit C to the Affidavit of Adam J. Kress). There were no allegations that the lithium-ion batteries contained in those devices were manufactured or sold by LGCL or LGCA.

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The facts of each case are different, and they must be weighed in determining whether personal jurisdiction would comport with fair play and substantial justice. *Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Properties*, 226 Ariz. at ¶15. In doing so, the jurisdictional facts of Mr. Empson's case are substantially different from those in the class action lawsuit, such that it does not show minimum contacts in Mr. Empson's case.

Exhibits E through H were proposed jurisdictional discovery requests. Because the Court finds that jurisdictional discovery is unnecessary as to LGCA's Motion to Dismiss, these exhibits are all deemed moot.

Exhibit I was a copy of a brief filed on behalf of Judge Emily Hagan, who was the Respondent in an appeal to the Ohio Supreme Court in *LG Chem, Ltd. v. Hagan*, 2020-Ohio-3474. Even though LGCA was not part of this appeal, the Court will discuss this exhibit. Judge Hagan had denied LGCL's Motion to Dismiss in a case that appeared to involve similar facts to Mr. Empson's case.

However, in reviewing the Respondent's brief (Exhibit I), it is clear that the trial judge made her decision solely on the pleadings. No evidence was taken by Judge Hagan. In fact, the Respondent's brief cited to Ohio case law that when a trial court determines a motion to dismiss for lack of personal jurisdiction without an evidentiary hearing, the plaintiff need only make a *prima facie* showing of personal jurisdiction. Respondent's Brief at 10 [citations omitted]. Arizona law is similar.

As stated earlier in this Ruling, the Court received evidence in Mr. Empson's case. Although the evidence was documentary, Arizona, unlike Ohio, requires proof by affidavit or otherwise, but does not require an evidentiary hearing. Even so, the parties in this case declined the Court's offer to have an evidentiary hearing, and agreed to submit the case on the pleadings, the written evidence and oral arguments. Even if Mr. Empson's Amended Complaint may have provided a *prima facie* showing, the evidence presented by LGCA defeated such a showing.

Exhibit I is neither precedential, not persuasive. It is interesting to note, though, that the jurisdictional allegations in Mr. Empson's case seem to have been taken from the allegations asserted by the plaintiff in the *Hagan* case.

**Mr. Empson's Argument that Knowledge of a Product's Misuse in a Forum
Equates to Purposeful Availment of that Forum**

At oral arguments, Mr. Empson's counsel basically conceded that there was no evidence that LGCA sold any lithium-ion battery cells in Arizona. Lacking such evidence, Plaintiff's counsel argued that LGCA knew or should have known that LGCL's batteries were being sold in

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Arizona by third parties to e-cigarette retailers, who then sold e-cigarette batteries to consumers. Based on this alleged knowledge, Mr. Empson's counsel argued that it was foreseeable that the improperly-modified and/or misused lithium-ion battery cells would wend their way to Arizona through third parties, where they would cause injury. They then argued that this foreseeability equated to purposeful availment of the Arizona market.

In support of his position, Mr. Empson relied on three cases mentioned earlier. The first of these was *Berven v. LG Chem, Ltd.*, 2019 WL 4687080 (E.D. Cal., Sep. 26, 2019). *Berven* was a United States District Court case involving the same basic fact situation as the one in this case: the plaintiff purchased an LGCL battery from a retailer in California to power her e-cigarette, which battery exploded and caused her to suffer burn injuries. The plaintiffs in *Berven* alleged similar grounds for specific jurisdiction as Mr. Empson alleged in this case, and LGCL asserted the same arguments in opposition that it asserted in this case. LGCA was not a party in the *Berven* case. Regardless, the Court will discuss *Berven*, because of the importance that Mr. Empson places on the case.

Berven v. LG Chem, Ltd.

In *Berven*, the district court adopted the findings of the Magistrate Judge after a *de novo* review. The Magistrate Judge's findings and recommendations were not attached to the district court's decision. Based on the decision, however, there is no indication that any jurisdictional discovery was allowed. It is clear from the decision that both the Magistrate Judge and the District Judge reached their conclusions based solely on the pleadings in the amended complaint. The district court, in adopting the Magistrate Judge's Report, stated that the allegations, if true, presented a *prima facie* case of specific jurisdiction. *Id.* at *2. As previously noted, the posture of Mr. Empson's case has gone beyond his ability to rely solely on the allegations of his Complaint.

One of the allegations in *Berven* was that, "upon information and belief," certain batteries that did not conform to LGCL's standards were dumped onto the open market for sale to anybody in any location. This unsupported allegation seemed to be pivotal in the district court's decision in *Berven*.

Berven became even more important at oral arguments, after Mr. Empson changed his primary argument. As discussed above, Mr. Empson's current argument channels the plaintiff's theory in *Berven* by alleging that LGCL dumped non-conforming batteries on a "black market," with knowledge that these batteries would be sold for improper and dangerous purposes. Mr. Empson alleged that LGCA had knowledge of this "black market" dumping.

However, Mr. Empson can no longer merely repeat an unsupported allegation from another case. In our case, Mr. Empson is unable to stand on the allegations in his complaint.

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LGCA has presented rebuttal evidence challenging those allegations. Jurisdictional discovery in the *Tague* case was available to Mr. Empson since June 10, 2019. Since September 26, 2019, when the *Berven* decision was issued, the Plaintiffs in the *Tague* case had months to investigate the *Berven* allegation about non-conforming batteries being sold on a “black market.” If any such evidence had been uncovered to support that allegation, Mr. Empson would have presented it.

In fact, this allegation is not even contained in the Declaration in support of the Response. The only basis for this allegation is a paragraph in the proposed Second Amended Complaint, which reads as follows:

Upon information and belief, LG Chem grades its batteries and sells the lower-grade, nonconforming or cosmetically defective batteries to other distributors for distribution around the world, including Arizona. These batteries are routinely used by individual consumers to power their e-cigarettes for vaping.

Proposed Second Amended Complaint ¶16(c), Exhibit A to Declaration of Adam J. Kress.

This is nothing more than an encapsulation of the allegation in the *Berven* case, with no evidence of any sort to support it. Mr. Empson had sufficient time to find some proof of this allegation. The allegation, without an affidavit or other evidence to support it, does not meet Mr. Empson’s burden. Based on the factual and legal differences in *Berven*, this Court finds it to be unpersuasive. This Court’s decision is based on the evidence that has been presented, rather than reliance solely on the allegations in the Complaint.

Mr. Empson also argued that this theory of dumping non-conforming batteries on a “black market” applies equally, if not more, to his reasonableness argument. The Court will address this theory further under Mr. Empson’s reasonableness argument.

The second and third cases upon which Mr. Empson relied for this theory were raised during oral arguments on August 19, 2020. Both of these cases were issued recently. The first was *Collett v. Olympus Medical Systems Corp.*, 437 F. Supp. 3d 1272 (M.D. Ga. 2020). The second case was *Fields v. South Georgia Vapor, LLC*, 2020 WL 4731077 (Fla. Cir., Apr. 24, 2020).

Collett v. Olympus Medical Systems Corp.

A thorough reading of the *Collett* case does not support Mr. Empson’s new primary theory. *Collett* found specific jurisdiction over a non-resident defendant based solely on the

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longstanding concepts of minimum contacts and reasonableness. The Court will discuss *Collett* in this section, and also under the reasonableness section.

Before discussing the ruling in *Collett*, it is important to distinguish between a company that manufactures a component, and a company that manufactures a finished product that contains the component. Two Arizona cases, upon which Mr. Empson relied, found personal jurisdiction over manufacturers of finished products. In *A. Uberti and C. v. Leonardo*, 181 Ariz. at 573, the Arizona Supreme Court found there was specific jurisdiction in Arizona against an Italian gun manufacturer, who never physically sold a gun in Arizona. The evidence showed, however, that the gun manufacturer's United States distributor was authorized to sell the guns anywhere in the United States, with an emphasis on the Western United States.

Similarly, in *Van Heeswyk v. Jabiru Aircraft Pty., Ltd.*, 229 Ariz. 412, ¶17 (App. 2012), the Court of Appeals found specific jurisdiction against a foreign manufacturer of airplane kits, because its American distributor was authorized and encouraged to sell its product anywhere in the United States. Because the company and/or its distributor advertised the sale of the kits throughout the country to consumers, the Court found that was sufficient to allow the foreign defendant to be haled into Arizona courts. Notably, the Court of Appeals held that a predictability that a defendant's goods might reach Arizona is not enough. Rather, specific jurisdiction is only proper where a defendant can be said to have targeted the forum. *Id.* at ¶16. In *Van Heeswyk*, there was evidence that the defendant purposefully directed marketing activities toward Arizona. *Id.* at ¶17.

It is true that neither of these Arizona cases specifically differentiated between component part manufacturers and finished-product manufacturers. Nonetheless, both of the products in *Uberti* and *Van Heeswyk* were finished products available for sale in Arizona, which were purposefully sold as finished products in Arizona.

The United States Supreme Court has indicated that such a differentiation is significant. In *Asahi, supra*, the defendant Japanese corporation manufactured tire valve assemblies in Japan, which were sold to tire manufacturers for use as components in tire tubes. The finished tire products were then sold in the United States. The specific question before the Court was whether there were minimum contacts for a component manufacturer in which the finished product was marketed in the forum State. *Asahi*, 480 U.S. at 106. As discussed above, the Court found that it was not reasonable to exercise specific jurisdiction over the component part manufacturer.

This distinction was further highlighted in Justice Ginsburg's dissent in *Nicastro, supra*. As discussed above, the Court found that specific jurisdiction did not exist, because the evidence did not show that the British manufacturer had any expectation that its finished product would be

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sold in the forum State of New Jersey. *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. at 883, 893.

However, in criticizing the stream-of-commerce debates by the pluralities and concurrences in *Asahi*, the dissent in *Nicastro* specifically commented that *Asahi*, unlike the defendant in *Nicastro*, “was a component-part manufacturer with ‘little control over the final destination of its products once they were delivered into the stream of commerce.’” *Id.* at 908 (Ginsburg, J., dissenting, *citing to Uberti*, 181 Ariz. at 572). Justice Ginsburg stated that “[i]t was important to the Court in *Asahi* that ‘those who use *Asahi* components in their **final products**, and sell those products in California, would be subject to the application of California tort law.’” *Id.* [citation omitted] [emphasis added].

The facts and ruling in *Collett* are really no different those in *A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 573-4 (1995) or *Van Heeswyk v. Jabiru Aircraft Pty., Ltd.*, 229 Ariz. 412, ¶16-7 (App. 2012). In *Collett*, the non-resident defendant, Olympus Medical Systems Corporation (Olympus), was a Japanese manufacturer of medical devices, known as colonoscopes. The colonoscopes were marketed by its American affiliate for sale to American purchasers. As in *Uberti*, Olympus argued that it had not conducted any business in Georgia, the State in which the equipment had been sold, and caused injury.

The district court in *Collett* found that Olympus was subject to that State’s jurisdiction, for the same basic reasons that Arizona exercised jurisdiction in *Uberti* and *Van Heeswyk*. The district court in *Collett* found that Olympus purposefully placed its products in the American market with the intent that they would be sold by its American affiliate. *Collett*, 437 F. Supp. 3d at 1278. The district court also noted that, because Olympus intended that its product was to be sold throughout America, the only way to possibly avoid jurisdiction in Georgia would have been to specifically restrict sales of colonoscopes in that State. *Id.*

This Court takes no issue with the legal analyses or rulings in *Uberti*, *Van Heeswyk*, or *Collett*. But those rulings are inapplicable to the facts of this case. The gun manufacturer, the airplane kit manufacturer, and the medical equipment manufacturer placed their items into the American market in the form of finished products that would be used by the ultimate buyer for their intended purposes. That is not the situation in this case. The evidence clearly showed that the LGCL lithium-ion batteries were component parts that were sold to companies that incorporated the batteries into safe, finished products that were then sold to retailers. The evidence was clear that neither LGCL nor LGCA intended that LGCL’s batteries would be sold in the American market as a stand-alone finished product for direct sale to retailers or consumers.

LGCL’s and LGCA’s sales of its battery cells to manufacturers of finished products is no different from a firing pin manufacturer selling its products for inclusion in *Uberti*’s firearms, or

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a valve manufacturer selling its products to Jabiru for inclusion in the engines in its kits, or a sealant manufacturer selling its product for incorporation in the colonoscopes manufactured by Olympus.

In fact, the connection in this case is even farther removed from the examples given above. In our case, the final manufacturers to whom LGCL or LGCA sells the batteries are not located in Arizona and are not involved in this case. There is no evidence that LGCL or LGCA ever sold LGCL's battery cells to the unauthorized wholesalers or retailers of the batteries for use in e-cigarettes.

As discussed above, a non-resident defendant must be found to have knowingly placed its product into a forum by its own unilateral actions, not those of a third party. A component part manufacturer cannot control where the finished product will be sold once the components have been sold to the ultimate manufacturer.

Fields v. South Georgia Vapor, LLC

This brings us to the *Fields* case, raised by Mr. Empson's counsel at the oral arguments hearing. Mr. Empson relied on *Fields* for the proposition that LGCA's alleged knowledge of third party misuses of LGCL's battery cells in Arizona was sufficient to show minimum contacts. The *Fields* case is an unreported order from the circuit court of Florida that involved similar facts as this one. In *Fields*, a lithium-ion battery cell manufactured by Samsung had been sold by a third party to a vape shop in Florida as an e-cigarette battery. The battery exploded in the consumer's pants, causing injuries. In that case, Samsung claimed the court did not have specific jurisdiction, because the battery cells were manufactured in South Korea, and Samsung did not sell its batteries for the purposes of being converted to e-cigarette batteries and sold to consumers.

The Florida judge found that Florida had specific jurisdiction over Samsung based, at least in part, on the theory espoused by Mr. Empson that a battery manufacturer who knows that its products are being misused, and causing injury in a forum must submit to that forum's jurisdiction. *Id.* at *5. The Florida judge found that Samsung's knowledge of such misuse showed a foreseeability that the misuse would result in injury, which equated to a purposeful availment by Samsung of the Florida market. *Id.*

The Florida court found that Samsung had knowledge of the misuse, because its battery cell specifications included a warning about misuse through vaping. *Id.* The Florida court also found that Samsung had such knowledge, because it was facing similar lawsuits in Florida and in other States. *Id.* at *5.

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In addition to this foreseeability conclusion, and perhaps most importantly, the Florida judge found that Samsung sold a substantial amount of its lithium-ion batteries to its intended purchasers throughout Florida, and that Samsung earned millions of dollars from this purposeful business in Florida. *Id.* at *2.

In our case, unlike in *Fields*, there is no evidence that LGCA marketed or sold lithium-ion battery cells in Arizona, nor that it earned any money from battery cell sales in Arizona. In fact, the evidence showed that LGCA had a miniscule sales footprint of LGCL products in Arizona, none of which pertained to battery cells.

Acknowledging the absence of evidence of such Arizona sales, Mr. Empson relied on *Fields*' theory that knowledge of misuse of LGCL's battery cells was enough to show minimum contacts. Mr. Empson contended that this misuse has been going on for years, such that LGCA must have known about it, and yet took no action to stop it. Mr. Empson contended that LGCA's knowledge was based largely upon the LG Chem website. The website does not support this contention. The website, which contains the generic name of "LG Chem," merely informs readers that they can inquire about information concerning LG Chem's products, with specific reference to "certificates." It then goes on to clarify that any inquiries for certificates as to its battery products will not be provided to anyone who is not under contract with LG Chem. This seems to support LGCA's argument that the battery products are not available to consumers.

In reviewing Mr. Empson's evidence, there is no indication that a consumer, or anyone else, could order products from the LG Chem website. Instead, it appears that the website is informational, and directs the readers to make inquiries about products to the appropriate product division in the LG Chem network of corporations.

The Ninth Circuit has held that a mere web presence is insufficient to establish personal jurisdiction. *Holland America Line Inc. v. Wärtsilä North America, Inc.*, 485 F.3d 450, 460 (9th Cir. 2007). In *Wärtsilä*, the non-resident defendant's website did not provide any direct means for purchasing parts or requesting services. Instead, it merely provided information on the various products manufactured by the Wärtsilä consortium, and redirected potential customers to the appropriate subsidiary. The Ninth Circuit held that this type of "passive website" was not purposefully directed to the forum State. *Id.* This Court finds the "LG Chem" website is more closely aligned with the "passive website" discussed in *Wärtsilä*, rather than the nationwide marketing program discussed in *Uberti*.

Further, even if there was evidence that LG Chem "advertised" its products on the website, and assuming that Arizona citizens read these "advertisements," advertisements in the forum state are not a sufficient basis for personal jurisdiction when the advertisements had no causal connection to the injury. *Williams v. Lakeview Co.*, 199 Ariz. 1, ¶14 (2000). In this case,

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any “advertising” in the website had no causal connection to the injuries suffered in this case. The LG Chem website was not advertising the misused, unauthorized battery cells that were sold to consumers by Oasis.

Therefore, the website evidence presented by Mr. Empson is insufficient to justify a finding of minimum contacts with Arizona.

The major flaw in the *Fields* case was its finding of personal jurisdiction was based on Samsung’s alleged knowledge that it was foreseeable that its product would be misused and cause injury. As discussed earlier, foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. *Burger King Corp. v. Rudzewicz*, 471 U.S. at 474 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at 295.

Additionally, the *Fields* case predicated knowledge based on Samsung being sued for the same types of claims in other courts. This conclusion is meaningless to prove knowledge and foreseeability of misuse of LGCL’s products. Both parties have cited cases involving LGCL and/or LGCA in support of their respective positions. Mr. Empson has cited cases, like *Berven*, that have exercised jurisdiction over LGCL and/or LGCA, and LGCA has cited cases that declined to find specific jurisdiction.

Further, the fact that LGCA has been sued throughout the country works against Mr. Empson’s argument that LGCA’s lack of action against those that sold the misused battery cells equates to purposeful availment. The very fact that the sale of misused LGCL’s battery cells is occurring throughout the country underlies the difficulty in trying to take action against numerous unknown retailers, who often may not be known until a lawsuit is filed. Mr. Empson provided no evidence that LGCA had prior knowledge as to which retailers were selling the misused products. In light of this, the warnings provided in the LG Chem website may be the most reasonable way to notify the public of the danger.

The *Fields* case is clearly not precedential. For the reasons stated above, it is not persuasive, either.

Conclusion as to Minimum Contacts Analysis

Put succinctly, the analysis must focus on the relationship between the defendant, the State, and the claim. In this case, the evidence showed that LGCA had no contacts with Arizona, except for a minimal amount of revenues received for the sales of LGCL’s petrochemical products. LGCA does not have a presence in Arizona in regard to lithium-ion batteries.

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There was simply no showing that LGCA targeted Arizona in regard to lithium-ion batteries. Case law is clear that even if a company sells certain products in a State, that does not create minimum contacts in regard to injuries incurred by a product that is not related to those other sales. Mr. Empson has failed to show minimum contacts by LGCA in regard to Mr. Empson's claims.

Reasonableness

The third prong of the specific jurisdiction test is whether the exercise of personal jurisdiction would be reasonable. LGCA asserted that the Court does not need to consider the reasonableness factor if it has determined that there are no minimum contacts under the first two prongs of the test. On the surface, the language in many of the cases seems to support LGCA's position.

The United States Supreme Court has stated that an analysis of reasonableness should follow a finding that minimum contacts exists. In *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985), the Court stated that "[o]nce it has been decided that a defendant purposefully established minimum contacts within the forum State....", certain factors should be considered to determine whether it is reasonable to assert personal jurisdiction that would comport with "fair play and substantial justice." Once minimum contacts have been shown, it is then the burden of the non-resident defendant to present a compelling case that it would be unreasonable to exercise personal jurisdiction. *Id.* at 477.

The Arizona appellate courts have restated this indicated procedure. For example, in *A. Uberti and C. v. Leonardo*, 181 Ariz. at 575, the Arizona Supreme Court stated that if the court finds there are minimum contacts, the court must then determine if it is reasonable to exercise jurisdiction. In *Beverage v. Pullman & Comley, LLC*, 232 Ariz. at ¶27, the Court of Appeals found that there were minimum contacts, which required it to then determine whether exercising such jurisdiction would be reasonable. In *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d at 1125, the Ninth Circuit stated that if it found that there were minimum contacts, the court must then analyze whether the assertion of jurisdiction is reasonable.

However, these rulings do not preclude a reasonableness analysis when minimum contacts have not been shown. *Burger King* also included a passage that the reasonableness test may sometimes serve to establish personal jurisdiction, in situations where there has been a lesser showing of minimum contacts than would otherwise be required. *Burger King Corp. v. Rudzewicz*, 471 U.S. at 477

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The latter approach was followed in *Asahi, supra*, in which the Supreme Court held that the plaintiff had failed to show that the non-resident defendant had minimum contacts with the forum State. Nonetheless, the judgment of the Court went on to examine the reasonableness issue. The Court ultimately decided that the exercise of personal jurisdiction by the forum State court over *Asahi* would be unreasonable and unfair. *Asahi*, 480 U.S. at 116. The three-justices that concurred in the judgment agreed with Justice O'Connor's opinion that it would not be reasonable to exercise jurisdiction, whether or not minimum contacts were found. *Id.* at 121-2 (Stevens, J., concurring). Justice Stevens noted that an "examination of minimum contacts is not always necessary to determine whether a state court's assertion of personal jurisdiction is constitutional," and that a finding of unreasonableness would alone be sufficient to decline jurisdiction. *Id.*

Therefore, it appears clear that this Court must consider the third prong, even though it has found that the first and second prongs were not met. The Court will, therefore, consider whether it would be reasonable to exercise specific jurisdiction. In assessing the reasonableness of exercising jurisdiction, trial courts in an "appropriate case" may evaluate the following factors:

1. The burden on the defendant in defending in the forum State;
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 Corp. v. Rudzewicz, 471 U.S. at 477.

None of these factors is dispositive in itself, but the Court should balance all of them in making its determination. *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1075 (9th Cir.2001).

Application of the Facts to the Law on Reasonableness

The Black Market Theory

As mentioned above, Mr. Empson shifted his their argument from primarily relying on the stream-of-commerce-plus theory to an argument that LGCA knew that LGCL's allegedly non-conforming lithium-ion batteries were being dumped on a "black market" to companies that would sell them as e-cigarette batteries, which would cause injury to consumers. Based on this

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knowledge, Mr. Empson argued that it is reasonable for Arizona to exercise specific jurisdiction over LGCL.

Mr. Empson relied in large part on the “LG Chem” website (Exhibit F to Mr. Kress’ Affidavit in Support of Plaintiff’s Response to the Motion to Dismiss), which was discussed earlier. Mr. Empson contended that the LG Chem website contained a warning that its batteries should not be misused, because they might explode and cause injury. Mr. Empson’s argument is that this warning would not have been included unless LGCL and/or LGCA reasonably knew that LGCL’s lithium-ion batteries were being and would continue to be misused.

Mr. Empson’s counsel cited to the reasoning in *Collett* to support this argument. *Collett* simply does not say what Mr. Empson says it says. Before even discussing the inapplicability of *Collett*, the Court finds that Mr. Empson’s analysis is fatally defective. First, Mr. Empson provided no evidence that there is a “black market” of LGCL non-conforming batteries. In fact, no evidence was presented that LGCL or LGCA has non-conforming batteries. Even assuming that such non-conforming batteries exist, Mr. Empson failed to present any evidence as to LGCL’s actual disposition of them. The very essence of Mr. Empson’s argument is speculative and unsupported.

The Court realizes that it did not allow LGCA to conduct jurisdictional discovery. Jurisdictional discovery, however, would have had no bearing on LGCA’s claim that non-conforming batteries were dumped on a black market. Any evidence of dumping non-conforming batteries into a black market would have related to LGCL’s activities, not LGCA’s. The evidence of this “black market” and non-conforming batteries, if it existed, should have been discovered during the jurisdictional discovery of LGCL, to which Mr. Empson was privy. If it existed, Mr. Empson’s counsel would surely have presented it in opposition to both company’s motions to dismiss.

There can be no dispute that the “LG Chem” website’s warning clearly indicated that LGCA knew about the misuse of LGCL’s lithium-ion batteries. Hence, the warning. That does not equate with a finding that LGCA’s general knowledge created specific jurisdiction in Arizona. The evidence showed that a third party unrelated to LGCA sold the battery cell to Arizona retailers to be sold to consumers. These were not the acts of LGCA. The Court has previously discussed that specific jurisdiction cannot be created by the unilateral acts of third parties.

Which brings us to the inapplicability of the *Collett* case on the reasonableness analysis. At oral arguments, Mr. Empson’s counsel seemed to argue that *Collett* created a novel theory that a company is subject to specific jurisdiction if it is aware that its product is being misused by third parties, which misused product may be sold in Arizona, and may cause injury in Arizona.

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Even though *Collett* is not precedential, that might be a colorably persuasive argument if *Collett* actually said that. It did not.

As discussed above, *Collett* involved a manufacturer of a finished product who was selling its finished product to American consumers through an American marketer. In that situation, the manufacturer's expectation that its product could be sold to any consumer in America clearly satisfied the third prong that it would be reasonable for any court in this country to exercise specific jurisdiction if that finished product caused injury.

The plaintiff in *Collett* alleged that he was injured by a manufacturing/design defect in the colonoscope. There were no allegations that the colonoscope was misused, that a third party was selling the colonoscopes for an unintended purpose, or that the manufacturer had knowledge of a third party's unauthorized sales of its colonoscopes.

The question in *Collett* was:

If a foreign corporation sells its product through a separate affiliated distributor throughout the United States but does not specifically instruct its distributor in which states to distribute its product, can someone injured by the product sue the foreign manufacturer in the state where the injured party resides when the party was injured in that state and the product was sold there?

Collett v. Olympus Medical Systems Corp., 437 F. Supp. 3d at 1274.

Collett merely echoed United States Supreme Court's rulings on the third-prong reasonableness argument in regard to a manufacturer of a finished product, who intended that product to be sold throughout the United States. It did not create new federal jurisdictional law, which, in any event, would not be within a district court's authority.

In our case, LGCA had no expectation that LGCL's lithium-ion batteries, as manufactured, would be sold throughout the country to American retailers or consumers. LGCA's expectation was that LGCL's product would be sold to authorized American manufacturers who would include the lithium-ion battery cells into an authorized and safe finished product. The fact that nefarious individuals or companies sold the battery cells for unsafe purposes that were not intended by LGCL or LGCA does not meet the reasonableness test.

Mr. Empson's argument, if accepted by this Court, would virtually swallow the reasonableness prong to the point where every non-resident component manufacturer would be

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subject to specific jurisdiction in every State of the Union, whenever its component part was misused, and sold by an unrelated third party for unintended purposes in a forum.

The Burger King Factors

The Court will now discuss the *Burger King* factors to determine reasonableness.

First, Mr. Empson contended that there is no burden on LGCA being sued in Arizona, because LGCA has to spend money anyway to come to America to defend itself in other jurisdictions. That is a circuitous argument, at best. Further, the burden is not just an economical one. This Court has found that Plaintiff has not shown minimum contacts. Requiring LGCA to defend a lawsuit in a State in which it has not availed itself is a legal burden that should not be allowed.

Second, Arizona certainly has an interest in adjudicating Mr. Empson's claim for injuries suffered by the explosion of a battery that was sold in Arizona. However, that dispute is between Mr. Empson and Oasis. Mr. Empson would certainly prefer to have LGCA as a defendant, because it likely has deeper pockets than Oasis. But that preference does not create a basis for specific jurisdiction over LGCA. The Supreme Court has agreed that a State has a strong interest in protecting its citizens from defective products, but "the Constitution commands restraint before discarding liberty in the name of expediency." *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. at 887.

Third, Mr. Empson will still have his day in court against the party that sold the injury-causing item. Further, nothing prohibited Mr. Empson from suing the company or companies that sold the batteries to Oasis. Obtaining the names of such companies would not require jurisdictional discovery. Mr. Empson merely had to request discovery of the names from Oasis. Mr. Empson has a convenient and effective relief in Arizona's court system.

Fourth, Arizona, unlike the federal court system, does not have the interstate judicial system's interest in obtaining the most efficient resolution of controversies. Arizona can only adjudicate cases in its jurisdiction.

Fifth, this Court certainly shares an interest with other States to further fundamental substantive social policies. Mr. Empson argued that in today's world where multi-national companies' products are sold worldwide, it is unfair, and, therefore, against public policy, to allow LGCA to evade justice when it knows its product, albeit sold or modified by unrelated third parties, caused injuries to an Arizona resident. Plaintiff relied upon *Berven* and *Fields* for this argument.

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The problem with that argument is that it goes against United States Supreme Court precedents on determining specific jurisdiction. The Supreme Court has stated that its precedents “make clear that it is the defendant’s actions, **not his expectations**, that empower a State’s courts to subject him to judgment.” *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. at 883 [emphasis added]. The jurisdictional conclusion is a question of authority, not fairness. *Id.* General fairness considerations are “not the touchstone of jurisdiction.” *Id.* at 883-4. Instead, a trial court must determine in the first instance if the foreign defendant availed itself of the forum State’s jurisdiction. *Id.*

If there was evidence that LGCA had some involvement in the distribution of the misused battery cells, and that it had profited from that distribution, there might be a reasonable public policy argument that LGCA should defend itself in Arizona. That was not the evidence. The fact that LGCA’s knowledge that third parties have sold the battery cells in a dangerous condition does not make it reasonable to hale LGCA into an Arizona court.

The social policy in this case is that e-cigarette wholesalers and retailers should not sell dangerous products that they know are not intended for the use to which such wholesalers and retailers are exploiting them. This lawsuit will certainly be able to address that social policy against the retailer that sold the lithium-ion battery. Again, nothing prohibited Mr. Empson from suing the companies that sold the batteries to Oasis.

The Ninth Circuit has added three factors to the above test, which it attributed to *Burger King*. These were (1) the extent of a defendant’s purposeful interjection into the forum state’s affairs; 2) the extent of conflict with the sovereignty of the defendant’s home state; and (3) the existence of an alternative forum. *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1125 (9th Cir. 2002). While these factors may have been gleaned somewhere in *Burger King*, the actual case upon which *Glencore* relied was a Ninth Circuit decision, which in turn cited to another Ninth Circuit decision, which in turn cited to another Ninth Circuit decision. None of those cases specifically cited to *Burger King* as a basis for the additional factors.

This Court is not bound by Ninth Circuit decisions. Out of an abundance of caution, however, the Court will also consider these additional factors. The Court has already determined that LGCA did not purposefully interject itself in Arizona’s affairs. No evidence was presented on the extent of conflict with the sovereignty of South Korea. While there may be an alternative forum in the United States, insufficient evidence was presented on this factor.

After balancing the factors, the Court finds that it would not be reasonable to exercise personal jurisdiction over LGCA in this case.

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Conclusion as to Specific Jurisdiction

The Court finds that the Amended Complaint, standing alone, may have stated a *prima facie* case for specific jurisdiction over LGCA. Even if it did, LGCA's Motions to Dismiss provided sworn evidence that completely rebutted the allegations against LGCA in the Amended Complaint. In response, Mr. Empson did not provide any colorable evidence that LGCA had any involvement with lithium-ion batteries in Arizona. Instead, Mr. Empson often asserted general allegations against the "Defendants," without separating or identifying each defendant's acts. When those generic references are disregarded, and the separate identities of LGCA and LGCL are considered, the allegations against LGCA in regard to lithium-ion battery cells are lacking.

Even if Mr. Empson's evidence had established minimum contacts, which it did not, LGCA presented a compelling case that it would be unreasonable to exercise personal jurisdiction. Mr. Empson's Response to LGCA's Motions to Dismiss, and his counsel's oral arguments, were wholly lacking in presenting "facts, by affidavit or otherwise, supporting personal jurisdiction." *Armstrong v. Aramco Services Co.*, 155 Ariz. at 348.

The Court finds that the evidence showed 1) there was no purposeful conduct by LGCA to target Arizona; 2) there was not a nexus between LGCA and the claims asserted by Mr. Empson; and 3) the exercise of personal jurisdiction would not be reasonable.

Mr. Empson's Motion for Leave to File Second Amended Complaint

Rule 15(a)(2) of the Rules of Civil Procedure states that "a party may amend its pleading only with leave of court or with the written consent of all opposing parties who have appeared in the action. Leave to amend must be freely given when justice requires." LGCA objected to the Motion, so the Court must consider whether leave to amend is appropriate.

Amendments to pleadings are liberally allowed. *Owen v. Superior Court*, 133 Ariz. 75, 79 (1982). The Rules favor trial on the merits, and amendment will be permitted unless there has been undue delay, bad faith, dilatory action, undue prejudice to the opposing party, or futility in the amendment. *Id.*; *Bishop v. State, Department of Corrections*, 172 Ariz. 472, 474-5 (App. 1992). Absent these circumstances, leave to amend a pleading should be granted if the underlying facts or circumstances relied upon may be a proper subject of relief. *MacCollum v. Perkinson*, 185 Ariz. 179, 185 (App. 1996). Denial of leave to amend is generally an abuse of discretion where the amendment merely seeks to add a new legal theory. *Id.*

In this case, Mr. Empson sought leave to amend in order that the pleadings supported the facts and arguments in his Response to the Motion to Dismiss the Amended Complaint. However, this was not a case in which the Court would refuse to consider Mr. Empson's

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Responses unless a corresponding Complaint was filed. The Court intended to consider and analyze both sides' arguments, regardless if they were fully pled in a complaint.

If the Court had found that it had specific jurisdiction over LGCA, it would have likely granted leave for the Second Amended Complaint to be filed. However, because the Court finds that it does not have personal jurisdiction over LGCA, the filing of a Second Amended Complaint would be futile.

IT IS ORDERED denying Plaintiff's request for the Court to reconsider its July 27, 2020 Minute Entry on jurisdictional discovery.

IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to Amend Complaint is denied.

IT IS FURTHER ORDERED that Defendant LG Chem America, Inc.'s Motions to Dismiss for Lack of Personal Jurisdiction are granted.

IT IS FURTHER ORDERED that the Amended Complaint, which took the place of the original Complaint, is dismissed with prejudice as to LG Chem America, Inc.

IT IS FURTHER ORDERED that any relief requested that was not granted herein is denied.

/S/ HON. THEODORE CAMPAGNOLO

HON. THEODORE CAMPAGNOLO
JUDGE OF THE SUPERIOR COURT

EXHIBIT D

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 1721

ERIC MILLER,
Plaintiff,

v.

LG CHEM, LTD., LG CHEM AMERICA,
INC., FOGGY BOTTOM VAPES, LLC,
CHAD & JACLYNN DABBS d/b/a SWEET
TEA'S VAPE LOUNGE, DOE
DEFENDANTS 1-10,
Defendants.

2020 FEB 01 12:10:40

CLERK OF SUPERIOR COURT

**ORDER GRANTING DEFENDANTS LG
CHEM, LTD. AND LG CHEM AMERICA,
INC.'S MOTIONS TO DISMISS FOR
LACK OF PERSONAL JURISDICTION**

THE CAUSE coming on to be heard before the Honorable Superior Court Judge, Michael J. O'Foghludha, in Durham County Superior Court on the 11th day of March, 2020, upon Plaintiff's noticing for hearing Defendant LG Chem, Ltd. and LG Chem America, Inc.'s Motions to Dismiss for Lack of Personal Jurisdiction pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure.

THE COURT having considered the arguments of counsel, the motions, memoranda, briefs, and filings of the parties, including all affidavits and submissions provided to the Court prior to, during, and after the hearing, and specifically including the declaration of Stuart Paynter, the affidavit of Theodore Kenyon, and the 30(b)(6) deposition of Joon Young Shin on behalf of LG Chem, Ltd. from the matter *Flores v. LG Chem, Ltd.*, No. 1:2016-cv-00297 (S.D. Tex.), and April 3, 2020 correspondence from Stuart M. Paynter, and for the reasons set forth below, Defendants LG Chem, Ltd. and LG Chem America, Inc.'s Motions to Dismiss for Lack of Personal Jurisdiction are GRANTED.

FINDINGS OF FACT

1. Plaintiff is a resident of Durham County, North Carolina.
2. Plaintiff alleges in his Complaint that he purchased a vaping device "bundle" from Foggy Bottom Vapes, LLC ("Foggy Bottom Vapes") that included an "LG Chem 18650 battery." Plaintiff also alleges that Chad & Jaclynn Dabbs d/b/a Sweet Tea's Vape Lounge ("Sweet Tea's Vape Lounge") sold him an "18650 LG lithium-ion battery" to use as a spare battery for his vaping device.
3. Plaintiff filed suit against LG Chem, Ltd. ("LG Chem") and LG Chem America, Inc. ("LGCAI"), alleging they manufactured and distributed the 18650 lithium-ion battery that ignited in his pocket. Plaintiff also named Foggy Bottom Vapes and Sweet Tea's Vape Lounge as defendants, and submitted evidence that vape shops throughout North Carolina carry LG 18650 batteries.

4. In discovery responses, Foggy Bottom Vapes and Sweet Tea's Vape Lounge state they obtained 18650 batteries either directly or indirectly from various distributors, including Midwest Goods Inc. ("Midwest Goods"); D&A Distribution, LLC ("D&A Distribution"); Vapor Beast; Shenzhen IMR Technology Co., Ltd. ("Shenzhen"); ISM Vape LLC ("ISM Vape"); and KMG Imports, LLC ("KMG Imports").

5. Plaintiff alleges he was injured on March 4, 2018, when one of the two 18650 lithium-ion batteries that he purchased ignited in his pocket.

6. LG Chem is a South Korean company with its headquarters and principal offices in Seoul, South Korea. LG Chem manufactures and sells lithium-ion cells for use in specific applications by sophisticated companies. It does not design, manufacture, distribute, advertise, or sell lithium-ion cells for use by individual consumers as standalone, replaceable, rechargeable batteries in electronic cigarette or vaping devices.

7. LG Chem does not sell 18650 lithium-ion cells directly to consumers and has never authorized any entity to do so either. Rather, it sells 18650 lithium-ion cells to sophisticated companies for incorporation into products such as power tools and power packs. There are legitimate business reasons for the design of LG Chem's 18650 lithium-ion cells in such applications which render the cells inappropriate for use as standalone, replaceable, rechargeable batteries in electronic cigarettes and vaping devices. Accordingly, LG Chem has tried to limit the distribution of its 18650 lithium-ion cells for use by consumers as standalone, replaceable, rechargeable batteries in electronic cigarettes and vaping devices.

8. LG Chem has never conducted any business with Foggy Bottom Vapes; Sweet Tea's Vape Lounge; Midwest Goods; D&A Distribution; Vapor Beast; Shenzhen; ISM Vape; or KMG Imports, LLC and has never authorized any of these entities to distribute or sell LG brand lithium-ion cells for any purpose. LG Chem has never authorized any distributor, retailer, or re-seller to distribute or sell any lithium-ion cells for use by individual consumers as standalone, replaceable, rechargeable batteries in e-cigarette or vaping devices.

9. LGCAI is a Delaware corporation with its principal place of business in Georgia. LGCAI primarily sells and distributes various petrochemical materials and products. LGCAI does not have any manufacturing plants, and it focuses on sales and/or distribution only.

10. LGCAI's sales in North Carolina are limited to petrochemical products. These sales have no relationship to the distribution of 18650 lithium-ion cells for sale to North Carolina consumers for use in electronic cigarettes and vaping devices.

CONCLUSIONS OF LAW

1. "[U]pon a defendant's motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of making out a prima facie case that jurisdiction exists." *Padron v. Bentley Marine Grp., LLC*, 822 S.E.2d 494, 498 (N.C. Ct. App. 2018), *review denied*, 372 N.C. 301, 826 S.E.2d 713 (2019). "If the defendant 'supplements [his] motion with affidavits or other supporting evidence, the allegations of the plaintiff's complaint can no longer be taken as true or controlling and plaintiff cannot rest on the allegations of the complaint[.]'" *Id.* (alterations in original) (quoting *Wyatt v. Walt Disney World, Co.*, 151 N.C. App. 158, 163, 565 S.E.2d 705, 708 (2002)). "Instead, the plaintiff 'must respond by affidavit or otherwise setting forth specific facts showing that the court has jurisdiction.'" *Id.* (quoting *Wyatt*, 151 N.C. App. at 163, 565 S.E.2d at 708).
2. Because the statutory authorization for personal jurisdiction under North Carolina's long-arm statute, N.C. Gen. Stat. § 1-75.4, "is coextensive with federal due process, the critical inquiry in determining whether North Carolina may assert *in personam* jurisdiction over a defendant is whether the assertion comports with due process." *Padron*, 822 S.E.2d at 498 (quoting *J.M. Thompson Co. v. Doral Mfg. Co.*, 72 N.C. App. 419, 424, 324 S.E.2d 909, 913 (1985)).
3. "There are two kinds of personal jurisdiction: general and specific." *Stetser v. TAP Pharm. Prods. Inc.*, 162 N.C. App. 518, 521, 591 S.E.2d 572, 575 (2004); *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017) ("[U.S. Supreme Court] decisions have recognized two types of personal jurisdiction: 'general' (sometimes called 'all-purpose') and 'specific' (sometimes called 'case-linked') jurisdiction.").
4. "A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)). Only in an "exceptional case" can a court exercise general jurisdiction in a forum that is not "the corporation's place of incorporation [or] its principal place of business." *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017).
5. "A court may exercise specific jurisdiction only 'where the controversy arises out of the defendant's contacts with the forum state.'" *Stetser*, 162 N.C. App. at 521, 591 S.E.2d at 575 (quoting *Tom Togs, Inc. v. Ben Elias Industries Corp.*, 318 N.C. 361, 366, 348 S.E.2d 782 (1986)); *Bristol-Myers*, 137 S. Ct. at 1780 ("In order for a state court to exercise specific jurisdiction, 'the *suit*' must 'aris[e] out of or relat[e] to the defendant's contacts with the *forum*.'" (emphasis and alterations in original) (quoting *Daimler*, 571 U.S. at 127).
6. In *Cox v. Hozelock, Ltd.*, 105 N.C. App. 52, 411 S.E.2d 640 (1992), the North Carolina Court of Appeals held that when an out-of-state defendant "purposefully injected [its] product into the stream of commerce without any indication that it desired to limit the area of distribution of its product so as to exclude North Carolina, ... the courts of North

Carolina may lawfully assert personal jurisdiction over" that defendant. *Id.* at 55, 411 S.E.2d at 643 (quoting *Bush v. BASF Wyandotte Corp.*, 64 N.C. App. 41, 306 S.E.2d 562 (1983)).

7. Since the North Carolina Court of Appeals' 1992 decision in *Cox*, the United States Supreme Court has issued several decisions that clarify the circumstances under which specific jurisdiction can be exercised consistent with due process, reflecting the Supreme Court's increasingly narrower interpretation of personal jurisdiction over foreign corporations. *See, e.g., Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017); *Walden v. Fiore*, 571 U.S. 277 (2014); *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873 (2011). However, the Court need not decide whether the "stream of commerce" standard applied in *Cox* and *Bush* remains valid after these United States Supreme Court decisions because, even under the *Cox* standard, Plaintiff has not carried his burden of demonstrating that this Court has personal jurisdiction over LG Chem or LGCAI.

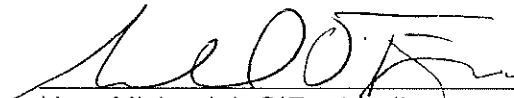
8. Plaintiff's alleged injuries did not arise from any activities of LG Chem in North Carolina. LG Chem did not purposefully inject 18650 lithium-ion cells into the stream of commerce to be sold to consumers for use as standalone, replaceable, rechargeable batteries in electronic cigarettes and vaping devices. To the contrary, LG Chem tried to limit the distribution of its 18650 lithium-ion cells for use by consumers as standalone, replaceable, rechargeable batteries in electronic cigarettes and vaping devices.

9. Plaintiff's alleged injuries did not arise from any activities of LGCAI in North Carolina. LGCAI's sales in North Carolina have no relationship to the distribution of 18650 lithium-ion cells for sale to North Carolina consumers for use in electronic cigarettes and vaping devices.

10. BASED UPON THE FOREGOING FINDINGS OF FACTS, the Court concludes that this Court lacks personal jurisdiction over Defendants LG Chem, Ltd. and LG Chem America, Inc.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Defendants LG Chem, Ltd. and LG Chem America, Inc.'s Motions to Dismiss for Lack of Personal Jurisdiction are granted pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure.

This the 22 of April, 2020.


Hon. Michael J. O'Foghlu
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing Order in the above captioned action on all parties by depositing a copy hereof in a postpaid wrapper in a post office depository under the exclusive care and custody of the United Postal Service, addressed as follows:

PAYNTER,STUART,M
410 N. BOYLAN AVE., STE. 100
RALEIGH, NC 27603

DERRENBACHER,CHRISTOPHER,J
4101 LAKE BOONE TRAIL, STE. 574
RALEIGH, NC 27607

TIERNEY,CRAIG
P.O. BOX 1729
RALEIGH, NC 27602

KISALA,ANDREW
P.O. BOX 25378
DURHAM, NC 27702

This the 20th day of April, 2020.

Smab. mark
ASSISTANT DEPUTY CLERK OF SUPERIOR COURT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	CERTIFICATE OF SERVICE
ROLLING FOG VAPOR COMPANY,	)	
LLC, LG CHEM, LTD., AND LG	)	
CHEM AMERICA, INC.,	)	
	)	
Defendants.	)	
	)	

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, do hereby certify that on this 1st day of February, 2021, a true and correct copy of **DEFENDANT LG CHEM, AMERICA, INC.'S REPLY MEMORANDUM IN SUPPORT OF ITS RENEWED MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR LACK OF PERSONAL JURISDICTION** was served on all counsel of record who are participants in the E-Filing system. I also hereby certify that on this 1st day of February 2021, a true and correct copy of this pleading was served via U.S. Mail upon the counsel/parties listed below not participating in the E-Filing system.

Counsel/Parties served:

Via E-Filing:	Via U.S. Mail:
Ronnie L. Crosby, Esquire Alexander P. Lewis, Esquire William B. Cummings, Esquire Austin H. Crosby, Esquire <i>Counsel for Plaintiff Dwayne Thompson</i>	Gina Marie Surace 317 Greenway Drive Chesnee, SC 29323 <i>Registered Agent for Defendant Rolling Fog Vapor Company, LLC</i>

By: /s/Rachel Hedley
Rachel A. Hedley (SC Bar No.: 16941)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF UNION	)	CIVIL ACTION NO.: 2019-CP-44-00054
	)	
DWAYNE THOMPSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING LG CHEM
	)	AMERICA, INC.'S
LG CHEM, LTD., LG CHEM AMERICA,	)	MOTION TO DISMISS
INC., and ROLLING FOG VAPOR	)	
COMPANY, LLC,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court for a hearing on February 1, 2020, on Defendant LG Chem America, Inc.'s ("LGA") motion to dismiss for lack of personal jurisdiction. After reviewing the parties' submissions and hearing argument of counsel, the Court denies LGA's motion for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

This is a product liability action involving an allegedly defective lithium ion battery used for an e-cigarette device. Plaintiff, a South Carolina citizen, alleges that on July 27, 2018, the battery, while in his pants pocket, exploded and burst into flames, causing severe burn injuries. The injuries occurred in Spartanburg, South Carolina. Defendant Rolling Fog Vapor Company, LLC, is a retail store in Spartanburg, South Carolina, that sold the battery and e-cigarette device to Plaintiff. (Cmpl. ¶ 2). Defendant LGA, a Delaware corporation, and Defendant LG Chem, Ltd., ("LG"), a South Korean corporation, allegedly designed, manufactured, imported, and sold the battery. *Id.* at ¶¶ 3-6.

On March 4, 2019, Plaintiff filed this action in Union County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. As to LGA, Plaintiff alleges LGA has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On November 2, 2020, LGA filed a renewed motion to dismiss for lack of personal jurisdiction, along with an affidavit of HyunSoo Kim, an LGA Compliance Manager. Mr. Kim states, *inter alia*, that LGA is incorporated in Delaware with its principal place of business in Georgia. (Aff. ¶5). It does not own or rent property in South Carolina. *Id.* at ¶ 6. Mr. Kim attests that LGA did not design, manufacture, distribute or sell a lithium-ion battery for use by individual consumers. *Id.* at ¶ 10.

On January 28, 2021, Plaintiff filed a memorandum in opposition to the renewed motion to dismiss, along with a South Carolina Certificate of Authority for LGA and hundreds of import records for the Port of Charleston. On September 15, 2010, LGA obtained a Certificate of Authority from the South Carolina Secretary of State that authorizes it to transact business in South Carolina. (Ex. 1). LGA maintains a registered agent in Columbia, South Carolina. *Id.* The import records show that from December 2016 to February 2019, LGA received as consignee approximately 244 product shipments from LG to the Port of Charleston in South Carolina. (Ex. 2). LGA is a wholly-owned subsidiary of LG, and LGA’s business activities for LG are “sales and trading” of its products within the United States.¹

¹ See LG Chem, Ltd. and Subsidiaries, *Consolidated Interim Financial Statements*, June 30, 2018 and 2017, http://www.lgchem.com/upload/file/audit-report/2018_2Q_ConFS_ENG.pdf at p. 10.

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in his favor, the Court finds there are sufficient minimum contacts between LGA and South Carolina to support exercising specific personal jurisdiction² over LGA.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and

² Plaintiff did not dispute LGA’s argument as to general jurisdiction.

substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there.” *Id.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).³ “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.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the fairness prong, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction.” *Id.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LGA has

³ See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

“continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LGA possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina’s long-arm statute,

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s: (1) transacting any business in this State; (2) contracting to supply services or things in the State; . . . (4) causing tortious injury or death in this State by an act or omission outside this State 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 State.

S.C. Code Ann. § 36-2-803(A). LGA has a presence in South Carolina in the form of being registered to transact business here, having a registered process agent here, continuously and regularly using a State port to conduct its business activities, and deriving revenue from South Carolina. Plaintiff points to LGA’s Certificate of Authority to transact business as evidence that supports the exercise of personal jurisdiction. The Court agrees. Section 33-15-101 of the South Carolina Code lists 13 categories of activities that are **not** considered transacting business in South Carolina. S.C. Code Ann. § 33-15-101. LGA’s decision to obtain a Certificate of Authority demonstrates that its activities in South Carolina are more substantial than those listed in § 33-15-101. Further, by obtaining a Certificate of Authority, LGA agreed at a minimum to the jurisdiction of the South Carolina Department of Revenue and our Courts to determine its South Carolina tax

liability. S.C. Code Ann. § 33-15-105(d). Along with the evidence of LGA's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 244 product shipments from LG to LGA as consignee through the Port of Charleston, South Carolina, from December 2016 to February 2019. This is ample evidence that LGA transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 (“W.W. Norton’s continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis.”); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) (“By using the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”). LGA participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied and it should come as no surprise to LGA that the subject battery ended up in South Carolina and injured a South Carolina citizen.

The exercise of personal jurisdiction is also reasonable and fair. First, LGA has conducted activities in South Carolina for a sufficient duration. It obtained a Certificate of Authority to transact business in South Carolina over ten years ago and the import records show its use of the Port for over ten years. Second, the character and circumstances of the commission of LGA's acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LGA. It is a U.S. corporation with a Certificate of Authority and

registered agent in South Carolina. Fourth, South Carolina has an interest in exercising jurisdiction over LGA. “South Carolina has an interest in providing redress for its citizens.” *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”)). Finally, four other circuit court judges in South Carolina have examined this precise issue and determined that South Carolina has personal jurisdiction over LGA. (Ex. 3, Order from the Honorable Michael G. Nettles, Ex. 4, Order from the Honorable Courtney Clyburn Pope, Ex. 5, Order from the Honorable Perry M. Buckner, III, and Ex. 6, Order from the Honorable Bentley Price). The Court has specific personal jurisdiction over LGA.

CONCLUSION

After reviewing all relevant cases presented by the parties, the Court is bound by *Sumatra*. Based on *Sumatra* and the additional authority cited above, the Court denies LGA’s motion.

AND IT IS SO ORDERED.

Dated: _____

York, South Carolina

William A. McKinnon
Circuit Court Judge

EXHIBIT

1

Business Entities Online

File, Search, and Retrieve Documents Electronically

LG CHEM AMERICA, INC.

Corporate Information

Entity Type: Corporation

Status: Good Standing

Domestic/Foreign: Foreign

Incorporated State: Delaware

Important Dates

Effective Date: 09/15/2010

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: CORPORATION SERVICE COMPANY

Address: 1703 LAUREL STREET
COLUMBIA, South Carolina 29201

Official Documents On File

Filing Type	Filing Date
Authority	09/15/2010

EXHIBIT

2

	CONSIGNEE	SHIPPER	ARRIVAL DATE	GROSS WEIGHT (LB)	GROSS WEIGHT (KG)	FOREIGN PORT	US PORT	VESSEL NAME	COUNTRY OF ORIGIN	MARKS & AMP; NUMBERS	CONSIGNEE ADDRESS	SHIP
P/O : E R REN											INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA 1-5742394090	LG TM DAER SEO 553201
4 36 6	LG CHEM AMERICA, INC.	LG CHEM, LTD.	02/08/2019	43254	19661	Pusan	Charleston, South Carolina	ZIM CHICAGO	South Korea	AS PER LABEL		
-IS	LG CHEM AMERICA, INC.	LG CHEM LTD.	02/05/2019	44000	20000	Pusan	Charleston, South Carolina	YM UTOPIA	South Korea	NO MARKS . . .	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA ATTN BONA CHANG / BCHANGLGCHEMXXXX	LG TM DAER SEO 07336
	CHEMBANK INTERNATIONAL, INC.	LG CHEM LTD.	02/05/2019	44000	20000	Pusan	Charleston, South Carolina	YM UTOPIA	South Korea	NO MARKS . .	15 FOREST STREET CLOSTER, NJ 07624 TEL 1- 201-364-4923	LG TM DAER SEO 07336
-IS	LG CHEM AMERICA, INC.	LG CHEM LTD.	02/05/2019	44000	20000	Pusan	Charleston, South Carolina	YM UTOPIA	South Korea	NO MARKS . . .	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA ATTN BONA CHANG / BCHANGLGCHEMXXXX	LG TM DAER SEO 07336
31D) 16.11	LG CHEM AMERICA, INC.	LG CHEM LTD.	02/05/2019	46200	21000	Pusan	Charleston, South Carolina	YM UTOPIA	South Korea	NO MARKS . . .	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL 1-404-400- 6125 BCHANGLGCHEM.COM	LG TM DAER SEO 07336
1YL	CHEMBANK INTERNATIONAL, INC.	LG CHEM LTD.	02/05/2019	44000	20000	Pusan	Charleston, South Carolina	YM UTOPIA	South Korea	NO MARKS . .	15 FOREST STREET CLOSTER, NJ 07624 TEL 1- 201-364-4923	LG TM DAER SEO 07336
-IS	LG CHEM AMERICA, INC.	LG CHEM LTD.	01/29/2019	44000	20000	Pusan	Charleston, South Carolina	HANOVER EXPRESS	South Korea	NO MARKS . . .	3475 PIEDMONT ROAD, NESTE 1200, ATLANTA, GA 30305, USA TEL 1-404-400- 6125 BCHANGLGCHEM.COM	LG TM DAER SEO KORE
											3475 PIEDMONT RD NE,	LG TM

	LG CHEM AMERICA, INC.	LG CHEM LTD.	01/29/2019	44000	20000	Pusan	Charleston, South Carolina	MOL MODERN	South Korea	NO MARKS . .	SUITE 1200, ATLANTA, GA 30305 USA TEL 1-404-400-6125 BCHANLGCHEM.COM	DAER SEOU COSE
IYL -HS	LG CHEM AMERICA, INC.	LG CHEM LTD.	01/29/2019	44000	20000	Pusan	Charleston, South Carolina	MOL MODERN	South Korea	N/M	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL 1-404-400-6125 BCHANLGCHEM.COM	LG TM DAER SEOU 07336
IYL -HS												
-HS i36- AL	LG CHEM AMERICA INC.	LG CHEM , LTD	01/29/2019	88000	40000	Pusan	Charleston, South Carolina	MOL MODERN	South Korea	NO MARKS NO MARKS	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA, 30305 USA TEL 1-404-400-6125 BCHANLGCHEM.COM	LG TM DAER SEOU 07336
- VE	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	01/25/2019	222666	101212	Ningpo	Charleston, South Carolina	NORTHERN JASPER	China	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE ST.HIGH POINT, .NORTH CAROLINA- 1-3368784207 TEL EX 53	LG TM DONG SEOU TEL E
IYL -HS	VOLVO CAR US OPERATIONS INC	LG CHEM	01/24/2019	26752	12160	Pusan	Charleston, South Carolina	NORTHERN JASPER	South Korea	VOLVO CARS CHARLESTON	1801 VOLVO CAR DR RIDGEVILLE SC 29472 US	20 YO YOUN TOWE
-HS	LG CHEM AMERICA INC.	LG CHEM , LTD	01/21/2019	88000	40000	Pusan	Charleston, South Carolina	MOL MAGNIFICENCE	South Korea	NO MARKS NO MARKS	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA, 30305 USA ATTN JEENY CHO/JENNYCHO1LGCHEM.COM TEL 404-400-6114 EXT 6125	LG TM DAER SEOU 07336
36- AL												
36- AL	LG CHEM AMERICA INC.	LG CHEM , LTD	01/21/2019	46200	21000	Pusan	Charleston, South Carolina	MOL MAGNIFICENCE	South Korea	NO MARKS	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA, 30305 USA ATTN JEENY CHO/JENNYCHO1LGCHEM.COM TEL 404-400-6114 EXT 6125	LG TM DAER SEOU 07336
-0464 L:336-	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	01/20/2019	222666	101212	Ningpo	Charleston, South Carolina	ZIM ROTTERDAM	China	N/M N/M N/M N/M N/M	243 WOODBINE ST.HIGH POINT, NORTH CAROLINA- 1-3368784207 TEL EX 53	LG TM DONG SEOU EX 82-

SEAL NO.: 09476 IN ISO 3475 PIEDMONT RD NE, LG TM

LG CHEM AMERICA, INC.	LG CHEM LTD.	01/13/2019	88000	40000	Pusan	Charleston, South Carolina	ZIM NINGBO	South Korea	TANK SEAL NO.: 109496 IN ISO TANK	SUITE 1200, ATLANTA ATLANTA US US	DAER YOUN
LG CHEM AMERICA, INC.	LG CHEM LTD.	01/08/2019	220462	100210	Pusan	Charleston, South Carolina	MSC CHICAGO	South Korea	1566/011600 RF CU8210591/010719/010754/010758 ITTU 1055141/010221/010223/010242 SEGU80 36009/008106/008115/00	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA ATTN: BONA CHANG / 1-4044006125	LG TW DAER SEOU 07336 32555
KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	01/06/2019	222666	101212	Ningpo	Charleston, South Carolina	ZIM ANTWERP	China	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE ST. HIGH POINT, NORTH CAROLINA - 1-3368784207 TEL EX 53	LG TW DONG SEOU TEL E
LG CHEM AMERICA, INC.	LG CHEM, LTD.	01/03/2019	43254	19661	Ningpo	Charleston, South Carolina	TIANJIN	China	AS PER LABEL	INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA 1-5742394090	LG TW DAER SEOU 55320
LG CHEM AMERICA, INC.	LG CHEM, LTD.	01/03/2019	43254	19661	Ningpo	Charleston, South Carolina	TIANJIN	China	AS PER LABEL	INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA 1-5742394090	LG TW DAER SEOU 55320
LG CHEM AMERICA, INC.	LG CHEM LTD.	01/03/2019	88000	40000	Pusan	Charleston, South Carolina	TIANJIN	South Korea	SEAL NO.: 132586 IN ISO TANK SEAL NO.: 132568 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA ATLANTA US US	LG TW DAER YOUN
ECOMIRAE TECHNOLOGIES LLC	LG CHEM, LTD.	12/22/2018	117638	53472	Pusan	Charleston, South Carolina	ZIM ALABAMA	South Korea	N/M N/M N/M	2445 NW 38TH STREET, GAINESVILLE, FL 32605, USA ATTN: SEUNGKOO KANG - 1-6786913927	128 YI YEON SEOU 37731
EATON POWER	LG CHEM LTD	12/21/2018	92633	42106	Pusan	Charleston, South Carolina	LOS ANGELES TRADER	South Korea	NM	8380 CAPITAL BLVD RALEIGH NC 27616 US	128 YI YEON 07336
EATON POWER	LG CHEM LTD	12/21/2018	92633	42106	Pusan	Charleston, South Carolina	LOS ANGELES TRADER	South Korea	NM	8380 CAPITAL BLVD RALEIGH NC 27616 US	128 YI YEON 07336

EATON POWER	LG CHEM LTD	12/21/2018	88055	40025	Pusan	Carolina	TRADER	South Korea	NM NM NO MARK	RALEIGH NC 27616 US	07336
LG CHEM AMERICA, INC.	LG CHEM LTD.	12/16/2018	88000	40000	Pusan	Charleston, South Carolina	MAERSK SHEERNESS	South Korea	SEAL NO.: 005860 IN ISO TANK SEAL NO.: 005821 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA ATLANTA US US	LG TM DAER YOUN
LG CHEM AMERICA, INC.	LG CHEM, LTD.	12/16/2018	222666	101212	Pusan	Charleston, South Carolina	MAERSK SHEERNESS	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE ST.HIGH POINT, NORTH CAROLINA — 1-3368784207 TEL EX 53	LG TM DONG SEOU TEL E
LG CHEM AMERICA, INC	LG CHEM LTD.	12/16/2018	267859	121754	Pusan	Charleston, South Carolina	MAERSK SHEERNESS	South Korea	N/M N/M N/M N/M N/M	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA ATTN: BONA CHANG / BCHANG@LGCHEM.COM ##	LG TM DAER SEOU 07336
LG CHEM AMERICA, INC.	LG CHEM LTD.	12/15/2018	88000	40000	Pusan	Charleston, South Carolina	AMERICA	South Korea	SEAL NO.: 131599 IN ISO TANK SEAL NO.: 131594 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA ATLANTA US US	LG TM DAER YOUN
ECOMIRAE TECHNOLOGIES LLC	LG CHEM, LTD.	12/10/2018	217814	99006	Pusan	Charleston, South Carolina	NORTHERN JULIE	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	2445 NW 38TH STREET, GAINESVILLE, FL 32605, USA ATTN: SEUNGKOO KANG— 1-6786913927	128 YI YEON SEOU 55320
LG CHEM AMERICA, INC.	LG CHEM LTD.	12/10/2018	88000	40000	Pusan	Charleston, South Carolina	NORTHERN JULIE	South Korea	SEAL NO.: 002644 IN ISO TANK SEAL NO.: 002640 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA ATLANTA US US	LG TM DAER YOUN
LG CHEM AMERICA, INC.	LG CHEM, LTD	12/10/2018	50992	23178	Pusan	Charleston, South Carolina	NORTHERN JULIE	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA	128, Y YEON KORE
LG CHEM AMERICA, INC.	LG CHEM, LTD.	12/04/2018	43254	19661	Pusan	Charleston, South Carolina	MAERSK SEMARANG	South Korea	AS PER LABEL	INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA 1-5742394090	LG TM DAER SEOU 55320

6-12-ETYL	LG CHEM AMERICA, INC.	LG CHEM LTD.	12/01/2018	88000	40000 Pusan	Charleston, South Carolina	EVER LEADING	South Korea	SEAL NO.: 941399 IN ISO TANK SEAL NO.: 941357 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA ATLANTA US US	LG TM DAER YOUN
6-12-ETYL	LG CHEM AMERICA, INC.	LG CHEM LTD.	12/01/2018	44000	20000 Pusan	Charleston, South Carolina	EVER LEADING	South Korea	SEAL NO.: 174599 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER YOUN
6-12-ETYL	LG CHEM AMERICA, INC.	LG CHEM LTD.	11/26/2018	88184	40084 Pusan	Charleston, South Carolina	MAERSK TAIKUNG	South Korea	N/M N/M	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL:404-400-6101 EXT. 6114 1-4044006125	LG TM DAER SEOU EX 82-
6-12-ETYL	LG CHEM AMERICA, INC.	LG CHEM LTD.	11/26/2018	138891	63132 Pusan	Charleston, South Carolina	MAERSK TAIKUNG	South Korea	N/M N/M N/M	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA BCHANGE@LGCHEM.COM 1-4044006125	LG TM DAER SEOU EX 82-
6-12-ETYL	LG CHEM AMERICA, INC.	LG CHEM LTD.	11/26/2018	88184	40084 Pusan	Charleston, South Carolina	MAERSK TAIKUNG	South Korea	N/M N/M	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL:404-400-6101 EXT. 1-4044006125	LG TM DAER SEOU 07336 32555
6-12-ETYL	LG CHEM AMERICA, INC.	LG CHEM LTD.	11/26/2018	88184	40084 Pusan	Charleston, South Carolina	MAERSK TAIKUNG	South Korea	N/M N/M	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL:404-400-6101 EXT. 6114 1-4044006125	LG TM DAER SEOU 07336 32555
6-12-ETYL	LG CHEM AMERICA, INC.	LG CHEM LTD.	11/26/2018	88184	40084 Pusan	Charleston, South Carolina	MAERSK TAIKUNG	South Korea	N/M N/M	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL:404-400-6101 EXT. 6114 1-4044006125	LG TM DAER SEOU 07336 32555
6-12-ETYL	LG CHEM AMERICA, INC.	LG CHEM LTD.	11/26/2018	88184	40084 Pusan	Charleston, South Carolina	MAERSK TAIKUNG	South Korea	N/M N/M	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA ATTN: BONA CHANG/BCHANG@LGCHEM.COM 1-4044006125	LG TM DAER SEOU 07336 32555

	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	11/26/2018	267859	121754 Pusan	Charleston, South Carolina	MAERSK TAIKUNG	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE ST. HIGH POINT, NORTH CAROLINA 27261 ATTN: BETH KLINE TEL:336-878-4269/336-878-4223	LG TM DONG SEOU
HIGH	LG CHEM AMERICA, INC.	LG CHEM LTD.	11/16/2018	37037	16835 Pusan	Charleston, South Carolina	ZIM SAN DIEGO	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE STE. 1200, ATLANTA, GA 30305 BCHANGE@LGCHEM.COM 1-4044006125	LG TM DAER SEOU 07336 32555
1 KG	LG CHEM AMERICA, INC.	LG CHEM, LTD	11/16/2018	46032	20924 Pusan	Charleston, South Carolina	ZIM SAN DIEGO	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA 1-4044006125	128, Y DAER SEOU TEL E
	CHEMBANK INTERNATIONAL, INC.	LG CHEM, LTD	11/14/2018	44000	20000 Pusan	Charleston, South Carolina	MOL MODERN	South Korea	NO MARKS . .	15 FOREST STREET CLOSTER, NJ 07624 TEL 1-201-364-4923	LG TM DAER SEOU 07336
HS	LG CHEM AMERICA, INC.	LG CHEM, LTD	11/14/2018	44000	20000 Pusan	Charleston, South Carolina	MOL MODERN	South Korea	NO MARKS	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA, 30305 USA ATTN JEENY CHO/JENNYCHO1@LGCHEM.COM TEL 404-400-6114 EXT 6125	LG TM DAER SEOU 07336
5880	35KG LG CHEM AMERICA, INC.	LG CHEM, LTD	11/12/2018	45936	20880 Pusan	Charleston, South Carolina	MSC RANIA	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA	128, Y DAER SEOU
3 N-4-4-9884-1S	LG CHEM AMERICA, INC.	LG CHEM LTD.	11/12/2018	176000	80000 Pusan	Charleston, South Carolina	MSC RANIA	South Korea	SEAL NO.: 032428 IN ISO TANK SEAL NO.: 032409 IN ISO TANK SEAL NO.: 032436 IN ISO TANK SEAL NO.: 032479 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER YOUN
L-A	LG CHEM AMERICA, INC.	LG CHEM, LTD.	11/12/2018	35361	16073 Pusan	Charleston, South Carolina	MSC RANIA	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA	LG TM DONG SEOU
										243 WOODBINE ST, HIGH AS PER LABEL AS PER	

3H	FNS INC ATL	LG CHEM LTD.	10/23/2018	37037	16835	Pusan	Charleston, South Carolina	COLUMBINE MAERSK	South Korea	AS PER LABEL	3000 HANBOLL PARKWAY, STE 390 NORCROSS, GA 30092 1-6786913927	07336-32555
0 KG											2445 NW 38TH STREET, GAINESVILLE, FL 32605, USA ATTN: SEUNGKOO KANG— 1-4047666441 TEL EX 64	128 YI YEON SEOU 553201
EL: E, E	ECOMIRAE TECHNOLOGIES LLC	LG CHEM, LTD.	10/23/2018	175438	79745	Pusan	Charleston, South Carolina	COLUMBINE MAERSK	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA RPASHAK@LGCHEM.COM— 1-4044006125	07336-32555
3H	LG CHEM AMERICA, INC.	LG CHEM LTD.	10/23/2018	37037	16835	Pusan	Charleston, South Carolina	COLUMBINE MAERSK	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA RPASHAK@LGCHEM.COM— 1-4044006125	07336-32555
9875 HS	LG CHEM AMERICA, INC.	LG CHEM LTD.	10/21/2018	44000	20000	Pusan	Charleston, South Carolina	MSC ROMA	South Korea	SEAL NO.: 032392 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA	LG TW DAER YOUN
	LG CHEM AMERICA, INC.	LG CHEM, LTD.	10/21/2018	35361	16073	Pusan	Charleston, South Carolina	MSC ROMA	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA	LG TW DONG SEOU
D L-A	LG CHEM AMERICA, INC.	LG CHEM LTD.	10/21/2018	44000	20000	Pusan	Charleston, South Carolina	EVER LAUREL	South Korea	SEAL NO.: 032793 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA	LG TW DAER YOUN
	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	10/19/2018	264552	120251	Pusan	Charleston, South Carolina	TIANJIN	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE ST. HIGH POINT, NORTH CAROLINA 27261 ATTN: BETH KLINE TEL: 336-878-4269	LG TW DONG SEOU
	LG CHEM AMERICA, INC.	LG CHEM LTD.	10/18/2018	44000	20000	Pusan	Charleston, South Carolina	CMA CGM NORMA	South Korea	SEAL NO.: 005593 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA	LG TW DAER YOUN
	LG CHEM AMERICA,						Charleston, South Carolina			SEAL NO.: 630191 IN	3475 PIEDMONT RD NE, SUITE 1200 ATLANTA	LG TW DAER

INC.	LG CHEM LTD.	10/12/2018	46200	21000	Pusan	Carolina	ZIM ANTWERP	South Korea	ISO TANK	ATLANTA US US	YOUN
LG CHEM AMERICA, INC.	LG CHEM LTD.	10/12/2018	88000	40000	Pusan	Charleston, South Carolina	ZIM ANTWERP	South Korea	SEAL NO.: 928967 IN ISO TANK SEAL NO.: 008097 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA ATLANTA US US	LG TM DAER YOUN
LG CHEM AMERICA, INC.	LG CHEM LTD.	10/12/2018	88000	40000	Pusan	Charleston, South Carolina	ZIM ANTWERP	South Korea	SEAL NO.: 005588 IN ISO TANK SEAL NO.: 005541 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA ATLANTA US US	LG TM DAER YOUN
LG CHEM AMERICA, INC.	LG CHEM, LTD.	10/07/2018	177176	80535	Ningpo	Charleston, South Carolina	MAERSK UTAH	China	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL: 678-984-5714 1-4044006125	20 YO YOUN TOWE KORE TEL E
LG CHEM AMERICA, INC.	LG CHEM LTD.	10/05/2018	88000	40000	Pusan	Charleston, South Carolina	YM UBIQUITY	South Korea	NO MARKS NO MARKS	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL 404-400-6101 EXT. 6114 RPASHAKLGCHEM.COM	LG TM DAER SEOU
LG CHEM AMERICA, INC.	LG CHEM LRD.	10/03/2018	44000	20000	Pusan	Charleston, South Carolina	MOL MAESTRO	South Korea	NO MARKS . . .	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA RPASHAKLGCHEM.COMXX XX	LG TM DAER GU,SE CODE
LG CHEM AMERICA, INC.	LG CHEM LTD.	10/03/2018	44000	20000	Pusan	Charleston, South Carolina	MOL MAESTRO	South Korea	NO MARKS . . .	3475 PIEDMONT ROAD, NE STE 1200, ATLANTA, GA 30305, USA ATTN SEA GUN LEEXXX	LG TM DAER SEOU 07336
LG CHEM AMERICA, INC.	LG CHEM LTD.	09/29/2018	44000	20000	Pusan	Charleston, South Carolina	MOL MISSION	South Korea	NO MARKS . . .	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA RPASHAKLGCHEM.COMXX XX	LG TM DAER SEOU 07336
LG CHEM AMERICA, INC.	LG CHEM LTD.	09/29/2018	44000	20000	Pusan	Charleston, South Carolina	MOL MISSION	South Korea	NO MARKS . . .	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA RPASHAKLGCHEM.COM TEL 248-289-5795	LG TM DAER SEOU 07336

492	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	09/28/2018	222200	101000	Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE ST.HIGH POINT, . NORTH CAROLINA	LG TM DONG SEOU
492	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	09/28/2018	222200	101000	Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE ST.HIGH POINT, . NORTH CAROLINA	LG TM DONG SEOU
	LG CHEM AMERICA, INC.	LG CHEM LTD.	09/28/2018	44000	20000	Pusan	Charleston, South Carolina	EVER LEADING	South Korea	SEAL NO.: 930514 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, 30305 ATLANTA ATLANTA US 30305 US	LG TM DAER 07336
	LG CHEM AMERICA, INC.	LG CHEM LTD.	09/28/2018	44000	20000	Pusan	Charleston, South Carolina	EVER LEADING	South Korea	SEAL NO.: 005387 IN ISO TANK	3475 PIEDMONT RD NE, SUITE 1200, 30305 ATLANTA ATLANTA US 30305 US	LG TM DAER GU YC KR
	LG CHEM AMERICA, INC.	LG CHEM LTD.	09/27/2018	42020	19100	Pusan	Charleston, South Carolina	E. R. TIANPING	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30350 USA RPASHAK@LGCHEM.COM TEL: 248-289-5795	LG TM DAER SEOU 07336
	LG CHEM AMERICA, INC.	LG CHEM, LTD.	09/25/2018	35361	16073	Pusan	Charleston, South Carolina	NORTHERN JULIE	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA	LG TM DONG SEOU
	LG CHEM AMERICA, INC.	LG CHEM LTD	09/25/2018	88000	40000	Pusan	Charleston, South Carolina	YM UNIFORMITY	South Korea	NO MARKS NO MARKS	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA,GA 30305 USA TEL 404-400-6101 EXT. 6114	LG TM DAER GU,SE CODE
	LG CHEM AMERICA, INC.	LG CHEM, LTD.	09/24/2018	35361	16073	South Riding Point	Charleston, South Carolina	SEALAND WASHINGTON	Bahamas	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA	LG TM DONG SEOU

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LG CHEM AMERICA, INC.	LG CHEM LTD.	09/17/2018	44000	20000	Pusan	Charleston, South Carolina	HARBOUR BRIDGE	South Korea	NO MARKS . . .	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL 1-404-400-6125 JENNYCHO1LGCHEM.COM	LG TW DAER SEOU 07336 NO
LG CHEM AMERICA INC	LG CHEM LTD.	09/16/2018	88000	40000	Pusan	Charleston, South Carolina	ZIM DJIBOUTI	South Korea	SEAL NO.: 128739 IN ISO TANK SEAL NO.: 128558 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TW DAER YOUN
LG CHEM AMERICA, INC.,	LG CHEM LTD.	09/07/2018	88000	40000	Pusan	Charleston, South Carolina	PARSIFAL	South Korea	SEAL NO.: 005371 IN ISO TANK SEAL NO.: 032270 IN ISO TANK	3475 PIEDMONT RD. NE STE. 1200, ATLANTA ATLANTA US US	LG TW DAER YOUN
KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	09/04/2018	222200	101000	Pusan	Charleston, South Carolina	MAERSK TAIKUNG	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE ST.HIGH POINT, . NORTH CAROLINA	LG TW DONG SEOU
SEALED AIR CORPORATION	LG CHEM EUROPE GMBH	08/30/2018	1164	529	Antwerp	Charleston, South Carolina	CHARLESTON EXPRESS	Belgium	SEALED AIR CORPORATION 100 ROGERS BRIDGE ROAD BUILDING A 29334 DUNCAN US	100 ROGERS BRIDGE ROAD BUILDING A DUNCAN, OK 29334 US	LYONI FRANI
ECOMIRAE TECHNOLOGIES LLC	LG CHEM LTD.	08/28/2018	38360	17436	Pusan	Charleston, South Carolina	ANNA MAERSK	South Korea	AS PER LABEL	2445 NW 38TH STREET, GAINESVILLE, FL 32605, USA ATTN: SEUNGKOO KANG— 1-3106674852 TEL EX 33	LG TW DAER SEOU 37731
FNS INC ATL	LG CHEM, LTD.	08/28/2018	141741	64428	Pusan	Charleston, South Carolina	ANNA MAERSK	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL	5550 TRIANGLE PARKWAY STE 390 NORCROSS, GA 30092 1-6786913927	20 YO YOUN TOWE KORE TEL E
LG CHEM AMERICA, INC.	LG CHEM, LTD.	08/28/2018	141741	64428	Pusan	Charleston, South Carolina	ANNA MAERSK	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL: 678-984-5714 1-4044006125	20 YO YOUN TOWE KORE TEL E

L	DE	LG CHEM AMERICA, ABS INC.	LG CHEM LTD.	08/28/2018	141741	64428	Pusan	Charleston, South Carolina	ANNA MAERSK	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL: 678-984- 5714 1-4044006125	LG TW DAER SEO 37731
L	DE	CHEMBANK INTERNATIONAL, INC.	LG CHEM LTD.	08/25/2018	44000	20000	Pusan	Charleston, South Carolina	HOUSTON BRIDGE	South Korea	NO MARKS . . .	15 FOREST STREET CLOSTER, NJ 07624 TEL 1- 201-364-4923	LG TW DAER SEO 07336
L	DE	LG CHEM AMERICA, INC.	LG CHEM LTD.	08/25/2018	44000	20000	Pusan	Charleston, South Carolina	HOUSTON BRIDGE	South Korea	NO MARKS . . .	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA RPASHAKLGCHEM.COM TEL 248-289-5795	LG TW DAER SEO 07336 NO
.C	.C	LG CHEM AMERICA, INC.	LG CHEM LTD.	08/25/2018	88000	40000	Pusan	Charleston, South Carolina	HOUSTON BRIDGE	South Korea	NO MARKS . . . NO MARKS . . .	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL 404-400- 6101 EXT. 6114 RPASHAKLGCHEM.COM	LG TW DAER SEO 07336 NO
- 9 .C	.C	LG CHEM AMERICA, INC.	LG CHEM LTD.	08/25/2018	88000	40000	Pusan	Charleston, South Carolina	HOUSTON BRIDGE	South Korea	NO MARKS . . . NO MARKS	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL 404-400- 6101 EXT. 6114 RPASHAKLGCHEM.COM	LG TW DAER SEO 07336
10404 'LIC, 218, -0099		LG CHEM AMERICA, INC.	LG CHEM LTD.	08/23/2018	36960	16800	Pusan	Charleston, South Carolina	MSC RANIA	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA RPASHAK LGCHEM.COM	LG TW DAER SEO 07336
-NP 12,80 'A, 110 0 <G		LG CHEM AMERICA, INC.	LG CHEM, LTD.	08/23/2018	30567	13894	Pusan	Charleston, South Carolina	MSC RANIA	South Korea	AS PER LABEL	3475 PIEDMONT ROAD, NE STE 1200, ATLANTA, GA 30305, USA TEL: 678-984- 5714 1-4044006125	20 YO YOUN TOWE KORE EX 82-
0 0 <G		LG CHEM AMERICA, INC.	LG CHEM, LTD.	08/23/2018	70870	32214	Pusan	Charleston, South Carolina	MSC RANIA	South Korea	AS PER LABEL AS PER LABEL	3475 PIEDMONT ROAD, NE STE 1200, ATLANTA, GA 30305, USA TEL: 678-984- 5714 1-4044006125	20 YO YOUN TOWE KORE EX 82-
												3475 PIEDMONT ROAD, NE	20 YO YOUN

0.000 3 0.000 3 0.000 3) KG IL: P/O : 17-	LG CHEM AMERICA, INC.	LG CHEM, LTD.	08/23/2018	70870	32214 Pusan	Charleston, South Carolina	MSC RANIA	South Korea	AS PER LABEL AS PER LABEL	STE 1200, ATLANTA, GA 30305, USA TEL: 678-984- 5714 1-4044006125	TOWE KORE EX 82-
	LG CHEM AMERICA, INC.	LG CHEM, LTD.	08/23/2018	177176	80535 Pusan	Charleston, South Carolina	MSC RANIA	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER AS PER LABEL AS PER LABEL	3475 PIEDMONT ROAD, NE STE 1200, ATLANTA, GA 30305, USA TEL: 678-984- 5714 1-4044006125	20 YO YOUN TOWE KORE EX 82-
	LG CHEM AMERICA, INC.	LG CHEM, LTD.	08/23/2018	70870	32214 Pusan	Charleston, South Carolina	MSC RANIA	South Korea	AS PER LABEL AS PER LABEL	3475 PIEDMONT ROAD, NE STE 1200, ATLANTA, GA 30305, USA TEL: 678-984- 5714 1-4044006125	20 YO YOUN TOWE KORE EX 82-
	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	08/22/2018	222666	101212 Ningpo	Charleston, South Carolina	SAFMARINE MAFADI	China	AS PER LABEL AS PER LABEL AS PER LABEL AS PER AS PER LABEL AS PER LABEL	243 WOODBINE ST.HIGH POINT,, NORTH CAROLINA 27261 ATTN:BETH KLINE 336-878-4269 1-3368784207 TEL EX 53	LG TM DONG SEO EX 82-
	TO ORDER	LG CHEM, LTD.	08/15/2018	421964	191802 Ningpo	Charleston, South Carolina	SAFMARINE MULANJE	China	N/M N/M N/M N/M N/M N/M N/M N/M N/M N/M N/M	OF LG CHEM AMERICA, INC 3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA 1- 4044006125	128 YI YEON SEO 37731
	CHEMBANK INTERNATIONAL, INC.	LG CHEM LTD.	08/14/2018	44000	20000 Pusan	Charleston, South Carolina	MSC LISBON	South Korea	SEAL NO.: 005226 IN ISO TANK	15 FOREST STREET CLOSTER CLOSTER US US	LG TM DAER YOUN
	LG CHEM AMERICA, INC.,	LG CHEM LTD.	08/06/2018	176000	80000 Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	SEAL NO.: 005197 IN ISO TANK SEAL NO.: 005162 IN ISO TANK SEAL NO.: 005137 IN ISO TANK SEAL NO.: 005179 IN ISO TANK	3475 PIEDMONT RD. NE STE. 1200, ATLANTA ATLANTA US US	LG TM DAER YOUN
	LG CHEM AMERICA, INC.,	LG CHEM LTD.	08/03/2018	88000	40000 Pusan	Charleston, South Carolina	TIANJIN	South Korea	SEAL NO.: 166347 IN ISO TANK SEAL NO.: 166390 IN ISO TANK	3475 PIEDMONT RD. NE STE. 1200, ATLANTA ATLANTA US US	LG TM DAER YOUN
										3475 PIEDMONT RD. NE	LG TM

D	LG CHEM AMERICA, INC.,	LG CHEM LTD.	08/03/2018	44000	20000 Pusan	Charleston, South Carolina	TIANJIN	South Korea	SEAL NO.: 128100 IN ISO TANK	STE. 1200, ATLANTA ATLANTA US US	DAER YOUN
-									AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL		
3	SAP ECOMIRAE TECHNOLOGIES LLC	LG CHEM,LTD.	08/01/2018	523796	238089 Ningpo	Charleston, South Carolina	GRASMERE MAERSK	China	LABEL AS PER LABEL AS PER LABEL AS PER LABEL	2445 NW 38TH STREET, GAINESVILLE, FL 32605, USA ATTN: SEUNGKOO KANG— 1-6786913927	128 YI YEON SEOU 55320
00									AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	OF LG CHEM AMERICA, INC 3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA 1-4044006125	128 YI YEON SEOU 37731
	TO ORDER	LG CHEM,LTD.	08/01/2018	268523	122056 Ningpo	Charleston, South Carolina	GRASMERE MAERSK	China	LABEL AS PER LABEL AS PER LABEL AS PER LABEL		
G S-									AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	5550 TRIANGLE PARKWAY STE 390 NORCROSS, GA 30092 1-6786913927	128 YI YEON SEOU 37731
3	FNS INC ATL	LG CHEM,LTD.	08/01/2018	230162	104619 Ningpo	Charleston, South Carolina	GRASMERE MAERSK	China	LABEL AS PER LABEL AS PER LABEL AS PER LABEL		
G S-									AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	OF LG CHEM AMERICA, INC 3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA 1-4044006125	128 YI YEON SEOU 37731
	TO ORDER	LG CHEM,LTD.	08/01/2018	230162	104619 Ningpo	Charleston, South Carolina	GRASMERE MAERSK	China	LABEL AS PER LABEL AS PER LABEL AS PER LABEL		
	LG CHEM AMERICA, INC.,	LG CHEM LTD.	07/30/2018	176000	80000 Pusan	Charleston, South Carolina	MSC ROMA	South Korea	SEAL NO.: 005199 IN ISO TANK SEAL NO.: 005096 IN ISO TANK SEAL NO.: 005188 IN ISO TANK SEAL NO.: 005166 IN ISO TANK	3475 PIEDMONT RD. NE STE. 1200, ATLANTA ATLANTA US US	LG TM DAER YOUN
D	LG CHEM AMERICA, INC.,	LG CHEM LTD.	07/28/2018	44000	20000 Pusan	Charleston, South Carolina	ZIM ANTWERP	South Korea	SEAL NO.: 128084 IN ISO TANK	3475 PIEDMONT RD. NE STE. 1200, ATLANTA ATLANTA US US	LG TM DAER YOUN
-A									AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE ST.HIGH POINT,. NORTH CAROLINA 27261 ATTN:BETH KLINE TE 336-878-4269	LG TM DONG SEOU
DRIVE 492, 843-ND	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	07/24/2018	222200	101000 Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	LABEL AS PER LABEL AS PER LABEL AS PER LABEL	OF LG CHEM AMERICA, INC 3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA 1-4044006125	128 YI YEON SEOU 37731
IMER 00									AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL		
4	TO ORDER	LG CHEM LTD.	07/24/2018	40000	20000 Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	LABEL AS PER LABEL AS PER LABEL AS PER LABEL		

1	TO ORDER	LG CHEM,LTD.	07/24/2018	460325	209239	Pusan	Carolina	MSC MAXINE	South Korea	AS PER LABEL AS PER	4044006125	3/7/31
	CHEMBANK INTERNATIONAL, INC	LG CHEM LTD.	07/13/2018	44000	20000	Pusan	Charleston, South Carolina	AMERICA	South Korea	SEAL NO.: 005051 IN ISO TANK	15 FOREST STREET CLOSTER CLOSTER US US	LG TW DAER YOUN
	LG CHEM AMERICA, INC.	LG CHEM LTD.	07/10/2018	37037	16835	Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL:1-404-400-6125- 1-2018162000 TEL EX 09	LG TW DAER SEOU 07336 32555
	LG CHEM AMERICA, INC.	LG CHEM LTD.	07/10/2018	37037	16835	Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL:1-404-400-6125- 1-4044006125	LG TW DAER SEOU 07336 32555
	LG CHEM AMERICA, INC.	LG CHEM LTD.	07/10/2018	37037	16835	Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL:1-404-400-6125- 1-4044006125	LG TW DAER SEOU 07336 32555
	LG CHEM AMERICA, INC.	LG CHEM LTD.	07/10/2018	37037	16835	Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL:1-404-400-6125- 1-4044006125	LG TW DAER SEOU 07336 32555
	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	07/10/2018	222200	101000	Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE ST.HIGH POINT, . NORTH CAROLINA	LG TW DONG SEOU
	LG CHEM AMERICA INC	LG CHEM LTD.	07/07/2018	44000	20000	Pusan	Charleston, South Carolina	E.R. TIANPING	South Korea	SEAL NO.: 027192 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TW DAER YOUN
	LG CHEM AMERICA INC	LG CHEM LTD.	07/06/2018	44000	20000	Pusan	Charleston, South Carolina	NORTHERN JULIE	South Korea	SEAL NO.: 027859 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TW DAER YOUN

100 RYLIC ACID ER	LG CHEM AMERICA, INC.	LG CHEM LTD.	06/19/2018	37037	16835	Pusan	Charleston, South Carolina	MAERSK SKARSTIND	South Korea	AS PER LABEL	3475 PIEDMONT RD NE, SUITE 1200, ATLANTA, GA 30305 USA TEL:1-404-400- 6125- 1-4044006125	LG TM DAER SEOU 07336 32555
	LG CHEM AMERICA INC	LG CHEM LTD.	06/17/2018	88000	40000	Pusan	Charleston, South Carolina	ZIM CHICAGO	South Korea	SEAL NO.: 171395 IN ISO TANK SEAL NO.: 002389 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER YOUN
	CHEMBANK INTERNATIONAL, INC.	LG CHEM LTD.	06/17/2018	88000	40000	Pusan	Charleston, South Carolina	ZIM CHICAGO	South Korea	SEAL NO.: 002987 IN ISO TANK SEAL NO.: 002961 IN ISO TANK	15 FOREST STREET CLOSTER CLOSTER US US	LG TM DAER YOUN
	LG CHEM AMERICA INC	LG CHEM LTD	06/07/2018	88000	40000	Pusan	Charleston, South Carolina	ZIM SAN DIEGO	South Korea	SEAL NO.: 164767 IN ISO TANK SEAL NO.: 126714 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER YOUN
	LG CHEM AMERICA INC	LG CHEM LTD.	05/22/2018	88000	40000	Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	NO MARKS AND NUMBERS NO MARKS AND NUMBERS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA GA, 30305 TEL:404-400-6101 EXT. 6114 TE RPASHAK@LGCHEM.COM	LG TM DAER SEOU 07336
	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	05/22/2018	222200	101000	Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE STREET HIGH POINT NC 27261 ATTN : BETH KLINE/LINDA GARNER	LG TM DONG SEOU
P/O : 3 ESIN	LG CHEM AMERICA INC	LG CHEM LTD.	05/18/2018	88000	40000	Pusan	Charleston, South Carolina	ZIM NINGBO	South Korea	SEAL NO.: 918278 IN ISO TANK SEAL NO.: 918299 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER YOUN
3 -A	LG CHEM AMERICA	LG CHEM, LTD.	05/16/2018	33230	15105	Pusan	Charleston, South Carolina	MAERSK SAIGON	South Korea	N/M	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA 30305 1-4044006125	128, Y YEON REPU EX 82-
100										AS PER LABEL AS PER	243 WOODBINE STREET	

MS, E	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	05/15/2018	222200	101000	Pusan	Charleston, South Carolina	MAERSK SAIGON	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE STREET HIGH POINT NC 27261 ATTN BETH KLINE/LINDA GARNER	LG TM DONG SEO
10 ATE TE VH ING 100	LG CHEM AMERICA INC	LG CHEM LTD.	05/10/2018	88000	40000	Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	SEAL NO.: 125338 IN ISO TANK SEAL NO.: 004216 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER YOUN
	LG CHEM AMERICA INC	LG CHEM LTD.	05/10/2018	88184	40084	Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	N/M N/M	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA GA, 30305 TEL:1-404-400-612 JENNYCHO1@LGCHEM.CO M 1-4044006125	LG TM DAER SEO 07336 32555
- G	LG CHEM AMERICA INC 3475	LG CHEM LTD. LG TWIN TOWERS,	05/10/2018	132277	60126	Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	N/M N/M N/M	PIEDMONT ROAD NE SUITE 1200 ATLANTA GA, 30305 1-4044006125	128, Y YOUN KORE 55320
	LG CHEM AMERICA INC	LG CHEM LTD.	05/04/2018	88000	40000	Pusan	Charleston, South Carolina	MSC ROMA	South Korea	SEAL NO.: 925486 IN ISO TANK SEAL NO.: 925463 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER YOUN
	LG CHEM AMERICA INC	LG CHEM LTD.	05/04/2018	88000	40000	Pusan	Charleston, South Carolina	MSC ROMA	South Korea	SEAL NO.: 918952 IN ISO TANK SEAL NO.: 918994 IN ISO TANK SEAL NO.: 004790 IN ISO TANK SEAL NO.: 004792 IN ISO TANK SEAL NO.: 004785 IN ISO TANK SEAL NO.: 004794 IN ISO TANK SEAL NO.: 004790 IN	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER YOUN
	LG CHEM AMERICA INC	LG CHEM LTD.	05/04/2018	264000	120000	Pusan	Charleston, South Carolina	MSC ROMA	South Korea		3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER YOUN
2/O : 07AT 0.000	LG CHEM AMERICA	LG CHEM, LTD.	04/28/2018	33230	15105	Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA 30305 1-4044006125	128, Y YEON REPU 55320

SEAL NO.: 125796 IN 3475 PIEDMONT ROAD NE

LG CHEM AMERICA INC	LG CHEM LTD.	04/28/2018	88000	40000	Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	ISO TANK SEAL NO.: 125775 IN ISO TANK	SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	04/26/2018	222200	101000	Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE STREET HIGH POINT NC 27261 ATTN BETH KLINE/LINDA GARNER	LG TM DONG SEO
VOLVO CAR US OPERATIONS INC	LG CHEM	04/21/2018	26752	12160	Pusan	Charleston, South Carolina	E. R. TIANPING	South Korea	41050411607	1801 VOLVO CAR DR RIDGEVILLE SC 29472 US	20 YO YOUN TOWE
LG CHEM AMERICA INC	LG CHEM LTD.	04/08/2018	44000	20000	Pusan	Charleston, South Carolina	PARSIFAL	South Korea	SEAL NO.: 004178 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 120 ATLANTA ATLANTA US US	128, Y DAER SEO
LG CHEM AMERICA INC	LG CHEM LTD.	04/08/2018	44000	20000	Pusan	Charleston, South Carolina	PARSIFAL	South Korea	SEAL NO.: 004000 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y DAER SEO
LG CHEM AMERICA INC	LG CHEM LTD.	04/08/2018	88000	40000	Pusan	Charleston, South Carolina	PARSIFAL	South Korea	SEAL NO.: 123966 IN ISO TANK SEAL NO.: 918087 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y DAER SEO
LG CHEM AMERICA, INC.,	LG CHEM LTD.	04/08/2018	44000	20000	Pusan	Charleston, South Carolina	PARSIFAL	South Korea	SEAL NO.: 004576 IN ISO TANK	3475 PIEDMONT RD. NE STE. 1200, ATLANTA ATLANTA US US	128, Y DAER SEO
LG CHEM AMERICA, INC	LG CHEM LTD.	04/08/2018	44000	20000	Pusan	Charleston, South Carolina	PARSIFAL	South Korea	SEAL NO.: 004597 IN ISO TANK	3475 PIEDMONT RD. NE STE. 1200, ATLANTA, ATLANTA, US US	128, Y DAER SEO
LG CHEM AMERICA,						Charleston, South			SEAL NO.: 004594 IN	3475 PIEDMONT RD. NE STE. 1200, ATLANTA	LG TM

INC.,	LG CHEM LTD.	04/08/2018	44000	20000	Pusan	Carolina	PARSIFAL	South Korea	ISO TANK	ATLANTA US US	DAER
LG CHEM AMERICA INC	LG CHEM LTD.	04/08/2018	88000	40000	Pusan	Charleston, South Carolina	PARSIFAL	South Korea	SEAL NO.: 931894 IN ISO TANK SEAL NO.: 931855 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA INC	LG CHEM LTD.	04/08/2018	44000	20000	Pusan	Charleston, South Carolina	PARSIFAL	South Korea	SEAL NO.: 003990 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA, INC.	LG CHEM. LTD.	04/05/2018	35361	16073	Pusan	Charleston, South Carolina	MOL MAGNIFICENCE	South Korea	AS PER LABEL	3475 PIEDMONT ROAD, NESTE 1200, ATLANTA, GA 30305, USA 1-404-400- 6112XXX	20 YO YOUN TOWE KORE
LG CHEM AMERICA INC	LG CHEM LTD.	04/01/2018	88000	40000	Pusan	Charleston, South Carolina	MSC ANTIGUA	South Korea	SEAL NO.: 931295 IN ISO TANK SEAL NO.: 931278 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y DAER SEO
LG CHEM AMERICA INC	LG CHEM LTD.	04/01/2018	88000	40000	Pusan	Charleston, South Carolina	MSC ANTIGUA	South Korea	SEAL NO.: 931879 IN ISO TANK SEAL NO.: 931873 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y DAER SEO
LG CHEM AMERICA INC	LG CHEM LTD.	04/01/2018	44000	20000	Pusan	Charleston, South Carolina	MSC ANTIGUA	South Korea	SEAL NO.: 001389 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y DAER SEO
LG CHEM AMERICA INC	LG CHEM LTD.	04/01/2018	88000	40000	Pusan	Charleston, South Carolina	ANNA MAERSK	South Korea	SEAL NO.: 931371 IN ISO TANK SEAL NO.: 931366 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y DAER SEO
LG CHEM AMERICA, INC	LG CHEM, LTD.	03/26/2018	35361	16073	Pusan	Charleston, South Carolina	EVER LIFTING	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA 30305 1-404-400-6112	20 YO YOUN TOWE KORE

	LG CHEM AMERICA INC	LG CHEM LTD.	03/08/2018	46200	21000	Pusan	Charleston, South Carolina	ZIM ROTTERDAM	South Korea	SEAL NO.: 123196 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y DAER SEO
16889 4S	LG CHEM AMERICA INC	LG CHEM LTD.	03/05/2018	88000	40000	Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	SEAL NO.: 121824 IN ISO TANK SEAL NO.: 123385 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y DAER SEO
4028	LG CHEM AMERICA, INC	LG CHEM, LTD.	03/02/2018	35361	16073	Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA 30305 1-404-400-6112	20 YO YOUN TOWE KORE
112	LG CHEM AMERICA INC	LG CHEM LTD.	02/26/2018	88000	40000	Pusan	Charleston, South Carolina	MAERSK SAIGON	South Korea	SEAL NO.: 002982 IN ISO TANK SEAL NO.: 003692 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y DAER SEO
	LG CHEM AMERICA INC	LG CHEM LTD.	02/20/2018	46200	21000	Pusan	Charleston, South Carolina	ZIM ANTWERP	South Korea	SEAL NO.: 120263 ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y YOUN SEO
16889 4S	LG CHEM AMERICA INC	LG CHEM LTD.	02/20/2018	46200	21000	Pusan	Charleston, South Carolina	ZIM ANTWERP	South Korea	SEAL NO.: 100189 ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	28, YE DUNG
16889 4S	CHANNEL PRIME ALLIANCE	LG CHEM, LTD.	02/20/2018	48347	21976	Pusan	Charleston, South Carolina	ZIM ANTWERP	South Korea	AS PER LABEL	1803 HULL AVE DES MOINES, IA 50313	128, Y YEON KOR
16889 4S	LG CHEM AMERICA, INC.	LG CHEM LTD.	02/20/2018	36960	16800	Pusan	Charleston, South Carolina	MAERSK SAIGON	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE STE. 1200, ATLANTA, GA 30305 RPASHAK LGCHEM.COM	LG TM DAER SEO 07336

LG CHEM AMERICA, INC.	LG CHEM, LTD	01/26/2018	129877	59035 Pusan	Charleston, South Carolina	MOL MAGNIFICENCE	South Korea	SURRENDERED POLYPROPYLENE PIC_ HEATH WILLIAMS /	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA, 30305	LG TWAER SEOU
LG CHEM AMERICA INC	LG CHEM LTD.	01/25/2018	88000	40000 Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	SEAL NO.: 003998 IN ISO TANKS SEAL NO.: 003984 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	YEOU GU, S
500 TO THE ORDER OF 19- LG CHEM AMERICA, INC	LG CHEM, LTD.	01/25/2018	43386	19721 Pusan	Charleston, South Carolina	MAERSK SURABAYA	South Korea	AS PER LABEL	INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA 1-5742394090	128, Y YEON KORE 32555
P/O :) KG - LG CHEM AMERICA, INC	LG CHEM, LTD.	01/15/2018	35435	16107 Pusan	Charleston, South Carolina	MAERSK SEMARANG	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA 30305 TEL:678-984-5714 1-3106674852 TEL EX 33	20 YO YOUN TOWE KORE TEL E
LG CHEM AMERICA INC	LG CHEM LTD.	01/15/2018	88000	40000 Pusan	Charleston, South Carolina	MAERSK SEMARANG	South Korea	SEAL NO.: 100268 IN ISO TANKS SEAL NO.: 100266 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	YEOU GU, S
LG CHEM AMERICA INC	LG CHEM LTD.	01/15/2018	88000	40000 Pusan	Charleston, South Carolina	MAERSK SEMARANG	South Korea	SEAL NO.: 004175 IN ISO TANKS SEAL NO.: 004184 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA GE	128, Y DAER SEOU
ST 16,0 LG CHEM AMERICA, INC	LG CHEM, LTD.	01/14/2018	35435	16107 Ningpo	Charleston, South Carolina	KAETHE P	China	AS PER LABEL	3475 PIEDMONT RD. NE STE. 1200 ATLANTA, GA 30305 ATTN: SEA GUN LEE- 1-4044006125	20 YO YOUN TOWE KORE EX 82-
00 K TEL LG CHEM AMERICA, INC	LG CHEM, LTD	01/12/2018	43296	19680 Pusan	Charleston, South Carolina	MOL MANEUVER	South Korea	4501012737 CUSTOMER P/O 4501012737 SYNTHETIC RUBBER NBR 2875 35KG SR GREEN BOX 18,900.000 K G H.S CODE	2400 LAKEVIEW PKWY STE 580 ALPHARET 30009 USA	128, Y YEON
LG CHEM AMERICA								SEAL NO.: 001340 IN ISO TANKS SEAL NO.	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA	128, Y

LG CHEM AMERICA INC	LG CHEM LTD.	01/08/2018	88000	40000	Pusan	Charleston, South Carolina	MSC ANTIGUA	South Korea	ISO TANKS SEAL NO.: 001339 IN ISO TANKS	SUITE 1200 ATLANTA ATLANTA US US	DAER SEO
LG CHEM AMERICA INC	LG CHEM LTD.	01/08/2018	88000	40000	Pusan	Charleston, South Carolina	MSC ANTIGUA	South Korea	SEAL NO.: 004395 IN ISO TANKS SEAL NO.: 004316 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y DAER SEO
LG CHEM AMERICA, ESIN INC.	LG CHEM, LTD.	01/05/2018	70721	32146	Pusan	Charleston, South Carolina	MSC ANTIGUA	South Korea	AS PER LABEL AS PER LABEL	3475 PIEDMONT RD. NE STE. 1200 ATLANTA, GA 30305 ATTN: SEA GUN LEE	20 YO YOUN TOWE KORE
LG CHEM AMERICA, INC.	LG CHEM LTD.	12/29/2017	44000	20000	Pusan	Charleston, South Carolina	NORTHERN JAMBOREE	South Korea	SEAL NO.: 801693 IN ISO TANK	3475 PIEDMONT RD. NE STE. 1200, ATLANTA ATLANTA US US	YOUN KORE
LG CHEM AMERICA INC	LG CHEM LTD.	12/29/2017	88000	40000	Pusan	Charleston, South Carolina	NORTHERN JAMBOREE	South Korea	SEAL NO.: 004349 IN ISO TANKS SEAL NO.: 004331 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	YOUN KORE
LG CHEM AMERICA, INC.	LG CHEM, LTD.	12/22/2017	141741	64428	Ningpo	Charleston, South Carolina	SAFMARINE MAKUTU	China	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	3475 PIEDMONT RD. NE STE. 1200 ATLANTA, GA 30305 ATTN: SEA GUN LEE — 1-4044006125	20 YO YOUN TOWE KORE TEL E
LG CHEM AMERICA INC	LG CHEM LTD.	12/21/2017	88000	40000	Pusan	Charleston, South Carolina	MSC LISBON	South Korea	SEAL NO.: 031949 IN ISO TANKS SEAL NO.: 031945 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA INC	LG CHEM LTD.	12/12/2017	46200	21000	Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	SEAL NO.: 118845 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA INC	LG CHEM LTD.	12/12/2017	46200	21000	Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	SEAL NO.: 120596 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER

INC	LG CHEM LTD.	12/12/2017	46200	21000 Pusan	Carolina	STRALSUND	South Korea	ISO TANK	ATLANTA US US	DAER
LG CHEM AMERICA INC	LG CHEM LTD.	12/12/2017	46200	21000 Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	SEAL NO.: 120569 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA INC	LG CHEM LTD.	12/12/2017	46200	21000 Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	SEAL NO.: 118899 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA INC	LG CHEM LTD.	12/12/2017	46200	21000 Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	SEAL NO.: 118886 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA INC	LG CHEM LTD.	12/12/2017	88000	40000 Pusan	Charleston, South Carolina	MAERSK STARLSUND	South Korea	SEAL NO.: 921764 IN ISO TANKS SEAL NO.: 119096 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA INC	LG CHEM LTD.	12/12/2017	44000	20000 Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	SEAL NO.: 926561 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
P/O : ABS	LG CHEM AMERICA INC.	LG CHEM, LTD.	12/12/2017	35435	16107 Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	AS PER LABEL	20 YO YOUN TOWE KORE TEL E
NYPRO ASHEVILLE	LG CHEM POLAND SP ZOO	12/12/2017	45320	20600 Bremerhaven	Charleston, South Carolina	HS ROME	Germany	N/M	100 VISTA BLVD ARDEN NC 28704 US EM RHONDA.RUTH@NYPRO.C OM	UL LC PODG
CHEMBANK INTERNATIONAL, INC.	LG CHEM LTD.	12/06/2017	44000	20000 Pusan	Charleston, South Carolina	MAERSK SAIGON	South Korea	SEAL NO.: 121036 IN ISO TANK	CHEMBANK INTERNATIONAL, INC. CLOSTER, CLOSTER, US US	LG TM DAER

P/O :
ABS

	LG CHEM AMERICA	LG CHEM, LTD.	12/01/2017	35435	16107 Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA GA 30305 TEL:678-984-5714 1-4044006125	20 YO YOUN TOWE 32555
13263 JP 21H- E- ESIN -5714 -A IRS, E IS	LG CHEM AMERICA, INC.	LG CHEM, LTD.	11/30/2017	106084	48220 Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL	3475 PIEDMONT RD. NE STE. 1200 ATLANTA, GA 30305 ATTN: SEA GUN LEE	20 YO YOUN TOWE KORE
IS	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	11/30/2017	222200	101000 Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE STREET HIGH POINT NC 27261 ATTN : BETH KLINE/LINDA GARNER	LG TM DONG SEOU
KG A IRS, E IS	LG CHEM AMERICA, INC.	LG CHEM, LTD.	11/21/2017	106306	48321 Ningpo	Charleston, South Carolina	ALS CERES	China	AS PER LABEL AS PER LABEL AS PER LABEL	3475 PIEDMONT RD. NE STE. 1200 ATLANTA, GA 30305 1-3106674852 TEL EX 33	20 YO YOUN TOWE 82-325
IS	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	11/16/2017	222200	101000 Pusan	Charleston, South Carolina	CONTI MAKALU	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE STREET HIGH POINT NC 27261 ATTN : BETH KLINE/LINDA GARNER	LG TM DONG SEOU
	LG CHEM AMERICA INC	LG CHEM LTD.	11/14/2017	46200	21000 Pusan	Charleston, South Carolina	MAERSK DHAHRAN	South Korea	SEAL NO.: 120870 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
	LG CHEM AMERICA INC	LG CHEM LTD.	11/14/2017	46200	21000 Pusan	Charleston, South Carolina	MAERSK DHAHRAN	South Korea	SEAL NO.: 120887 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
19900 /IC	LG CHEM AMERICA INC	LG CHEM LTD.	11/14/2017	46200	21000 Pusan	Charleston, South Carolina	MAERSK DHAHRAN	South Korea	SEAL NO.: 120893 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER

218,												3475 PIEDMONT RD. NE STE. 1200, ATLANTA, GA 30305 DONGWON LEE(DW)LEE1 LGCHEM.COM)	LG TM DAER SEOUL 07336
2627	LG CHEM AMERICA, INC.	LG CHEM LTD.	11/14/2017	36960	16800 Pusan	Charleston, South Carolina	MAERSK DHAHRAN	South Korea	AS PER LABEL				20 YO DONG TWIN KORE TEL E
3													
3985													
14	LG CHEAM AMERICA INC	LG CHEM, LTD.	11/14/2017	35499	16136 Pusan	Charleston, South Carolina	MAERSK DHAHRAN	South Korea	AS PER LABEL				
4													20 YO YOUN TOWE KORE EX 82-
HS	LG CHEM AMERICA	LG CHEM, LTD.	11/07/2017	35435	16107 Pusan	Charleston, South Carolina	MSC ROMA	South Korea	AS PER LABEL			3475 PIEDMONT RD. NE, SUITE 1200 TEL:678-984- 5714 1-4044006125	
4646													
ER,													
	LG CHEM, LTD	LG CHEM, LTD	11/07/2017	45804	20820 Pusan	Charleston, South Carolina	MSC ROMA	South Korea	AS PER LABEL			128, YEOUL- DAERO, YEONGDEUNGPO- GU, SEOUL KOREA	128, Y DAER SEOUL
21													
3P													
21H-													
184-	LG CHEM AMERICA, INC.	LG CHEM, LTD.	11/01/2017	141741	64428 Ningpo	Charleston, South Carolina	KAETHE P	China	N/M N/M N/M N/M			3475 PIEDMONT RD. NE STE. 1200 ATLANTA, GA 30305 ATTN: SEA GUN LEE- 1-4044006125	20 YO YOUN TOWE TEL E
SAI													
	LG CHEM AMERICA INC	LG CHEM LTD.	10/27/2017	88000	40000 Pusan	Charleston, South Carolina	PARSIFAL	South Korea	SEAL NO.: 219861 IN ISO TANKS SEAL NO.: 107386 IN ISO TANKS			3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
	LG CHEM AMERICA INC	LG CHEM LTD.	10/27/2017	46200	21000 Pusan	Charleston, South Carolina	PARSIFAL	South Korea	SEAL NO.: 219883 IN ISO TANK			3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
P/O :													
ABS													
	LG CHEM AMERICA	LG CHEM, LTD.	10/24/2017	35499	16136 Pusan	Charleston, South Carolina	MAERSK SEMARANG	South Korea	AS PER LABEL			3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA GA 30305 TEL:678-984-5714 1- 4044006125	20 YO YOUN TOWE KORE TEL E

	LG CHEM AMERICA INC	LG CHEM LTD	10/24/2017	88000	40000	Pusan	Charleston, South Carolina	ZIM DJIBOUTI	South Korea	SEAL NO.: 028014 IN ISO TANKS SEAL NO.: 028240 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
2790	LG CHEM AMERICA INC	LG CHEM LTD.	10/24/2017	46200	21000	Pusan	Charleston, South Carolina	ZIM DJIBOUTI	South Korea	SEAL NO.: 218650 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
JE	LG CHEM AMERICA INC.	LG CHEM, LTD.	10/24/2017	43881	19946	Pusan	Charleston, South Carolina	MAERSK SEMARANG	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA, 30305 USA CONTACT : SAM PYUN	20 YO YOUN TOWE 150-07
I:	LG CHEM AMERICA INC	LG CHEM LTD.	10/17/2017	46200	21000	Pusan	Charleston, South Carolina	ZIM CHICAGO	South Korea	SEAL NO.: 927266,30636 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
	LG CHEM AMERICA INC	LG CHEM LTD.	10/17/2017	46200	21000	Pusan	Charleston, South Carolina	ZIM CHICAGO	South Korea	SEAL NO.: 925166 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
	LG CHEM AMERICA INC	LG CHEM LTD.	10/17/2017	88000	40000	Pusan	Charleston, South Carolina	ZIM CHICAGO	South Korea	SEAL NO.: 120166 IN ISO TANKS SEAL NO.: 120192 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
-A	LG CHEM AMERICA INC	LG CHEM LTD.	10/11/2017	44000	20000	Pusan	Charleston, South Carolina	NORTHERN JAMBOREE	South Korea	SEAL NO.: 001815,1704211 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
NA J, SC DM	KAO SPECIALTIES AMERICAS LLC	LG CHEM, LTD.	10/10/2017	222200	101000	Pusan	Charleston, South Carolina	NORTHERN JAMBOREE	South Korea	AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL AS PER LABEL	243 WOODBINE STREET HIGH POINT NC 27261 ATTN : BETH KLINE/LINDA GARNER	LG TM DONG SEO
										SEAL NO.: 134274 IN	3475 PIEDMONT ROAD NE	

LG CHEM AMERICA INC	LG CHEM LTD.	10/07/2017	88000	40000 Pusan	Charleston, South Carolina	ZIM SAN DIEGO	South Korea	ISO TANKS SEAL NO.: 132270 IN ISO TANKS	SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA INC	LG CHEM LTD.	10/02/2017	88000	40000 Pusan	Charleston, South Carolina	ZIM ROTTERDAM	South Korea	SEAL NO.: 024893 IN ISO TANKS SEAL NO.: 024898 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA, INC.	LG CHEM, LTD.	09/28/2017	106306	48321 Ningpo	Charleston, South Carolina	MAERSK GATESHEAD	China	AS PER LABEL AS PER LABEL AS PER LABEL	3475 PIEDMONT RD.NE STE.1200 ATLANTA, GA 30305 ATTN: SEA GUN LEE- — 1-4044006125	20 YO YOUN TOWE KORE TEL E
LG CHEM AMERICA INC	LG CHEM, LTD.	09/23/2017	88000	40000 Pusan	Charleston, South Carolina	ZIM NINGBO	South Korea	SEAL NO.: 218693,30531 IN ISO TANKS SEAL NO.: 218627 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y YEON SEO
LG CHEM AMERICA INC	LG CHEM, LTD.	09/20/2017	88000	40000 Pusan	Charleston, South Carolina	ARISTOMENIS	South Korea	SEAL NO.: 107296 ISO TANKS SEAL NO.: 924881 ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	128, Y YEON SEO
LG CHEM AMERICA, R401-INC.	LG CHEM, LTD.	09/09/2017	35424	16102 Pusan	Charleston, South Carolina	EVER LEGION	South Korea	AS PER LABEL	3475 PIEDMONT RD.NE STE.1200 ATLANTA, GA 30305 ATTN SEA GUN LEE	20 YO YOUN TOWE KORE
LG CHEM AMERICA INC	LG CHEM LTD.	09/03/2017	88000	40000 Pusan	Charleston, South Carolina	HYUNDAI MERCURY	South Korea	SEAL NO.: 924895 IN ISO TANKS SEAL NO.: 924882 IN ISO TANKS	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
LG CHEM AMERICA INC.	LG CHEM LTD	08/28/2017	70870	32214 Pusan	Charleston, South Carolina	CONTI MAKALU	South Korea	AS PER LABEL AS PER LABEL	3475 PIEDMONT RD.NE STE.1200ATLANTA, GA 30305 ATTN: SEA GUN LEE 1-4044006125	20 YO YOUN TOWE TEL E
LG CHEM AMERICA,					Charleston, South				3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S.A. ATTN : ESTHER LE	LG TM DAER SEO

INC.,	LG CHEM LTD.	08/19/2017	53572	24351	Pusan	Carolina	E. R. TIANPING	South Korea	IN ISO TANK	TEL : 404-400-6125	07336
LG CHEM AMERICA, INC.,	LG CHEM LTD.	08/11/2017	107144	48702	Pusan	Charleston, South Carolina	PARSIFAL	South Korea	IN ISO TANKS IN ISO TANKS	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S.A. ATTN : ESTHER LE TEL : 404-400-6125	LG TM DAER SEOU 07336
P-O 5714,	LG CHEM AMERICA, INC.	08/06/2017	70721	32146	Pusan	Charleston, South Carolina	EVER LUCID	South Korea	MARKS AND NUMBERS WITH CONTAINER APZU390761 AS PER LABEL	3475 PIEDMONT RD. NE STE. 1200 ATLANTA, GA 30305 ATTN SEA GUN LEE	20 YO YOUN TOWE KORE
LG CHEM AMERICA, INC.,	LG CHEM LTD.	08/03/2017	107144	48702	Pusan	Charleston, South Carolina	ZIM DJIBOUTI	South Korea	IN ISO TANKS IN ISO TANKS	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S.A. ATTN : ESTHER LE TEL : 404-400-6125	LG TM DAER SEOU 07336
LG CHEM AMERICA, INC.,	LG CHEM LTD.	08/01/2017	88184	40084	Pusan	Charleston, South Carolina	MSC ANTIGUA	South Korea	N/M N/M 4500955392 CUSTOMER P/O _ 507459 PP H7914 58,800.000 KG POLYPROPYLENE H.S CODE 3902100000 _FAX_ 213.623.3329	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA GA 30305 TEL:678-984-5714	LG TM DAER SEOU 07336 32555
LG CHEM AMERICA, INC., 910 SYLVAN	LG CHEM, LTD	07/26/2017	129877	59035	Pusan	Charleston, South Carolina	MOL MISSION	South Korea		910 SYLVAN AVE., ENGLEWOOD CLIFFS N	LG TM DAER SEOU
LG CHEM AMERICA	LG CHEM, LTD.	07/25/2017	35361	16073	Pusan	Charleston, South Carolina	ATHOS	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA GA 30305 TEL:678-984-5714	20 YO YOUN TOWE KORE
LG CHEM AMERICA, INC.,	LG CHEM LTD.	07/25/2017	88184	40084	Pusan	Charleston, South Carolina	ATHOS	South Korea	N/M N/M	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S ATTN : ESTHER LE 1-4044006125	LG TM DAER SEOU 07336 32555
LG CHEM AMERICA INC	LG CHEM LTD.	07/18/2017	44000	20000	Pusan	Charleston, South Carolina	MSC LISBON	South Korea	SEAL NO.: 133586 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	YOUN KORE

785 8	GR LG CHEM AMERICA, INC.,	LG CHEM LTD.	07/18/2017	44092	20042 Pusan	Charleston, South Carolina	MSC LISBON	South Korea	MARK & NO. IN ISO TANK	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S.A. ATTN : ESTHER LE 1-4044006125	LG TM DAER SEOU 07336 32555
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	LG CHEM AMERICA	LG CHEM, LTD.	07/11/2017	35361	16073 Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA GA 30305 TEL:678-984-5714	20 YO YOUN TOWE KORE
6-1 2-	LG CHEM AMERICA, INC.,	LG CHEM LTD.	07/11/2017	88184	40084 Pusan	Charleston, South Carolina	MAERSK STRALSUND	South Korea	N/M N/M	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S ATTN : ESTHER LE 1-4044006125	LG TM DAER SEOU 07336 32555
9 738	ME LG CHEM AMERICA, INC.,	LG CHEM LTD.	07/06/2017	88184	40084 Pusan	Charleston, South Carolina	MAERSK SAIGON	South Korea	N/M N/M	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S ATTN : ESTHER LE 1-4044006125	LG TM DAER SEOU 07336 32555
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	LG CHEM AMERICA	LG CHEM, LTD.	06/28/2017	35361	16073 Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA GA 30305 TEL:678-984-5714	20 YO YOUN TOWE KORE
9 739	ME LG CHEM AMERICA, INC.,	LG CHEM LTD.	06/28/2017	88184	40084 Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	N/M N/M	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S ATTN : ESTHER LE 1-4044006125	LG TM DAER SEOU 07336 23773
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4-	LG CHEM AMERICA, INC.	LG CHEM, LTD.	06/28/2017	35435	16107 Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	AS PER LABEL	3475 PIEDMONT ROAD, NE STE 1200, ATLANTA, GA 30305, USA ATIN: SEA GUN LEE— 1-4044006125	20 YO YOUN TOWE KORE TEL E
9 740	ME LG CHEM AMERICA, INC.,	LG CHEM LTD.	06/28/2017	88184	40084 Pusan	Charleston, South Carolina	MSC MAXINE	South Korea	N/M N/M	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S ATTN : ESTHER LE 1-4044006125	LG TM DAER SEOU 07336 32555
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	LG CHEM AMERICA INC	LG CHEM LTD.	04/29/2017	44000	20000 Pusan	Charleston, South Carolina	MOL MODERN	South Korea	N/M . .	SUITE 1200 ATLANTA GA, 30305 TEL 404-400-6125 EMAIL ESTHERLELGCHEM.COM	LG T DAEI SEO 0733
2 00 G-SHI HO, VEN 322948	LG CHEM AMERICA, INC.	LG CHEM, LTD.	04/27/2017	35435	16107 Pusan	Charleston, South Carolina	SAFMARINE MAKUTU	South Korea	AS PER LABEL	3475 PIEDMONT ROAD, NE STE 1200, ATLANTA, GA 30305, USA ATTN: SEA GUN LEE— 1-4044006125	20 Y DON TWIN KOR EX 8
	LG CHEM AMERICA, INC	LG CHEM, LTD.	04/12/2017	35361	16073 Pusan	Charleston, South Carolina	MOL MAXIM	South Korea	AS PER LABEL	3475 PIEDMONT RD. NE, SUITE 1200 ATLANTA, GA 30305 TEL: 678-984-5714	20 Y YOU TOW KOR
TOP 121H- 75412 , 20 121 11	LG CHEM AMERICA, INC.	LG CHEM, LTD.	04/05/2017	35499	16136 Pusan	Charleston, South Carolina	KAETHE P	South Korea	AS PER LABEL HGX3 CONTAINER ONLY. . . AS PER LABEL 40 HGX3 CONT AINER ONLY. . . AS PER LABEL 40 HGX3 CONTAINER ONLY.	3475 PIEDMONT RD. NE STE. 1200 ATLANTA, GA 30305 AUN: SEA GUN LEE— - 1-4044006125	20 Y YOU TOW KOR TEL I
. . 84 PP OMER OF P.O U, II, -3 R P/O :	FITESA SIMPSONVILLE INC	LG CHEM, LTD.	03/28/2017	129875	59034 Pusan	Charleston, South Carolina	GRASMERE MAERSK	South Korea		840 SE MAIN ST SIMPSONVILLE, SC 29681 US	128, YEO 0733
IDE:2 16, U, 11, ER ATE,	LG CHEM AMERICA, INC.,	LG CHEM LTD.	03/28/2017	44092	20042 Pusan	Charleston, South Carolina	GRASMERE MAERSK	South Korea	N/M	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S ATTN : ESTHER LE, TEL : 404-400-612 1-4044006125	LG T DAEI SEO 0733 3255
IDE 90 7 ZED	LG CHEM AMERICA, INC.,	LG CHEM LTD.	03/28/2017	44092	20042 Pusan	Charleston, South Carolina	GRASMERE MAERSK	South Korea	N/M	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA, GA 30305 (12TH FLOOR), U.S ATTN : ESTHER LE 1- 4044006125	LG T DAEI SEO 0733 2757
D 291612 WT IGS	LG CHEM AMERICA INC	LG CHEM LTD.	03/17/2017	44000	20000 Pusan	Charleston, South Carolina	MOL MATRIX	South Korea	N/M	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA GA, 30305 TE 404-400-6125 EMAIL ESTHERLELGCHEM.COM	LG T DAEI SEO 0733

03 INH NO S II HS	LG CHEM AMERICA INC	LG CHEM LTD.	03/14/2017	46200	21000	Pusan	Charleston, South Carolina	SEA LAND METEOR	South Korea	SEAL NO.: 134957 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
CHEMBANK YL, O INTERNATIONAL, INC.	LG CHEM LTD.	03/14/2017	44092	20042	Pusan	Charleston, South Carolina	SEA LAND METEOR	South Korea	N/M		15 FOREST STREET CLOSTER, NJ 07624 1- 7326750773	LG TM DAER SEOU 07336 32555
03 INH NO S II HS	LG CHEM AMERICA INC	LG CHEM LTD.	03/14/2017	44092	20042	Pusan	Charleston, South Carolina	SEA LAND METEOR	South Korea	IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA GA, 30305 TEL: 404-400- 6125, EMAIL: ESTHERLE@L 1-4044006125	LG TM DAER SEOU 07336 32555
03 INH NO S II HS	LG CHEM AMERICA INC	LG CHEM LTD.	03/14/2017	44092	20042	Pusan	Charleston, South Carolina	SEA LAND METEOR	South Korea	IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 AT 30305 TEL: 404-400-6125, EMAIL: ESTHERLE@LGCHE M.COM 1-4044006125	LG TM DAER SEOU 07336 32555
03 INH NO S II HS	LG CHEM AMERICA INC	LG CHEM LTD.	03/14/2017	44092	20042	Pusan	Charleston, South Carolina	SEA LAND METEOR	South Korea	N/M	15 FOREST STREET CLOSTER, NJ 07624 1- 7326750773	LG TM DAER SEOU 07336 32555
03 INH NO S II HS	LG CHEM AMERICA INC	LG CHEM LTD.	03/12/2017	46200	21000	Pusan	Charleston, South Carolina	MOL MISSION	South Korea	SEAL NO.: 113676 IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA ATLANTA US US	LG TM DAER
CHEMBANK INTERNATIONAL, INC.	LG CHEM LTD.	03/09/2017	44000	20000	Pusan	Charleston, South Carolina	COSCO NINGBO	South Korea	SECOND SEAL NO: 117052/117070 IN ISO TANK		15 FOREST STREET, BERGEN, NEW JERSEY, UNITED STATES, CLOSTER NJ, UNITED S TATES -- TELEX: POSTAL: 07624	LG TM DAER GU, SE UL, S POST,
03 INH NO S II HS	LG CHEM AMERICA INC	LG CHEM LTD.	02/24/2017	44000	20000	Pusan	Charleston, South Carolina	HENRY HUDSON BRIDGE	South Korea	NO MARKS	3475 PIEDMONT ROAD NE SUITE 1200 AT LANTA GA, UNITED STATES POSTAL: 303 05	LG TM DAER SEOU POST,
03 INH NO S II HS	LG CHEM AMERICA INC	LG CHEM LTD.	02/24/2017	44000	20000	Pusan	Charleston, South Carolina	HENRY HUDSON BRIDGE	South Korea	NO MARKS	3475 PIEDMONT ROAD NE SUITE 1200 AT LANTA GA, 30305 ATLANTA GA, UNITED STATES 404 400	LG TM DAER

LG CHEM AMERICA INC	LG CHEM LTD.	02/16/2017	44000	20000 Pusan	Charleston, South Carolina	COSCO GUANGZHOU	South Korea	NO MARKS	UNITED STATES 404-400- 6125 POSTAL:30305	DAEF KORE
LG CHEM AMERICA, INC.,	LG CHEM LTD.	02/12/2017	46200	21000 Pusan	Charleston, South Carolina	HANNOVER BRIDGE	South Korea	IN ISO TANK	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA GA, UNITED STATES POSTAL:30 305	LG TI DAEF SEOI OSTA
LG CHEM AMERICA, INC.,	LG CHEM LTD.	02/12/2017	46200	21000 Pusan	Charleston, South Carolina	HANNOVER BRIDGE	South Korea	IN ISO TANK	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA GA, UNITED STATES POSTAL:30 305	LG TI DAEF SEOI OSTA
LG CHEM AMERICA, INC.,	LG CHEM LTD.	02/12/2017	46200	21000 Pusan	Charleston, South Carolina	HANNOVER BRIDGE	South Korea	IN ISO TANK	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA GA, UNITED STATES POSTAL:30 305	LG TI DAEF SEOI POST
LG CHEM AMERICA, INC.,	LG CHEM LTD.	02/12/2017	46200	21000 Pusan	Charleston, South Carolina	HANNOVER BRIDGE	South Korea	IN ISO TANK	3475 PIEDMONT RD. NE, SUITE 1200, ATLANTA GA, UNITED STATES POSTAL:30 305	LG TI DAEF SEOI POST
LG CHEM AMERICA INC	LG CHEM LTD.	02/12/2017	44000	20000 Pusan	Charleston, South Carolina	HANNOVER BRIDGE	South Korea	NO MARKS	3475 PIEDMONT ROAD NE SUITE 1200 AT LANTA GA, UNITED STATES 4044006125 POSTAL:30354	LG TI DAEF SEOI POST
LG CHEM AMERICA, INC.,	LG CHEM, LTD.	02/11/2017	129875	59034 Pusan	Charleston, South Carolina	MOL MAJESTY	South Korea	HQX3 CONTAINER ONLY. . . AS PER LABEL 40 HQX3 CONT AINER ONLY. . . AS PER LABEL 40 HQX3 CONTAINER ONLY.	840 SE MAIN ST SIMPSONVILLE, SC 29681 US	128, ' YEOI 07336
LG CHEM AMERICA, INC.,	LG CHEM, LTD	02/10/2017	45804	20820 Pusan	Charleston, South Carolina	MOL MAJESTY	South Korea	AS PER LABEL	INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA	128, ' DAEF SEOI
LG CHEM AMERICA INC	LG CHEM LTD	01/19/2017	44000	20000 Pusan	Charleston, South Carolina	MAERSK LITAH	South Korea	PARTY 2 LG CHEM AMERICA INC 3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA GA, 30305 TEL:404-400- 6125	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA GA, 30305 TEL:404-400-6125, 1- 4044006125	LG TI DAEF SEOI 07336 32556

INC	LG CHEM LTD.	01/16/2017	44092	20042 Pusan	Charleston, South Carolina	MOL MOTIVATOR	South Korea	AS PER LABEL	INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA	128, Y DAER SEOU	
14308	LG CHEM AMERICA,	LG CHEM, LTD	01/16/2017	45804	20820 Pusan	Charleston, South Carolina	MOL MOTIVATOR	South Korea	AS PER LABEL	INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA	128, Y DAER SEOU
1018 3 IL -	LG CHEM AMERICA,	LG CHEM, LTD	01/16/2017	45804	20820 Pusan	Charleston, South Carolina	MOL MOTIVATOR	South Korea	AS PER LABEL	INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA	128, Y DAER SEOU
14308	LG CHEM AMERICA,	LG CHEM, LTD	01/16/2017	45804	20820 Pusan	Charleston, South Carolina	MOL MOTIVATOR	South Korea	AS PER LABEL	INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA	128, Y DAER SEOU
1018 3 IL -	LG CHEM AMERICA,	LG CHEM, LTD	01/16/2017	45804	20820 Pusan	Charleston, South Carolina	MOL MOTIVATOR	South Korea	AS PER LABEL	INC. 2400 LAKEVIEW PKWY STE 580 ALPHARETTA GA 30009 USA	128, Y DAER SEOU
1000 JC	LG CHEM AMERICA INC	LG CHEM LTD.	12/21/2016	46297	21044 Pusan	Charleston, South Carolina	SEA LAND MERCURY	South Korea	IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA GA, 30305 TEL: 404-400-6125 1-0000000000	LG TM DAER SEOU 07336 32555
8(3) N	LG CHEM AMERICA INC	LG CHEM LTD.	12/21/2016	46297	21044 Pusan	Charleston, South Carolina	SEA LAND MERCURY	South Korea	N/M	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA GA, 30305 TEL: 404-400-6125 1-0000000000	LG TM DAER SEOU 07336 32555
1.1	LG CHEM AMERICA INC	LG CHEM LTD.	12/21/2016	44092	20042 Pusan	Charleston, South Carolina	SEA LAND MERCURY	South Korea	IN ISO TANK	3475 PIEDMONT ROAD NE SUITE 1200 ATLANTA GA, 30305 TEL: 404-400-6125 1-0000000000	LG TM DAER SEOU 07336 32555

EXHIBIT

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
	)	
RANEE MICHELLE MOORE,	)	CIVIL ACTION NO. 2018-CP-21-02884
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING LG CHEM,
	)	AMERICA, INC.'S, MOTION TO
	)	DISMISS
PLANET VAPOR, INC., LG CHEM,	)	
LTD., and LG CHEM AMERICA, INC.	)	

This matter came before the Court for a hearing on April 2, 2019, on Defendant LG Chem America, Inc.'s ("LGA") motion to dismiss for lack of personal jurisdiction. After reviewing the parties' submissions and hearing argument of counsel, the Court denies LGA's motion for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

This is a product liability action involving an allegedly defective lithium ion battery used for an e-cigarette device. Plaintiff, a South Carolina citizen, alleges that on March 9, 2016, the battery, while in her pants pocket, exploded and burst into flames, causing severe burn injuries. The injuries occurred in Florence, South Carolina. Defendant Planet Vapor, Inc., is a retail store in Columbia, South Carolina, that sold the battery and e-cigarette device to Plaintiff. (Cmplt. ¶ 2). Defendant LGA, a Delaware corporation, and Defendant LG Chem, Ltd., ("LG"), a South Korean corporation, allegedly designed, manufactured, imported, and sold the battery. *Id.* at ¶¶ 3-6.

On October 31, 2018, Plaintiff filed this action in Florence County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. As to LGA, Plaintiff alleges LGA has "continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling

goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On December 21, 2018, LGA filed a motion to dismiss for lack of personal jurisdiction, along with an affidavit of HyunSoo Kim, an LGA Compliance Manager. Mr. Kim states, *inter alia*, that LGA is incorporated in Delaware with its principal place of business in Georgia. (Aff. ¶3). It does not own or rent property in South Carolina. *Id.* at ¶ 5. In 2017, LGA generated 1.27% of its revenue in South Carolina. *Id.* at ¶ 7. Mr. Kim attests that LGA did not design, manufacture, import or sell a lithium-ion battery in South Carolina. *Id.* at ¶ 8.

On April 2, 2019, Plaintiff filed a memorandum in opposition to the motion to dismiss, along with a South Carolina Certificate of Authority for LGA and hundreds of import records for the Port of Charleston. On September 15, 2010, LGA obtained a Certificate of Authority from the South Carolina Secretary of State that authorizes it to transact business in South Carolina. (Exh. 2). LGA maintains a registered agent in Columbia, South Carolina. *Id.* The import records show that from December 2016 to February 2019, LGA received as consignee approximately 244 product shipments from LG to the Port of Charleston in South Carolina. (Exh. 3). LGA is a wholly-owned subsidiary of LG, and LGA’s business activities for LG are “sales and trading” of its products within the United States.¹

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton &*

¹ See LG Chem, Ltd. and Subsidiaries, *Consolidated Interim Financial Statements*, June 30, 2018 and 2017, http://www.lgchem.com/upload/file/audit-report/2018_2Q_ConFS_ENG.pdf at p. 10.

Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in her favor, the Court finds there are sufficient minimum contacts between LGA and South Carolina to support exercising specific personal jurisdiction² over LGA.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there.” *Id.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco*

² Plaintiff did not dispute LGA’s argument as to general jurisdiction.

Trading, Co., 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).³ “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.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the fairness prong, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction.” *Id.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LGA has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmpl. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient

³ See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the additional evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LGA possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina's long-arm statute,

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's: (1) transacting any business in this State; (2) contracting to supply services or things in the State; . . . (4) causing tortious injury or death in this State by an act or omission outside this State 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 State.

S.C. Code Ann. § 36-2-803(A). LGA has a presence in South Carolina in the form of being registered to transact business here, having a registered process agent here, continuously and regularly using a State port to conduct its business activities, and deriving revenue from South Carolina. Plaintiff points to LGA's Certificate of Authority to transact business as evidence that supports the exercise of personal jurisdiction. The Court agrees. Section 33-15-101 of the South Carolina Code lists 13 categories of activities that are **not** considered transacting business in South Carolina. S.C. Code Ann. § 33-15-101. LGA's decision to obtain a Certificate of Authority demonstrates that its activities in South Carolina are more substantial than those listed in § 33-15-101. Further, by obtaining a Certificate of Authority, LGA agreed at a minimum to the jurisdiction of the South Carolina Department of Revenue and our Courts to determine its South Carolina tax liability. S.C. Code Ann. § 33-15-105(d). Along with the evidence of LGA's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 244 product shipments from LG to LGA as consignee through the Port of Charleston, South Carolina, from December 2016 to

February 2019. This is ample evidence that LGA transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 (“W.W. Norton’s continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis.”); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) (“By using the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”). LGA participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied.

LGA lists in its memorandum and in Mr. Kim’s affidavit various products it sells and distributes, but specifically omits lithium-ion batteries from the list. The Court rejects this assertion because another court already found that “LGCAI is responsible for marketing LGC petrochemicals, information and electronic materials, and *batteries* to customers in the United States.” *Celgard, LLC v. LG Chem, Ltd.*, 2015 U.S. Dist. LEXIS 66600, *74, 2015 WL 2412467 (W.D.N.C. May 21, 2015) (emphasis added). Therefore, it should come as no surprise to LGA that the subject battery ended up in South Carolina and injured a South Carolina citizen.

The exercise of personal jurisdiction is also reasonable and fair. First, LGA has conducted activities in South Carolina for a sufficient duration. It obtained a Certificate of Authority to transact business in South Carolina over eight years ago and the import records show its use of the Port for over three years. Second, the character and circumstances of the commission of LGA’s acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of

Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LGA. It is a U.S. corporation with a Certificate of Authority and registered agent in South Carolina. Fourth, and finally, South Carolina has an interest in exercising jurisdiction over LGA. "South Carolina has an interest in providing redress for its citizens." *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) ("A State generally has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors."))). The Court has specific personal jurisdiction over LGA.

CONCLUSION

For the reasons stated above, the Court denies Defendant LG Chem America, Inc.'s motion.

AND IT IS SO ORDERED.

Dated: _____
Florence, South Carolina

Michael G. Nettles
Circuit Court Judge



Florence Common Pleas

Case Caption: Rance Machel Moore , plaintiff, et al VS Planet Vapor Inc ,
defendant, et al
Case Number: 2018CP2102884
Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

EXHIBIT

4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	CIVIL ACTION NO. : 2018-CP-0201518
	)	
JOSHUA HOLTZENDORFF,	)	
	)	
Plaintiff,	)	[PROPOSED] ORDER DENYING
	)	LG CHEM, LTD.'S MOTION TO
vs.	)	DISMISS FOR LACK OF PERSONAL
	)	JURISDICTION
VAPOR TEK USA, LLC, and LG CHEM	)	
LTD.	)	
	)	
Defendants.	)	
_____	)	

Defendant LG Chem, Ltd.'s motion to dismiss for lack of personal jurisdiction, pursuant to South Carolina Rule of Procedure 12(b)(2), came before the Court for a hearing on February 3, 2020. After considering the pleadings, the evidence submitted by both parties, and the arguments of counsel, the Court denies LG Chem, Ltd.'s motion to dismiss. Defendant LG Chem, Ltd. shall file and serve its answer within 15 days of service of this order.

AND IT IS SO ORDERED.

Dated: _____
Aiken, South Carolina

Hon. Courtney Clyburn Pope
Circuit Court Judge



Aiken Common Pleas

Case Caption: Joshua Holtzendorff VS Vapor Tek Usa Llc , defendant, et al
Case Number: 2019CP0201518
Type: Order/Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2020-05-06 12:01:14 page 2 of 2

EXHIBIT

5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
ERIC "CHASE" WILLIAMSON,	)	CIVIL ACTION NO. 2019-CP-07-02270
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING LG CHEM
	)	AMERICA, INC.'S, MOTION TO
	)	DISMISS FOR LACK OF PERSONAL
	)	JURISDICTION
PIRATES COVE VAPOR LOUNGE, LLC;	)	
LG CHEM, LTD.; LG CHEM AMERICA,	)	
INC.; & D&A DISTRIBUTION, LLC	)	
D/B/A STRICTLY E-CIG	)	
	)	

This matter came before the Court for a videoconference hearing on May 28, 2020, on Defendant LG Chem America, Inc.'s ("LGCAI") motion to dismiss for lack of personal jurisdiction. Present before the Court via videoconference was Harris Yegelwel for the Plaintiff, and Rachel Hedley for Defendant, LGCAI. After reviewing the parties' submissions and hearing arguments of counsel, the Court denies LG Chem America, Inc.'s motion with prejudice, for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

On October 19, 2019, Plaintiff filed this action in Beaufort County, South Carolina. This is a products liability matter involving an allegedly defective lithium-ion battery, described by Plaintiff as an "LG HG2 18650 battery" and the "subject battery." (Am. Compl. Intro, and ¶¶ 25, 27-29). Plaintiff, Eric Chase Williamson, a South Carolina citizen, alleges that an LG HG2 18650 battery exploded, causing him serious burn injuries in Beaufort County, South Carolina. (*Id.*, Jurisdiction and ¶¶ 26-35). Plaintiff alleges that he purchased the subject battery from a vaping retail store called Pirates Cove Vapor Lounge located in Beaufort, South Carolina. (*Id.*, ¶¶ 5, 10, 25).

With respect to LG Chem America, Inc., Plaintiff alleges that all Defendants, including LG Chem America, Inc., “regularly conduct business in South Carolina and have continuing contacts with South Carolina by transacting substantial business in the state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be purchased and/or used in South Carolina. (Am. Compl. Jurisdiction). Plaintiff also alleges that LG Chem America, Inc., manufactured, designed, tested, marketed, sold, and distributed the 18650 battery at issue. (*Id.*, ¶¶ 3-4). Plaintiff further alleges that Defendant LG Chem America, Inc., markets, distributes, and sells LG branded 18650 batteries throughout the United States, including in the state of South Carolina, and regularly transacts, does, or solicits business in the State of South Carolina. (*Id.*, ¶¶ 17-24). Moreover, Plaintiff asserts that his claims arise out of alleged acts, omissions, and business transactions occurring in Beaufort, South Carolina. (*Id.* Jurisdiction).

On March 31, 2020 LG Chem America, Inc., filed a motion to dismiss for lack of personal jurisdiction, along with an affidavit of Hyunsoo Kim, LG Chem America, Inc.’s “compliance manager and authorized representative.” (Ex. 1 ¶ 2). Via his affidavit, Mr. Kim made several assertions “in support of [LG Chem America, Inc.]’s Motion to Dismiss.” (*Id.*). Specifically, Mr. Kim has asserted, *inter alia*, that LG Chem America, Inc. is a Delaware company with its principal place of business in the State of Georgia; that it does not own or rent property in this state; that it does not distribute, advertise, or sell any lithium-ion cell for use by individual consumers; and that it does not have a relationship with Pirate’s Cove Vapor Lounge or D&A Distribution LLC related to the distribution or sale of LG-branded 18650 lithium-ion batteries for any purpose. (*Id.*, ¶ 5-6, 13-14).

Subsequently, on May 26, 2020, LG Chem America, Inc., submitted a memorandum in support of its motion. Plaintiff filed a memorandum response in opposition to the motion to

dismiss, along with an affidavit of one of his attorneys, Harris I. Yegelwel, Esq., to properly authenticate several exhibits rebutting Mr. Kim's affidavit.

On September 15, 2010, LG Chem America, Inc. obtained a Certificate of Authority from the South Carolina Secretary of State that authorizes it to transact business in South Carolina, where it has maintained a registered agent in Columbia, South Carolina. (Ex. 5). Import records show that LG Chem America, Inc. has been utilizing the ports of Charleston as early as 2006 and that through December 2016 to February 2019 alone, LG Chem America, Inc. consigned approximately 244 product shipments from LG Chem, Ltd. to the Port of Charleston in South Carolina. (Ex. 6). The shipping records related to Defendant LG Chem America, Inc.'s distribution of goods to and through South Carolina (Exs. 6-7), is consistent with representations by LG Chem, Ltd. that LG Chem America, Inc. is the "sales and trading" arm of LG Chem, Ltd. (Ex. 2).

Furthermore, LG Chem America, Inc. has been found subject to specific personal jurisdiction in South Carolina in a substantially similar case, where a plaintiff asserted products liability claims against LG Chem America, Inc. related to LG HG2 18650 batteries and where the Court rejected the same arguments set forth by LG Chem America, Inc. (Ex. 9).

STANDARD

"The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). "The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law." *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). "A prima facie showing of personal jurisdiction can be made through factual allegations in the complaint or through affidavits that establish a basis for the court to assert jurisdiction over an out-of state-

defendant.” *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 151, 723 S.E.2d 835, 839 (Ct. App. 2012) (citing *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 259, 423 S.E.2d 128, 130 (1992)). When addressing a motion to dismiss for lack of personal jurisdiction, “[c]ourts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking all of Plaintiff’s allegations as true, resolving all factual disputes in his favor, and drawing all reasonable inferences in his favor from the evidence submitted, the Court finds there are sufficient minimum contacts between Defendant LG Chem America, Inc., and South Carolina, to support exercising specific¹ personal jurisdiction over LG Chem America, Inc.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Cockrell*, 363 S.C. at 491, (citing S.C. Code Ann. § 36-2-803 (2003)).² “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Id.* Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

¹ Plaintiff did not dispute LG Chem America, Inc.’s argument as to the absence of general jurisdiction.

² Under South Carolina’s long-arm statute:

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s: (1) transacting any business in this State; (2) contracting to supply services or things in the State; . . . (4) causing tortious injury or death in this State by an act or omission outside this State 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 State.

S.C. Code Ann. § 36-2-803(A).

To satisfy due process and establish specific jurisdiction, in addition to looking to the long-arm statute, courts use “a two-prong analysis: (1) the ‘power’ prong, in which minimum contacts provide courts the ‘power’ to adjudicate the action; and (2) the ‘fairness’ prong, which requires the exercise of jurisdiction to be ‘reasonable’ or ‘fair.’” *See Moosally*, 594 S.E.2d at 884.

First, “[u]nder the power prong, a minimum contacts analysis requires a court to find that the defendant directed its activities to residents of South Carolina and that the cause of action arises out of or relates to those activities.” *Id.* at 883. To that end, the court looks at whether a defendant has sufficient minimum contacts in the forum and whether the claims at issue “arise out of,” are “connected with,” or “relate to” the defendant’s activities in the forum – bearing in mind “reasonableness” and “other relevant factors.” *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980); *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945); *see also Moosally*, 594 S.E.2d 884. Moreover, a plaintiff may establish a defendant’s sufficient minimum contacts with the forum to satisfy this prong of the analysis by showing the defendant placed goods into the stream of commerce with the expectation that the “‘regular...flow’ or ‘regular course’ of sales” could lead the product to the forum state. *See J. McIntyre Machinery, Ltd. v. Nicaastro*, 564 U.S. 873, 888-889 (2011) (Breyer, J., concurring in judgment); *see also Asahi Metal Ind. Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 117, 120-21 (Brennan, J. concurring in part and in the judgment).³

³ Defendant LG Chem America, Inc.’s reliance on these cases and the recent *Bristol-Myers Squibb Co. v. Super. Ct. of California, San Francisco Co.*, 137 S. Ct. 1773 (2017) decision, does not alter the Court’s finding. The analysis in *Bristol-Myers* was focused on claims brought by non-resident plaintiffs in California state court who were not prescribed Plavix in California, nor purchased, used, or sustained injuries related to that drug in California. Defendant’s reliance on this case is misplaced as it did not alter the constitutional specific jurisdictional analysis; indeed, the opinion specifically states “[o]ur settled principles regarding specific jurisdiction control this case.” *See Bristol-Myers*, 137 S. Ct. 1781. Moreover, the facts here are distinguishable as Mr. Williamson is a South Carolina resident who purchased Defendant’s product in in this state and was injured in, and brought suit in, South Carolina.

Second, under the fairness prong, “[t]he court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction.” *Id.* Likewise, “[d]ue process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Id.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pleadings, and alternatively, based on the additional evidence presented. “At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993).

Plaintiff alleges in the Complaint that LG Chem America, Inc., “regularly conduct[s] business in South Carolina and has continuing contacts with South Carolina by transacting substantial business in the state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be purchased and/or used in South Carolina; that LG Chem America, Inc. manufactured, designed, tested, marketed, sold, and distributed the 18650 battery at issue; and that LG Chem America, Inc. markets, distributes, and sells LG branded 18650 batteries throughout the United States, including in the state of South Carolina, and regularly transacts, does, or solicits business in the State of South Carolina. (Am Comp. Introduction; ¶¶ 3-4, 17-24). This demonstrates specific personal jurisdiction under the long-arm statute and due process

analysis by asserting sufficient minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds, based on the additional evidence submitted, that Plaintiff has demonstrated that the exercise of specific personal jurisdiction over Defendant LG Chem America, Inc., is appropriate under both the long-arm statute and due process. Considering South Carolina's long-arm statute, LG Chem America, Inc. has a presence in South Carolina in the form of being registered to transact business here, having a registered process agent here, continuously and regularly using a State port to conduct its business activities, and deriving revenue from South Carolina. Plaintiff points to LG Chem America, Inc.'s Certificate of Authority to transact business as evidence that supports the exercise of personal jurisdiction. The Court agrees. Section 33-15-101 of the South Carolina Code lists 13 categories of activities that are not considered transacting business in South Carolina. S.C. Code Ann. § 33-15-101. LG Chem America, Inc.'s decision to obtain a Certificate of Authority demonstrates that its activities in South Carolina are more substantial than those listed in § 33-15-101. Further, by obtaining a Certificate of Authority, LG Chem America, Inc. agreed at a minimum to the jurisdiction of the South Carolina Department of Revenue and our Courts to determine its South Carolina tax liability. S.C. Code Ann. § 33-15-105(d). Along with the evidence of LG Chem America, Inc.'s activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted documents showing approximately 244 product shipments from LG Chem. Ltd., to LG Chem America, Inc. as consignee through the Port of Charleston, South Carolina, from December 2016 to February 2019. That data identified approximately 40 shipments by LG Chem, Ltd. through LG Chem America, Inc. to customers in South Carolina, including shipments of lithium-ion batteries. This is alleged evidence that LG Chem America, Inc. transacted

business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 (“W.W. Norton’s continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis.”); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) (“By using the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”).

LG Chem America, Inc.’s lists in its memorandum and in Mr. Kim’s affidavit various products it sells and distributes, but specifically omits lithium-ion batteries from the list. However, Mr. Kim’s affidavit is neither uncontroverted nor determinative of the Court’s inquiry in light of the record. Indeed, as noted by the Plaintiff, the Hon. Max O. Cogburn, Jr. of the United States District Court for the Western District of North Carolina, after reviewing a declaration from prior litigation involving LG Chem America, Inc., by Mr. Juan (S.H.) Oh, found that “LGCAI is responsible for marketing LGC petrochemicals, information and electronic materials, and batteries to customers in the United States.” *Celgard, LLC v. LG Chem, Ltd.*, 2015 U.S. Dist. LEXIS 66600, *74, 2015 WL 2412467 (W.D.N.C. May 21, 2015). Therefore, it should come as no surprise to LG Chem America, Inc., that the subject battery ended up in South Carolina and injured a South Carolina citizen.

The evidence provided further establishes that Defendant LG Chem America, Inc., participated in the economic markets of this state and derived revenue from this state and has created sufficient minimum contacts with South Carolina such that it should reasonably anticipate

being haled into court here. LG Chem America, Inc.'s activities show the requisite "regular ... flow' or 'regular course' of sales" in South Carolina, and Plaintiff's claims sufficiently relate to these activities LG Chem America, Inc. directed at this state, such that Plaintiff has demonstrated minimum contacts for this court to permissibly exercise the power of specific personal jurisdiction over LG Chem America, Inc. *See J. McIntyre*, 564 U.S. at 889 (2011) (Breyer, J., concurring). Exercising specific jurisdiction over LG Chem America, Inc., arising from Plaintiff's claims alleging injuries in this state from a product purchased in this state, comports with both the long-arm statute and due process.

Finally, the exercise of personal jurisdiction is also reasonable and fair. First, LG Chem America, Inc. has conducted activities in South Carolina for a sufficient duration. It obtained a Certificate of Authority to transact business in South Carolina over ten (10) years ago and the import records show its use of the South Carolina ports for over three years. Second, LG Chem America, Inc.'s acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of Charleston and receives products directly into the state of South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LG Chem America, Inc., a U.S. corporation with a Certificate of Authority and registered agent in South Carolina. And, it has already been found subject to the jurisdiction of South Carolina courts in a case involving substantially similar facts. Fourth, and finally, South Carolina has an interest in exercising jurisdiction over LG Chem America, Inc. "South Carolina has an interest in providing redress for its citizens." *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King*, 471 U.S. at 473 ("A State generally has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors."))).

CONCLUSION

For the reasons stated above, the Court finds that the Plaintiff, through the allegations in the operative Complaint and, alternatively, through the evidence provided with his memorandum in opposition, has established specific personal jurisdiction over Defendant LG Chem America, Inc. The Court denies Defendant LG Chem America, Inc.'s motion to dismiss with prejudice.

Defendant LG Chem America, Inc. shall file and serve its Answer within 30 days of service of this Order.

AND IT IS SO ORDERED.

Dated: _____
Walterboro, South Carolina

Hon. Perry M. Buckner
Circuit Court Judge



Beaufort Common Pleas

Case Caption: Eric Chase Williamson VS Pirates Cove Vapor Lounge Llc ,
defendant, et al
Case Number: 2019CP0702270
Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2020-06-08 15:23:30 page 11 of 11

EXHIBIT

6

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2020CP1000912

Nicholas Keith Roberts
PLAINTIFF(S)

Planet Vape Llc The et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant LG Chem Ltd's Motion to Dismiss is denied. Defendant LG Chem America Inc.'s Motion to Dismiss is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/17/2020 .

Sceecigarette LLC
Duke Raleigh Highfield for Ecig Charleston Llc
Brandt R. Horton for Ecig Charleston Llc
Christian Edwin Wayne Fober for Ecig Charleston Llc
James D Durham for Nicholas Keith Roberts
R Brian Tanner for Nicholas Keith Roberts
Shannon C O'Reilly for Nicholas Keith Roberts
Deirdre Shelton McCool for Lg Chem America Inc, Lg Chem Ltd
Rachel Atkin Hedley for Lg Chem America Inc, Lg Chem Ltd
Elizabeth Scott Moise for Lg Chem America Inc, Lg Chem Ltd
Joyetech Usa Inc
Daphne S. Withrow for Nicholas Keith Roberts
Planet Vape Llc The

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Nicholas Keith Roberts VS Planet Vape Llc The , defendant, et al
Case Number: 2020CP1000912
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-12-17 11:51:35 page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	LG CHEM AMERICA, INC.'S
vs.	)	OBJECTIONS TO PLAINTIFF'S
	)	PROPOSED ORDER AND
ROLLING FOG VAPOR COMPANY,	)	SUPPLEMENTAL MEMORANDUM
LLC, LG CHEM, LTD., AND LG	)	SUPPORTING MOTION TO
CHEM AMERICA, INC.,	)	DISMISS
	)	
Defendants.	)	
	)	

Defendant LG Chem America, Inc. ("LGCAI") respectfully submits these Objections and Supplemental Memorandum regarding Plaintiff's Proposed Order denying LGCAI's motion to dismiss for lack of personal jurisdiction.¹

Summary of Objections

Plaintiff's Proposed Order concludes that specific jurisdiction² may be exercised over LGCAI because: (1) Plaintiff alleged in his complaint that LGCAI has "continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state"; (2) LGCAI transacted unrelated business in South Carolina; and (3) other South Carolina trial courts have denied similar motions.

¹ A copy of the Court's email dated February 18, 2021 is attached hereto as **Exhibit A**. A copy of Plaintiff's Proposed Order denying LGCAI's renewed motion to dismiss Plaintiff's amended complaint, submitted by email on February 26, 2021, is attached hereto as **Exhibit B**. A copy of the transcript of the February 1, 2021 Motion hearing is attached hereto as **Exhibit C**.

² Plaintiff conceded that general personal jurisdiction is lacking over LGCAI. (**Ex. B**, Proposed Order at 3 n.2; **Ex. C**, Hearing Tr. at 31.)

LGCAI objects to Plaintiff's Proposed Order on the following grounds: (1) Plaintiff's Proposed Order contradicts and negates the prior orders entered by the Honorable Cordell Maddox in this case and is silent as to LGCAI's argument on this issue; (2) Plaintiff's Proposed Order does not accurately reflect the facts presented to the Court when considering LGCAI's motion; (3) Plaintiff's Proposed Order raises issues never presented to the Court; and (4) Plaintiff's Proposed Order fails to address a critical element of the jurisdictional analysis, demonstrating why LGCAI's motion should have been granted.

Basis for Objections

I. The Proposed Order ignores Judge Maddox's prior ruling that the same allegation and evidence were insufficient to establish jurisdiction.

Judge Maddox previously ruled that "the allegations in the Complaint and the parties submissions" (which included the same information Plaintiff relied on during the February 1, 2021 hearing) did not provide enough information to determine jurisdiction. Contrary to Plaintiff's argument that Judge Maddox's Order was limited to information on the identity of the manufacturer of the subject battery at issue, Judge Maddox's July 20, 2020 Order on LG Chem's and LGCAI's motion for reconsideration and clarification shows otherwise:

As set forth in the Court's oral rulings at the September 23, 2019 hearing, the allegations in the Complaint and the parties' submissions do not provide enough information upon which to base a decision as to whether the battery at issue was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information remains an issue that prevents a decision on personal jurisdiction.

(**Exhibit D**, Order Granting Def. LG Chem Ltd. and LG Chem America, Inc.'s Joint Mot. for Clarification and Denying Reconsideration, at 3 (dated 7/20/2020) (emphasis added)). Therefore, the Order itself shows that Judge Maddox had, in fact, found that Plaintiff had not met his prima

facie burden to prove jurisdiction based on his complaint and the import records submitted at the hearing on February 1, 2021.

LGCAI argued that it would be in conflict with Judge Maddox's prior Orders to deny LGCAI's motion based on the same record that was before Judge Maddox when he concluded that Plaintiff had not satisfied his burden of establishing a prima facie case of jurisdiction. Plaintiff's Proposed Order is silent as this argument.

II. Plaintiff's Proposed Order does not accurately reflect the facts presented to the Court when considering LGCAI's motion.

During the hearing on LGCAI's motion, Plaintiff offered the allegations of his complaint and the 38 pages of import records that had previously been submitted to Judge Maddox. As to the import records, Plaintiff informed the Court that "the chart does not show specific products. It doesn't distinguish between any type of product as opposed to shipments that LG Chem Limited is making into the Port of Charleston and on the majority of those I can give you the numbers here." (Ex. C, Hearing Tr., at 28:20–25.) The Court then inquired of counsel whether any of the entries were the batteries in question, and Plaintiff's counsel responded that he could not point to that information but that "it's immaterial whether it's 18650 batteries or other products that LG Chem is availing themselves of shipping and selling in South Carolina." (*Id.* at 29:17–30:6.) Plaintiff never made any attempt to distinguish between LG Chem, Ltd. (the alleged manufacturer) and LGCAI (a separate and independent subsidiary entity primarily engaged in the sale and distribution of various petrochemical materials and products).

LGCAI's counsel also pointed out at the hearing that the chart does show specific products and what it does not contain is any record of LGCAI participating in the supply of 18650 battery cells to anyone in a consumer vaping industry. Rather, the chart primarily shows shipment of

petrochemical products and a limited number of entries showing the supply of electric vehicle batteries from LG Chem, Ltd. to a Volvo plant. (*Id.* at 37:6–39:2.)

Product Description	Consignee	Shipper	Arrival Date	Gross Weight (LB)	Gross Weight (KG)	Foreign Port	US Port	Vessel Name	Country of Origin	Marks & AMP, Numbers	Consignee Address	Shipper Address
LITHIUM POLYMER BATTERY	VOLVO CAR US OPERATIONS INC	LG CHEM	04/21/2018	28752	12180	Pusan	Charleston, South Carolina	E R TIANPING	South Korea	41050411607	1801 VOLVO CAR DR RIDGEVILLE SC 29472 US	20 YOIDO-DONG, YOUNGOUNGPO-GU, LG T W TOWERS SEOUL SEOUL KR
LITHIUM ION BATTERY	VOLVO CAR US OPERATIONS INC	LG CHEM	01/24/2019	28752	12180	Pusan	Charleston, South Carolina	NORTHERN JASPER	South Korea	VOLVO CARS CHARLESTON	1801 VOLVO CAR DR RIDGEVILLE SC 29472 US	20 YOIDO-DONG, YOUNGOUNGPO-GU, LG T W TOWERS SEOUL SEOUL KR

Plaintiff's Proposed Order also does not address the fact that, after Judge Maddox authorized jurisdictional discovery, Plaintiff chose not to serve any additional discovery requests on LGCAI. Plaintiff affirmatively chose not to pursue discovery facts of that would only have confirmed that LGCAI was not involved in the chain of distribution that brought an 18650 lithium ion battery cell to a South Carolina vape store where it was purchased by the Plaintiff.

III. Plaintiff's Proposed Order raises issues never presented to the Court.

Plaintiff's Proposed Order states that this Court rejects LGCAI's arguments because "another court already found that '[LG Chem America, Inc.] is responsible for marketing [LG Chem] petrochemicals, information and electronic materials, and batteries to customers in the United States.'" (Proposed Order at 6, citing *Celgard, LLC v. LG Chem, Ltd.*, No. 3:14-CV-00043-MOC-DC, 2015 WL 2412467 (W.D.N.C. May 21, 2015)). Despite citing *Celgard* to support this Court's decision, Plaintiff never previously cited or raised the case to this Court, and importantly, *Celgard* does not support the argument that LGCAI's business contacts *in the United States* are sufficient to support the exercise of jurisdiction *in South Carolina*.

In that case, the U.S. District Court for the Western District of North Carolina applied the Fourteenth Amendment Due Process analysis to conclude that personal jurisdiction could be exercised because it found that LGCAI was subject to general jurisdiction in North Carolina based on its registration to do business and extensive sales of petrochemical products (not batteries) in North Carolina.³ Of note, that case involved a business dispute related to supply of separator material for a licensed battery separator used in the manufacture of batteries for electronic devices and electric vehicles and related patent infringement claims. *See Celgard*, 2015 WL 2412467, at *19–21. *Celgard* did not have anything to do with claims of consumers who acquired lithium ion battery cells for use as replaceable, rechargeable batteries. *Id.* at *24–26. Notably, the *Celgard* court also specifically rejected “stream of commerce” as a basis to exercise specific personal jurisdiction over LG Chem, Ltd. in that case. *Id.* at *24–25.

IV. Plaintiff’s Proposed Order does not address the “relatedness” element of the specific jurisdiction test, further demonstrating why LGCAI’s motion should have been granted.

The Supreme Court has held that “[f]or specific jurisdiction, a defendant’s general connections with the forum are not enough. As we have said, a corporation’s continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.” *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1781 (2017). The Supreme Court reiterated that specific jurisdiction requires “a connection between the defendant’s contacts with the forum and the specific claims at issue.” *Bristol-Myers*,

³ That decision is in conflict with United States Supreme Court authority regarding limitations on the exercise of general jurisdiction, and Plaintiff here concedes general jurisdiction is lacking.

137 S. Ct. at 1781; *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

In the Court's email instructions, the Court stated that it was bound by *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008) and concluded that neither *Bristol Myers* nor *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011) were apposite or compelled a different result. (Ex. A) Plaintiff's Proposed Order does not address either of these cases, and South Carolina's appellate courts have not yet addressed *Bristol-Myers*. However, several South Carolina federal courts have applied *Bristol-Myers* when dismissing resident plaintiffs' cases based on their failure to prove that their claims arose from purposeful contacts in the forum state. *See, e.g., Carl v. Mazda Motor Corp.*, No. 4:20-CV-00640-DCC, 2020 WL 7352563, at *5 (D.S.C. Dec. 15, 2020); *Maseng v. Lenox Corp.*, No. 3:19-CV-03245-SAL, 2020 WL 6709991, at *5–6 (D.S.C. Apr. 16, 2020); *Grant v. Lowe's Home Centers LLC*, No. 9:20-CV-00764-DCN, 2020 WL 1494070, at *2 (D.S.C. Mar. 27, 2020); *Accident Ins. Co., Inc. v. U.S. Bank Nat'l Ass'n*, No. 3:16-CV-2621-JMC, 2017 WL 4238231, at *3 (D.S.C. Sept. 25, 2017).

This is consistent with South Carolina law, adhering to the well-established principles that (1) jurisdiction over a non-resident defendant cannot be based on the unilateral actions of third parties and (2) the specific jurisdiction analysis requires the plaintiff to show that his claims arise from or are related to the defendant's forum-specific contacts. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 508–09 (2005). Neither of these principles is addressed in Plaintiff's Proposed Order.

In addition, as to LGCAI, Plaintiff's Proposed Order does not appear to rely on a "stream of commerce" theory of jurisdiction under *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C.

81, 666 S.E.2d 218 (2008).⁴ Instead, Plaintiff's Proposed Order contends that South Carolina's long-arm statute is satisfied because LGCAI is registered to do business in South Carolina and has engaged in unrelated business transactions in South Carolina, an argument that is separate from Plaintiff's "stream of commerce" argument as to LG Chem, Ltd. and one that the Court did not address. Plaintiff's Proposed Order is silent as to how his claims could possibly arise out of LGCAI's unrelated business activities in South Carolina. Under controlling authority, they cannot.

CONCLUSION

For the foregoing reasons, LGCAI objects to Plaintiff's Proposed Order and asks that the Court instead grant LGCAI's Motion to Dismiss.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Rachel Hedley

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Attorneys for Defendant LG Chem America, Inc.

⁴ The "stream of commerce" metaphor is used to determine whether the "purposeful availment" element of the personal jurisdiction test is satisfied; it is not a substitute for meeting the second element of the specific jurisdiction test - relatedness.

Columbia, SC
March 2, 2021

Appendix_01033

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, do hereby certify that on this 2nd day of March, 2021, a true and correct copy of **LG CHEM AMERICA, INC.'S OBJECTIONS TO PLAINTIFF'S PROPOSED ORDER AND SUPPLEMENTAL MEMORANDUM SUPPORTING MOTION TO DISMISS** was served on all counsel of record who are participants in the E-Filing system. I also hereby certify that on this 2nd day of March, 2021, a true and correct copy of this pleading was served via U.S. Mail upon the counsel/parties listed below not participating in the E-Filing system.

Counsel/Parties served:

Via E-Filing: Ronnie L. Crosby, Esquire Alexander P. Lewis, Esquire William B. Cummings, Esquire Austin H. Crosby, Esquire <i>Counsel for Plaintiff Dwayne Thompson</i>	Via U.S. Mail: Gina Marie Surace 317 Greenway Drive Chesnee, SC 29323 <i>Registered Agent for Defendant Rolling Fog Vapor Company, LLC</i>

By: /s/Rachel Hedley

Rachel A. Hedley (SC Bar No.: 16941)

EXHIBIT A

From: McKinnon, William A. <wmckinnonj@sccourts.org>
Sent: Thursday, February 18, 2021 1:55 PM
To: Rachel Hedley; Ronnie L. Crosby; Blake Cummings; Alex Lewis; Jim Rogers; Scott Moise; Deirdre McCool; Ann Boney; Casey M. Gore; Austin Crosby
Cc: McKinnon, William A. Law Clerk (Elizabeth Butler)
Subject: Dwayne Thompson v. LG Chem, Ltd., et al., C.A. No.: 2019-CP-44-00054

◀External Email▶ - From: prvs=968351a2a1=wmckinnonj@sccourts.org

Mr. Crosby,

Please prepare an Order denying Defendants' Motion.

This was very well-argued on both sides and I have reflected on this for some time. However, I have reviewed the relevant cases, and I have concluded I am bound by *Sumatra*. I do not see either *Bristol Meyers* (no specific jurisdiction for claim by non-resident plaintiffs injured outside the forum state) or *J. McIntyre* (no specific jurisdiction where defendant had no contacts with forum state at all excepting four of its machines ending up there) as being apposite or compelling a different result.

/WAM

William A. McKinnon

Chief Judge for Administrative Purposes &
 Resident Circuit Judge
 Sixteenth Judicial Circuit
 Moss Justice Center
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# EXHIBIT B

**From:** Casey M. Gore <cgore@pmped.com>  
**Sent:** Friday, February 26, 2021 3:37 PM  
**To:** 'McKinnon, William A.'; Rachel Hedley; Ronnie L. Crosby; 'Blake Cummings'; 'Alex Lewis'; Jim Rogers; Scott Moise; Deirdre McCool; Ann Boney; Austin Crosby  
**Cc:** 'McKinnon, William A. Law Clerk (Elizabeth Butler)'  
**Subject:** RE: Dwayne Thompson v. LG Chem, Ltd., et al., C.A. No.: 2019-CP-44-00054  
**Attachments:** Proposed Order Denying LGCA's MTD.DOCX; Ex. 1 - SCSOS Documents.pdf; Ex. 2 - Import Data.pdf; Ex. 3 - Order Denying LG Chem America, Inc.'s Motion to Dismiss.pdf; Ex. 4 - Order from the Honorable Courtney C. Pope.pdf; Ex. 5 - Order from the Honorable Perry M. Buckner, III).pdf; Ex. 6 - Order from the Honorable Bentley Price.pdf

◄External Email► - From: cgore@pmped.com

Email 2 of 2

Dear Judge McKinnon,

Attached please find the proposed order denying Defendant LG Chem America, Inc.'s Motion to Dismiss and exhibits.

Thank you,

**Casey Gore**

LEGAL ASSISTANT TO RONNIE L. CROSBY &  
AUSTIN L. CROSBY

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**From:** Casey M. Gore  
**Sent:** Friday, February 26, 2021 3:34 PM  
**To:** 'McKinnon, William A.' <wmckinnonj@sccourts.org>; Rachel Hedley <rachel.hedley@nelsonmullins.com>; Ronnie L. Crosby <RCrosby@pmped.com>; Blake Cummings <blake.cummings@cummingslewis.com>; Alex Lewis <alex.lewis@cummingslewis.com>; Jim Rogers <jim.rogers@nelsonmullins.com>; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>; Ann Boney <ann.boney@nelsonmullins.com>; Austin Crosby <acrosby@pmped.com>  
**Cc:** McKinnon, William A. Law Clerk (Elizabeth Butler) <wmckinnonlc@sccourts.org>  
**Subject:** RE: Dwayne Thompson v. LG Chem, Ltd., et al., C.A. No.: 2019-CP-44-00054

Dear Judge McKinnon,

Attached please find the proposed order denying Defendant LG Chem, Ltd.'s Motion to Dismiss and exhibits. A second email will follow with the proposed order denying Defendant LG Chem America, Inc.'s Motion to Dismiss.



Thank you,

## Casey Gore

LEGAL ASSISTANT TO RONNIE L. CROSBY &  
AUSTIN H. CROSBY

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**Sent:** Thursday, February 18, 2021 1:55 PM

**To:** Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>; Ronnie L. Crosby <[RCrosby@pmped.com](mailto:RCrosby@pmped.com)>; Blake Cummings <[blake.cummings@cummingslewis.com](mailto:blake.cummings@cummingslewis.com)>; Alex Lewis <[alex.lewis@cummingslewis.com](mailto:alex.lewis@cummingslewis.com)>; Jim Rogers <[jim.rogers@nelsonmullins.com](mailto:jim.rogers@nelsonmullins.com)>; Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>; Ann Boney <[ann.boney@nelsonmullins.com](mailto:ann.boney@nelsonmullins.com)>; Casey M. Gore <[cgore@pmped.com](mailto:cgore@pmped.com)>; Austin Crosby <[acrosby@pmped.com](mailto:acrosby@pmped.com)>

**Cc:** McKinnon, William A. Law Clerk (Elizabeth Butler) <[wmckinnonlc@sccourts.org](mailto:wmckinnonlc@sccourts.org)>

**Subject:** [External Email] Dwayne Thompson v. LG Chem, Ltd., et al., C.A. No.: 2019-CP-44-00054

Mr. Crosby,

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/WAM

**William A. McKinnon**

Chief Judge for Administrative Purposes &  
Resident Circuit Judge  
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ELECTRONICALLY FILED - 2021 Mar 02 6:39 PM - UNION - COMMON PLEAS - CASE#2019CP4400054

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF UNION	)	CIVIL ACTION NO.: 2019-CP-44-00054
	)	
DWAYNE THOMPSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING LG CHEM
	)	AMERICA, INC.'S
	)	MOTION TO DISMISS
LG CHEM, LTD., LG CHEM AMERICA,	)	
INC., and ROLLING FOG VAPOR	)	
COMPANY, LLC,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court for a hearing on February 1, 2020, on Defendant LG Chem America, Inc.'s ("LGA") motion to dismiss for lack of personal jurisdiction. After reviewing the parties' submissions and hearing argument of counsel, the Court denies LGA's motion for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

This is a product liability action involving an allegedly defective lithium ion battery used for an e-cigarette device. Plaintiff, a South Carolina citizen, alleges that on July 27, 2018, the battery, while in his pants pocket, exploded and burst into flames, causing severe burn injuries. The injuries occurred in Spartanburg, South Carolina. Defendant Rolling Fog Vapor Company, LLC, is a retail store in Spartanburg, South Carolina, that sold the battery and e-cigarette device to Plaintiff. (Cmplt. ¶ 2). Defendant LGA, a Delaware corporation, and Defendant LG Chem, Ltd., ("LG"), a South Korean corporation, allegedly designed, manufactured, imported, and sold the battery. *Id.* at ¶¶ 3-6.

On March 4, 2019, Plaintiff filed this action in Union County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. As to LGA, Plaintiff alleges LGA has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On November 2, 2020, LGA filed a renewed motion to dismiss for lack of personal jurisdiction, along with an affidavit of HyunSoo Kim, an LGA Compliance Manager. Mr. Kim states, *inter alia*, that LGA is incorporated in Delaware with its principal place of business in Georgia. (Aff. ¶5). It does not own or rent property in South Carolina. *Id.* at ¶ 6. Mr. Kim attests that LGA did not design, manufacture, distribute or sell a lithium-ion battery for use by individual consumers. *Id.* at ¶ 10.

On January 28, 2021, Plaintiff filed a memorandum in opposition to the renewed motion to dismiss, along with a South Carolina Certificate of Authority for LGA and hundreds of import records for the Port of Charleston. On September 15, 2010, LGA obtained a Certificate of Authority from the South Carolina Secretary of State that authorizes it to transact business in South Carolina. (Ex. 1). LGA maintains a registered agent in Columbia, South Carolina. *Id.* The import records show that from December 2016 to February 2019, LGA received as consignee approximately 244 product shipments from LG to the Port of Charleston in South Carolina. (Ex. 2). LGA is a wholly-owned subsidiary of LG, and LGA’s business activities for LG are “sales and trading” of its products within the United States.¹

¹ See LG Chem, Ltd. and Subsidiaries, *Consolidated Interim Financial Statements*, June 30, 2018 and 2017, http://www.lgchem.com/upload/file/audit-report/2018_2Q_ConFS_ENG.pdf at p. 10.

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in his favor, the Court finds there are sufficient minimum contacts between LGA and South Carolina to support exercising specific personal jurisdiction² over LGA.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and

² Plaintiff did not dispute LGA’s argument as to general jurisdiction.

substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there.” *Id.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).³ “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.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the fairness prong, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction.” *Id.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LGA has

³ See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

“continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmpl. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LGA possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina’s long-arm statute,

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s: (1) transacting any business in this State; (2) contracting to supply services or things in the State; . . . (4) causing tortious injury or death in this State by an act or omission outside this State 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 State.

S.C. Code Ann. § 36-2-803(A). LGA has a presence in South Carolina in the form of being registered to transact business here, having a registered process agent here, continuously and regularly using a State port to conduct its business activities, and deriving revenue from South Carolina. Plaintiff points to LGA’s Certificate of Authority to transact business as evidence that supports the exercise of personal jurisdiction. The Court agrees. Section 33-15-101 of the South Carolina Code lists 13 categories of activities that are **not** considered transacting business in South Carolina. S.C. Code Ann. § 33-15-101. LGA’s decision to obtain a Certificate of Authority demonstrates that its activities in South Carolina are more substantial than those listed in § 33-15-101. Further, by obtaining a Certificate of Authority, LGA agreed at a minimum to the jurisdiction of the South Carolina Department of Revenue and our Courts to determine its South Carolina tax

liability. S.C. Code Ann. § 33-15-105(d). Along with the evidence of LGA's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 244 product shipments from LG to LGA as consignee through the Port of Charleston, South Carolina, from December 2016 to February 2019. This is ample evidence that LGA transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 ("W.W. Norton's continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis."); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) ("By using the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."). LGA participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied and it should come as no surprise to LGA that the subject battery ended up in South Carolina and injured a South Carolina citizen.

The exercise of personal jurisdiction is also reasonable and fair. First, LGA has conducted activities in South Carolina for a sufficient duration. It obtained a Certificate of Authority to transact business in South Carolina over ten years ago and the import records show its use of the Port for over ten years. Second, the character and circumstances of the commission of LGA's acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LGA. It is a U.S. corporation with a Certificate of Authority and

registered agent in South Carolina. Fourth, South Carolina has an interest in exercising jurisdiction over LGA. “South Carolina has an interest in providing redress for its citizens.” *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”)). Finally, four other circuit court judges in South Carolina have examined this precise issue and determined that South Carolina has personal jurisdiction over LGA. (Ex. 3, Order from the Honorable Michael G. Nettles, Ex. 4, Order from the Honorable Courtney Clyburn Pope, Ex. 5, Order from the Honorable Perry M. Buckner, III, and Ex. 6, Order from the Honorable Bentley Price). The Court has specific personal jurisdiction over LGA.

CONCLUSION

After reviewing all relevant cases presented by the parties, the Court is bound by *Sumatra*. Based on *Sumatra* and the additional authority cited above, the Court denies LGA’s motion.

AND IT IS SO ORDERED.

Dated: _____

York, South Carolina

William A. McKinnon
Circuit Court Judge

EXHIBIT C

1 STATE OF SOUTH CAROLINA

2 -----x

3 DWAYNE THOMPSON ,

4 Plaintiff,

5 Case No.

6 -against-

2019-CP-44-00054

7 LG CHEM LIMITED ET AL,

8 Defendants.

9 -----x

10 February 1, 2021

11

12

13 B E F O R E:

14 HONORABLE WILLIAM MCKINNON

15

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

17 AUSTIN HOWEL CROSBY,

18 Attorney for the Plaintiff

19

20 RACHEL ATKIN HEDLEY,

21 Attorney for the Defendant

22

23

24

Aileen Butler

25

Official Court Reporter

1 (Whereupon, the following took place via
2 virtually)

3 THE COURT: Miss Hedley, your motion.

4 MS. HEDLEY: Thank you, Your Honor. May it please
5 the Court. Good morning. Again, for the record, my
6 name is Rachel Hedley and I am appearing this morning
7 on behalf of defendants LG Chem Limited and LG Chem
8 America Inc.

9 Before I get into the motion I do want to address
10 very briefly, Your Honor, there's a discovery motion
11 on the docket and there are motions to dismiss on the
12 docket.

13 THE COURT: Okay.

14 MS. HEDLEY: The discovery motion is now moot and
15 I will cover that in a moment, but I'll go through the
16 arguments on the motion to dismiss and then address
17 the motion for protective order. The plaintiff did
18 not put in an opposition and as I mentioned I believe
19 it's moot.

20 THE COURT: Okay. Mr. Crosby, do you concur that
21 the discovery motion is moot?

22 MR. CROSBY: Your Honor, I think a little bit of
23 background on that might help clarify. We are taking
24 the position that based on other trial court orders
25 from around this state -- in fact we've cited three of

1 them in our brief and just found out this morning that
2 there's actually an additional one that was just
3 entered in January of this year denying this exact
4 same motion with regards to these exact same two
5 defendants. We are able to proceed with the motions
6 to dismiss. I think depending on Your Honor's ruling
7 on the discovery issue and whether or not based on
8 Judge Maddox's prior order that we wouldn't have in
9 fact have to engage in further discovery. I think an
10 interpretation of that would dictate whether or not
11 that is moot. So I don't necessarily agree that it's
12 moot. I think Your Honor will have to give us some
13 guidance as to your preference as to how to handle
14 that.

15 THE COURT: Okay. Miss Hedley, I apologize for
16 interrupting you. Go ahead.

17 MS. HEDLEY: That's okay. Thank you, Your Honor.

18 First of all very briefly, a summary of the
19 argument and the basic facts. In this case which
20 involves allegations that the plaintiff, Dwayne
21 Thompson, alleges that he purchased a lithium-ion
22 battery from a vape store called Rolling Fog Vapor and
23 that while that battery that he purchased to use for
24 an e-cigerrate vaping device was in his pocket he
25 alleges that it exploded.

1 In the complaint the plaintiff identifies the
2 battery as quote, an LG Brown Hg2 INR 18650. Now, INR
3 appears to be some sort of brand name. It is not an
4 LG Chem battery. LG Chem does not sell -- never sold
5 anything called INR. But the 18650 -- and this is
6 just for Your Honor's reference -- that is a size
7 demarcation. It is a standard term in the industry.
8 So the 18 references the diameter. The 65 references
9 the length. And the zero makes it cylindrical. So I
10 believe it's 18 millimeters in diameter, 65
11 millimeters in length and then cylindrical. That is
12 just a standard size in the industry manufactured by
13 leading manufacturers that include Sony and Samsung
14 and Panasonic. So what's at issue in this case is an
15 allegation that the plaintiff purchased this battery
16 from --

17 (WHEREUPON, the audio drops out)

18 THE COURT: Your video is fine, but audio is
19 dropping out. Can you call in.

20 MS. HEDLEY: Let me try that. I apologize I am in
21 interest. I will /PHAOT this and see if I can /TKPO
22 the audio.

23 THE COURT: You may have to turn your computer
24 speakers off Ms. Hedley as well so the volume will
25 only come through your phone.

1 MS. HEDLEY: Thank you. Can you hear me?

2 THE COURT: Yes, ma'am.

3 MS. HEDLEY: I got phone in my hand. I'm ready.
4 Sorry about that. So I was just mentioning just in
5 terms of basic background, the size and type of this
6 battery.

7 So in the complaint plaintiff alleged that the
8 manufacturer was LG Chem limited which is a Korean
9 company and also alleged that LG Chem America Inc.
10 was a seller/importer/distributor of this battery.
11 And the prior history in this case is very important
12 to the Court's decision. We filed a reply brief this
13 morning. I know that we filed two and they were 20
14 pages long each so I'm confident the Court may not yet
15 had the opportunity to review those.

16 THE COURT: I will be honest, I did my best to
17 skim them. I have not read them carefully, but I did
18 have a question. Did Judge Maddox actually issue a
19 ruling saying there was not a prima facia case or did
20 he just say he wasn't going to rule yet.

21 MS. HEDLEY: Thank you, Your Honor. So what
22 happened is in September of 2019 at the hearing the
23 plaintiff presented the exact same arguments that the
24 plaintiff is presenting to Your Honor. As to LG Chem
25 America the same argument about consent to

1 jurisdiction and the registration statute. The same
2 argument that Sumatra is all that's required in the
3 allegation of placing a product essentially in the
4 stream of commerce. All of the same information
5 argued regarding the order in the *Renee Moore case.
6 All the same information. And at the oral ruling
7 Judge Maddox stated that more information was needed
8 to decide the jurisdictional issue. A written order
9 was entered in December and then the parties had a
10 disagreement about what that meant. And our position
11 LG Chem Limited and LG Chem America our position was
12 that it was very clear that Judge Maddox had ruled
13 that there was not enough information to decide the
14 jurisdictional issue and therefore we would go forward
15 with discovery limited only to the product ID question
16 and a question of whether LG Chem Limited and LG Chem
17 America had sufficient contact with South Carolina to
18 to establish jurisdiction. Our position was that it
19 was so limited. The plaintiff took the position that
20 it was not. We filed a motion. Both entities filed a
21 Motions for Reconsideration or in the alternative
22 clarification and we asked the Court to reconsider and
23 essentially just decide no, the motion should be
24 granted outright. Also as to the service of process
25 issue on LG Chem. Alternatively we asked if the Court

1 is not going to completely throw these cases out then
2 please clarify the prior written order to document and
3 confirm the oral ruling back in September 2019 which
4 was that there is not enough information on this
5 record to find there's jurisdiction. The plaintiff
6 opposed that and ultimately Judge Maddox ruled in our
7 favor in July of this year and said that there was not
8 enough information to decide the jurisdictional issue.
9 So our argument at this point is that Judge Maddox
10 already had in front of him every single thing that
11 the plaintiff is putting in front of Your Honor. The
12 same facts. The same law, including the other
13 decision from some other South Carolina Circuit Court.
14 All of that was in front of Judge Maddox and Judge
15 Maddox said there's not enough here to decide
16 jurisdiction. The law however makes it very clear
17 that it is the plaintiff's burden to establish
18 jurisdiction and if the plaintiff did not meet that
19 burden according to the information that was presented
20 then then the plaintiff can not meet that burden with
21 the information that is presented now because it is
22 the same information and the plaintiff has waived any
23 right for further discovery and that goes to my second
24 point about the motion for protective order that I am
25 going to address.

1 So our position is that in order for this Court on
2 these facts which were the exact same facts that were
3 presented to Judge Maddox to now say that the
4 plaintiff can move forward that would undo Judge
5 Maddox's ruling and that is against South Carolina Law
6 for the plaintiff to come in here and do that.

7 THE COURT: Exactly what -- that's was my original
8 question to you. To me there's a difference between a
9 judge saying I don't have enough information to make a
10 ruling and you seem to be saying because of the burden
11 being on the plaintiff that is equivalent to a ruling
12 that there was not a prima facia case presented. Is
13 that what you are saying?

14 MS. HEDLEY: That is what I am saying Your Honor.

15 THE COURT: I am not sure those two are the same
16 things. Just reading -- I haven't read his underlying
17 order but reading the quotes from your brief, your
18 memo, it appears he's just saying I'm not issuing a
19 ruling. Isn't that what he's saying?

20 MS. HEDLEY: What he said in September was, I will
21 deny the motion without prejudice and the defendants
22 can bring the motion again as soon as jurisdictional
23 discovery has been concluded.

24 At this point our position is jurisdictional
25 discovery has been concluded because the 90 days has

1 gone by. The plaintiff has not produced any evidence
2 of contacts with South Carolina. The plaintiff has
3 put in a brief that said we don't need any more
4 discovery. We don't want any more discovery. So
5 regardless of how Your Honor views Judge Maddox's
6 decision it's very clear that he said the defendant
7 can come back and renew this motion after
8 jurisdictional discovery. We are after jurisdictional
9 discovery. The plaintiff is not offering any
10 additional facts. So we don't see any other way other
11 than on the current record to grant this motion
12 without undoing what Judge Maddox said before. So
13 that's our position on the motion to be granted.

14 Now, I'm also glad to address the law for Your
15 Honor's benefit addressing exactly why we believe that
16 any other ruling would violate constitutional due
17 process.

18 THE COURT: Yes, ma'am, please.

19 MS. HEDLEY: Thank you.

20 So again, as I mentioned, plaintiff says that he
21 purchased this battery from a vape store. In support
22 of his motion to dismiss -- and again, just for the
23 record I just want to reiterate that LG Chem Limited
24 is a Korean company headquartered in South Korea. Our
25 position is that service to the South Carolina

1 Secretary of State is improper and is insufficient and
2 inconsistent with the Hague Service Convention.
3 However, that issue was already decided by Judge
4 Maddox and we moved to reconsider. He denied it. So
5 for the record a that maintains our position but we
6 are not asking this Court to undo that order now.
7 Okay. So moving beyond to the question of personal
8 jurisdiction, LG Chem introduced admissible evidence
9 showing that it did not supply Rolling Vapor vape
10 store. Not only that, LG Chem never supplied any vape
11 store. Not only that, LG Chem never supplied anyone
12 that LG Chem was aware was serving a consumer market
13 for stand-alone batteries. And so, if the battery
14 that arrived in South Carolina where the plaintiff
15 purchased it was in fact manufactured by LG Chem
16 Limited then it arrived in South Carolina as the
17 result of unilateral actions of third parties and not
18 as the result of any action that LG Chem directed to
19 South Carolina.

20 THE COURT: Where did LG Chem believe their
21 batteries were going if they didn't think they were
22 going to consumer products?

23 MS. HEDLEY: I am glad to address that.

24 So LG Chem manufactured these battery cells for
25 use by sophisticated companies and I'll -- and I'll as

1 examples, a computer manufacturer or an e-vite
2 manufacturer that will take the cells, pack them in a
3 battery pack with protective circuitry and put them in
4 the back of these consumer electronic devices. So LG
5 Chem was never serving in a consumer market to
6 actually purchase and handle the walk-around with one
7 of these cells in their pocket. So they did have
8 customers in the United States, but those customers
9 were limited to original equipment manufacturers who
10 would purchase cells and install them directly into
11 the equipment. Battery packers who would purchase the
12 cells, create the battery pack and supply those to the
13 manufacturers. And then finally, a very limited
14 number of distributors. None of whom were located in
15 South Carolina that would purchase cells, and then
16 supply them to the battery packers to go into the
17 battery packs. So at no time LG Chem was never
18 supplying to a consumer market. And that
19 distinguishes the case in particular from Sumatra
20 which we put in our briefs. Regardless of whether if
21 the Court is bound by Sumatra whether Sumatra would
22 stand constitutional scrutiny after the United States
23 Supreme Court's more recent decisions on personal
24 jurisdiction I denote that it would, but our position
25 is that it does not matter. The Court does not need

1 to go against Sumatra here. But reading together
2 Sumatra and the Cockrell case and considering the
3 Supreme Court authorities of Walden versus Fiore which
4 in 2014 reiterated that jurisdiction over a defendant
5 can not be based on the unilateral actions of third
6 parties. And in Bristol-Myers it does not matter the
7 extent of a defendants connections with a foreign
8 state or business in the state if the claims at issue
9 don't arise out of those connection. And so the
10 plaintiff is asking Your Honor to follow what other
11 circuit courts in South Carolina have done. However,
12 of course Your Honor is aware that those are not
13 binding on this Court and we have also pointed to
14 numerous authorities and I believe I've only cited a
15 handful in these briefs, but there are many others.
16 Federal Courts around the country including the Ninth
17 Circuit Court of Appeals. Recently the Federal
18 District Court in Georgia, the Supreme Court of the
19 State of Missouri. Numerous appellant courts in
20 various states have all confirmed that these same
21 constitution principle prevent the exercise of
22 personal jurisdiction over LG Chem in a forum and the
23 plaintiff's allegation in the complaint are limited to
24 saying that LG Chem allegedly manufactured this
25 battery cell and separately saying that LG Chem

1 regularly transacted business in the state. Does not
2 even allege in the complaint any connection. It could
3 be any kind of business. It could be selling petra
4 chemical. And the charts that was submitted
5 previously, which again, there's nowhere on those
6 charts that show that LG Chem shipped into this state
7 lithium-ion battery cells to Rolling Fog Vapor or to
8 any other vape store. Selling lithium-ion battery
9 cells for example to Volvo, a car manufacturer, not
10 18650 cells or pouch-type cells that never be confused
11 and they are going into a car, the car battery. So
12 again, our position would be that none of that
13 information could possibly support personal
14 jurisdiction.

15 Judge Maddox said I need more information. The
16 law says that it is the plaintiff's burden. So, yes,
17 we do believe that Judge Maddox's decision was -- the
18 complaint and this chart does not amount to the
19 plaintiff meeting its burden. Otherwise there would
20 have been no reason for Judge Maddox to say we need
21 more discovery regarding the plaintiff's contacts --
22 excuse me -- regarding the defendant's contacts with
23 South Carolina. And I do want to briefly mention that
24 although the legal principles are the same the two
25 defendants of course LG Chem Limited is a Korean

1 company headquartered in Korea, did not have any
2 physical presence in South Carolina. LG Chem America
3 Inc. is a Delaware corporation with its principal
4 place of business in Atlanta, Georgia. So LG Chem
5 America Inc. would be subject to general jurisdiction
6 in those two states under recent Supreme Court
7 authority in Delaware and in Georgia, but not here.
8 And registered to do business in South Carolina and
9 the tax statute, again, those were already presented
10 to Judge Maddox. But additionally, that would run
11 contrary to the United States Supreme Court precedent
12 which in recent years. Particularly as recently as
13 the BNSF Railway decision, 2017, the United States
14 Supreme Court has reiterated that when it comes to
15 general jurisdiction it's the state of incorporation
16 and the principal place of business and anything other
17 than that would have to be so extraordinary as to show
18 that the defendant was actually at home in the state
19 and I don't think the plaintiff is even arguing that
20 either LG Chem Limited or LG Chem America is at home.
21 So I think general jurisdiction is really not an
22 issue.

23 THE COURT: So let me make sure I understand. So
24 your argument on the specific jurisdiction is, in
25 general that because there's no evidence of this

1 particular product coming into South Carolina evidence
2 of other sales from LG Chem are insufficient?

3 MS. HEDLEY: So our position would be that
4 certainly sales of petro chemicals or car batteries
5 into the State of South Carolina there's no possible
6 connection to this claim. But even if LG Chem sold
7 18650's battery cells to a manufacturer in South
8 Carolina that still would not be enough. And in a
9 case called Richter, R-i-c-h-t-e-r, for example,
10 Federal District Court in Illinois correctly found
11 that despite LG Chem having sold cells to battery
12 packers in that state it was not enough to satisfy
13 constitutional due process.

14 In the Missouri case the plaintiff simply alleged
15 similar -- in fact, the plaintiff allegations in
16 Missouri were more than what we have here. The
17 plaintiff alleged that LG Chem sold through a
18 distributor to Missouri. The trial court originally
19 denied LG Chem's motion and we took a writ to the
20 Supreme Court of Missouri which ultimately granted the
21 writ and found that the trial court had erred because
22 allegations that LG Chem should have foreseen that
23 some third party would bring its cell into the foreign
24 state and sell it to a consumer were not sufficient to
25 satisfy the constitution. And so in summary, we think

1 that the plaintiff's argument really reduced to its
2 essence, is that LG Chem manufactured the cell. The
3 cell found its way into South Carolina and LG Chem
4 does unrelated business in South Carolina. That is
5 simply not enough to satisfy the constitution under
6 Cockrell, under Sumatra and certainly not under any of
7 the United States Supreme Court precedents we've
8 cited.

9 THE COURT: Miss Hedley, I'll be honest. The
10 argument that there is a distinction when the company
11 is selling a product to one group of people, group A,
12 but not to group B, that there's no specific
13 jurisdiction over a claim by group B if they buy
14 product by another channel. That is a new argument to
15 me.

16 What is the single best case you have that
17 supports that contention?

18 MS. HEDLEY: Well, again, I mean the case --
19 excuse me, the Richter case from Illinois.

20 THE COURT: The Richer case from Illinois. Okay.

21 MS. HEDLEY: As well as the Walsh case which is
22 the Ninth Circuit Court of Appeal. An LG Chem case.
23 There are several LG Chem cases. But the Richter case
24 most particularly. Additionally, another case from a
25 California Appellant Court called Kadow, K-a-d-o-w.

1 But also Bristol-Myers, the United States Supreme
2 Court. And the reason I mention that is because in
3 Bristol-Myers the issue there was mass manufacturer
4 distribution and sale of a prescription medication
5 called Plavix, p-l-a-v-i-x. And in the State of
6 California the defendant, Bristol-Myers, which was a
7 nonresident for California had sold hundred of
8 thousands of prescriptions but had 250 in state sale
9 representatives, research laboratories, a government
10 advocacy center and a distributor all for that product
11 and yet the United States Supreme Court said a
12 non-resident plaintiff can not come in to California
13 and sue Bristol-Myers in California despite fact it
14 was selling these very medications to consumers in the
15 very state because there is no connection.

16 So our position would be how could it possibly
17 follow after Bristol-Myers that a plaintiff could come
18 into South Carolina and say they purchased a cell from
19 a vape store. That vape store did not get that cell
20 from LG Chem Limited. Did not say there was a
21 distributor that LG Chem was supplying that was
22 supplying that vape store.

23 The plaintiff is relying simply on allegations
24 that show no connection between any business LG Chem
25 conducted in South Carolina and these claims as well

1 as a chart which is inadmissible. Hearsay. So it's
2 not admissible. But regardless, even if it were it
3 does not show LG Chem shipping 18650 battery cells
4 into South Carolina. And so we do not believe that
5 personal jurisdiction can exist under the specific
6 jurisdiction argument and numerous courts around the
7 country. In at least 12 different states; Appellant
8 Courts, Federal Courts, State Courts, State Appellant
9 Courts have recognized that the very same constitutional
10 principals that support our motion require the
11 dismissal of LG Chem in a case involving these
12 allegations. And I know I started off this hearing by
13 saying I believe that the discovery motion has been
14 rendered moot. And the reason I say that is because
15 Judge Maddox said that the plaintiff could have 90
16 days to conduct jurisdictional discovery. Which
17 regard to LG Chem America the plaintiff did not serve
18 any. So come completely waived any right to ask for
19 jurisdictional discovery from LG Chem America. The 90
20 days elapsed. We filed a renewed motion according to
21 Judge Maddox's order.

22 As to LG Chem Limited the plaintiff did serve
23 discovery, but very broad in scope. The plaintiff
24 wanted to know everything there was to know about the
25 LG Chem sales throughout the United States. Even

1 sales and business contacts and activities that
2 occurred well after the alleged date of the incident
3 which was in 2018. Information regarding sales of
4 other products throughout the United States. And
5 ultimately we put in a supplemental memoranda in
6 support last week on Tuesday addressing that motion
7 for protective order and on Thursday -- honestly to
8 our surprise, after the plaintiff had not said a word
9 to us about anything relating to the discovery since
10 we agreed back in August that we could not agree and
11 therefore filed a motion for protective order. The
12 plaintiff said we don't need any more discovery. The
13 facts and the record as it is, this is enough. And so
14 we submit that the motion for protective order is not
15 opposed. And if the Court is inclined not to grant -
16 let me rephrase it. Our position would be that at this
17 time there is nothing in the record to support the
18 plaintiff's burden of establishing jurisdiction. The
19 allegations are not sufficient. There are no facts in
20 the record. The plaintiff had the opportunity to
21 conduct jurisdictional discovery which we maintain
22 would turn out the same way. There are no related
23 contacts but the plaintiff gave that up. And so that
24 is why at this point we are asking that the Court
25 grant the motion as to both defendants and dismiss

1 both for lack of personal jurisdiction.

2 Thank you, Your Honor.

3 THE COURT: Mr. Crosby.

4 MR. CROSBY: Thank you. Austin Crosby here along
5 with my partner William Barnes and co-counsel, Alex
6 Lewis and Blake Cummings, on behalf of the plaintiff.
7 Judge, I want to pick up right where Miss Hedley just
8 left off. That is these LG entities have contended
9 from day one that there's no document they could
10 possibly produce that would change the outcome of this
11 court's ruling on personal jurisdiction. Candidally
12 we're taking them on their word on that which is why
13 we decided to push forward with these motions to
14 dismiss because they say there's no document we can
15 produce that would change the outcome.

16 A little bit of background I think on not just
17 this case but other cases around the country I think
18 will help put this in a context a little bit better.
19 This is not isolated case involving manufacturing
20 defect of the battery. There are literally hundreds
21 of these cases pending around the country. To bring
22 it more at home level -- and I don't want to misstate
23 to the Court the number of actively pending cases, but
24 I know that either currently pending or were pending
25 in the very recent past there are in addition to this

1 case our firm is working on another case involving
2 this identical battery, that's the Ranae Moore case
3 which has been cited numerous times. There's also a
4 case pending in Akin County in which Judge Courtney
5 Clyburn Pope has ruled to deny this exact same motion.
6 There's a case pending in Beaufort County which Judge
7 Buckner has ruled to deny this exact same motion. And
8 again, we just found out today that there is is okay
9 in Charleston with Judge Price has denied this exact
10 same motion. But again on a broader scale there's
11 been numerous, dozens if not more of these motions
12 heard around the country and LG is fighting this exact
13 same battle on multiple fronts.

14 We believe that candidly the Court does have
15 enough information to render a ruling at this point in
16 time based not only on the orders of the other South
17 Carolina Circuit Court judges but based on the import
18 data that was attached to our memo which shows the
19 number of these shipments that come into the country.

20 Your Honor was spot on in your analysis that
21 there is no distinction between LG Chem shipping an
22 18650 battery to South Carolina as opposed to shipping
23 another product that they design and manufacturer to
24 this state. It's really no different if you think
25 about Ford Motor Company I assume that shipments of

1 Ford vehicles are coming from overseas into our
2 country, the argument that LG is asking this Court to
3 adopt and embrace is that well, Ford may have F-150's
4 imported into South Carolina but if they don't import
5 Ford Explorers and you have Ford Explorer rollover,
6 you can't bring a case against Ford involving a
7 Employer. And to your point, Your Honor, there is no
8 case standing for that proposition just because the
9 product is not identical in nature that this Court is
10 not able to exercise jurisdiction over that defendant
11 It's simply not the case at all.

12 Let me address a few things, a few statements made
13 by counsel. She said the motion for protective order
14 is not opposed. Your Honor, again, I think depending
15 on what Your Honor rules on whether or not we are
16 bound by Judge Maddox's prior ruling. I would
17 respectfully submit that on this Webex call right now,
18 the only lawyer that was at that hearing that was
19 involved at that point in time -- and I'm referring to
20 the defense lawyers. There was another firm, the firm
21 of Lewis Brisbois which was handling the case at that
22 juncture and I am not saying it was a
23 mischaracterization but I think counsel's
24 representation of what Judge Maddox's ruling is is not
25 exactly in line of what he said at that hearing. And

1 Your Honor picked up on it. He did not rule that the
2 plaintiffs have not met their burden of establishing
3 prima facia case in involving jurisdiction. He was
4 concerned with one main issue that was raised by the
5 defense and that is a lot of times in these cases
6 there are knock-off batteries that are not LG brand
7 batteries. They look the same. They perform the same
8 function but they're not an LG battery. That issue
9 was raised again by prior defense counsel in that
10 hearing in front of Judge Maddox back in 2019 and he
11 understandably said well, I do think the parties need
12 more time to inspect the product and confirm it is an
13 LG battery. That inspection has taken place. Our
14 experts have already confirmed in fact it was an LG
15 battery. LG was given the opportunity to inspect that
16 battery. I've heard nothing from them though that
17 would indicate it is not an LG battery or that they
18 contest that issue. So Judge Maddox was concerned
19 with that issue. In addition to allowing the parties
20 90 days to conduct jurisdictional discovery and
21 actually the order said the parties may conduct
22 jurisdictional discovery. It's our position today
23 that further jurisdictional discovery is not needed
24 based on the information that's in front of this Court
25 and that exact same information that is before Your

1 Honor is what has been considered by every single one
2 of these other Circuit Court Judges in South Carolina

3 THE COURT: Let me stop you for a second. Am I
4 correct, I believe Miss Hedley said that Judge Maddox
5 characterized his order as a denial of their motion
6 without prejudice, is that correct?

7 MR. CROSBY: That is correct Your Honor.

8 THE COURT: Okay, let me speak to Miss Hedley
9 again.

10 Miss Hedley, the general principal is you can't
11 file a successive motion raising the same argument
12 unless there is new evidence to support it in Rule 43
13 but if Judge Maddox characterized his ruling on your
14 motion as without prejudice, doesn't that mean we're
15 on a blank slate today and I can rule however I
16 please.

17 MS. HEDLEY: Well, Your Honor I don't think so
18 only because of the fact that Judge Maddox clearly
19 stated that the information that the plaintiff is
20 relying on today was not sufficient.

21 THE COURT: But that ruling was without prejudice
22 to it being re-raised. I'm struggling how an order
23 without prejudice can preclude the party from making
24 the argument again. Isn't that by definition without
25 prejudice means?

1 MS. HEDLEY: Yes, as to the motion, but I do think
2 that the -- and some of the comments that counsel is
3 making were made in the briefing related to our motion
4 for clarification where I understand that I was not at
5 that hearing but of course I familiarized myself
6 carefully with the transcript and the other pleadings
7 and I am very familiar with the progress of this case
8 But that is exactly the position that the plaintiff
9 took when we asked Judge Maddox to clarify the written
10 order to more accurately capture the oral ruling he
11 had made. He granted our motion. He entered an order
12 agreeing with our position and so the plaintiff is now
13 again advancing that position but again Judge Maddox
14 agreed with our understanding of the oral ruling and
15 had documented that in the July 20, 2020, order
16 additionally limiting to 90 days and the plaintiff
17 have not -- have waived any right for further
18 discovery. Have not put in any other information.
19 And so I do believe that Judge Maddox's decision
20 controls but I also believe that there is nothing in
21 this record that can support the plaintiff's burden
22 and so regardless of how Your Honor views our argument
23 that this would be going against what Judge Maddox
24 did. We also briefed and clearly set forth that
25 there's no basis. The only basis that the plaintiff

1 is offering is, well, three other South Carolina
2 Circuit Judges said so. I understand that, but I also
3 understand what the law says and to the extent that
4 counsel is arguing, you know, that LG Chem is fighting
5 this exact same battle on multiple fronts, that is --
6 I don't know that I would say fighting. I would say
7 winning because this is the correct analysis and
8 numerous courts, state and federal and appellant
9 courts in state after state after state. Federal
10 courts; Hawaii, California, Washington State, Ohio,
11 Illinois, Georgia, Arizona. Federal courts all
12 applying and adopting the exact same argument that I
13 am making.

14 State courts in New York, in New Jersey, in
15 neighboring North Carolina, in Texas, in California,
16 Oklahoma, in Washington State, in I believe South
17 Dakota or perhaps it was Idaho. Sorry, I don't get
18 out west much. But in many, many other states.
19 Again, state courts saying that these constitutional
20 due principal mandate the outcome that we are asking
21 for here.

22 THE COURT: Okay. Mr. Crosby, I apologize for
23 interrupting your argument.

24 Based on what I've heard today I don't think I am
25 persuaded by the argument that Judge Maddox's ruling

1 binds me today. And again, if you want to send some
2 authority I will be happy to look at it. If his order
3 was without prejudice my understanding of the term
4 "without prejudice" means without prejudice to a
5 further motion by that party on the same grounds. So
6 I don't think by definition I can be bound by an order
7 by another Judge that is entered without prejudice.
8 But Mr. Crosby if don't mind if you can focus your
9 argument on the underlying issue of whether or not
10 there is jurisdiction.

11 MR. CROSBY: I'll be happy to, Your Honor. Very
12 briefly, I anticipated that issue that Miss Hedley
13 just raised coming up today about what's happening in
14 other states and I would submit this, but if Your
15 Honor feels it would be helpful, there's briefing that
16 was done in the State of Iowa and it was just done
17 last month, January of 2021, and it addresses the same
18 issue because another Circuit Judge sitting in you
19 same position heard the argument that LG was winning
20 this jurisdictional battle all around the country. I
21 don't think the facts support that, Your Honor. I
22 will submit this brief if Your Honor would like. It
23 shows ten different states, South Carolina being one
24 of those ten states and it's got roughly 20 orders
25 where trial courts around the country have ruled to

1 deny this exact same motion. So, I would respectfully
2 submit that LG is not winning this battle. I think
3 that argument has been set forth in other cases in
4 front of other judges and I don't think that has any
5 true significance. I'm not sure that it's factually
6 correct, Your Honor, with regard to the number of
7 times they are winning.

8 THE COURT: Is it exhibit two that you are
9 referring to, the chart?

10 MR. CROSBY: Well, exhibit two is the import data
11 Your Honor. So Your Honor is aware, that is data that
12 was collected from the U.S. customs. They keep that
13 information. That information was wired and then
14 assembled on that spreadsheet to show the number of
15 shipments coming into the Port of Charleston.

16 THE COURT: Okay, I'll be honest. It's a little
17 confusing to look at for someone who is not heavily
18 involved in this case. Where in the chart are the
19 particular batteries at issue?

20 MR. CROSBY: Your Honor, I believe the chart does
21 not show specific products. It doesn't distinguish
22 between any type of product as opposed to shipments
23 that LG Chem Limited is making into the Port of
24 Charleston and on the majority of those I can give you
25 the numbers here. They're cited in our brief. We got

1 data going back to 2006 that shows this import data.
2 For ease of our conversation today we focused on the
3 data between December 2016 and February of 2019. So
4 roughly a little over two years of data and we got 29
5 shipments from LG Chem that are coming through the
6 Port of Charleston. Of those 296 shipments 244 of
7 those LG Chem America is listed as consigning those
8 shipments. And I did a little quick math last night.
9 Basically that amounts about every three days a
10 shipment is coming into the Port of Charleston with
11 products from LG Chem.

12 Do you have that exhibit two in front of you?

13 THE COURT: I do. Yes, sir.

14 MR. CROSBY: And I happy to kind of go through any
15 of that that may not be as clear as we should have
16 made it if Your Honor would like.

17 THE COURT: It's okay. My main question was, are
18 any of these entries the particular batteries in
19 question and my understanding is we don't know. It's
20 not specific enough.

21 MR. CROSBY: That's correct, Your Honor. I'm not
22 able to represent to the Court that we can point out
23 which specific shipments of those were 18650
24 batteries. What I would point out is the point Your
25 Honor raised earlier and that I think for purposes of

1 a decision of whether or not this Court can exercise
2 personal jurisdiction over the LG defendants I really
3 think it's to a certain degree it's immaterial whether
4 it's 18650 batteries or other products that LG Chem is
5 availing themselves of shipping and selling in South
6 Carolina.

7 THE COURT: What's your best case? Miss Hedley,
8 my understanding is her argument is that not only do
9 you have to show these batteries were shipped into
10 South Carolina but that they were shipped to consumer
11 and not OEM manufacturers. Do you have a case?
12 What's your best case saying the shipments of other
13 goods and batteries in general is enough for
14 jurisdiction.

15 MR. CROSBY: Your Honor, I don't think how
16 specifically they address it in these cases but I
17 truly think that South Carolina verses Sumatra, it NV
18 Sumatra. It's from our own Supreme Court here in
19 South Carolina. It's still good law and I think
20 really from this whole analysis that and Worldwide
21 Volkswagon case which we all remember from first year
22 in law school. I really think those cases are
23 probably the best on point. And really what we're
24 talking about of course is stream of commerce theory
25 where these LG defendants are availing themselves and

1 putting their products into the stream of commerce.
2 So I think those cases and particularly the Sumatra
3 case are probably the best ones.

4 THE COURT: All right..

5 MR. CROSBY: So back to your request as far as the
6 actual merits of the jurisdictional issue. And Miss
7 Hedley was correct, we're not arguing general
8 jurisdiction. I don't believe general jurisdiction
9 would apply to the defendants. We have purposely only
10 argued specific jurisdiction. And a little bit of
11 factual information I think would help with this
12 issue. If you were to believe the argument that LG is
13 making here that this Court would not be able to
14 exercise jurisdiction over a South Carolina resident
15 who purchased a battery from a store in South Carolina
16 and then his injury took place in the State of South
17 Carolina. There is truly no other forum which would
18 be appropriate other than right here in South Carolina
19 where all of this it took place. LG seems to think
20 they can insulate themselves virtue of being an
21 overseas manufacturer, but it's simply not the case.
22 It doesn't comport with our South Carolina long-arm
23 statute which is truly what governs most of what we
24 are talking about. It's well detailed in the brief,
25 Your Honor, but we're talking about 36-2-803. And the

1 particular language in that statute that is important
2 is the production, manufacture or distribution of
3 goods with the reasonable expectation that those goods
4 are to be used or consumed in this state and are so
5 used or consumed. And that last bit of language, Your
6 Honor, I think is most important part. We know this
7 exact part, 18650 was used and consumed in the State
8 of South Carolina. It was purchased from a store here
9 and we know that it would have arrived from a shipmen
10 from overseas coming through South Carolina. And at
11 the end of the day that's probably the best proof is
12 the fact that the product did in fact end here. The
13 defendants directed their products to be shipped to
14 the United States, and in fact the facts of this case
15 support that that is in fact what happened. So when
16 you are look at this long-arm statute I think really
17 that language there is the reasonable expectation to
18 be used or consumed. LG I don't believe can say,
19 well, we know we shipped these thousands and thousands
20 of products through the Port of Charleston in South
21 Carolina, but however we're immune from being sued. I
22 don't think it comports with what our long-arm statute
23 says and specifically due process.

24 The Court's job here is really from our view to
25 apply the stream of commerce test to assess whether or

1 not due process is afforded to LG with them being a
2 foreign manufacturer and that analysis, Your Honor,
3 really hinges upon their minimum contacts which we
4 would submit are established through the import data
5 that's been provided to the Court. When you get
6 beyond that prong, Your Honor, the analysis charged to
7 the reasonableness and fairness of exercising
8 jurisdiction over these defendants. And I think a
9 point that probably hasn't been brought to Your
10 Honor's attention is, we're really talking about the
11 same company here when we're talking about LG Chem
12 America and LG Chem Limited. LG Chem America is
13 simply a wholly-owned subsidiary of LG Chem Limited.
14 As that import data that you were looking at earlier
15 shows almost all of these shipments by LG Chem into
16 the United States list LG Chem America as the
17 consigning party. So LG Chem America while there
18 maybe arguments made they are different companies they
19 are by far and large the same company. Just simply
20 fulfilling different roles with regard to what they
21 do.

22 I want to touch on one thing with regard to the
23 discovery in this case, and Your Honor has heard a
24 little bit about it as we've gone along. We have been
25 fighting this issue, this jurisdictional issue with

1 these defendants for over a year and a half now. And
2 when Judge Maddox decided to allow limited
3 jurisdictional discovery we did search jurisdictional
4 discovery. I want to make sure that point is clear.
5 We served it to LG Chem Limited and our response we
6 got back from the defendants was, well, we're
7 objecting to everything you sent. It's overly broad.
8 And they basically assert a boilerplate objections to
9 that discovery. Once they were ordered to go and
10 conduct jurisdictional discovery which the plaintiffs
11 tried to comply with, we were then met with, well,
12 we're not going to produce anything and then basically
13 more delay tactics from these defendants. And that's
14 unfortunately why we had to attach that Alabama order
15 which you will see, Your Honor, that addresses the
16 discovery abuse that I would submit to this Court that
17 has gone on around this country with regard to these
18 LG defendants. When we attempted to do discovery that
19 Judge Maddox contemplated we were met with resistance
20 and find ourselves right back here at step one
21 basically.

22 THE COURT: Miss Hedley I believe contended your
23 co-counsel had stated that plaintiff didn't want any
24 more jurisdictional discovery or wouldn't need it, is
25 that correct?

1 MR. CROSBY: I would alter that slightly, Your
2 Honor. When we did serve additional discovery on the
3 LG defendants we were met with basically lengthy
4 objections that were basically boilerplate objections
5 that when we tried to work those issues such as
6 agreeing on a protective order which we've discussed
7 numerous times. We couldn't agree on a protective
8 order. They wouldn't produce any documents and
9 basically what we unfortunately after a year and a
10 half of litigating just this jurisdictional issue came
11 to realize was that this was all an attempt by these
12 LG defendants to stall litigation. Not only in this
13 case but litigation around the country. That's what
14 that order from Alabama court really exemplified and
15 unfortunately it took us a while to realize what was
16 going on and that's why, Your Honor, based we thing
17 that based on the record in front of you not only what
18 we submitted to the Court but also these orders from
19 around our state that there is sufficient information
20 for the Court to rule on.

21 THE COURT: Okay, let me make sure. What you're
22 telling me is one possible resolution of today's
23 hearing is I would say go back to discovery if I were
24 to deny the motion for protective order and then the
25 main motion for personal jurisdiction would be heard a

1 different day but you're saying you don't want me to
2 do that.

3 MR. CROSBY: Well, Your Honor, I would submit, you
4 know, I believe the position that you stated earlier
5 with regards to Judge Maddox's order being his ruling
6 that he denied LG he's motion to dismiss without
7 prejudice. My understanding of the law is consistent
8 with what Your Honor articulated which is, there is
9 nothing that would bar this Court from ruling to deny
10 these two motions to dismiss based on the same
11 evidence. If Your Honor felt differently, then I
12 would say that I think an option certainly is us going
13 back and conducting further jurisdictional discovery.

14 THE COURT: Let me make sure you're not telling me
15 you want more time for jurisdictional discovery?

16 MR. CROSBY: We are not currently requesting more
17 time for jurisdictional discovery, Your Honor.

18 THE COURT: Okay. In that case I do agree with
19 the defendant that their motion for protective order
20 is mooted. Any objection to that conclusion?

21 MR. CROSBY: No, Your Honor.

22 THE COURT: Okay. So we're on agreement on that.
23 Miss Hedley, I will give you the final argument on
24 anything you want to speak about.

25 MS. HEDLEY: Thank you, Your Honor. The Court has

1 been very generous of its time and I appreciate that.
2 This is an important issue and I will be as brief as
3 can. I would like to comment in a very targeted way
4 to just some of the things raised by plaintiff's
5 counsel.

6 First, the chart. I have the chart in front of me
7 and if the chart were to be submitted to Your Honor
8 electronically where it could search as PDF can be, I
9 disagree that the chart doesn't give any information
10 and I think the Court can easily look at the chart and
11 I'm looking at it right now.

12 THE COURT: Give me a second. Let me see if my
13 PDF is searchable. Yes, mine is searchable.

14 MS. HEDLEY: Then if Your Honor were to search for
15 example the word resin I'm confident there would be a
16 lot of hits for that. I'm looking at entries that
17 talk about resin.

18 THE COURT: Yes, ma'am, I do see those.

19 MS. HEDLEY: And another example would be methyl
20 acrylate but honestly Your Honor could just type in
21 methyl, m-e-t-h-y-l.

22 THE COURT: Right. Okay.

23 MS. HEDLEY: And so the type of products are
24 identified. And my first question would be the same
25 as what Your Honor asked plaintiff, where on that

1 chart do you see 18650 battery cells coming into South
2 Carolina? And I don't think that it's accurate to say
3 that this chart just shows a bunch of products. It
4 specifies. Now, the chart is hearsay and
5 inadmissible. My understanding is that is a chart
6 that's created by counsel reflecting information from
7 the U.S. Customs and that information I believe is
8 recorded by the importer. But the bottom line is,
9 this chart does say what the products are and it shows
10 petrochemicals and resins. Some are on here. I
11 believe there maybe shipments of car batteries to
12 Volvo. But there are not -- that I'm aware of --
13 shipments of 18650 battery cells, and if there are
14 they are very limited and there certainly not going to
15 any vape stores but the plaintiff has pointed to that.
16 The plaintiff has told Your Honor that it doesn't say
17 what the products are and we believe the chart shows
18 otherwise.

19 THE COURT: Okay, but there are definitely entries
20 for batteries being imported but this goes back to
21 your argument that importing for the use by Volvo car
22 companies is not sufficient to justify jurisdiction in
23 this case, is that correct?

24 MS. HEDLEY: That's correct, Your Honor and those
25 car batteries for example could never be confused with

1 an 18650. They're not the size or shape. They don't
2 look the same. So there's simply no confusion.
3 That's number one. Number two, the plaintiff says we
4 know how it got here. It would have arrived from
5 overseas. However in many of the cases -- and I would
6 submit to the Court that the supply chain works in two
7 directions. The plaintiff could go to Rolling Fog
8 Vapor and say where did you get your supply from. In
9 other cases plaintiffs have gone to vape stores and
10 said, where did you get your supply from? The vape
11 stores have pointed to some other distributor, very
12 frequently entities in China and these entities in
13 China have been named as defendants in some of these
14 cases and in cases where the allegation has been made
15 LG Chem has introduced admissible evidence that it did
16 not do business with those entities. How they are
17 getting the battery cells I do not know. But what I
18 do know is that there is no chain of distribution
19 suggesting that LG Chem put the battery cells on a
20 ship to the United States. It landed in the United
21 States and somebody took it off the back of a truck
22 and then sold it to the vape store. They're coming
23 into the country in some way but it's not by LG Chem
24 directing them there and pertinent here, is not by LG
25 Chem directing it to South Carolina, which is what due

1 process would require.

2 Number three, I believe plaintiff's counsel called
3 Your Honor all the way back to Worldwide Volkswagon
4 and I believe -- and I don't have the cite in front of
5 me, but there's a quote in that case, defendant's
6 shadow cannot be the agent for the service of process.
7 Plaintiff's argument is basically LG Chem manufactured
8 this product. It found its way to South Carolina.
9 Game over. And we submit that that is not what due
10 process requires.

11 To the argument that no other forum would be
12 appropriate, counting back to talk about the decision
13 by the Supreme Court of Missouri, that oral argument
14 if the Court were interested is available on the
15 Supreme Court of Missouri's website and that was the
16 first question that was asked. And to counsel's point
17 that I may not have been at the hearing before Judge
18 Maddox's but I have been at most of the hearings in
19 these other cases, in these other jurisdictions. I
20 stood before the Supreme Court of Missouri and was
21 asked that very question with regard to whether
22 there's a forum. And so, to those points due process
23 controls and we again respectfully submit that these
24 other orders, these other South Carolina Circuit
25 Courts simply do not comply with constitutional due

1 process and nothing in Sumatra requires a different
2 result.

3 Also, for the record, I do need to briefly mention
4 that counsel mentioned that quote I wrote down, "We
5 are really talking about the same company here." LG
6 Chem Limited is a Korean company. LG Chem America
7 Inc. is an independent subsidiary. They are separate
8 and independent companies. So for purposes of
9 jurisdiction there is ample body of case law that have
10 not been briefed or addressed, but it has not been
11 raised before I don't believe in this case. But just
12 because they are a parent subsidiary relationship does
13 not support the exercise of jurisdiction and that's
14 very clear. I believe the Dangler (phonetics) case,
15 U.S. Supreme Court said that.

16 So finally, to the extent that counsel is throwing
17 out the amount of time that has gone by and saying
18 it's been a year and a half, this is a delay tactic.
19 All of that is unsupported by the record. In fact
20 much of the delay here is because plaintiff disagreed
21 with us as to the meaning of the order in September of
22 2019. We were forced to go to a motion for
23 reconsideration and we won that motion in July of this
24 year. Judge Maddox said, yes, LG Chem Limited and LG
25 Chem America, you are correct. Discovery is limited

1 to jurisdictional issues. And so finally to the
2 extent that plaintiff again raises this case which I
3 did address in our reply brief, it's Cannon case from
4 Alabama. It's an aberration. The order itself was
5 primarily drafted by the plaintiff's counsel but the
6 discovery -- and I'm glad to give Your Honor the
7 history of that case if you would like. I don't think
8 it's important here.

9 THE COURT: That's not necessarily.

10 MS. HEDLEY: But some of the examples of the
11 discovery are in our reply brief as to how overbroad
12 and abusive that discovery was. However, we have also
13 submitted to Your Honor many decisions including an
14 order issued by trial court in Arizona in the Tague
15 case, T-a-g-u-e, as well as one in New Jersey in a
16 case called Cribb, C-r-i-b-b. In both of those again
17 in the Cribb case the Judge allowed extensive
18 discovery. Nationwide contact of LG Chem related to
19 these 18650 batteries cells and ultimately concluded
20 that there was nothing to connect LG Chem to how the
21 batteries arrived in a New Jersey vape store in that
22 case or in an Arizona vape store in the Tague case.

23 So we again respectfully submit that this Court is
24 bound by the decisions of South Carolina Supreme Court
25 and the United States Supreme Court. There have been

1 numerous decisions by other courts around the country
2 and in fact this very argument about saying, well,
3 there's no forum here was recently heard and rejected
4 by a federal judge in Atlanta and those cases are
5 cited in our brief; the Davis case and the Fullerton
6 case order on September 28th of 2020. And there was
7 lengthy oral argument where the plaintiff made a
8 similar argument that was rejected. But ultimately
9 constitutional due process set forth two very clear
10 principles. One, and that's Walden versus Fiore as I
11 mentioned, that the unilateral actions of third
12 parties can not support the exercise of jurisdiction.
13 And two, and that's Bristol-Myers in 2017, that the
14 plaintiff's claim must arise out of or relate to
15 contact that the defendant formed with the forum
16 state. Not contact formed by the plaintiff or other
17 third parties such as Rolling Fog Vapor or whoever it
18 is that supplied Rolling Fog Vapor which the plaintiff
19 has not identified. But those contacts would have to
20 have been form by LG Chem Limited or LG Chem America
21 Inc. respectfully. And again, we submit that there is
22 nothing in the record that would support the
23 plaintiff's burden of establishing jurisdiction and
24 therefore we ask that the Court grant these motions.

25 If there are any issues that we covered that the

1 Court would like supplemental briefing I'm happy to
2 provide that.

3 THE COURT: That's unnecessary. But counsel, I
4 will take this matter under advisement. You all will
5 hear from me as quickly as I can make a ruling.

6 MR. CROSBY: Thank you, Your Honor.

7 MS. HEDLEY: Your Honor, one very brief thing.
8 Again we ask --

9 THE COURT: Go ahead.

10 MS. HEDLEY: Again, we ask that our motion be
11 granted. However, if for whatever reason the Court
12 were to deny the motions which we don't believe it
13 should, then I believe there is still a motion for a
14 entry of a confidentiality order that has never been
15 opposed so that should be entered. However, again,
16 our position is that LG Chem Limited and LG Chem
17 America should be dismissed from this action without
18 further proceedings.

19 Thank you.

20 THE COURT: Thank you, counsel. I will take the
21 matter under advisement.

22 MR. CROSBY: Thank you, Your Honor.

23 (END OF TRANSCRIPT)
24
25

CERTIFICATION

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 1st day of February, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 24, 2021

S/ Aileen Butler

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	
vs.	)	<u>ORDER GRANTING DEFENDANT</u>
	)	<u>LG CHEM, LTD. AND LG CHEM</u>
ROLLING FOG VAPOR COMPANY, LLC,	)	<u>AMERICA, INC.'S JOINT MOTION</u>
LG CHEM, LTD., and LG CHEM	)	<u>FOR CLARIFICATION AND</u>
AMERICA, INC.,	)	<u>DENYING RECONSIDERATION</u>
	)	
Defendants.	)	

This matter is before the Court on Defendants LG Chem, Ltd. ("LG Chem") and LG Chem America, Inc.'s ("LGCAI") Joint Motion for Clarification or, Alternatively, Reconsideration. After considering all submissions and arguments of counsel, and for the reasons stated below, the Court (1) grants LG Chem and LGCAI's Joint Motion for Clarification to clarify that only limited discovery is permitted at this time, limited to the threshold issues of whether LG Chem or LGCAI designed, manufactured, or sold the subject battery and the extent of LG Chem's and LGCAI's jurisdictional contacts with South Carolina, and (2) denies the Motion for Reconsideration of the Court's December 12, 2019 and December 23, 2019 Orders.

FACTS

In this products liability action, Plaintiff seeks recovery for injuries allegedly sustained when a lithium-ion battery cell exploded in his pocket. (Compl. ¶¶ 11-12.) Plaintiff alleges he purchased the battery cell, an "LG Brown Hg2 INR 18650 3000mAh" model cell allegedly manufactured by LG Chem, from Defendant Rolling Fog Vapor Company, LLC ("Rolling Fog"), a South Carolina retailer of e-cigarettes and accessories. (*Id.* ¶¶ 2, 9.) Plaintiff filed this action on

March 4, 2019, asserting claims of negligence, strict liability, and breach of warranty against LG Chem, LGCAI, and Rolling Fog.

On April 24, 2019, LG Chem filed a Motion to Dismiss and Quash Service of Process, and LGCAI filed a separate Motion to Dismiss. Defendants and Plaintiff filed memoranda in support of and opposing the motions on September 18, 2019. The parties appeared for a hearing on September 23, 2019, and the Court gave its oral ruling and thereafter entered written orders denying LG Chem's and LGCAI's motions on December 6 and December 21, 2019 respectively (hereinafter referred to as the "written orders").

Following entry of the written orders, LG Chem and LGCAI filed this Motion for Clarification or, Alternatively, Reconsideration on December 16, 2019. The Motion has been fully briefed by both parties, and all submissions have been considered by the Court.

LEGAL STANDARD

Under Rule 54(b) of the South Carolina Rules of Civil Procedure, this Court has the authority to clarify, or reconsider, its written orders denying LG Chem's Motion to Quash and denying both LG Chem's and LGCAI's motions to dismiss for lack of personal jurisdiction. Under Rule 54(b), "any order . . . which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." *See Broom, Jr. v. Andrews*, 2017 WL 10701535, at *2 (S.C. Ct. Com. Pls. Nov. 2, 2007) ("Rule 54(b) . . . instructs that unless the Court expressly directs the entry of judgment, any intermediate order is subject to revision, at any time, until a final judgment is issued."). Courts may also clarify their prior orders under Rule 54(b). *See, e.g., Carpenter v. Measter*, 2010 WL 4219701 (S.C. Ct. Com. Pls. Feb. 23,

2010) (issuing a revised order under Rule 54(b) clarifying its previous order granting partial summary judgment).

ANALYSIS

A. Motion for Reconsideration

Having carefully considered the arguments and submissions by LG Chem, LGCAI, and Plaintiff supporting and opposing LG Chem and LGCAI's Joint Motion for Reconsideration, the Court denies the motion to the extent it seeks reconsideration. As set forth in the Court's oral rulings at the September 23, 2019 hearing, the allegations in the Complaint and the parties' submissions do not provide enough information upon which to base a decision as to whether the battery at issue in this matter was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information still remains an issue that prevents a decision on personal jurisdiction. Therefore, Defendants' Motion for Reconsideration of the motions to dismiss for lack of personal jurisdiction is denied.

B. Motion for Clarification

Defendants requested clarification of the written orders, which did not directly address whether the issue of jurisdiction should be decided before proceeding with the merits of the case, including the parties engaging in any merits-related discovery. As stated above, the Court needs more information before ruling on the issue of personal jurisdiction, an issue that should be decided before proceeding with the merits of the case. *See Bridges v. Wyandotte Worsted Co.*, 243 S.C. 1, 9, 132 S.E.2d 18, 22 (1963) ("The decision of the question of whether the court has jurisdiction is a preliminary one to the determination of the merits of the cause"), *overruled in part on other grounds, Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002); *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 538–39, 783 S.E.2d 839, 842 (Ct. App. 2016) (explaining the trial court's decision

to “permit[] the parties to conduct discovery on the jurisdictional issues raised in [the defendant’s] motion to dismiss” and to hold “its ruling on the motion to dismiss in abeyance pending completion of the jurisdictional discovery”). Discovery must first determine whether the battery at issue in this lawsuit was designed, manufactured, and sold by LG Chem or LGCAI and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina. Therefore, the written orders are clarified to hold that the parties may conduct discovery for a period of 90 days following entry of this Order limited to these issues.

CONCLUSION

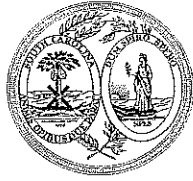
For the foregoing reasons, the Court allows the parties 90 days from the date of entry of this Order to conduct discovery limited to the specific issues of whether LG Chem or LGCAI designed, manufactured, or sold the subject battery and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina. After the close of jurisdictional discovery, LG Chem and LGCAI may refile motions to dismiss. LG Chem and LGCAI shall have no obligation to file a responsive pleading until 15 days after the jurisdictional discovery period ends.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Judge, Sixteenth Judicial Circuit

Union, South Carolina

_____, 2020



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al
Case Number: 2019CP4400054
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	DEFENDANT LG CHEM, LTD.'S
vs.	)	MOTION TO RECONSIDER
	)	MARCH 19, 2021 ORDER DENYING
ROLLING FOG VAPOR COMPANY,	)	RENEWED MOTION TO DISMISS
LLC, LG CHEM, LTD., AND LG	)	PLAINTIFF'S COMPLAINT FOR
CHEM AMERICA, INC.,	)	LACK OF PERSONAL
	)	JURISDICTION
Defendants.	)	

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendant LG Chem, Ltd. ("LG Chem") respectfully requests an Order reconsidering the Court's March 19, 2021 Order ("the Order"), which denied LG Chem's renewed motion to dismiss Plaintiff's complaint for lack of personal jurisdiction, and asks the Court to vacate the Order and instead grant LG Chem's motion to dismiss.

INTRODUCTION

LG Chem's motion to dismiss was supported by admissible evidence showing that it did not seek to serve a consumer market in South Carolina for its 18650 lithium ion battery cells and that Plaintiff's claims do not relate in any way to any action LG Chem directed to South Carolina. Plaintiff offered nothing to contradict that evidence, and the allegations of his Complaint—even if true—do not contradict this evidence and do not support Plaintiff's burden of proof.

First, the Honorable J. Cordell Maddox, Jr. previously held—based on the exact same record before this Court—that there was not enough information to decide whether jurisdiction could attach. It is well established in South Carolina that a prior state court judge's decision in a

particular matter cannot be overturned by a subsequent judge. Because Plaintiff bears the burden of proving jurisdiction, and because Judge Maddox's previous decision established that Plaintiff's burden had not been met, when Plaintiff informed the Court that he had nothing further to offer in opposition to LG Chem's motion to dismiss, the motion should have been granted.

Second, even if this motion had come before the Court without a prior decision by another state court judge, Plaintiff did not satisfy his burden of proof. Plaintiff did not allege or prove any facts to support his conclusion that that Court has jurisdiction. Instead, Plaintiff relied on inadmissible facts showing only that LG Chem conducted some business in South Carolina, and those facts—even if admissible, which they were not—could not be construed to show that LG Chem directed any actions to South Carolina connected in any way to Plaintiff's claims.

Plaintiff relied on a "stream of commerce" theory of jurisdiction, and this Court found that it was bound by the South Carolina Supreme Court's decision in *Sumatra* and that United States Supreme Court precedents, including *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017) and *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011), were not relevant to the Court's decision and did not support a basis to depart from *Sumatra*.

However, the Court's Order did not address the relatedness element of the specific jurisdiction analysis, an element that is critical to the personal jurisdiction analysis, according to both South Carolina and U.S. Supreme Court precedents.¹ On Thursday, March 25, 2021, the U.S. Supreme Court issued its most recent decision on personal jurisdiction, in which it reiterated the continued vitality of the precedents cited in support of LG Chem's motion, focusing on the

¹ The Order also did not address LG Chem's argument that if the Court interprets *Sumatra* to permit the exercise of specific jurisdiction over LG Chem without considering whether plaintiff's claims relate to any conduct LG Chem directed to South Carolina, that interpretation would render *Sumatra* in conflict with controlling U.S. Supreme Court authority, including *Bristol-Myers* and *J. McIntyre* (and *Ford*, which was decided after the Order was entered).

“relatedness” element of the personal jurisdiction analysis. *See Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368, 2021 WL 1132515 (U.S. Mar. 25, 2021). Although the Supreme Court rejected Ford’s argument that a strict causation standard was necessary to show the required connection, the Supreme Court also reiterated that the specific jurisdiction analysis must focus on the extent and nature of the defendant’s conduct directed to the forum state and the degree to which that conduct is related or connected to the plaintiff’s claims.

The contrast between the facts of *Ford* and the facts here, like the contrast between the facts of *Sumatra* and the facts here, illustrates why LG Chem’s motion to dismiss should be granted.

For these reasons, LG Chem respectfully requests that the Court reconsider its March 19, 2021 Order and instead grant LG Chem’s motion to dismiss.

LEGAL STANDARD

1. Standard for a Rule 59(e) motion

Under Rule 59(e) a court may correct factual or legal errors in an order by way of a Motion to Alter or Amend. *See Doe v. Doe*, 324 S.C. 492, 502, 478 S.E.2d 854, 859 (Ct. App. 1996); *see also* James F. Flanagan, et al., *South Carolina Civil Procedure* 702 (4th ed. 2020) (“A Rule 59(e) motion provides an opportunity for the trial court to correct errors in the findings and perhaps change the result.”). There are two basic situations in which a party may file a Rule 59(e) motion. First, a party may wish to file a Rule 59(e) motion “when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Also, a Rule 59(e) motion is appropriate when a party has raised an issue to the

trial court that has not been mentioned in the order or ruled on by the trial judge. *Id.*² Issue preservation rules such as Rule 59(e) are designed to give the trial court a fair opportunity to rule on the issues and, thus, provide the appellate court with a platform for meaningful appellate review. *See Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2012). Respectfully, the Court has overlooked or misapprehended LG Chem's stated grounds and cited authorities as to why the motion to dismiss should be granted and LG Chem asks this Court to reconsider its March 19, 2021 Order and dismiss this lawsuit against it.

2. Standard for a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction

At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by the plaintiff's making a prima facie showing of jurisdiction. *See S. Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992); *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478; *see also Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 428, 665 S.E.2d 660, 663 (Ct. App. 2008) (citing defendants' affidavits submitted to negate facts alleged in the complaint and support their argument that there was an insufficient nexus from their actions to support jurisdiction); *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 538, 783 S.E.2d 839, 841 (Ct. App. 2016) (citing to affidavits submitted by both plaintiff and defendant in

² LG Chem herein expressly incorporates by reference and re-raises each and every argument in favor of dismissal from prior filings and hearings and advances all arguments supporting its position that personal jurisdiction is lacking. This includes all arguments presented in LG Chem's original and renewed motions to dismiss and memoranda in support and reply briefs, LG Chem's motion for reconsideration or alternatively for clarification, LG Chem's objections to Plaintiff's proposed order denying LG Chem's renewed motion to dismiss, and also including all previous filings and the transcripts of hearing on September 23, 2019 and February 1, 2021.

affirming the trial court's dismissal); *Grant v. Lowe's Home Centers LLC*, No. 9:20-CV-00764-DCN, 2020 WL 1494070, at *3 (D.S.C. Mar. 27, 2020) ("In cases where the defendant provides evidence which denies facts essential for jurisdiction, the plaintiff must, under threat of dismissal, present sufficient evidence to create a factual dispute on each jurisdictional element which has been denied by the defendant and on which the defendant has presented evidence.").

ARGUMENT

I. THE ORDER IMPERMISSIBLY OVERRULES A PRIOR TRIAL COURT'S DECISION THAT PLAINTIFF HAD NOT MET HIS BURDEN OF ESTABLISHING A PRIMA FACIE SHOWING OF PERSONAL JURISDICTION.

"There is a long-standing rule in this State that one judge of the same court cannot overrule another." *See Charleston Cnty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) ("[W]e hold a successor judge may not substitute his own judgment for that of a trial judge . . ."); *Tisdale v. Am. Life Ins. Co.*, 216 S.C. 10, 13, 56 S.E.2d 580, 581 (1949) ("It is axiomatic [that] a Circuit Judge does not have the power to reverse the ruling of another Circuit Judge."); *see also Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 410, 581 S.E.2d 161, 168 (2003) (upholding denial of a motion to intervene based on Judge Perry M. Buckner, III's "finding that to do so would substantially alter or affect Judge [Gerald C.] Smoak's prior orders").

The South Carolina Supreme Court set forth the rationale for this long-established rule:

The Court of Common Pleas is a unity, although its jurisdiction is administered by a number of judges who are, in some sense, the exponents of the court. When one of these judges makes a decision on the merits of a matter within his jurisdiction, that is not merely the personal opinion of the judge, but a judgment of the Court of Common Pleas, which exhausts the power of the court upon that subject and must stand until reversed or set aside in the manner prescribed by law. . . . One Circuit judge upon the same state of facts, has no power to change, alter or reverse a decision of a brother judge of the same Circuit. Otherwise, there would be no end to litigation.

Steele v. Charlotte, Columbia & Augusta R.R. Co., 14 S.C. 324, 329 (1880) (emphasis added).

Here, the Order states that Judge Maddox's order "declin[ed] to decide" the issue of personal jurisdiction. (Order at 7 n.3.) However, Judge Maddox's order made an affirmative decision that Plaintiff had not submitted enough information for the Court to base a decision on personal jurisdiction—a decision based on the allegations of the complaint and the facts submitted to the court. Relatedly, Judge Maddox had provided Plaintiff with the opportunity to conduct jurisdictional discovery in order to obtain that information. Because Plaintiff bears the burden of proof regarding personal jurisdiction, the determination of insufficiency of information by Judge Maddox necessarily meant that if Plaintiff failed to obtain any additional information, he would fail in his burden of proving personal jurisdiction. Specifically, Judge Maddox's Order stated as follows:

As set forth in the Court's oral rulings at the September 23, 2019 hearing, the allegations in the Complaint and the parties' submissions do not provide enough information upon which to base a decision as to whether the battery at issue was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information remains an issue that prevents a decision on personal jurisdiction.

(**Exhibit A**, Order Granting Def. LG Chem Ltd. and LG Chem America, Inc.'s Joint Mot. for Clarification and Denying Reconsideration, at 3 (dated 7/20/2020) (emphasis added)). By way of clarification, Judge Maddox expressly agreed with LG Chem that he had found Plaintiff's allegations and the facts presented to him insufficient on the issue of personal jurisdiction, but had given Plaintiff the opportunity to conduct jurisdictional discovery to collect additional information, rather than simply granting dismissal.

Plaintiff then chose to come before the Court on February 1, 2021 stating that Plaintiff *did not want any further discovery* and that he wanted the Court to render its decision based only on

the same record that had been presented to Judge Maddox.³ Because Plaintiff presented no new facts or information to this Court following jurisdictional discovery, Judge Maddox's determination of the insufficiency of Plaintiff's submissions still stands. This Court's determination that Plaintiff has met his burden of proof—based on the exact same facts and evidence (including the import data chart upon which the Order was based) as were presented to Judge Maddox—is a direct reversal of a previous trial court's decision. To find otherwise would render Judge Maddox's decision meaningless. This is error and the Court is not empowered to reverse Judge Maddox.

II. THE ORDER INCORRECTLY FOUND THAT PLAINTIFF'S COMPLAINT, WITH NO SUPPORTING FACTS, ESTABLISHED A PRIMA FACIE SHOWING OF SPECIFIC JURISDICTION.

Even if this Court could overrule Judge Maddox's prior order, which it cannot, the allegations in Plaintiff's complaint were not sufficient to meet his burden of showing a *prima facie* case of personal jurisdiction. The Order states that the following allegations in the Complaint were sufficient for a *prima facie* showing of specific jurisdiction:

[LG Chem] has continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are used in this state.

(Order at 4 (quoting Compl. ¶ 7)). In so ruling, the Order contradicts controlling precedent that requires the complaint to allege specific facts, not just conclusory allegations, to establish the contacts necessary to invoke specific jurisdiction. *See Power Prods. & Servs. Co., Inc. v. Kozma*,

³ In so doing, Plaintiff affirmatively chose not to introduce the discovery responses LG Chem had previously served, which were included with LG Chem's Motion for Protective Order, and which were submitted with LG Chem's Objections to Plaintiff's Proposed Order. Those verified discovery responses are consistent with the admissible evidence introduced in support of LG Chem's Motion to Dismiss, and Plaintiff (and the Court's Order) failed to address them.

379 S.C. 423, 433, 434, 436, 665 S.E.2d 660, 665–67 (Ct. App. 2008); *Sonoco Prods. Co. v. ACE INA Ins.*, 877 F. Supp. 2d 398, 406–07 (D.S.C. 2012).

In *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 148, 723 S.E.2d 835, 838 (Ct. App. 2012), the complaint alleged that the court had personal jurisdiction based on the same kind of allegations as found in Paragraph 7 of Plaintiff's complaint:

[E]ach [defendant] has caused tortious injury within this State as set forth herein, and each regularly does or solicits business, or engages in a persistent course of conduct or derives substantial revenue from goods used or consumed or services rendered in this State as contemplated under the statute.

The South Carolina Court of Appeals held that, even with a liberal construction of the statute and the complaint, the plaintiff had “failed to allege any facts that show that [the defendants] (1) have regular transactions of business or solicitation, (2) engage in a persistent course of conduct, (3) derive substantial revenue, or (4) consume goods or services rendered in South Carolina.” *Id.* at 151, 723 S.E.2d at 839. Here, as in *Sullivan*, merely alleging general legal conclusions, without alleging a single fact to support the conclusions, requires the trial court to grant a Rule 12(b)(2) motion. *Id.*

Further, the Complaint does not allege any connection between his claims and any action allegedly directed by LG Chem to South Carolina specifically, as required by constitutional due process. Therefore, the Complaint itself is insufficient to meet Plaintiff's prima facie burden.

III. THE ORDER INCORRECTLY FOUND THAT PLAINTIFF'S INADMISSIBLE IMPORT EXHIBIT ESTABLISHED A PRIMA FACIE SHOWING OF SPECIFIC JURISDICTION.

Outside of Plaintiff's insufficiently pleaded complaint, the Order relies solely on a chart purporting to show imports and exports through the Port of Charleston. However, that chart is inadmissible (an issue that the Order does not address), and even if the chart were admissible and

accurate, it does not establish that Plaintiff's claims relate to LG Chem's imports of different products.

1. Plaintiff's exhibit is inadmissible.

Plaintiff's exhibit is inadmissible for purposes of this motion because it is inadmissible hearsay and lacks authentication and an adequate foundation. *See Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153, 268 S.E.2d 42, 43 (1980) (holding that affidavits based almost entirely on hearsay should have been excluded from the trial court's consideration of personal jurisdiction); S.C. R. Evid. 901, Note (citing *State v. Jeffcoat*, 279 S.C. 167, 303 S.E.2d 855 (1983)). For this reason, the Court should disregard the chart in its entirety.

2. Even if the chart were admissible and accurate, it does not establish that Plaintiff's claims arose from or are related to imports of dissimilar products.

The Order was incorrect in finding that alleged shipments of automotive batteries to a car manufacturer through Charleston was a sufficient connection to support a finding that Plaintiff's injuries (involving a 18650 lithium ion battery he purchased for use as a standalone, replaceable battery with a vaping product) arose from or are related to shipments of automotive batteries to Volvo to be installed in vehicles or petrochemical products allegedly imported by LG Chem through a South Carolina port—the only in-state conduct cited in the Order to support a nexus between Plaintiff's claims and this State.⁴

⁴ The Order incorrectly states that LG Chem has claimed that it does not ship lithium-ion batteries through a South Carolina port. (Order at 6.) However, LG Chem never took that position. Instead, in response to Plaintiff's incorrect statement that the chart he offered did not allow the Court to determine what type of products were shipped into the state, LG Chem showed that the chart does include such information but does not identify a single shipment of 18650 lithium ion battery cells into South Carolina (the product at issue in this case) and that the few entries that reflect shipment of lithium ion battery cells show shipment of car batteries to an auto manufacturer.

The Order is also incorrect in finding that *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017) and *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011) support the Court's ruling. As the Supreme Court held in *Bristol-Myers*, “‘[e]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales.’” *Id.* at 1781 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011)).

In *Bristol-Myers* the defendant's selling the same kind of product in California was insufficient for specific jurisdiction. In that case, the plaintiffs alleged that they were injured by a pharmaceutical product, Plavix. Bristol-Myers had sold almost 187 million Plavix pills in the state, through an in-state distributor, and took in more than \$900 million from those sales between 2006 and 2012. *Id.* at 1778. Additionally, in California the company owned five research and laboratory facilities, employing a total of approximately 160 employees; employed about 250 sales representatives; and maintained a state-government advocacy office. *Id.* Despite all these contacts with the state, including the defendant's sale to others of the same product at issue, the Court found that the plaintiffs' claims against the company were not connected to those contacts. *See also Madden v. Petland Summerville, LLC*, No. 2:20-CV-02953-DCN, 2021 WL 288370, at *5 (D.S.C. Jan. 28, 2021) (finding that defendant's credit card and rewards program in South Carolina did not give rise to the plaintiffs' claims under *Bristol-Myers*).

After the Court entered its Order, the U.S. Supreme Court rendered its most recent decision on personal jurisdiction, in *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368, 2021 WL 1132515 (U.S. Mar. 25, 2021), on Thursday, March 25, 2021. In its decision, the Supreme Court reiterated the continued vitality of the precedents and principles supporting LG Chem's Motion to Dismiss.

In *Ford*, which consolidated two cases that originated in Montana and Minnesota state courts, the Supreme Court found that those two states had properly exercised personal jurisdiction over Ford in cases in which a consumer plaintiff asserted product liability claims against Ford based on use of a Ford vehicle that had arrived in the forum state (where the accident occurred) as the result of consumer relocations and resales, and was not designed, manufactured, or sold in the forum by Ford. Ford argued that the “relatedness” element of the specific jurisdiction analysis imposed a specific causation requirement. Rejecting Ford’s argument, the Supreme Court concluded that “none of our precedents has suggested that only a strict causal relationship between the defendant’s in-state activities and the litigation will do.” 2021 WL 1132515, at *5. Observing that the relatedness standard allowed the disjunctive “or,” the Supreme Court reiterated that its decision should not be interpreted to mean that “anything goes when it comes to the relatedness standard.” Instead, the relatedness element “incorporates real limits, as it must to adequately protect defendants foreign to a forum.” *Id.* In addition, the Court’s decision reinforces that the relatedness analysis focuses on the contacts between the defendant and the forum state and in no way supports Plaintiff’s argument that the Court should consider LG Chem’s contacts with the United States as a whole under a “stream of commerce” theory.

In *Ford*, unlike here, the Court found Ford intentionally served a market in Montana and Minnesota for the exact same type of product (Ford Explorers and Crown Victorias), which allegedly injured the plaintiffs in those states. The Court found Ford’s widespread activities directed to the consumer auto market in those states (such as billboards, TV and radio spots, print ads, direct mail, and local dealer repair services and sale of replacement parts) established the necessary connection between the consumers’ claims and Ford’s state-directed activities involving those same kinds of motor vehicles. 2021 WL 1133515, at *6. No such facts are present here, and

Plaintiff offered nothing to contradict LG Chem's further showing that the facts of *Sumatra* were readily distinguishable. The same facts distinguish this case from *Ford*.

3. The Order does not address the fact that South Carolina's long-arm statute is not satisfied.

To subject a foreign defendant to specific personal jurisdiction, the plaintiff must establish both that the long-arm statute is satisfied and that constitutional due process is satisfied. South Carolina's long-arm statute requires a finding that the plaintiff's claims arise from the defendant's activities. *See* S.C. Code Ann. § 36-2-803(A)(4); *see Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012) (construing similar provision in South Carolina's long-arm statute). Here, no such finding can be made, because the uncontroverted evidence submitted in support of LG Chem's motion illustrates that there is no connection between any alleged activity LG Chem took and Plaintiff's claim, and Plaintiff cannot establish that his claim arose from an enumerated act in the long-arm statute. Therefore, the 37-year-old *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) case cited on page 5 of the Order, interpreting the Maryland long-arm statute, does not apply here, and *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 335, 594 S.E.2d 878, 886 (Ct. App. 2004) is distinguishable, where the defendant admitted that it sold 25 copies of the book at issue in South Carolina and its employees distributed its books widely in this state. 358 S.C. at 335, 594 S.E.2d at 886.

4. The Order does not address the fact that there is no specific jurisdiction over LG Chem when the subject battery arrived in South Carolina solely through the unilateral efforts of other entities that were unrelated to LG Chem.

"[T]he mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *World-Wide Volkswagen*, 444 U.S. 286, 298 (1980). The "defendant's conduct [] must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Walden v. Fiore*,

571 U.S. 277, 285 (2014); *see also* *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005) (“[W]e conclude that South Carolina also does not have personal jurisdiction over the respondents in this case. The bats did not arrive in South Carolina through the respondents' efforts.”); *Moosally*, 358 S.C. at 334, 594 S.E.2d at 885 (“The fruits of [defendant’s] labor . . . arrived in South Carolina not through his efforts, but through the efforts of others, and therefore cannot serve as the basis for jurisdiction.”).

Plaintiff’s only mention of this issue is the conclusory statement in a brief that this lawsuit “arises from [the subject battery’s] sale and use in South Carolina.” (Plf.’s Opp’n to LG Chem’s Renewed Mot. to Dismiss for Lack of Personal Jurisdiction, at 6 (1/28/21). But this conclusory statement does not reference any activity by LG Chem. Instead, the statement only serves to underscore the fact that third parties—not LG Chem—are responsible for bringing the subject battery cell (and others like it) to South Carolina. (*See* *Ryu Aff.*, ¶¶ 14–16.)

Here, Plaintiff’s complaint made no allegations that his claims related to LG Chem’s activities in South Carolina. To the contrary, the complaint alleges that defendant Rolling Fog Vapor Company, LLC sold the battery to Plaintiff. Plaintiff neither alleged nor offered any evidence whatsoever to support a conclusion that LG Chem directed any 18650 lithium ion battery cells to a consumer market in South Carolina. In addition, LG Chem supported its motion with admissible, uncontroverted evidence showing that it never conducted any business with the vape store, Rolling Fog Vapor, and never directed any 18650 lithium ion battery cells to a consumer market in South Carolina or authorized anyone else to do so. (*Ryu Aff.*, ¶¶ 13, 15, 16.)

Even after the opportunity to conduct discovery, Plaintiff presented no facts, admissible or otherwise, to controvert LG Chem’s evidence showing that the product at issue was brought into

this state through the unilateral efforts of others, which cannot be the basis for a finding of specific jurisdiction.

IV. EXERCISING JURISDICTION OVER LG CHEM UNDER THE FACTS OF THIS CASE DOES NOT SATISFY THE FAIRNESS PRONG.

The Court need not address the fairness prong because Plaintiff has not met his burden of proof for either general or specific jurisdiction, this factor is not met in this case:

[E]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

Bristol-Myers, 137 S. Ct. at 1780–81 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 276, 294 (1980)); see also *United States v. M/V Santa Clara I*, 859 F. Supp. 980, 990 (D.S.C. 1994). Here, as the Court agrees, Plaintiff did not dispute the lack of general jurisdiction over LG Chem, and the only evidence submitted by Plaintiff to support a finding of specific jurisdiction is both inadmissible and insufficient to show that his claims arose from LG Chem’s activities (as required by South Carolina’s long-arm statute) or relate to LG Chem’s South Carolina-based activities (as required by constitutional due process).

Further, the Order’s decision on the fairness prong addresses only one of the factors required under *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992),⁵ and the Order is based on evidence that is irrelevant to the fairness factors, such as LG Chem’s having defended cases around the country outside of South Carolina and three other courts

⁵ Specifically, the fairness factors “the burden on the defendant[;] . . . the forum state’s interest in adjudicating the dispute; the plaintiff’s interest in obtaining convenient and effective relief; the interstate judicial system’s interest in obtaining the most efficient solution to controversies; and the shared interest of the several states in furthering fundamental substantive social policies”). *S. Plastics*, 310 S.C. at 263, 423 S.E.2d at 132 (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

in this state having found personal jurisdiction over this defendant (and ignoring Judge Maddox's order in this case and the numerous cases in which courts across the country have dismissed LG Chem for lack of personal jurisdiction based on controlling U.S. Supreme Court precedents and other similar facts and law as before this Court). The Order also does not address the unfairness of subjecting LG Chem to personal jurisdiction in South Carolina based solely on the fact that rogue third-party actors intercepted its product somewhere between Korea and the United States, and directed the product to a consumer market for standalone, replaceable batteries, when LG Chem never took any action seeking to serve that consumer market in South Carolina. Therefore, the Order does not show that Plaintiff has met his burden of meeting the fairness prong.

WHEREFORE, for the foregoing reasons, LG Chem respectfully requests that the Court reconsider its March 19, 2021 Order and enter an order dismissing LG Chem from this action for lack of personal jurisdiction and such other and further relief the Court deems just and proper.

Respectfully submitted,

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Columbia, SC
March 29, 2021

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, do hereby certify that on this 29th day of March, 2021, a true and correct copy of **DEFENDANT LG CHEM, LTD.'S MOTION TO RECONSIDER MARCH 19, 2021 ORDER DENYING RENEWED MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR LACK OF PERSONAL JURISDICTION** was served on all counsel of record who are participants in the E-Filing system. I also hereby certify that on this same day, a true and correct copy of this pleading was served via U.S. Mail upon the counsel/parties listed below not participating in the E-Filing system.

Counsel/Parties served:

Via E-Filing: Ronnie L. Crosby, Esquire Alexander P. Lewis, Esquire William B. Cummings, Esquire Austin H. Crosby, Esquire <i>Counsel for Plaintiff Dwayne Thompson</i>	Via U.S. Mail: Gina Marie Surace 317 Greenway Drive Chesnee, SC 29323 <i>Registered Agent for Defendant Rolling Fog Vapor Company, LLC</i>

By: /s/ Rachel Hedley
Rachel Atkin Hedley (SC Bar No.: 16941)

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	
vs.	)	<u>ORDER GRANTING DEFENDANT</u>
	)	<u>LG CHEM, LTD. AND LG CHEM</u>
ROLLING FOG VAPOR COMPANY, LLC,	)	<u>AMERICA, INC.'S JOINT MOTION</u>
LG CHEM, LTD., and LG CHEM	)	<u>FOR CLARIFICATION AND</u>
AMERICA, INC.,	)	<u>DENYING RECONSIDERATION</u>
	)	
Defendants.	)	

This matter is before the Court on Defendants LG Chem, Ltd. (“LG Chem”) and LG Chem America, Inc.’s (“LGCAI”) Joint Motion for Clarification or, Alternatively, Reconsideration. After considering all submissions and arguments of counsel, and for the reasons stated below, the Court (1) grants LG Chem and LGCAI’s Joint Motion for Clarification to clarify that only limited discovery is permitted at this time, limited to the threshold issues of whether LG Chem or LGCAI designed, manufactured, or sold the subject battery and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina, and (2) denies the Motion for Reconsideration of the Court’s December 12, 2019 and December 23, 2019 Orders.

FACTS

In this products liability action, Plaintiff seeks recovery for injuries allegedly sustained when a lithium-ion battery cell exploded in his pocket. (Compl. ¶¶ 11–12.) Plaintiff alleges he purchased the battery cell, an “LG Brown Hg2 INR 18650 3000mAh” model cell allegedly manufactured by LG Chem, from Defendant Rolling Fog Vapor Company, LLC (“Rolling Fog”), a South Carolina retailer of e-cigarettes and accessories. (*Id.* ¶¶ 2, 9.) Plaintiff filed this action on

March 4, 2019, asserting claims of negligence, strict liability, and breach of warranty against LG Chem, LGCAI, and Rolling Fog.

On April 24, 2019, LG Chem filed a Motion to Dismiss and Quash Service of Process, and LGCAI filed a separate Motion to Dismiss. Defendants and Plaintiff filed memoranda in support of and opposing the motions on September 18, 2019. The parties appeared for a hearing on September 23, 2019, and the Court gave its oral ruling and thereafter entered written orders denying LG Chem's and LGCAI's motions on December 6 and December 21, 2019 respectively (hereinafter referred to as the "written orders").

Following entry of the written orders, LG Chem and LGCAI filed this Motion for Clarification or, Alternatively, Reconsideration on December 16, 2019. The Motion has been fully briefed by both parties, and all submissions have been considered by the Court.

LEGAL STANDARD

Under Rule 54(b) of the South Carolina Rules of Civil Procedure, this Court has the authority to clarify, or reconsider, its written orders denying LG Chem's Motion to Quash and denying both LG Chem's and LGCAI's motions to dismiss for lack of personal jurisdiction. Under Rule 54(b), "any order . . . which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." *See Broom, Jr. v. Andrews*, 2017 WL 10701535, at *2 (S.C. Ct. Com. Pls. Nov. 2, 2007) ("Rule 54(b) . . . instructs that unless the Court expressly directs the entry of judgment, any intermediate order is subject to revision, at any time, until a final judgment is issued."). Courts may also clarify their prior orders under Rule 54(b). *See, e.g., Carpenter v. Measter*, 2010 WL 4219701 (S.C. Ct. Com. Pls. Feb. 23,

2010) (issuing a revised order under Rule 54(b) clarifying its previous order granting partial summary judgment).

ANALYSIS

A. Motion for Reconsideration

Having carefully considered the arguments and submissions by LG Chem, LGCAI, and Plaintiff supporting and opposing LG Chem and LGCAI's Joint Motion for Reconsideration, the Court denies the motion to the extent it seeks reconsideration. As set forth in the Court's oral rulings at the September 23, 2019 hearing, the allegations in the Complaint and the parties' submissions do not provide enough information upon which to base a decision as to whether the battery at issue in this matter was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information still remains an issue that prevents a decision on personal jurisdiction. Therefore, Defendants' Motion for Reconsideration of the motions to dismiss for lack of personal jurisdiction is denied.

B. Motion for Clarification

Defendants requested clarification of the written orders, which did not directly address whether the issue of jurisdiction should be decided before proceeding with the merits of the case, including the parties engaging in any merits-related discovery. As stated above, the Court needs more information before ruling on the issue of personal jurisdiction, an issue that should be decided before proceeding with the merits of the case. *See Bridges v. Wyandotte Worsted Co.*, 243 S.C. 1, 9, 132 S.E.2d 18, 22 (1963) ("The decision of the question of whether the court has jurisdiction is a preliminary one to the determination of the merits of the cause"), *overruled in part on other grounds, Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002); *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 538–39, 783 S.E.2d 839, 842 (Ct. App. 2016) (explaining the trial court's decision

to “permit[] the parties to conduct discovery on the jurisdictional issues raised in [the defendant’s] motion to dismiss” and to hold “its ruling on the motion to dismiss in abeyance pending completion of the jurisdictional discovery”). Discovery must first determine whether the battery at issue in this lawsuit was designed, manufactured, and sold by LG Chem or LGCAI and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina. Therefore, the written orders are clarified to hold that the parties may conduct discovery for a period of 90 days following entry of this Order limited to these issues.

CONCLUSION

For the foregoing reasons, the Court allows the parties 90 days from the date of entry of this Order to conduct discovery limited to the specific issues of whether LG Chem or LGCAI designed, manufactured, or sold the subject battery and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina. After the close of jurisdictional discovery, LG Chem and LGCAI may refile motions to dismiss. LG Chem and LGCAI shall have no obligation to file a responsive pleading until 15 days after the jurisdictional discovery period ends.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Judge, Sixteenth Judicial Circuit

Union, South Carolina

_____, 2020



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al
Case Number: 2019CP4400054
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	DEFENDANT LG CHEM
vs.	)	AMERICA, INC.'S MOTION TO
	)	RECONSIDER MARCH 19, 2021
ROLLING FOG VAPOR COMPANY,	)	ORDER DENYING RENEWED
LLC, LG CHEM, LTD., AND LG	)	MOTION TO DISMISS
CHEM AMERICA, INC.,	)	PLAINTIFF'S COMPLAINT FOR
	)	LACK OF PERSONAL
Defendants.	)	JURISDICTION
	)	

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendant LG Chem America, Inc. ("LGCAI") respectfully requests an Order reconsidering the Court's March 19, 2021 Order ("the Order"), which denied LGCAI's renewed motion to dismiss Plaintiff's complaint for lack of personal jurisdiction, and asks the Court to vacate the Order and instead grant LGCAI's motion to dismiss.

INTRODUCTION

LGCAI's motion to dismiss was supported by admissible evidence showing that it did not seek to serve a consumer market in South Carolina for LG brand 18650 lithium ion battery cells and that Plaintiff's claims do not relate in any way to any action LGCAI directed to South Carolina. Plaintiff offered nothing to contradict that evidence, and the allegations of his Complaint—even if true—do not contradict this evidence and do not support Plaintiff's burden of proof.

First, the Honorable J. Cordell Maddox, Jr. previously held—based on the exact same record before this Court—that there was not enough information to decide whether jurisdiction could attach. It is well established in South Carolina that a prior state court judge's decision in a

particular matter cannot be overturned by a subsequent judge. Because Plaintiff bears the burden of proving jurisdiction, and because Judge Maddox's previous decision established that Plaintiff's burden had not been met, when Plaintiff informed the Court that he had nothing further to offer in opposition to LGCAI's motion to dismiss, the motion should have been granted.

Second, even if this motion had come before the Court without a prior decision by another state court judge, Plaintiff did not satisfy his burden of proof. Plaintiff did not allege or prove any facts to support his conclusion that that Court has jurisdiction. Instead, Plaintiff relied on inadmissible facts showing only that LGCAI conducted some business in South Carolina, and those facts could not be construed to show that LGCAI directed any actions to South Carolina connected in any way to Plaintiff's claims.

Plaintiff relied on a "stream of commerce" theory of jurisdiction, and this Court found that it was bound by the South Carolina Supreme Court's decision in *Sumatra* and concluded that United States Supreme Court precedents, including *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017) and *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011), were not relevant to the Court's decision and did not support a basis to depart from *Sumatra*.

However, the Court's Order did not address the relatedness element of the specific jurisdiction analysis, an element that is critical to the personal jurisdiction analysis, according to both South Carolina and U.S. Supreme Court precedents.¹ On Thursday, March 25, 2021, the U.S. Supreme Court issued its most recent decision on personal jurisdiction, in which it reiterated the continued vitality of the precedents cited in support of LGCAI's motion, focusing on the

¹ The Order also did not address LGCAI's argument that if the Court interprets *Sumatra* to permit the exercise of specific jurisdiction over LGCAI without considering whether plaintiff's claims relate to any conduct LGCAI directed to South Carolina, that interpretation would render *Sumatra* in conflict with controlling U.S. Supreme Court authority, including *Bristol-Myers* and *J. McIntyre* (and *Ford*, which was decided after the Order was entered).

“relatedness” element of the personal jurisdiction analysis. *See Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368, 2021 WL 1132515 (U.S. Mar. 25, 2021). Although the Supreme Court rejected Ford’s argument that a strict causation standard was necessary to show the required connection, the Supreme Court also reiterated that the specific jurisdiction analysis must focus on the extent and nature of the defendant’s conduct directed to the forum state and the degree to which that conduct is related or connected to the plaintiff’s claims.

The contrast between the facts of *Ford* and the facts here, like the contrast between the facts of *Sumatra* and the facts here, illustrates why LGCAI’s motion to dismiss should be granted.

For these reasons, LGCAI respectfully requests that the Court reconsider its March 19, 2021 Order and instead grant LGCAI’s motion to dismiss.

LEGAL STANDARD

1. Standard for a Rule 59(e) motion

Under Rule 59(e) a court may correct factual or legal errors in an order by way of a Motion to Alter or Amend. *See Doe v. Doe*, 324 S.C. 492, 502, 478 S.E.2d 854, 859 (Ct. App. 1996); *see also* James F. Flanagan, et al., *South Carolina Civil Procedure* 702 (4th ed. 2020) (“A Rule 59(e) motion provides an opportunity for the trial court to correct errors in the findings and perhaps change the result.”). There are two basic situations in which a party may file a Rule 59(e) motion. First, a party may wish to file a Rule 59(e) motion “when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Also, a Rule 59(e) motion is appropriate when a party has raised an issue to the

trial court that has not been mentioned in the order or ruled on by the trial judge. *Id.*² Issue preservation rules such as Rule 59(e) are designed to give the trial court a fair opportunity to rule on the issues and, thus, provide the appellate court with a platform for meaningful appellate review. *See Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2012). Respectfully, the Court has overlooked or misapprehended LGCAI's stated grounds and cited authorities as to why the motion to dismiss should be granted and asks this Court to reconsider its March 19, 2021 Order and dismiss this lawsuit against LGCAI.

2. Standard for a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction

At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by the plaintiff's making a *prima facie* showing of jurisdiction. *See S. Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992); *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478; *see also Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 428, 665 S.E.2d 660, 663 (Ct. App. 2008) (citing defendants' affidavits submitted to negate facts alleged in the complaint and support their argument that there was an insufficient nexus from their actions to support jurisdiction); *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 538, 783 S.E.2d 839, 841 (Ct. App. 2016) (citing to affidavits submitted by both plaintiff and defendant in

² LGCAI herein expressly incorporates by reference and re-raises each and every argument in favor of dismissal from prior filings and hearings and advances all arguments supporting its position that personal jurisdiction is lacking. This includes all arguments presented in LGCAI's original and renewed motions to dismiss and memoranda in support and reply briefs, LGCAI's motion for reconsideration or alternatively for clarification, LGCAI's objections to Plaintiff's proposed order denying LGCAI's renewed motion to dismiss, and also including all previous filings and the transcripts of hearing on September 23, 2019 and February 1, 2021.

affirming the trial court's dismissal); *Grant v. Lowe's Home Centers LLC*, No. 9:20-CV-00764-DCN, 2020 WL 1494070, at *3 (D.S.C. Mar. 27, 2020) ("In cases where the defendant provides evidence which denies facts essential for jurisdiction, the plaintiff must, under threat of dismissal, present sufficient evidence to create a factual dispute on each jurisdictional element which has been denied by the defendant and on which the defendant has presented evidence.").

ARGUMENT

I. THE ORDER IMPERMISSIBLY OVERRULES A PRIOR TRIAL COURT'S DECISION THAT PLAINTIFF HAD NOT MET HIS BURDEN OF ESTABLISHING A *PRIMA FACIE* SHOWING OF PERSONAL JURISDICTION.

"There is a long-standing rule in this State that one judge of the same court cannot overrule another." *See Charleston Cnty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) ("[W]e hold a successor judge may not substitute his own judgment for that of a trial judge"); *Tisdale v. Am. Life Ins. Co.*, 216 S.C. 10, 13, 56 S.E.2d 580, 581 (1949) ("It is axiomatic [that] a Circuit Judge does not have the power to reverse the ruling of another Circuit Judge."); *see also Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 410, 581 S.E.2d 161, 168 (2003) (upholding denial of a motion to intervene based on Judge Perry M. Buckner, III's "finding that to do so would substantially alter or affect Judge [Gerald C.] Smoak's prior orders").

The South Carolina Supreme Court set forth the rationale for this long-established rule:

The Court of Common Pleas is a unity, although its jurisdiction is administered by a number of judges who are, in some sense, the exponents of the court. When one of these judges makes a decision on the merits of a matter within his jurisdiction, that is not merely the personal opinion of the judge, but a judgment of the Court of Common Pleas, which exhausts the power of the court upon that subject and must stand until reversed or set aside in the manner prescribed by law. . . . One Circuit judge upon the same state of facts, has no power to change, alter or reverse a decision of a brother judge of the same Circuit. Otherwise, there would be no end to litigation.

Steele v. Charlotte, Columbia & Augusta R.R. Co., 14 S.C. 324, 329 (1880) (emphasis added).

Here, the Order states that Judge Maddox's order "declin[ed] to decide" the issue of personal jurisdiction. (Order at 7 n.4.) However, Judge Maddox's order made an affirmative decision that Plaintiff had not submitted enough information for the Court to base a decision on personal jurisdiction—a decision based on the allegations of the complaint and the facts submitted to the court. Relatedly, Judge Maddox provided Plaintiff with the opportunity to conduct jurisdictional discovery in order to obtain that information. Because Plaintiff bears the burden of proof regarding personal jurisdiction, the determination of insufficiency of information by Judge Maddox necessarily meant that if Plaintiff failed to obtain any additional information, he would fail in his burden of proving personal jurisdiction. Specifically, Judge Maddox's Order stated as follows:

As set forth in the Court's oral rulings at the September 23, 2019 hearing, the allegations in the Complaint and the parties' submissions do not provide enough information upon which to base a decision as to whether the battery at issue was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information remains an issue that prevents a decision on personal jurisdiction.

(**Exhibit A**, Order Granting Def. LG Chem Ltd. and LG Chem America, Inc.'s Joint Mot. for Clarification and Denying Reconsideration, at 3 (dated 7/20/2020) (emphasis added)). By way of clarification, Judge Maddox expressly agreed with LGCAI that he had found Plaintiff's allegations and the facts presented to him insufficient on the issue of personal jurisdiction, but had given Plaintiff the opportunity to conduct jurisdictional discovery to collect additional information, rather than simply granting dismissal.

Plaintiff sought no discovery of any kind from LGCAI and then chose to come before the Court on February 1, 2021 stating that Plaintiff *did not want any further discovery* and that he wanted the Court to render its decision based only on the same record that had been presented to Judge Maddox. Because Plaintiff presented no new facts or information to this Court following

jurisdictional discovery, Judge Maddox's determination of the insufficiency of Plaintiff's submissions still stands. This Court's determination that Plaintiff has met his burden of proof—based on the exact same facts and evidence (including the import data chart upon which the Order was based) as were presented to Judge Maddox—is a direct reversal of a previous trial court's decision. To find otherwise would render Judge Maddox's decision meaningless. This is error, and the Court is not empowered to reverse Judge Maddox.

II. THE ORDER INCORRECTLY FOUND THAT PLAINTIFF'S COMPLAINT, WITH NO SUPPORTING FACTS, ESTABLISHED A *PRIMA FACIE* SHOWING OF SPECIFIC JURISDICTION.

Even if this Court could overrule Judge Maddox's prior order, which it cannot, the allegations in Plaintiff's complaint were not sufficient to meet his burden of showing a *prima facie* case of personal jurisdiction. The Order states that the following allegations in the Complaint were sufficient for a *prima facie* showing of specific jurisdiction:

[LGCAI] has continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are used in this state.

(Order at 4–5 (quoting Compl. ¶ 7)). In so ruling, the Order contradicts controlling precedent that requires the complaint to allege specific facts, not just conclusory allegations, to establish the contacts necessary to invoke specific jurisdiction. *See Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 433, 434, 436, 665 S.E.2d 660, 665–67 (Ct. App. 2008); *Sonoco Prods. Co. v. ACE INA Ins.*, 877 F. Supp. 2d 398, 406–07 (D.S.C. 2012).

In *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 148, 723 S.E.2d 835, 838 (Ct. App. 2012), the complaint alleged that the court had personal jurisdiction based on the same kind of allegations as found in Paragraph 7 of Plaintiff's complaint:

[E]ach [defendant] has caused tortious injury within this State as set forth herein, and each regularly does or solicits business, or engages in a persistent course of conduct or derives substantial revenue from goods used or consumed or services rendered in this State as contemplated under the statute.

The South Carolina Court of Appeals held that, even with a liberal construction of the statute and the complaint, the plaintiff had “failed to allege any facts that show that [the defendants] (1) have regular transactions of business or solicitation, (2) engage in a persistent course of conduct, (3) derive substantial revenue, or (4) consume goods or services rendered in South Carolina.” *Id.* at 151, 723 S.E.2d at 839. Here, as in *Sullivan*, merely alleging general legal conclusions, without alleging a single fact to support the conclusions, requires the trial court to grant a Rule 12(b)(2) motion. *Id.*

Further, the Complaint does not allege any connection between his claims and any action allegedly directed by LGCAI to South Carolina specifically, as required by constitutional due process. Therefore, the Complaint itself is insufficient to meet Plaintiff’s *prima facie* burden.

III. THE ORDER INCORRECTLY FOUND THAT PLAINTIFF’S INADMISSIBLE IMPORT EXHIBIT ESTABLISHED A *PRIMA FACIE* SHOWING OF SPECIFIC JURISDICTION.

Outside of Plaintiff’s insufficiently pleaded complaint, the Order relies solely on a chart purporting to show imports and exports through the Port of Charleston. However, that chart is inadmissible (an issue that the Order does not address), and even if the chart were admissible and accurate, it does not establish that Plaintiff’s claims relate to imports of unrelated products.

1. Plaintiff’s exhibit is inadmissible.

Plaintiff’s exhibit is inadmissible for purposes of this motion because it is inadmissible hearsay and lacks authentication and an adequate foundation. *See Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153, 268 S.E.2d 42, 43 (1980) (holding that affidavits based almost entirely on hearsay should have been excluded from the trial court’s consideration of

personal jurisdiction); S.C. R. Evid. 901, Note (citing *State v. Jeffcoat*, 279 S.C. 167, 303 S.E.2d 855 (1983)). For this reason, the Court should disregard the chart in its entirety.

2. Even if the chart were admissible and accurate, it does not establish that Plaintiff's claims arose from or are related to imports of dissimilar products.

The Order was incorrect in finding that alleged shipments of automotive batteries to a car manufacturer through Charleston was a sufficient connection to support a finding that Plaintiff's injuries (involving a 18650 lithium ion battery he purchased for use as a standalone, replaceable battery with a vaping product) arose from or are related to shipments of automotive batteries to Volvo to be installed in vehicles or petrochemical products allegedly imported through a South Carolina port in which LGCAI was allegedly a consignee—the only in-state conduct cited in the Order to support a nexus between Plaintiff's claims and this State.

The Order is also incorrect in finding that *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017) and *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011) support the Court's ruling. As the Supreme Court held in *Bristol-Myers*, “‘[e]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales.’” *Id.* at 1781 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011)).

In *Bristol-Myers* the defendant's selling the same kind of product in California was insufficient for specific jurisdiction. In that case, the plaintiffs alleged that they were injured by a pharmaceutical product, Plavix. Bristol-Myers had sold almost 187 million Plavix pills in the state, through an in-state distributor, and took in more than \$900 million from those sales between 2006 and 2012. *Id.* at 1778. Additionally, in California the company owned five research and laboratory facilities, employing a total of approximately 160 employees; employed about 250 sales representatives; and maintained a state-government advocacy office. *Id.* Despite all these contacts

with the state, including the defendant's sale to others of the same product at issue, the Court found that the plaintiffs' claims against the company were not connected to those contacts. *See also Madden v. Petland Summerville, LLC*, No. 2:20-CV-02953-DCN, 2021 WL 288370, at *5 (D.S.C. Jan. 28, 2021) (finding that defendant's credit card and rewards program in South Carolina did not give rise to the plaintiffs' claims under *Bristol-Myers*).

After the Court entered its March 19, 2021 Order, the U.S. Supreme Court rendered its most recent decision on personal jurisdiction, in *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368, 2021 WL 1132515 (U.S. Mar. 25, 2021), on Thursday, March 25, 2021. In its decision, the Supreme Court reiterated the continued vitality of the precedents and principles supporting LGCAI's Motion to Dismiss.

In *Ford*, which consolidated two cases that originated in Montana and Minnesota state courts, the Supreme Court found that those two states had properly exercised personal jurisdiction over Ford in cases in which a consumer plaintiff asserted product liability claims against Ford based on use of a Ford vehicle that had arrived in the forum state (where the accident occurred) as the result of consumer relocations and resales, and was not designed, manufactured, or sold in the forum by Ford. Ford argued that the "relatedness" element of the specific jurisdiction analysis imposed a specific causation requirement. Rejecting Ford's argument, the Supreme Court concluded that "none of our precedents has suggested that only a strict causal relationship between the defendant's in-state activities and the litigation will do." 2021 WL 1132515, at *5. Observing that the relatedness standard allowed the disjunctive "or," the Supreme Court reiterated that its decision should not be interpreted to mean that "anything goes when it comes to the relatedness standard." Instead, the relatedness element "incorporates real limits, as it must to adequately protect defendants foreign to a forum." *Id.* In addition, the Court's decision reinforces that the

relatedness analysis focuses on the contacts between the defendant and the forum state and in no way supports Plaintiff's argument that the Court should consider LGCAI's contacts with the United States as a whole under a "stream of commerce" theory.

In *Ford*, unlike here, the Court found that Ford intentionally served a market in Montana and Minnesota for the exact same type of product (Ford Explorers and Crown Victorias), which allegedly injured the plaintiffs in those states. The Court found Ford's widespread activities directed to the consumer auto market in those states (such as billboards, TV and radio spots, print ads, direct mail, and local dealer repair services and sale of replacement parts) established the necessary connection between the consumers' claims and Ford's state-directed activities involving those same kinds of motor vehicles. 2021 WL 1133515, at *6. No such facts are present here, and Plaintiff offered nothing to contradict LGCAI's further showing that the facts of *Sumatra* were readily distinguishable. The same facts distinguish this case from *Ford*.

3. The Order does not address the fact that South Carolina's long-arm statute is not satisfied.

To subject a nonresident defendant to specific personal jurisdiction, the plaintiff must establish both that the long-arm statute is satisfied and that constitutional due process is satisfied. South Carolina's long-arm statute requires a finding that the plaintiff's claims arise from the defendant's activities. *See* S.C. Code Ann. § 36-2-803(A)(4); *see Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012) (construing similar provision in South Carolina's long-arm statute). Here, no such finding can be made, because the uncontroverted evidence submitted in support of LGCAI's motion illustrates that there is no connection between any alleged activity LGCAI took and Plaintiff's claim, and Plaintiff cannot establish that his claim arose from an enumerated act in the long-arm statute. Therefore, the 37-year-old *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) case cited on

page 5 of the Order, interpreting the Maryland long-arm statute, does not apply here, and *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 335, 594 S.E.2d 878, 886 (Ct. App. 2004) is distinguishable, where the defendant admitted that it sold 25 copies of the book at issue in South Carolina and its employees distributed its books widely in this state.

4. The Order does not address the fact that there is no specific jurisdiction over LGCAI when the subject battery arrived in South Carolina solely through the unilateral efforts of other entities that were unrelated to LGCAI.

“[T]he mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.” *World-Wide Volkswagen*, 444 U.S. 286, 298 (1980). The “defendant’s conduct [] must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” *Walden v. Fiore*, 571 U.S. 277, 285 (2014); *see also Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005) (“[W]e conclude that South Carolina also does not have personal jurisdiction over the respondents in this case. The bats did not arrive in South Carolina through the respondents’ efforts.”); *Moosally*, 358 S.C. at 334, 594 S.E.2d at 885 (“The fruits of [defendant’s] labor . . . arrived in South Carolina not through his efforts, but through the efforts of others, and therefore cannot serve as the basis for jurisdiction.”).

Plaintiff’s only mention of this issue is the conclusory statement in a brief that this lawsuit “arises from [the subject battery’s] sale and/or use in South Carolina.” (Plf.’s Opp’n to LGCAI’s Renewed Mot. to Dismiss for Lack of Personal Jurisdiction, at 7 (1/28/21). But this conclusory statement does not reference any activity by LGCAI. Instead, the statement only serves to underscore the fact that third parties—not LGCAI—are responsible for bringing the subject battery cell (and others like it) to South Carolina. (*See Kim Aff.*, ¶¶ 12–13.)

Here, Plaintiff's complaint made no allegations that his claims related to LGCAI's activities in South Carolina. To the contrary, the complaint alleges that defendant Rolling Fog Vapor Company, LLC sold the battery to Plaintiff. Plaintiff neither alleged nor offered any evidence whatsoever to support a conclusion that LGCAI directed any 18650 lithium ion battery cells to a consumer market in South Carolina. In addition, LGCAI supported its motion with admissible, uncontroverted evidence showing that it never conducted any business with the vape store, Rolling Fog Vapor, and never directed any 18650 lithium ion battery cells to a consumer market in South Carolina or authorized anyone else to do so. (Kim Aff., ¶¶ 10, 12, 13)

Even after the opportunity to conduct discovery, Plaintiff presented no facts, admissible or otherwise, to controvert LGCAI's evidence showing that the product at issue was brought into this state through the unilateral efforts of others, which cannot be the basis for a finding of specific jurisdiction.

IV. EXERCISING JURISDICTION OVER LGCAI UNDER THE FACTS OF THIS CASE DOES NOT SATISFY THE FAIRNESS PRONG.

The Court need not address the fairness prong because Plaintiff has not met his burden of proof for either general or specific jurisdiction, this factor is not met in this case:

[E]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

Bristol-Myers, 137 S. Ct. at 1780–81 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 276, 294 (1980)); *see also United States v. M/V Santa Clara I*, 859 F. Supp. 980, 990 (D.S.C. 1994). Here, as the Court agrees, Plaintiff did not dispute the lack of general jurisdiction over LGCAI, and the only evidence submitted by Plaintiff to support a finding of specific jurisdiction

is both inadmissible and insufficient to show that his claims arose from LGCAI's activities (as required by South Carolina's long-arm statute) or relate to LGCAI's South Carolina-based activities (as required by constitutional due process).

Further, the Order's decision on the fairness prong addresses only one of the factors required under *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992),³ and the Order is based on evidence that is irrelevant to the fairness factors, such as other courts in this state having found personal jurisdiction over this defendant (and ignoring Judge Maddox's order in this case and the numerous cases in which courts in other states have dismissed LGCAI from similar suits for lack of personal jurisdiction based on controlling U.S. Supreme Court precedents and other similar facts and law as before this Court). The Order also does not address the unfairness of subjecting LGCAI to personal jurisdiction in South Carolina when it had no part in bringing the subject battery, or other similar 18650 lithium ion battery cells, to a consumer market in South Carolina. Therefore, the Order does not show that Plaintiff has met his burden of meeting the fairness prong.

WHEREFORE, for the foregoing reasons, LGCAI respectfully requests that the Court reconsider its March 19, 2021 Order and enter an order dismissing LGCAI from this action for lack of personal jurisdiction and such other and further relief the Court deems just and proper.

³ Specifically, the fairness factors "the burden on the defendant[;] . . . the forum state's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient solution to controversies; and the shared interest of the several states in furthering fundamental substantive social policies"). *S. Plastics*, 310 S.C. at 263, 423 S.E.2d at 132 (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

Respectfully submitted,

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Attorneys for Defendant LG Chem America, Inc.

Columbia, SC
March 29, 2021

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, do hereby certify that on this 29th day of March, 2021, a true and correct copy of **DEFENDANT LG CHEM AMERICA, INC.'S MOTION TO RECONSIDER MARCH 19, 2021 ORDER DENYING RENEWED MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR LACK OF PERSONAL JURISDICTION** was served on all counsel of record who are participants in the E-Filing system. I also hereby certify that on this same day, a true and correct copy of this pleading was served via U.S. Mail upon the counsel/parties listed below not participating in the E-Filing system.

Counsel/Parties served:

Via E-Filing: Ronnie L. Crosby, Esquire Alexander P. Lewis, Esquire William B. Cummings, Esquire Austin H. Crosby, Esquire <i>Counsel for Plaintiff Dwayne Thompson</i>	Via U.S. Mail: Gina Marie Surace 317 Greenway Drive Chesnee, SC 29323 <i>Registered Agent for Defendant Rolling Fog Vapor Company, LLC</i>

By: /s/ Rachel Hedley
Rachel Atkin Hedley (SC Bar No.: 16941)

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	
vs.	)	<u>ORDER GRANTING DEFENDANT</u>
	)	<u>LG CHEM, LTD. AND LG CHEM</u>
ROLLING FOG VAPOR COMPANY, LLC,	)	<u>AMERICA, INC.'S JOINT MOTION</u>
LG CHEM, LTD., and LG CHEM	)	<u>FOR CLARIFICATION AND</u>
AMERICA, INC.,	)	<u>DENYING RECONSIDERATION</u>
	)	
Defendants.	)	

This matter is before the Court on Defendants LG Chem, Ltd. (“LG Chem”) and LG Chem America, Inc.’s (“LGCAI”) Joint Motion for Clarification or, Alternatively, Reconsideration. After considering all submissions and arguments of counsel, and for the reasons stated below, the Court (1) grants LG Chem and LGCAI’s Joint Motion for Clarification to clarify that only limited discovery is permitted at this time, limited to the threshold issues of whether LG Chem or LGCAI designed, manufactured, or sold the subject battery and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina, and (2) denies the Motion for Reconsideration of the Court’s December 12, 2019 and December 23, 2019 Orders.

FACTS

In this products liability action, Plaintiff seeks recovery for injuries allegedly sustained when a lithium-ion battery cell exploded in his pocket. (Compl. ¶¶ 11–12.) Plaintiff alleges he purchased the battery cell, an “LG Brown Hg2 INR 18650 3000mAh” model cell allegedly manufactured by LG Chem, from Defendant Rolling Fog Vapor Company, LLC (“Rolling Fog”), a South Carolina retailer of e-cigarettes and accessories. (*Id.* ¶¶ 2, 9.) Plaintiff filed this action on

March 4, 2019, asserting claims of negligence, strict liability, and breach of warranty against LG Chem, LGCAI, and Rolling Fog.

On April 24, 2019, LG Chem filed a Motion to Dismiss and Quash Service of Process, and LGCAI filed a separate Motion to Dismiss. Defendants and Plaintiff filed memoranda in support of and opposing the motions on September 18, 2019. The parties appeared for a hearing on September 23, 2019, and the Court gave its oral ruling and thereafter entered written orders denying LG Chem's and LGCAI's motions on December 6 and December 21, 2019 respectively (hereinafter referred to as the "written orders").

Following entry of the written orders, LG Chem and LGCAI filed this Motion for Clarification or, Alternatively, Reconsideration on December 16, 2019. The Motion has been fully briefed by both parties, and all submissions have been considered by the Court.

LEGAL STANDARD

Under Rule 54(b) of the South Carolina Rules of Civil Procedure, this Court has the authority to clarify, or reconsider, its written orders denying LG Chem's Motion to Quash and denying both LG Chem's and LGCAI's motions to dismiss for lack of personal jurisdiction. Under Rule 54(b), "any order . . . which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." *See Broom, Jr. v. Andrews*, 2017 WL 10701535, at *2 (S.C. Ct. Com. Pls. Nov. 2, 2007) ("Rule 54(b) . . . instructs that unless the Court expressly directs the entry of judgment, any intermediate order is subject to revision, at any time, until a final judgment is issued."). Courts may also clarify their prior orders under Rule 54(b). *See, e.g., Carpenter v. Measter*, 2010 WL 4219701 (S.C. Ct. Com. Pls. Feb. 23,

2010) (issuing a revised order under Rule 54(b) clarifying its previous order granting partial summary judgment).

ANALYSIS

A. Motion for Reconsideration

Having carefully considered the arguments and submissions by LG Chem, LGCAI, and Plaintiff supporting and opposing LG Chem and LGCAI's Joint Motion for Reconsideration, the Court denies the motion to the extent it seeks reconsideration. As set forth in the Court's oral rulings at the September 23, 2019 hearing, the allegations in the Complaint and the parties' submissions do not provide enough information upon which to base a decision as to whether the battery at issue in this matter was designed, manufactured, and sold by LG Chem or LGCAI or whether the Court has personal jurisdiction over these Defendants. This lack of information still remains an issue that prevents a decision on personal jurisdiction. Therefore, Defendants' Motion for Reconsideration of the motions to dismiss for lack of personal jurisdiction is denied.

B. Motion for Clarification

Defendants requested clarification of the written orders, which did not directly address whether the issue of jurisdiction should be decided before proceeding with the merits of the case, including the parties engaging in any merits-related discovery. As stated above, the Court needs more information before ruling on the issue of personal jurisdiction, an issue that should be decided before proceeding with the merits of the case. *See Bridges v. Wyandotte Worsted Co.*, 243 S.C. 1, 9, 132 S.E.2d 18, 22 (1963) ("The decision of the question of whether the court has jurisdiction is a preliminary one to the determination of the merits of the cause"), *overruled in part on other grounds, Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002); *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 538–39, 783 S.E.2d 839, 842 (Ct. App. 2016) (explaining the trial court's decision

to “permit[] the parties to conduct discovery on the jurisdictional issues raised in [the defendant’s] motion to dismiss” and to hold “its ruling on the motion to dismiss in abeyance pending completion of the jurisdictional discovery”). Discovery must first determine whether the battery at issue in this lawsuit was designed, manufactured, and sold by LG Chem or LGCAI and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina. Therefore, the written orders are clarified to hold that the parties may conduct discovery for a period of 90 days following entry of this Order limited to these issues.

CONCLUSION

For the foregoing reasons, the Court allows the parties 90 days from the date of entry of this Order to conduct discovery limited to the specific issues of whether LG Chem or LGCAI designed, manufactured, or sold the subject battery and the extent of LG Chem’s and LGCAI’s jurisdictional contacts with South Carolina. After the close of jurisdictional discovery, LG Chem and LGCAI may refile motions to dismiss. LG Chem and LGCAI shall have no obligation to file a responsive pleading until 15 days after the jurisdictional discovery period ends.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Judge, Sixteenth Judicial Circuit

Union, South Carolina

_____, 2020



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al

Case Number: 2019CP4400054

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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Jul 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

Appellate Case No. 2021-000557

Civil Action No. 2019-CP-44-00054

Dwayne Thompson, ... Respondent,

v.

LG Chem, Ltd.; LG Chem America, Inc.; and Rolling Fog
Vapor Company, LLC..... Defendants,

Of which LG Chem, Ltd. and LG Chem America, Inc., are
the..... Appellants.

MEMORANDUM IN SUPPORT OF IMMEDIATE APPEALABILITY

Appellants LG Chem, Ltd. (“LG Chem”) and LG Chem America, Inc. (“LGCAI”) (collectively, “Appellants”) submit this memorandum in response to the Court’s letter questioning the immediate appealability of the challenged orders. Appellants filed this appeal seeking review of the circuit court’s rulings permitting the litigation to go forward against Appellants despite the absence of minimum contacts with South Carolina sufficient to support the exercise of personal jurisdiction consistent with the Due Process requirements of the Fourteenth Amendment to the United States Constitution.

As detailed below, appealability must be determined on a case-by-case basis. *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019). Therefore, although the Supreme Court considered whether the denial of a motion to dismiss based on lack of personal jurisdiction

was immediately appealable in *Mid-State Distributors v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993), the Court’s statement there that “the denial of a motion to dismiss under Rule 12(b)(2), SCRCP, is interlocutory and not directly appealable,” necessarily addressed the arguments and facts and circumstances in *Mid-State*, and did not foreclose all interlocutory appeals of orders denying motions to dismiss under Rule 12(b)(2) SCRCP no matter the arguments made or the facts and circumstances present. *Id.* at 336, 426 S.E.32d at 781.

Here, the subject orders are immediately appealable because Appellants have raised arguments that were not argued to or ruled upon by the Supreme Court in *Mid-State* regarding both the merits and appealability itself, and because the procedural history and facts and circumstances here are different than those before the court in *Mid-State*. Therefore, the Court should find the Orders involved to be immediately appealable and instruct the parties to engage in the appellate briefing procedures outlined in the South Carolina Appellate Court Rules.

Background

In this products liability action, Respondent Dwayne Thompson seeks to recover for injuries allegedly sustained when a lithium ion battery cell allegedly exploded in his pocket. (**Ex. A**, Compl. ¶¶ 2, 8, 11–12.) Respondent asserts that he purchased the battery cell from Defendant Rolling Fog Vapor Company, LLC (“Rolling Fog”), as a standalone battery to use with his e-cigarette device. (*Id.*) Respondent also alleges, generically and in conclusory fashion, that Appellants designed, manufactured, supplied, sold, imported, and distributed the subject battery and expected the battery to be sold in South Carolina. (*Id.* at ¶¶ 5-7.)

LG Chem is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. (**Ex. B**, Aff. of Sung Han Ryu, filed April 24, 2019, ¶ 4; Compl. ¶ 3.) LGCAI is a Delaware corporation with its principal place of business in Atlanta, Georgia. (**Ex. C**, Aff. of

HyunSoo Kim, filed April 24, 2019, at ¶ 5; Ex. A, Compl. ¶ 4.) LGCAI is a wholly-owned subsidiary of LG Chem, and is a separate and independent corporate entity. Appellants do not design, manufacture, distribute, advertise, or sell lithium ion battery cells to consumers for use as standalone, replaceable batteries with e-cigarette devices, or for any other purpose. (Ex. B, Ryu Aff. ¶ 13; Ex. C, Kim Aff. ¶ 10, 13.) Appellants have never conducted any business with the retailer (Rolling Fog) and have never served a consumer market for such standalone, replaceable batteries in South Carolina—or anywhere else. (Ex. B, Ryu Aff. ¶ 15; Ex. C, Kim Aff. ¶ 12.)

Notwithstanding these facts, Respondent successfully argued to the circuit court that Appellants are subject to specific personal jurisdiction in South Carolina under a “stream of commerce” theory based on *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008). Respondent waived the opportunity to pursue discovery concerning the extent of Appellants’ suit-related contacts with South Carolina, and successfully argued to the circuit court that the defendant could be subjected to the burden of litigating the merits of the case merely because the Respondent Plaintiff alleged in his complaint that Appellants placed a product into the stream of commerce and expected that it would make its way to South Carolina.

As Appellants will detail in their merits brief, the circuit court should not have denied Appellants’ motion to dismiss because Respondent Plaintiff’s formulaic and conclusory allegations were legally insufficient to meet his burden of proving that Appellants had sufficient minimum contacts with South Carolina to satisfy constitutional due process, and Respondent Plaintiff offered no admissible facts or evidence to support that burden.

In fact, the first circuit court judge to hear the Appellants’ motions—Judge Maddox—expressly concluded that he could not determine that the defendants had sufficient contacts with South Carolina to support the exercise of personal jurisdiction based on the allegations of the

Complaint alone and an inadmissible chart of irrelevant import records prepared by Plaintiff's counsel.

After Respondent Plaintiff was provided the *opportunity* to conduct jurisdictional discovery to attempt to obtain admissible facts concerning any suit-related contacts Appellants may have formed with South Carolina, Respondent did not pursue such discovery, and instead expressly asked a second circuit court judge—Judge McKinnon—to decide the motions on the same record he initially presented to Judge Maddox (which Judge Maddox had previously correctly found insufficient). Judge McKinnon then ruled that the allegations of Plaintiff's complaint were sufficient to meet his burden of establishing a prima facie case of jurisdiction, and denied Appellants' motions to dismiss. Alternatively, Judge McKinnon found the inadmissible and irrelevant chart of import records produced by Plaintiff's counsel was sufficient to establish minimum contacts as to LG Chem, Ltd. and that this chart and a business registration in the state was sufficient to establish minimum contacts as to LG Chem America, Inc.¹

This was error. For a court of this state to exercise specific personal jurisdiction over Appellants consistent with constitutional due process, Respondent Plaintiff would have to establish that his claims “arose out of or related to” contacts formed by Appellants with South Carolina. He failed to do so. By contrast, Appellants introduced *admissible, uncontroverted* evidence establishing that they had no suit-related contacts with South Carolina, including because neither Appellant ever served a consumer market for standalone, replaceable lithium ion batteries in South Carolina, or anywhere else.

¹ The chart was an inadmissible summary of unidentified documents described as import records illustrating shipments of other products to industrial customers in the state, not shipments of lithium ion battery cells to anyone in the consumer vaping industry. The circuit court concluded that this unrelated business was sufficient to satisfy *J. McIntyre* and *Bristol-Myers* and did not address the Supreme Court's most recent personal jurisdiction decision in *Ford*.

Therefore, the circuit court—Judge McKinnon—should have found that Respondent Plaintiff failed to meet his burden of establishing constitutional minimum contacts. The circuit court erred in relying on *Sumatra*, when the facts of this case were highly distinguishable, and when the U.S. Supreme Court’s three decisions on specific personal jurisdiction since *Sumatra* was decided² make clear that constitutional due process cannot be satisfied based on conclusory allegations that a foreign defendant placed a product into the stream of commerce and expected that it would make its way to the forum or by allegations concerning unrelated business conducted in the state.³ Instead, the court must have facts, which it did not have in this case, showing that the defendant directed some activity to South Carolina that was sufficiently related to the plaintiff’s claims to satisfy constitutional due process according to the Supreme Court, as discussed in *Bristol-Myers* (2017) and *Ford* (2021).

Because those facts were not presented to the court in this case, as the first circuit court judge to consider the issue expressly found; because, to the contrary, Appellants presented

² *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 877-78 (2011); *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1781 (2017); and *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021).

³ As applied in products liability cases, *Sumatra* is not consistent with the law governing specific jurisdiction. See *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 877-78 (2011); *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1781 (2017); and *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). In *Nicastro*, the Supreme Court expressly rejected the type of “nationwide” stream of commerce jurisdiction that the South Carolina Supreme Court approved in *Sumatra*. See 564 U.S. at 877-78. Moreover, in 2017, the Supreme Court reiterated in *Bristol-Myers* that specific jurisdiction requires “a connection between the defendant’s contacts with the forum and the specific claims at issue,” and “[e]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales.” 137 S. Ct. 1773, 1781 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 931 n.6 (2011)). Therefore, interpreting *Sumatra* to allow the exercise of personal jurisdiction based on allegations that a defendant placed a product into the stream of commerce with knowledge or awareness or expectation it might make its way to South Carolina, or conducted unrelated business in the state, and when the only admissible evidence in the record showed that the plaintiff’s claims are not related to any contacts the defendants formed with the forum state itself, directly conflicts with these United States Supreme Court decisions.

admissible facts establishing that constitutional minimum contacts were lacking; and because one circuit judge cannot overrule another, this Court should find that the challenged orders are immediately appealable.

Argument

I. The subject orders are immediately appealable because a finding of sufficient minimum contacts implicates a defendant's substantial constitutional right to due process.

S.C. Code Ann. § 14-3-330(2) provides that “[a]n order affecting a substantial right” is immediately appealable if it “in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action.” *Id.* The Supreme Court has recognized that “by its nature, however, the question of whether an order is immediately appealable is determined on a *case-by-case basis*.” *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) (emphasis added). This Court should therefore analyze the circumstances presented here and determine appealability.

Although the Supreme Court held in 1993 that “the denial of a motion to dismiss under Rule 12(b)(2), SCRPC, is interlocutory and not directly appealable,” *Mid-State*, Appellants here raised several arguments to the circuit court that were not before the *Mid-State* Court, and raise arguments regarding appealability itself that were not argued to the *Mid-State* court. *Mid-State* **did not** expressly address whether a ruling that a foreign defendant could be required to defend suit - based on conclusory allegations that minimum contacts existed without a showing of admissible, supporting facts, and in the face of competing, admissible facts showing that minimum contacts were lacking - affects a substantial right. *Mid-State* expressly overruled two prior cases to the extent they conflicted with the *Mid-State* ruling. Notably, however, the court did not expressly overrule *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988), which **permitted** an

interlocutory appeal from an order denying a motion to dismiss for lack of personal jurisdiction where the sufficiency of minimum contacts was at issue, as it is here.

A review of the Supreme Court briefing in *Mid-State* is instructive and confirms that the arguments raised by Appellants here were not before the court there. (See generally **Ex. D**, Br. of Appellant; **Ex. E**, Br. of Resp't; and **Ex. F**, Reply Br. of Appellant.) Appellant did not address appealability in its opening brief in *Mid-State*. (See generally **Ex D**.) Respondent in *Mid-State* challenged appealability in its brief by highlighting the lack of finality and comparing the subject ruling to an order denying a motion to dismiss under 12(b)(6). (Br. of Resp. at 6-7.) Respondent also contended that permitting interlocutory appeal would "open the floodgates" to appeals of orders denying motions to dismiss for lack of personal jurisdiction. (*Id.* at 7-8.) Appellant's reply to respondent's arguments in *Mid-State* consisted *solely* of a short point citing a case from 1890 that the appellant contended supported immediate appealability, along with three subsequent cases that were in accord.⁴ (See Reply Br. at 1.) Appellant there did not specifically address the finality or judicial economy arguments raised by the respondent. Most importantly, the appellant there did not raise *any* arguments about the sufficiency of a defendant's minimum contacts or due process or provide any analysis regarding whether the challenged rulings implicated a substantial right, which is the basis Appellants raise here. (See *id.*)

Mid-State also came before the Supreme Court under an entirely different procedural posture from this matter. In *Mid-State* the case had been pending 18 months when the motion to

⁴ Notably *Mid-State* only expressly overruled the 1890 case cited by appellant: *National Exchange v. Stelling*, 32 S.C. 102, 10 S.E.2d 766 (1890). The court also overruled a second case that was not cited by the appellant, *Agnew v. Adams*, 24 S.C. 86 (1885), but did not discuss the other three cases detailed in the appellant's reply brief: *Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985); *Kay v. Meadors*, 216 S.C. 483, 58 S.E.2d 893 (1950); and *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988).

dismiss was heard and denied, and the court had previously heard and denied a motion for summary judgment and found there were genuine issues of material fact for trial. The case was nearly up for trial at the time of the hearing on the motion to dismiss in *Mid-State*. (See **Ex. B** at 1-2 & n.1.) The present matter is far different. Here, there has been no merits discovery, the case is likely several years away from a trial, and the plaintiff specifically argued to the trial court that it could decide the question of jurisdiction based solely on the allegations of the complaint. In fact, after the first circuit judge to consider the issues decided that *more information was required* before it could decide the issue of personal jurisdiction, Respondent Plaintiff later argued to the second circuit judge that he did not need additional facts, that he was waiving his opportunity to pursue jurisdictional discovery, and that the issue could—and should—be decided solely on the pleadings.

This Court has previously indicated that an order implicating a party's constitutional rights is immediately appealable because it concerns a substantial right. *E.g., Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004). Here, the constitutional guarantee of due process is implicated where the court finds there are sufficient minimum contacts to subject a foreign defendant to the burden of litigation and trial. In this case, the order at issue was based on Respondent Plaintiff's conclusory allegations that minimum contacts are satisfied, even though Appellants introduced *admissible, uncontroverted* evidence showing the constitutional minimum contacts were *absent* and even though Respondent Plaintiff disclaimed any interest or need to pursue discovery to obtain admissible facts to support his burden of proving jurisdiction. This alone warrants a finding of immediate appealability, as explained further below.

South Carolina courts have frequently looked to North Carolina law for guidance in addressing whether an order is immediately appealable. *See, e.g., Salmonsens v. CGD, Inc.*, 377

S.C. 442, 451, 661 S.E.2d 81, 86-87 (2008); *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991); *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) (all looking to North Carolina case law on immediate appeal questions). North Carolina's appealability statute is similar to South Carolina's and likewise permits interlocutory appeals of orders "affecting a substantial right." *See* N.C. Gen. Stat. Ann. § 7A-27(b)(3). Although the North Carolina statutory language has an additional provision permitting "immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant," N.C. Gen. Stat. § 1-277(b), the North Carolina courts have interpreted this right to be *limited* to where the appeal raises questions concerning due process and minimum contacts, because those are the questions *affecting a substantial right*.

As the North Carolina Court of Appeals explained in *Hardee ex rel. White v. Lowe's Companies, Inc.*, 640 S.E.2d 445 (N.C. Ct. App. 2007) (table), this is because a substantial right exists where the interlocutory order denying a motion to dismiss for lack of personal jurisdiction "raises questions concerning due process and minimum contacts." *Id.* at *2. This ensures that parties who have less than minimum contacts with the state "will never be forced to trial against their wishes," "promotes judicial economy[,] and protects the constitutional rights of foreign defendants." *Love v. Moore*, 291 S.E.2d 141, 146 (N.C. 1982). The same concerns and points support appealability under South Carolina's appealability statute, which also permit immediate appeals "affecting a substantial right."

Therefore, in light of the foregoing authorities and the requirement that appealability must be determined on a case-by-case basis, Appellants submit that immediate appeal is proper in this narrow circumstance where the question of constitutional minimum contacts is at issue, and

especially where, as here, one circuit judge ruled that Respondent Plaintiff's showing *was not* enough to determine whether minimum contacts existed and a second circuit judge then decided the *same* showing *was* enough.

With respect to a ruling affecting a substantial right for appealability purposes, this case should be viewed as somewhat analogous to *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). In *Hagood*, the South Carolina Supreme Court found that an order disqualifying a party's counsel of their choice was an immediately appealable order. The respondent there argued any error could be corrected on appeal after final judgment. Yet, the Supreme Court, looking to the points made by other courts concerning the appealability of such an order – including a decision from North Carolina – held that the order affected a substantial right and should be immediately appealable.

The orders appealed here require a foreign defendant who has put forth admissible evidence negating any constitutional minimum contacts with South Carolina, to nonetheless defend itself fully in litigation here without any showing by Respondent Plaintiff of admissible facts establishing the defendant engaged in sufficient suit-related minimum contacts with South Carolina to satisfy due process. This affects the substantial right of the foreign defendant to the constitutional guarantee of due process. North Carolina law should again be taken into account and followed with respect to allowing immediate appellate review of such orders.

II. The lack of available appellate remedies has led to a dearth of precedent to guide the circuit courts.

If the Court views *Mid-State* as a blanket rule against immediate appealability of all orders denying motions to dismiss for lack of personal jurisdiction, it will essentially foreclose Appellants from safeguarding their due process rights in derogation of both the state and federal Constitutions.

A litigant has an arduous road in the absence of immediate appellate consideration of a denial of a motion to dismiss for lack of personal jurisdiction and, particularly, a ruling regarding the sufficiency of minimum contacts. The litigant under such circumstances could not appeal until after final judgment and, only then, if the litigant loses on one or more issues. *See* S.C. Code Ann. § 18-1-30 (“Any party aggrieved may appeal . . .”); *State v. Looper*, 421 S.C. 384, 388–89, 807 S.E.2d 203, 205 (2017) (“[A]n aggrieved party is one who is injured in a legal sense or has suffered an injury to person or property.”). Even if the litigant loses the final judgment and appeals, it must then establish that the order was reversible error. This process would likely take many years, and Appellants would be forced through the entirety of these proceedings all the while being compelled to litigate in the absence of minimum contacts supporting personal jurisdiction.

Further, a litigant who loses at trial will likely have multiple potential appellate issues and must make a tactical decision about which issues—and how many issues—are important enough and strong enough to raise in its appellate brief.⁵ And even if a litigant raises a jurisdictional issue on appeal, an appellate court may not reach the issue. *See Skydive Myrtle Beach, Inc. v. Horry Cty.*, 428 S.C. 638, 643 n.1, 837 S.E.2d 485, 488 n.1 (2020) (noting an appellate court need not address an issue if its ruling on another issue is dispositive (citing *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999))); *Ledford v. Dep’t of Pub. Safety*, 428 S.C. 387, 392 n.5, 835 S.E.2d 509, 511 n.5 (2019) (citing *Futch*); *cf. Davis*, 409 S.C.

⁵ *See, e.g., Jones v. Barnes*, 463 U.S. 745, 751–52 (1983) (“Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.”); *State v. Pelletier*, 552 A.2d 805, 807–08 (Conn. 1989) (“Most cases present only one, two, or three significant questions. . . . Usually . . . if you cannot win on a few major points, the others are not likely to help. . . . The effect of adding weak arguments will be to dilute the force of the stronger ones.” (alterations in original) (quoting R. Stern, *Appellate Practice in the United States* 266 (1981))).

at 281, 762 S.E.2d at 543 (addressing a contempt ruling but declining to address the underlying discovery orders).

The lack of appellate review of circuit court orders finding sufficient minimum contacts creates, in turn, a lack of precedent addressing what is constitutionally sufficient. Trial judges and counsel are left to apply outdated principles with little guidance, as the trial court did here, relying on a decision rendered in 2008 without further guidance as to the three separate decisions issued by the U.S. Supreme Court in 2011, 2017, and 2021 addressing the very constitutional standard at issue in this case. Published decisions addressing the modern confines of personal jurisdiction will create uniformity and stability within the state judicial system, avoid disparate treatment by the trial bench, and reduce costs because litigants will not fight over matters governed by precedent.

The guarantees of due process are illusory if there is no opportunity for appellate review until after final judgment simply because a trial court finds plaintiff's conclusory allegations of minimum contacts are sufficient to proceed with subjecting the foreign defendant to the burden of litigation. Recognizing this potentially harsh result, the federal courts and a number of states permit interlocutory appeal of jurisdictional orders, whether by right⁶, by direct application to an intermediate appellate court,⁷ or by asking the trial court to certify the issue for discretionary appellate review.⁸ South Carolina, however, has no such discretionary procedure, other than direct

⁶ See, e.g., N.Y. C.P.L.R. § 5701(a)(2)(v); Fla. R. App. P. 9.130(a)(3)(C)(i); N.C. Gen. Stat. § 1-277(b); Texas Civil Practice and Remedies Code § 51.014(a)(7).

⁷ See, e.g., N.J. R.A.R 2:2-4; Mich. Ct. R. 7.203(b); Ill. R. S. Ct. 306.

⁸ See, e.g., 28 U.S.C. § 1292(b) (permitting district judge to certify issue for interlocutory appeal where it presents a controlling question of law as to which there is substantial ground for difference of opinion and immediate appeal from the order may materially advance the ultimate termination of the litigation); Ga. O.C.G.A. § 5-6-34(b); C.A.R. 4.2(b); M. R. A. P. 5; Pa. R.A.P. 311(b) (permitting interlocutory appeal as of right of order sustaining personal jurisdiction where the lower court finds a substantial issue of jurisdiction is presented); Ind. R. App. P. 14(B)(1) (permitting interlocutory appeal upon trial court's certification if one of three grounds are met: (1)

petition to the Supreme Court for an extraordinary writ of certiorari in its original jurisdiction. Therefore, because this matter implicates Appellants' substantial constitutional right to due process, the facts of this case illustrate why interlocutory review as of right is appropriate when, as here, the U.S. Constitution limits the authority of the trial court to subject a foreign defendant to the burden of litigation and trial.

III. Recognizing the propriety of immediate review regarding sufficiency of minimum contacts will not “open the floodgates” to the appellate courts.

To the extent the Court is concerned with the potential ramifications of approving of an immediate appeal in this matter, the facts of this case both highlight the necessity for a foreign defendant to have access to appellate review when its constitutional rights are at stake and illustrate that opening the door here will not “open the floodgates” to the appellate courts.

The South Carolina Supreme Court has long recognized that “[w]ithout minimum contacts, the court does not have the “power” to adjudicate the action.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 508 (2005) (quoting *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131(1992).)

This Court has also previously recognized that, in order to establish a prima facie case based on the allegations in his complaint, a plaintiff must set forth *specific facts*, not just conclusory allegations, to establish the minimum contacts constitutionally necessary to invoke specific jurisdiction. See *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 433, 434, 436, 665 S.E.2d 660, 665–67 (Ct. App. 2008). In *Mid-State*, the Supreme Court recognized that this

appellant will suffer substantial expense, damage or injury if the order is erroneous and the determination of the error is withheld until after judgment; (2) the order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case; or (3) the remedy by appeal after final judgment is otherwise inadequate); Tenn. R. App. P. 9 (permitting interlocutory appeal by permission where discretionary approval is given by both the trial court and appellate court and where there is a need “to prevent irreparable injury,” “to prevent needless, expensive, and protracted litigation,” and “to develop a uniform body of law”).

standard was modeled after the federal court rule and commented that “[i]t is sound public policy to modify the procedure currently in place and conform our case law to the established limits of constitutionality.” 310 S.C. at 335. Appellants respectfully submit that “a correction is needed to conform the case law to the established limits of constitutionality.”⁹

Federal law is in accord with this Court’s precedent establishing that facts (as opposed to conclusory allegations) are needed to make a prima facie showing of minimum contacts, *including* numerous federal courts that have *granted* motions to dismiss filed by LG Chem in cases involving virtually indistinguishable facts. *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 397, 403 (4th Cir. 2003) (affirming order dismissing defendant for lack of personal jurisdiction and finding no abuse of discretion when trial court denied request for jurisdictional discovery “based on bare allegations in the face of specific denials made by defendants”); *Reyes v. Freedom Smokes, Inc.*, No. 5:19-CV-2695, 2020 WL 1677480, at *2 (N.D. Ohio Apr. 6, 2020) (dismissing LG Chem, Ltd. from a similar action, the Ohio federal court stated, “[w]hen faced with a properly supported 12(b)(2) motion, “the plaintiff may not stand on his pleadings but must, by affidavit or otherwise, set forth specific facts showing that the court has jurisdiction.”); *Walsh v. LG Chem Am.*, No. CV-18-01545-PHX-SPL, 2019 WL 4394550, at *1 (D. Ariz. Sept. 13, 2019), *aff’d sub nom. Walsh v. LG Chem Ltd.*, 834 F. App’x 310 (9th Cir. 2020) (dismissing LG Chem,

⁹ Federal and state appellate courts in other jurisdictions have *repeatedly* found that constitutional due process is not satisfied by the exercise of personal jurisdiction over Appellant LG Chem, Ltd. in other states based on similar allegations, including the Supreme Court of Missouri, which found personal jurisdiction lacking in a writ proceeding challenging a trial court’s order that had been decided on a similarly erroneous view of stream of commerce jurisdiction. *State ex rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899 (Mo. 2020); *see also, Eriksen v. ECX, LLC, et al.*, No. 79473-I, 2020 WL 6395534 (Wash. Ct. App. Nov. 2, 2020) (unpublished); *Walsh v. LG Chem, Ltd.*, 834 Fed. App’x 310 (9th Cir. Nov. 2, 2020); *Schexnider v. E-Cig Central, LLC*, No. 06-20-00003, 2020 WL 6929872 (Tex. Ct. App. Nov. 25, 2020), *reh’g denied* (Dec. 15, 2020). And, like trial courts in numerous states including Texas, California, Washington, New York, New Jersey, Oklahoma, and Arizona, a North Carolina trial court dismissed Appellants from a similar suit involving the identical issues of constitutional due process. *See Miller v. LG Chem, Ltd.*, No. 19 CVS 1721, 2020 WL 4635627, at *3 (N.C.Super. Apr. 20, 2020).

Ltd. from a similar action, the Arizona federal court stated, “[t]he Court may not, however, “assume the truth of allegations in a pleading that are controverted by affidavit.”)) Under the federal rule, if a court postpones the decision to permit discovery (which is what the first circuit judge did here), the plaintiff’s burden at that point shifts to a preponderance of the evidence standard. *Informaxion Sols., Inc. v. Vantus Grp.*, 130 F. Supp. 3d 994, 998 (D.S.C. 2015).

Here, the circuit court found the following conclusory allegations were sufficient to meet Respondent’s burden:

[LG Chem and LGCAI have] continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are used in this state.

(Ex. A, Compl., ¶ 7.) These allegations were comparable to the allegations this court found to be insufficient in *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835, 838 (Ct. App. 2012), and amount to nothing more general legal conclusions, unsupported by a single fact. Respondent Plaintiff argued that the above conclusory allegations were sufficient to satisfy the standard in this state, and the second circuit judge agreed, even after the first circuit judge found Respondent Plaintiff’s showing was not sufficient to decide the issue. By contrast, Appellants’ introduced ***admissible, uncontroverted*** evidence establishing that they did not serve a consumer market in South Carolina for the product at issue in this case (lithium ion battery cells sold as standalone, replaceable e-cigarette batteries) and that they did not engage in any activities in or directed to South Carolina related in any way to plaintiff’s claims.

The constitutional protections guaranteed by the Due Process Clause of the United States Constitution, and the above-cited authorities of this Court, demand more than subjecting a foreign defendant to the burdens of litigation in the courts of this state simply based on conclusory and formulaic allegations in a complaint, unsupported by ***admissible*** evidence, particularly when the

defendants introduced *admissible, uncontroverted* evidence showing that constitutional minimum contacts were lacking.

Conclusion

For all of these reasons, the Court should hold that an order finding that a plaintiff has established sufficient minimum contacts to justify the exercise of personal jurisdiction consistent with due process implicates a substantial right supporting immediate appeal under S.C. Code Ann. § 14-3-330.

NELSON MULLINS RILEY & SCARBOROUGH LLP



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*Attorneys for Appellants LG Chem, Ltd. and LG Chem
America, Inc.*

Columbia, SC
July 19, 2021

EXHIBIT A
(Complaint)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF UNION)

CIVIL ACTION NO.: 2018-CP-44-

DWAYNE THOMPSON,)

Plaintiff,)

v.)

SUMMONS

(Jury Trial Requested)

LG CHEM, LTD., LG CHEM AMERICA,)
INC., and ROLLING FOG VAPOR)
COMPANY, LLC,)

Defendants.)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at 101 Mulberry Street East, Post Office Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

-signature page to follow-

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ATTORNEYS FOR PLAINTIFF

March 4, 2019
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF UNION	)	CIVIL ACTION NO.: 2018-CP-44-
	)	
DWAYNE THOMPSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>COMPLAINT</u>
	)	<i>(Jury Trial Requested)</i>
	)	
ROLLING FOG VAPOR COMPANY,	)	
LLC, LG CHEM, LTD., and LG CHEM	)	
AMERICA, INC.,	)	
	)	
Defendants.	)	
	)	

The Plaintiff alleges:

1. That he is a resident of Union County, South Carolina.
2. That Defendant, Rolling Fog Vapor Company, LLC ("Rolling Fog"), is a domestic limited liability company with its principal place of business in Spartanburg County, South Carolina, and is engaged in the business of selling vapor accessories, e-liquids, lithium-ion rechargeable batteries including, but not limited to, the LG Brown Hg2 INR 18650 3000mAh ("subject battery") and other e-cigarette/vaporizer products.
3. That Defendant, LG Chem, Ltd. ("LG"), is a foreign corporation organized under the laws of Korea with its principal place of business in Seoul, South Korea, and is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing lithium ion rechargeable batteries including, but not limited to, the subject battery that forms the basis of this action.
4. The Defendant, LG Chem America, Inc., ("LGA"), is a foreign corporation organized under the laws of Delaware and is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing lithium ion

rechargeable batteries including, but not limited to, the subject battery that forms the basis of this action.

5. The subject battery was manufactured, designed, supplied, sold, imported and distributed by LG and LGA.

6. At all times mentioned herein, Defendants were engaged in the business of manufacturing, fabricating, designing, assembling, distributing, selling, inspecting, warranting, retailing, wholesaling, and advertising the e-cigarette products that the Plaintiff purchased and used.

7. LG and LGA have continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.

8. Each cause of action alleged against the Defendants arises out of a battery explosion in Spartanburg County, South Carolina, on July 27, 2018, that seriously and permanently injured the Plaintiff.

9. Plaintiff purchased the subject battery, which was manufactured, designed and imported by LG and LGA, from Defendant Rolling Fog's store located at 958 East Main Street in Spartanburg, South Carolina.

10. A case was not provided with the purchase of the subject batteries.

11. While at his place of employment located at 2155 S 2006, Spartanburg, South Carolina, the subject battery exploded and burst into flames in Plaintiff's right front pant pocket.

12. As a result of the explosion and the chemicals from the subject battery, Plaintiff sustained third degree burns on numerous portions of his body requiring skin grafts. He also suffered and continues to suffer permanent injury and/or disfigurement to his body, pain and

suffering, mental anguish, emotional distress, loss of wages and related medical, hospital and caretaking expenses.

13. Plaintiff's injuries and damages were due to and proximately caused by the negligent, reckless and careless conduct of the Defendants in the following particulars, for which the Defendants are liable:

FIRST CAUSE OF ACTION

(Negligence as to Defendant Rolling Fog Vapor Company, LLC)

14. The above allegations are incorporated as if repeated verbatim.
15. Plaintiff is informed and believes the Defendant was negligent, willful, wanton, careless, reckless and grossly negligent in the following particulars:
 - a. In selling a lithium-ion battery such as the subject battery that was designed and manufactured without a positive temperature coefficient thermistor or similar device to prevent rapid discharge when short circuited, leading to overheating and catastrophic failure;
 - b. In selling a battery that was designed and manufactured without internal temperature controls and/or protective circuitry;
 - c. In selling a battery with manufacturing defects present;
 - d. In selling a battery that was unreasonably dangerous for its foreseeable and intended use;
 - e. In selling a battery that failed to comply with generally accepted engineering safety standards applicable to lithium-ion batteries;
 - f. In failing to sell and market the subject battery with a package or container that would prevent short circuiting that could lead to rapid discharge, overheating, and catastrophic failure;
 - g. In failing to warn customers that the subject battery should not be stored in a pocket and that short circuiting of the battery could lead to catastrophic failure;
 - h. In failing to train personnel with regard to industry standards, proper use, and proper storage of the 18650 lithium-ion Hg2 batteries;

- i. In failing to provide adequate warnings and instructions to warn the users of the dangers associated with the use and failure of the lithium-ion Hg2 INR 18650 3000mAh batteries;
- j. In failing to warn of the defective condition of the subject battery; and
- k. In such other particulars as the evidence may establish.

SECOND CAUSE OF ACTION
(Negligence as to Defendants LG and LGA)

- 16. The above allegations are incorporated as if repeated verbatim.
- 17. Plaintiff is informed and believes the Defendants were negligent, willful, wanton, careless, reckless and grossly negligent in the following particulars:
 - a. In failing to include a positive temperature coefficient thermistor or similar device to prevent rapid discharge which short circuited, leading to overheating and catastrophic failure;
 - b. In failing to incorporate any other protection circuitry, current interrupt devices, or other protections against rapid discharge, overheating, and explosion;
 - c. In failing to sell and market the subject battery with a package or container that would prevent short circuiting that could lead to rapid discharge, overheating, and catastrophic failure;
 - d. In failing to warn consumers that the subject battery should not be stored in a pocket and that short circuiting of the subject battery could lead to catastrophic failure;
 - e. In failing to manufacture, design, assemble, test, instruct, warn, distribute, supply and/or sell the subject battery in such a condition so that it would operate safely as a reasonable consumer would expect;
 - f. In failing to manufacture, design, assemble, test, instruct, warn, distribute, supply and/or sell the subject battery in such a manner that it would not spontaneously explode;
 - g. In failing to manufacture, design, assemble, test, instruct, warn, distribute, supply and/or sell the subject battery in such a manner that it would not spontaneously heat and catch fire;

- h. In failing to provide reasonable and adequate warnings to the suppliers, purchasers and users of the subject battery to alert users about the dangerous conditions described herein; and
- i. In such other particulars as the evidence may establish.

THIRD CAUSE OF ACTION
(Strict Liability as to All Defendants)

- 18. The above allegations are incorporated as if repeated verbatim.
- 19. Defendants are engaged in the business of selling vaporizing products to the public, including selling the subject battery to the Plaintiff.
- 20. Defendants placed into the stream of commerce the subject battery, which was defective, unfit, and unreasonably dangerous to the intended users or consumers, including Plaintiff.
- 21. Plaintiff's injuries and damages occurred because the subject battery was designed, manufactured, imported, and sold by the Defendants in a defective condition that was unreasonably dangerous to the Plaintiff.
- 22. The subject battery was in the same or substantially the same condition as when sold by the Defendants and was being used in a reasonably foreseeable manner.
- 23. The Defendants sold the subject battery in an unreasonably dangerous and defective condition, and as a result, the Defendants are strictly liable, pursuant to S.C. Code Ann §15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

FOURTH CAUSE OF ACTION
(Breach of Warranty as to All Defendants)

- 24. The above allegations are incorporated as if repeated verbatim.
- 25. That by act, word, and/or deed at the time of sale, the Defendants made certain Express Warranties, certain Implied Warranties of Merchantability, and certain Implied

Warranties of Fitness for a Particular Purpose, regarding the subject battery, which was part of the basis of the bargain and/or which arose by operation of law.

26. Plaintiff rightfully and reasonably relied upon the warranties of the Defendants to his great detriment, injury, and damage.

27. The Defendants expressly and impliedly warranted at the time of sale that the subject battery was fit, safe, in good condition, of merchantable quality, and was fit for a particular purpose, namely a safe vaporizer battery, when in fact, the subject battery was unfit, unsafe, not of merchantable quality, and was not fit or suited for its particular purpose.

28. By reason of and in consequence of Defendants' breach of express and implied warranties, Plaintiff suffered the injuries and damages as set forth herein, for which the Defendants are liable.

29. In order to investigate this claim, Plaintiff will need access to certain information concerning the design and manufacture of the subject battery including, but not limited to, design specifications with change histories, design evaluations, chemistry, materials, and manufacture process. Some or all of this information may fall subject to a claim of trade secret. Without access to this information, Plaintiff will be substantially prejudiced in her investigation and proof of defect herein. Plaintiff believes that access to this information will likely lead to admissible evidence at the trial of this case.

WHEREFORE, Plaintiff prays for judgement against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

-signature page to follow-

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March 4, 2019
Hampton, South Carolina

EXHIBIT B

(Affidavit of Sung Han Ryu for LG Chem, Ltd.)



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[별지 제11호시식]

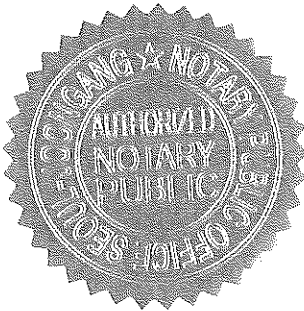
서울중앙 공증인 합동사무소

(전화) 02-3178-8201
(팩스) 02-3178-5511

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Registered No. 2019 - 847

NOTARIAL CERTIFICATE



NOTARY PUBLIC OFFICE
SEOUL-JOONGANG

floor 14 Sinsong Bldg

67, yeouinaru-ro, yeongdeungpo-gu, Seoul, Korea

210mm X 297mm
보존용지(1종) 70g/m²

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	
vs.	)	<u>AFFIDAVIT OF SUNG HAN RYU</u>
	)	
ROLLING FOG VAPOR COMPANY,	)	
LLC, LG CHEM, LTD., and LG CHEM	)	
AMERICA, INC.,	)	
	)	
Defendants.	)	
	)	



Personally appeared before me, Sung Han Ryu, who first being duly sworn, deposes and says:

1. I am over the age of eighteen and am competent to testify to the matters contained in this affidavit.
2. I am a Team Leader and authorized representative for Defendant LG Chem, Ltd. ("LG Chem"). I have personal knowledge of the facts described in this affidavit. If called upon as a witness, I could and would testify competently under oath as to all such facts based upon my personal knowledge and my review of the business records of LG Chem.
3. This affidavit is submitted in support of Defendant LG Chem's Motion to Dismiss and Quash Service of Process, and I have been authorized by LG Chem to execute this affidavit for this purpose.
4. LG Chem is a Korean company with its headquarters and principal offices in Seoul, South Korea.
5. LG Chem has never had an office in South Carolina.
6. LG Chem has never been registered to do business in the State of South Carolina, and has never sought qualifications to do business in South Carolina, or registered as a corporation with the South Carolina Secretary of State.
7. LG Chem has never owned or leased any real property in South Carolina.



8. LG Chem has never had a registered agent for the service of process in South Carolina.

9. LG Chem has never had a telephone number, post office box, mailing address, or bank account in South Carolina.

10. LG Chem has never paid income or property taxes in South Carolina.

11. LG Chem has no employees that reside or work in South Carolina.

12. LG Chem manufactures 18650 lithium-ion power cells for use in specific applications by sophisticated companies.

13. LG Chem does not design, manufacture, distribute, advertise, or sell 18650 lithium-ion power cells for use by individual consumers as replaceable, rechargeable batteries in electronic cigarette devices.

14. The type of battery identified in the complaint in this case is described as an “LG Brown Hg2 INR 18650 3000mAh.” If the subject battery identified in Plaintiff’s complaint was, in fact, an LG brand 18650 lithium-ion cell, the 18650 lithium-ion cell was not designed or manufactured in South Carolina.

15. Plaintiff alleges that he purchased the subject e-cigarette equipment and battery from Defendant Rolling Fog Vapor Company, LLC (“Rolling Fog”), which Plaintiff alleges is a “domestic limited liability company with its principal place of business in Spartanburg County, South Carolina.” Compl., ¶¶ 2, 9. LG Chem has no relationship with Rolling Fog. LG Chem does not direct or control the actions of Rolling Fog. LG Chem has never authorized Rolling Fog to advertise, distribute, or sell LG 18650 lithium-ion power cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices.

16. LG Chem has never authorized any distributor, wholesaler, retailer or re-seller to advertise, distribute or sell LG 18650 lithium-ion power cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices.

I, Sung Han Ryu, hereby declare under penalty of perjury that the foregoing statements made by me are true and correct. I am aware that if any foregoing statements made by me are willfully false, I am subject to punishment.

Executed this 24th day of April, 2019.

Ryu. Sung Han
Sung Han Ryu

SWORN to and subscribed before me

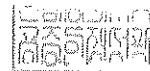
this 24th day of April, 2019.

(L.S.)

Notary Public for SEOUL JOONGANG
NOTARY PUBLIC OFFICE

S.K. CHUNG

My Commission Expires: 2024. 2



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NOTARIAL CERTIFICATE

SUNG HAN RYU -----

위 선서진술서 -----

에 기재된 유 성 한 -----

은 본 공증인의 면전에서 위 사서증서에
자기가 서명 - 한 것임을 자인하였다.

personally appeared before me and
admitted his(her) subscription to the
attached AFFIDAVIT OF SUNG HAN RYU.

2019년 04월 24일

이 사무소에서 위 인증한다.

This is hereby attested on this
24th day of Apr. 2019 at this office.



서울중앙 공증인 합동사무소

NOTARY PUBLIC OFFICE
SEOUL-JOONGANG

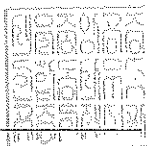
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공증인
정 성 광



Signature of the Notary Public

Sung Kwang Chung

본 사무소는 인가번호 제158호에 의거하여
2014년 01월 20일 법무부 장관으로부터
공증인 업무를 행할 것을 인가 받았다.

This office has been authorized by the
Minister of Justice, the Republic of
Korea, to act as Notary Public Since
20, Jan. 2014 Under Law No.158.

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EXHIBIT C

(Affidavit of HyunSoo Kim for LG Chem America, Inc.)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
DWAYNE THOMPSON,	)	Civil Action No. 2019-CP-44-00054
	)	
Plaintiff,	)	
	)	
vs.	)	<u>AFFIDAVIT OF HYUNSOO KIM</u>
	)	
ROLLING FOG VAPOR COMPANY,	)	
LLC, LG CHEM, LTD., and LG CHEM	)	
AMERICA, INC.,	)	
	)	
Defendants.	)	

Personally appeared before me, HyunSoo Kim, who first being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and am competent to testify to the matters contained in this Affidavit.

2. I am the Compliance Manager and authorized representative for LG Chem America, Inc. ("LGCAI"). I have personal knowledge of the facts described in this Affidavit, and I have been authorized by LGCAI to make this Affidavit. If called upon as a witness, I could and would testify competently under oath as to all such facts based upon my personal knowledge and the business records of LGCAI.

3. This affidavit is submitted in support of LGCAI's Motion to Dismiss for Lack of Personal Jurisdiction.

4. LGCAI sells and distributes various petrochemical materials and products including ABS resin, Engineered Plastic (EP), Rubbers, Acrylate, Super Absorbent Polymer (SAP), and Specialty Polymers. LGCAI does not have any manufacturing plants, and it focuses on sales and/or distribution only.

5. LGCAI is a Delaware incorporated entity with its principal place of business in the State of Georgia. It was incorporated in the State of Delaware on March 1, 2009.

6. LGCAI does not presently, nor has it ever owned, leased, rented, purchased, or controlled any property in the State of South Carolina.

7. LGCAI does not presently, nor has it ever maintained a bank account in the State of South Carolina.

8. LGCAI does not presently, nor has it ever maintained a mailing address, telephone, or telefax number in the State of South Carolina.

9. LGCAI has no employees that reside or work in South Carolina.

10. LGCAI does not and has never designed, manufactured, distributed, advertised, or sold any lithium-ion power cell for use by individual consumers as replaceable, rechargeable batteries in electronic cigarette devices.

11. Plaintiff Dwayne Thompson alleges he was injured while carrying a battery in his pants pocket. Compl., ¶ 11. Plaintiff identifies the subject battery as an "LG Brown Hg2 INR 18650 3000mAh." *Id.*, ¶ 2. If the subject battery identified in Plaintiff's Complaint was, in fact, an LG brand 18650 lithium-ion cell, the cell could not have been manufactured by LGCAI, as LGCAI does not have any manufacturing plants.

12. The Complaint alleges that Plaintiff Dwayne Thompson "purchased the subject battery . . . from Defendant [Rolling Fog Vapor Company, LLC]'s store located at 958 East Main Street in Spartanburg, South Carolina." Compl., ¶ 9. LGCAI has never conducted any business with Rolling Fog Vapor Company, LLC ("Rolling Fog"), and does not direct or control the actions of Rolling Fog. LGCAI has never authorized Rolling Fog to distribute or sell LG brand lithium ion battery cells for any purpose, and did not authorize Rolling Fog to distribute or sell LG branded lithium ion battery cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices.

13. LGCAI has never authorized any distributor, retailer, or re-seller to distribute or sell any lithium ion battery cells for use by individual consumers as replaceable, rechargeable batteries in e-cigarette devices.

I, HyunSoo Kim, hereby declare under penalty of perjury that the foregoing statements made by me are true and correct. I am aware that if any foregoing statements made by me are willfully false, I am subject to punishment.

Executed this 24th day of April, 2019.

HyunSoo Kim

SWORN to and subscribed before me

this 24th day of April, 2019.

David Hyun Kwak (L.S.)

Notary Public for _____

My Commission Expires: _____

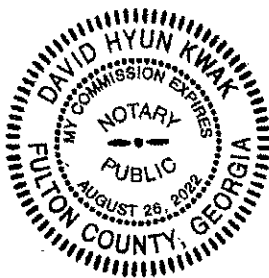


EXHIBIT D
(Mid-State Brief of Appellant)

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

The Honorable L. Henry McKellar
Circuit Court Judge

Case No. 90-CP-40-4980

Mid-State Distributors, Inc., ... Respondent,

vs.

Century Importers, Inc., Carlton and United
Breweries Limited, Molson Breweries U. S.
Holdings, Inc., Fosters Brewing Group
Limited, f/k/a Elders IXL, and Capital Wine
and Beverage Distributing Co. of Columbia,
Inc.

OF WHOM

Carlton and United Breweries
Limited, is..... Appellant.

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STATEMENT OF ISSUES ON APPEAL

1. Does § 36-2-803(1), S. C. Code of Laws, (1976) confer long arm jurisdiction over defendant Carlton and United Breweries Limited?
2. Are defendants Carlton and United Breweries' contacts with South Carolina sufficient to meet the Due Process requirements of fair play and substantial justice?
3. Was the lower court's ruling the result of bias and prejudice.

STATEMENT OF THE CASE

The Complaint in this case was filed on October 30, 1990, alleging that Respondent Mid-State Distributors, Inc.'s ("Mid-State") beer distributorship franchise was wrongfully terminated by defendant Century Importers, Inc. ("Century") in violation of Title 61, Chapter 9 of the South Carolina Code of Laws (1976). An Amended Summons and Complaint was served on December 28, 1990, naming Appellant Carlton and United Breweries ("Carlton") as a defendant. On February 7, 1991, Carlton filed a Motion To Dismiss on the grounds of lack of jurisdiction over the person.

A Second Amended Summons and Complaint was subsequently served. On April 14, 1992, Carlton refiled its Motion to Dismiss for lack of jurisdiction over the person, with the attached Affidavit of K. R. Carnie, dated January 16, 1991.

Carlton's Motion To Dismiss was heard on April 20, 1992. The Order denying the motion was filed on April 21, 1992. Carlton's Notice Of Appeal was served on April 29, 1992.

29939.1-BR (J_H) 015460-1

STATEMENT OF FACTS

The facts of this case are not in dispute. (See transcript of representations of counsel made to trial court during argument on motion to dismiss.)

Carlton, an Australian corporation, produces Fosters Lager beer in Australia. (Affidavit of K. R. Carnie, dated January 16, 1991) It originally entered into a contract with All Brand Importers, Inc., a foreign corporation, ("All Brand") giving it the right to import its product into the United States. All Brand, in turn, contracted with Mid-State to distribute Fosters Lager in central South Carolina.

Subsequently, All Brand was acquired by Guinness, which brewed a product which was a major competitor to Fosters Lager. Because of the competitive situation, Carlton terminated its relationship with All Brand and contracted with Century Importers, Inc., a Virginia corporation, ("Century") to become its United States importer.

Century did not choose Mid-State as its central South Carolina distributor of the Fosters product. Instead it contracted with Capital Wine and Beverages Distributing Co. of Columbia, Inc. ("Capital") to distribute its product. As a result, Mid-State instituted this action to retain its former distribution rights.

Carlton does not conduct any business in the State of South Carolina, has not qualified to do business in South Carolina, has no property, real or personal, in South Carolina and has no other contact with the State of South Carolina; further, no

officer, employee, representative or agent of Carlton has ever had any contractual relationship with Mid-State; and all of its Fosters products are produced outside of the United States. (Affidavit of K. R. Carnie, dated January 16, 1991).

ARGUMENT

THE TRIAL COURT ERRED IN DENYING CARLTON'S MOTION TO DISMISS FOR LACK OF JURISDICTION OVER THE PERSON

The party seeking to invoke personal jurisdiction against a foreign corporation by utilization of South Carolina's long-arm statute has the burden of establishing jurisdiction. Aviation Associates And Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 402 S.E.2d 177, 178 (1991); White v. Stephens, 300 S.C. 241, 387 S.E.2d 260, 262 (1990). In the instant case, Mid-State failed to meet this burden. The lower court's determination that the court had jurisdiction over Carlton, therefore, is not supported by the evidence and is manifestly controlled by error of law. Hammond v. Cummins Engine Co., 287 S.C. 200, 336 S.E.2d 867, 869 (1985); Askins v. Firedoor Corp. of Florida, 281 S.C. 611, 316 S.E.2d 713, 715 (1984).

At the pre-trial stage of determining jurisdiction, the plaintiff must make a prima facie showing of jurisdiction "by his pleadings and affidavits that the trial court should exercise jurisdiction." Aviation supra, at 178-79. See also, Springmasters, Inc. v. D & M Manufacturing, 303 S.C. 528, 402 S.E.2d 192, 193 (Ct. App. 1991). As Mid-State filed no affidavits in response to Carlton's motion, the record was limited to the allegations of Mid-State's Second Amended

Complaint in determining whether Mid-State successfully met its burden of making a prima facie showing of jurisdiction. The Second Amended Complaint alleges personal jurisdiction over Carlton on the grounds that Carlton "is a corporation organized and existing under the laws of the Commonwealth of Australia, and distributing goods, to wit: Fosters Lager beer, with the reasonable expectation and intention that those goods are to be consumed in South Carolina." (Second Amended Complaint, paragraph 2). For the reasons set forth hereinbelow, the fact that the beer brewed by Carlton is sold to an importer, who in turn sells it, among other places, in South Carolina is not sufficient contact with South Carolina to subject Carlton to the jurisdiction of South Carolina's courts for the purpose of determining the relationship between its independent importer and a South Carolina beer wholesaler.

In determining whether personal jurisdiction can be exercised over a nonresident, "the first step is whether the nonresident's conduct meets the requirements of the South Carolina long-arm statute; and if so, whether, under the particular circumstances, a finding of minimum contact comports with 'traditional notions of fair play and substantial justice.'" Clark v. Key, ____ S.C. ____, 405 S.E.2d 599, 600 (1991). Carlton's conduct neither meets the requirements of the South Carolina long-arm statute, nor does it form the basis for a finding of minimum contract with the State for personal jurisdictional purposes.

- A. § 36-2-803(1), South Carolina Code of Laws, 1976, does not confer long-arm jurisdiction over Carlton.

§ 36-2-803(1) states in pertinent part that:

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's....

- (h) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed. (emphasis added)

Plaintiff's cause of action is not based upon any damages flowing from Carlton's product. Rather, its cause of action is based upon alternative theories; (a) pursuant to the terms of §61-9-1010(1)(b), South Carolina Code of Laws, 1976, Century may not terminate Mid-State's contractual relationship with All Brand (Carlton's initial U.S. importer); (b) Century entered into a new distribution contract with Mid-State which is protected from termination by the provisions of §61-9-1010(1)(b). Hence, Mid-State's cause of action does not arise from Carlton's brewing of Fosters Lager, but from a controversy between Mid-State and Century as to whether Mid-State is entitled to distribute it in central South Carolina.

- B. The exercise of personal jurisdiction over Carlton by the State of South Carolina would violate the traditional notions of fair play and substantial justice required by the Due Process Clause of the Fourteenth Amendment.

In order for the courts to have statutory authority to exercise jurisdiction, the nonresident must have sufficient contacts with South Carolina so that the constitutional

standards of due process are not violated. White v. Stephens, 300 S.C. 241, 387 S.E.2d 260, 262 (1990). These contacts must be generated by the defendant and not the unilateral actions of some other entity. Aviation at 180. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490, 501 (1980); Helicopteros Nacionales v. Hall, 466 U.S. 408, 417, 104 S.Ct. 1868, 1873, 80 L.Ed. 404, 412 (1984) ("unilateral activity of another party or a third person is not an appropriate consideration"). The contacts unilaterally generated by other entities must therefore be excluded when conducting an analysis of Carlton's minimum contacts with South Carolina.

It is therefore necessary to separate from the analysis of Carlton's minimum contacts the contacts generated by All Brand and Century. Fosters Lager beer is sold in Australia by Carlton to a United States importer (previously All Brand, and now Century). The United States importer then markets and distributes the product throughout the United States through a network of distributors. The U.S. importer, therefore, and not Carlton, contracts with, and sells Fosters Lager to, the South Carolina distributors. Carlton has never had a contractual relationship with Mid-State and has never sold anything to Mid-State. (Affidavit of K. R. Carnie, dated January 16, 1991). Thus, Carlton is not a party to the franchise agreement between All Brand and Mid-State or to any agreement which Century allegedly entered into with Mid-State, which are the alternative bases of Mid-State's Complaint.

Mid-State's contention that Carlton's minimum contacts are established because Carlton and Century are related entities¹ is without merit. Yarborough & Co. v. Schoolfield Furniture Industries, Inc., 275 S.C. 151, 268 S.E.2d 42, 44 (1980). In Yarborough, this Court held that the "acquisition and control of a domestic subsidiary's capital stock does not subject the foreign parent to jurisdiction of that State's courts," See also, Cannon Manufacturing Co. v. Cudahy, 267 U.S. 333, 45 S.Ct. 250, 69 L.Ed. 634 (1924). A fortiori, if a direct ownership interest in a domestic corporation is not sufficient minimum contact to justify in personam jurisdiction for the parent corporation, the tenuous connection existing between Carlton and Century does not. (Carlton's parent owns a company, which is a partner in a company, which owns a company, which owns Century.)

Four factors should be considered in determining whether due process will be offended by imposing jurisdiction over a non-resident defendant:

- (1) The duration of the activity of the nonresident within this State;
- (2) The character and circumstances of the commission of the nonresident's acts;

¹ Defendant Foster's Brewing Group Limited owns Carlton. Foster's Brewing Group Limited also has an interest in Defendant Century through the following chain of entities: Foster's Brewing Group Limited owns Carling, which is a partner in Molson Canada, which owns an Ontario Numbered Company, which owns Molson USA, which owns Defendant Century.

(3) The inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and

(4) The state's interest in exercising jurisdiction.

Clark v. Key, ___ S.C. ___, 405 S.E.2d 599, 601 (1991); White v. Stephens, 300 S.C. 241, 387 S.E.2d 260 (1990); Colite Industries v. G.W. Murphy Const., 297 S.C. 426, 377 S.E.2d 321 (1989).

Applying these factors to the instant case, the imposition of personal jurisdiction over Carlton offends the notions of fair play and substantial justice.

a. The duration of the activity of the nonresident within this state.

Carlton conducts no activities in South Carolina. The United States importer (All Brand, then Century), not Carlton, contracted with, and sold beer to, the local distributors. "(U)nilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts...." Helicopteros, 466 U.S. at 417, 104 S.Ct. at 1873.

b. The character and circumstances of the commission of the nonresident's acts.

The record is barren of the commission of any act in South Carolina by Carlton which is the basis of this litigation. Every business transaction and activity related to this litigation arose in South Carolina solely between Mid-State and Century, not Carlton.

- c. The inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident.

There is no inconvenience to Mid-State if the Court does not confer jurisdiction over Carlton. It can obtain complete relief from the allegations of its complaint relative to its rights under its franchise agreement with All Brand or, in the alternative, under its alleged franchise agreement with Century, without Carlton's presence. The fact that Carlton brews Fosters Lager and sells it to Century for importation into the United States in no way impinges on Mid-State's relationship, or lack thereof, with Century.

On the other hand, to require Carlton, an Australian corporation, with its principal place of business there, to defend a quarrel between Mid-State and Century in South Carolina would not only be inconvenient, but totally unnecessary.

In Asahi Metal Industry Co. Limited v. Superior Court of California, Solano County, 480 U.S. 102, 107 S.Ct. 1026, 1033, 94 L.Ed.2d 92 (1987), a tire valve stem manufactured by Asahi in Japan was involved in a motorcycle accident in California. The Supreme Court concluded that Asahi's burden of traveling from Japan to California and being forced to defend in a foreign legal system outweighed both the State's and plaintiff's interests of having the dispute resolved in California. "The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal

jurisdiction over national borders." See also, Parry v. Ernst Home Center Corp., 779 P.2d 659 (Utah 1989). In the instant case where, unlike Asahi, Carlton's product has no causal relationship with Mid-State's complaint, which is its dispute with Century over the right to sell the product, the burden of forcing Carlton to defend a suit in South Carolina, in which complete relief is available to the plaintiff in Carlton's absence, far outweighs whatever tenuous benefits Mid-State could conceivably receive by forcing Carlton to remain a party.

d. The state's interest in exercising jurisdiction.

South Carolina has no interest in exercising jurisdiction over Carlton where it can afford the interested parties complete relief in its absence.

c. The Lower Court's Ruling Was Incorrectly Based On Judicial Bias And Prejudice.

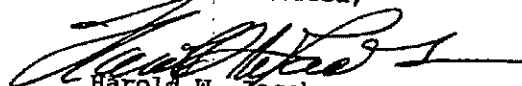
The trial court incorrectly denied Carlton's motion on the basis of prejudice and bias as evidenced the following commentary from the Bench:

"Well about ten years ago, the Australian courts ruled that they had personal jurisdiction over SCN. So if Australia has got jurisdiction over SCN, we've got jurisdiction over Fosters." (Transcript 14/9-12).....If Australia has got jurisdiction over South Carolina corporations, we've got jurisdiction over Australian corporation. I may be wrong, but I will be right for a year." (Transcript 21/3-8).

CONCLUSION

For the reasons set forth above, Mid-State failed to meet its burden of establishing jurisdiction over Carlton and the lower court's denial of its motion to dismiss, as a result, was without support in the evidence and was manifestly controlled by error of law. The lower court's Order should, therefore, be reversed.

Respectfully submitted,


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August 5, 1992

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

The Honorable L. Henry McKellar
Circuit Court Judge

Case No. 90-CP-40-4980

Mid-State Distributors, Inc., ... Respondent,

vs.

Century Importers, Inc., Carlton and United
Breweries Limited, Molson Breweries U. S.
Holdings, Inc., Fosters Brewing Group
Limited, f/k/a Elders IXL, and Capital Wine
and Beverage Distributing Co. of Columbia,
Inc.

OF WHOM

Carlton and United Breweries
Limited, is Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Initial Brief of
Appellant on all parties by causing a copy of same to be
deposited in the United States Mail, proper postage prepaid,
this 5th day of August, 1992, addressed to their attorneys of
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EXHIBIT E
(Mid-State - Brief of Respondent)

Entire Brief of
Respondent
Mid-State Distributors Inc.
Century's Importers and
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**COUNTERSTATEMENT OF
QUESTIONS PRESENTED**

I.

IS THE ORDER APPEALABLE?

II.

**WHERE THE AUSTRALIAN BREWER SHIPS ITS
PRODUCT DIRECTLY INTO SOUTH CAROLINA
FOR SALE BY FRANCHISED DISTRIBUTORS TO
RETAILERS AND THENCE TO THE CONSUMER,
DOES A SOUTH CAROLINA COURT HAVE
PERSONAL JURISDICTION OF THE BREWER IN
A SUIT ARISING OUT OF THE TERMINATION OF
A DISTRIBUTOR'S FRANCHISE?**

STATEMENT OF THE CASE

This is an action to vindicate plaintiff's statutory rights as wholesale distributor of Foster's Lager Beer in central South Carolina. One of the defendants, Carlton & United Breweries, Ltd., is the Australian brewer of Foster's. Carlton & United was brought into the case in December 1990. In its second amended complaint plaintiff sought, among other things, a declaration "that plaintiff is protected as a franchised beer wholesaler of Foster's Lager Beer within the meaning of §§ 61-9-1020 and -1021, S.C. Code Ann. (1990); and *** that the attempted termination of plaintiff's franchise was and is null and void *** ." [Complaint, pp. 8-9.] Plaintiff further sought "a permanent injunction prohibiting the defendants from terminating plaintiff's franchise, and enjoining defendants from supplying plaintiff's customers through other distributors or by other means *** ." Carlton & United moved to dismiss in February 1991. The motion was refiled in April 1992, supported by the same January 1991 affidavit as was the original motion. The motion was not heard until April 1992, and was denied.

This interlocutory appeal followed, delaying the trial of this action, already eighteen months old when the motion to dismiss was heard and denied.

STATEMENT OF FACTS¹

Plaintiff ("Mid-State") is a Columbia beer distributor. This controversy concerns Mid-State's claim to possess a protected franchise right to sell Foster's Lager Beer, an Australian product, at wholesale in central South Carolina.

Foster's Brewing Group, Ltd. ("Foster's Group") is an Australian holding company which owns the appellant, Carlton & United Breweries, Ltd. ("Carlton & United"). Carlton & United is an Australian corporation which brews Foster's Lager Beer. Through an international chain of subsidiaries, Foster's Group also owns a beneficial half-interest in a Virginia-based corporation, Century Importers, Inc. ("Century").² Century is the importing arm of Molson USA, which is the U. S. operating division of Molson Breweries of Canada, which is effectively half-owned by Foster's Group of Australia.

¹ Before the court as part of the case file at the hearing of the motion to dismiss was the earlier order denying defendant Century's motion for summary judgment. [See Tr. 7, lines 18-21, drawing the court's attention to the order denying summary judgment.] The summary judgment order was based upon numerous depositions. [See Order of December 12, 1991, at p. 1.] The order denying summary judgment contains numerous findings of fact, and findings of genuine issues of material fact, relevant to Carlton & United's motion to dismiss. The order denying summary judgment, appearing at pages ____ of the Record on Appeal, is freely borrowed from in this Statement of Facts.

² Foster's Group owns Carling, which is a partner in Molson Canada, which owns an Ontario Numbered Company, which owns Molson USA, which owns Century. Thus, Carlton & United, the brewer, is wholly owned, and its sister corporation, Century, the importer, is beneficially half-owned by Foster's Group, an Australian holding company. [See Complaint, ¶¶ 4-5.]

Century is the "registered producer" of Foster's Lager Beer in South Carolina under the South Carolina Beer Wholesalers Act of 1974.³ Century assumed that role when Carlton & United, the brewer, terminated the importation rights of the previous importer. Until April 1, 1990 Foster's Lager Beer was imported into the United States from Australia by All Brand Importers, Inc. Mid-State was All Brand's duly appointed franchisee for Foster's Lager Beer in central South Carolina, and as such enjoyed the protection of the Act. In early 1990, All Brand was taken over by the Guinness brewing interests of the United Kingdom. Not wanting the importation of its products to be handled by Guinness -- a competitor -- Carlton & United terminated its importation agreement with All Brand. Carlton & United thereupon appointed its half-sister, Century, as the new importer. Century named Capital Wine and Beverage Company of Columbia, Inc., as its Foster's distributor in central South Carolina.

Mid-State brought this action to enjoin Century and Carlton & United from terminating Mid-State's franchise, and for a declaration, binding upon Carlton & United, that Mid-State is the statutorily protected distributor of Foster's Lager Beer in central South Carolina.

Mid-State contends that Century recognized Mid-State as its franchisee following Century's appointment as importer. [Complaint, ¶¶ 13-14.] Moreover, Mid-State contends that its statutory franchise protection extends to the case where a foreign brewer,

³ S.C. Code Ann. §§ 61-9-1010, et seq. (Supp. 1991).

such as Carlton & United, jettisons an independent importer and thereafter imports the beer itself, either directly or through a related entity, regardless of whether a new franchise contract is thereafter substituted for the previous one.

Four months before Carlton & United brought on its motion to dismiss for a hearing, the court had determined, on Century's summary judgment motion, that there existed a genuine issue of material fact as to whether Mid-State's franchise was reconfirmed by Century after it took over the importation of Foster's. [Order of December 12, 1991.] The summary judgment court had further held that the beer franchise protection afforded by the statute cannot be circumvented by the foreign brewer's termination of the previous importer and taking over the importation itself or by appointing a related entity. In denying summary judgment, the court observed:

Mid-State held the Foster's Beer franchise in central South Carolina while an independent importer, All Brand, was bringing in the beer from Australia to South Carolina. Mid-State was the only person authorized to sell Foster's Beer at wholesale within the confines of its franchised area. It is this exclusive right to sell the product at wholesale which is at the heart of the franchise. The Australian brewer can change importers as it wishes, or can even dispense with an independent importer and import the product itself (or vicariously), as was done here; but the franchise of Mid-State to sell Foster's Beer at wholesale in central South Carolina remains the object of statutory protection, regardless of what middlemen may stand between the foreign brewer and the local wholesale franchisee.

Since Mid-State's franchise exists independently of any specific agreement between Mid-State and Century, § 61-9-1010 prohibits the manufacturer, acting alone or through a related corporation -- the new importer, Century --

from terminating Mid-State's franchise without just cause.

[Order of December 12, 1991 at _____.]

Century, the Virginia importer, beneficially half-owned by the same Australian holding company which owns the brewer, receives orders from its 460 American distributors and places each such order directly with the brewer, Carlton & United, in Australia. Each order is individually filled by shipment direct to the port of entry closest to the distributor.⁴ Each order by an American distributor (e.g., Mid-State) is shipped from Australia by Carlton & United specifically to fill the order of the American distributor. [Tr. 16, line 25, through p. 17, line 12.]

⁴ Depositions which confirm the method of sale were filed earlier in connection with the summary judgment motion. They were not specifically refiled at the hearing of the motion to dismiss, but the substance of the testimony was represented to the court by counsel. See Alston v. Blue Ridge Transfer Co., ____ S.C. ____, 417 S.E.2d 631 (Ct. App. 1992). Appellant says that the facts so represented are undisputed [Brief at 2]; and so they are, except for the contrary statement of counsel for Carlton & United's codefendant, Capital Wine and Beverage. Century does not, as suggested by Capital's counsel at the hearing below, purchase a stock of beer from Australia, then warehouse the beer and sell it to the American distributors as they call for it. Capital was not privy to the motion being heard and had no right to address the court in regard to the motion, in any event.

ARGUMENT

I.

The order denying Carlton & United's motion to dismiss is only preliminary. The motion can be renewed and finally determined at trial. The order is not appealable.

The Court has heard a number of direct appeals from orders denying Rule 12(b)(2) motions to dismiss, but the undersigned cannot find a case where the appealability of such orders was challenged. It appears to respondent that 12(b)(2) denials do not fit the description of immediately appealable orders. By analogy, orders denying motions to dismiss under Rule 12(b)(6) are not directly appealable, except under extraordinary circumstances. Moyd v. Johnson, 289 S.C. 482, 347 S.E.2d 97 (1986); Bowen & Smoot v. Plumlee, ___ S.C. ___, 417 S.E.2d 855 (1992).

These preliminary jurisdictional rulings under the long-arm statute do not involve the merits.⁵ See generally Link v. School District of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990). In fact, they are unrelated to the merits. They represent a procedural skirmish in a wider war. Nor do Rule 12(b)(2) denials affect a substantial right thereby determining the action, as that key

⁵ "The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits *** ." S.C. Code Ann. § 14-3-330(1) (1976).

phrase is used in the appellate jurisdiction statute,⁶ since the ruling is preliminary only.

At this pretrial stage of determining jurisdiction, the respondents need only make a prima facie showing by pleadings and affidavits that the trial court should exercise personal jurisdiction ***.

Allen v. Columbia Financial Management, Ltd., 297 S.C. 481, 377 S.E.2d 352 (Ct. App. 1988), citing Askins v. Firedoor Corp., 281 S.C. 611, 316 S.E.2d 713 (Ct. App. 1984). Accord: Aviation Associates v. Jet Time, Inc., 303 S.C. 502, 402 S.E.2d 177 (1991); White v. Stephens, 300 S.C. 241, 387 S.E.2d 260 (1990). The final determination of personal jurisdiction awaits trial. The preliminary, nonfinal quality of an order denying a Rule 12(b)(2) motion to dismiss is shown by the fact that the *unsworn* allegations of the complaint are properly to be weighed in favor of jurisdiction at this early stage. Springmasters, Inc. v. D & M Mfg. Co., 303 S.C. 528, 402 S.E.2d 192 (Ct. App. 1991). A *final* determination in favor of personal jurisdiction could not rest upon unsworn allegations, inadmissible to prove anything at any other stage of the case. The denial of a 12(b)(2) motion is simply a conclusion that enough has been shown preliminarily to require the case to progress toward trial.

⁶ "The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action ***." S.C. Code Ann. § 14-3-330(2) (1976).

Denials of these motions are not appealable in the federal system, from whence our rule was taken. Cf. In re Heddendorf, 263 F.2d 887 (1st Cir. 1959) (federal appellate court might rarely accept discretionary appeal from order denying motion to dismiss for lack of jurisdiction if new issue of law involved).

Here, the motion was not heard for fourteen months after it was first filed. By then the case was eighteen months old and was almost up for trial. To allow an interlocutory appeal will make this case more than two years old by the time it gets to trial.

Appeals from these 12(b)(2) denials, if routinely allowed, will rise exponentially as South Carolina's economy converges with those of our more-industrialized sisters and interstate parties become more the rule than the exception. Not one in ten of these jurisdictional questions would raise its head if these cases were allowed to progress to judgment in normal course without expensive, dilatory interlocutory appeals.⁷

The circuit court's denial of the motion is presumptively correct. Dicks & Gillam, Inc. v. Cleland, 295 S.C. 124, 367 S.E.2d 430 (Ct. App. 1988). The great majority of pretrial orders are unappealable. Real prejudice from the denial of a 12(b)(2) motion can always be cured in an appeal from final judgment, where the factual record is more full. By that time the issue of personal

⁷ These 12(b)(2) denial appeals will increasingly clog the appellate dockets. Our judiciary already needs a third panel for the Court of Appeals but seems unlikely to get it in this century. Surely, the appellate jurisdiction statute should not be expansively interpreted so as to encourage unnecessary interlocutory appeals under such conditions.

jurisdiction will have been resolved by trial, with live witnesses, cross-examination, discovery, and all the tools designed to ferret out the truth -- not by self-serving affidavits which can seldom be impeached by the adverse party.⁸

This appeal should be dismissed so that the case can proceed immediately to trial. Carlton can reinstate its appeal following judgment if the final determination of personal jurisdiction is the same as was the court's preliminary determination.⁹

II.

Carlton & United is subject to suit in South Carolina.

The Australian brewer is subject to suit in South Carolina under the long-arm statute.¹⁰ Its amenability to suit here does not offend traditional notions of fair play and substantial justice.¹¹

⁸ For example, Carlton & United's affidavit makes no reference to the fact that it fills each South Carolina distributor's order by individualized shipment to that distributor by boat from Melbourne to Charleston (or the closest other port possible).

⁹ Carlton & United appears to say at points in its brief that Mid-State seeks no relief against it, and that the real fight is between Mid-State and Century, the importer. On the contrary, Mid-State seeks and needs a declaration binding upon the Australian brewer, the *real* party in interest, that Mid-State's franchise to distribute Foster's Lager Beer in the midlands cannot be circumvented by changing importers in the manner done here. Unless the Australian brewer is bound by the judgment to be entered in this case, the same manipulation could be repeated at any time.

¹⁰ S.C. Code Ann. § 36-2-803 (1976).

¹¹ International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 310, 90 L.Ed. 867 (1945).

Two subsections of the long-arm statute apply here: the "distribution of goods" provision,¹² and the "transaction of business" provision.¹³

A. This case arises out of the Australian brewer's distribution of beer into South Carolina.

A South Carolina distributor orders, say, 400 cases of Foster's Lager Beer from the importer, Century -- the Australian brewer's half-sister. The importer FAXes the order to Melbourne, Australia, where the brewer fills the order by shipping 400 cases of Foster's on the next ship to Charleston.

If one of those cans of Foster's Lager Beer were unwholesome, and caused injury to the ultimate consumer, there is no doubt that Carlton & United would be subject to suit in South Carolina under the long-arm statute at the instance of the injured victim. The case at bar arises, not from a single bad bottle of beer, but from a long-established course of business in which tens of thousands of bottles of beer are shipped into South Carolina by the Australian brewer. The question is: which Columbia distributor has the franchise to make those purchases and to resell the beer at

¹² "A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's (h) *** distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed." S.C. Code Ann. § 36-2-803(1)(h) (1976).

¹³ "A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's (a) transacting business in this State *** ." S.C. Code Ann. § 36-2-803(1)(a) (1976).

wholesale? The flow of beer from Australia to South Carolina is the *sine qua non* of the suit. If Carlton & United were to stop distributing beer into South Carolina, there would be no suit, for there would be no franchise to fight over. This suit "arises from" the distribution of its product by the Australian brewer in South Carolina, just as surely as would the suit of a consumer injured by a single unwholesome bottle of beer.

Moreover, Carlton & United's shipment of thousands of cases of Foster's Lager Beer over many years into South Carolina is the transaction of business here, within the long-arm statute's meaning. Carlton puts a specific quantity of beer on a boat in Melbourne to fill a particular order of a franchisee in Columbia. It makes no difference whether the consignee's name on the shipping label is Mid-State or is Century Importers. The order is specifically earmarked and bound for Mid-State in Columbia. We are not talking about an isolated transaction but a steady course of commerce extending over many years. This is the transaction of business for purposes of the jurisdiction of our courts.

B. Due process is not offended by holding the Australian brewer to suit in South Carolina, where it ships Foster's Lager Beer for resale by Foster's franchisees for consumption by South Carolina residents.

Carlton & United labels this case as a "stream of commerce" case, and contends that a manufacturer cannot be held to suit in a State of the Union solely on the basis of its placement of its product into the stream of commerce, from whence it ends up in a particular jurisdiction.

The United States Supreme Court has not said the final word on the "stream of commerce" cases, as shown by its 4-4-1 decision in its most recent effort on the subject, Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987). But this is not a "stream of commerce" case in the line of those cases relied upon by Carlton & United. "Stream of commerce" cases typically involve the manufacturer of a *component part* of a chattel. The component part is sold to the manufacturer of the finished product, who then sells it where desired. The component part manufacturer may not even know where the final product is going. The component part manufacturer may have done nothing to avail itself of the benefits of the laws of the remote jurisdiction. The "availment" concept has been central to some of the post-*International Shoe* decisions of the U.S. Supreme Court in this area, most particularly Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). See also Hanson v. Denkla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958).

Even the manufacturer or distributor of the finished product may not be subject to suit in a remote jurisdiction where its product surfaces by random chance. See, e.g., World-Wide Volkswagen v. Woodson, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). Asahi and World-Wide Volkswagen are true "stream of commerce" cases, and the final word has yet to be written there.¹⁴

¹⁴ The weight of scholarly thought favors stream of commerce jurisdiction. Asahi was criticized by a number of legal writers, see, e.g., U.S.C. Professor Stravitz' article, "Sayonara to Minimum Contacts: Asahi Metal Industry Co. v. Superior Court," 40 S.C.L.Rev. 729 (continued...)

The instant case, by contrast, is not a "stream of commerce" case in the usual sense -- where a remote manufacturer's products "end up" in the forum State.¹⁵ Carlton & United is not like the Japanese valve manufacturer in Asahi whose valves ended up in a California motorcycle, nor like the New York distributor in World-Wide Volkswagen, one of whose cars, sold in New York, eventually was involved in a collision in Oklahoma.¹⁶ Carlton & United regularly ships Foster's Lager Beer directly into South Carolina for distribution by Foster's franchisees to retailers, thence to be sold to and consumed by South Carolina customers. When Carlton

¹⁴(...continued)
(1988), since admittedly that case appears to step back somewhat from the stream-of-commerce theory so broadly accepted in the State and lower federal courts. See, e.g., Gray v. American Radiator & Standard Sanitary Supply Corp., 176 N.E.2d 761, 766 (Ill. 1961), the leading "stream of commerce" case, cited with approval twice by the U.S. Supreme Court before Asahi. See 40 S.C.L.Rev. 729, 791. See also In re San Juan Dupont Plaza Hotel Fire Litigation, 742 F.2d 717, 721 (D.P.R. 1990); International Harvester Co. v. Henrickson Mfg. Co., 459 S.W.2d 62, 65 (Ark. 1970), citing Comment, "In Personam Jurisdiction Over Nonresident Manufacturers in Product Liability Actions," 63 Mich.L.Rev. 1028 (1965).

¹⁵ U.S. Supreme Court decisions have differentiated between "a case involving goods which reach a distant state through a chain of distribution and a case involving goods which reach the same state because a consumer *** took them there." World-Wide Volkswagen v. Woodson, 444 U.S. 286, 306-07 (1980) (Brennan, dissenting). Justice White, for the majority in World-Wide Volkswagen, said: "The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." 444 U.S. at 297-98.

¹⁶ But see Parker v. Fireman's Ins. Co., 297 S.C. 166, 375 S.E.2d 325 (Ct. App. 1988) (insurer knew that carnival's vehicles would traverse the eastern seaboard, including South Carolina; long-arm jurisdiction confirmed under the "insure a South Carolina risk" subsection).

& United loads an order in Melbourne bound for Charleston, it knows, expects, intends, hopes and believes that South Carolinians will buy and consume those very bottles of beer. These sales and the resulting profits to Carlton & United could never take place without the operation of South Carolina law at every step to order and protect the merchandising process.¹⁷ Carlton has availed itself of South Carolina law by taking advantage of the opportunity to sell its product here.

The South Carolina Supreme Court has formulated a four-part analysis of the facts of each case to see whether traditional notions of fair play and substantial justice are offended by holding a nonresident to suit in the courts of this State. These are: (1) the duration of the nonresident's activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties of litigating here as opposed to some other jurisdiction; and (4) the State's interest in adjudicating the controversy here. Aviation Associates v. Jet Time, Inc., 303 S.C. 502, 402 S.E.2d 177 (1991); Clark v. Key, ___ S.C. ___, 405 S.E.2d 599 (1991).

¹⁷ "A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether that participant directly conducts business in the forum State, or engages in additional conduct directed toward that State." Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102, 117 (1987) (per Brennan, J., for four members of the Court).

a. Duration of conduct.

This case is not about a single, isolated sale.¹⁸ It is about the right to distribute the appellant's product in central South Carolina over an indefinite course of future time. Carlton & United has been exporting Foster's Lager Beer to South Carolina since at least 1983. Mid-State was the Columbia distributor from then until 1990 when the new importer, a half-owned subsidiary of Foster's Brewing Group of Australia, attempted to terminate Mid-State's franchise. [Complaint, ¶ 10.]

This is a steady, long-standing course of conduct by Carlton & United directed at the consumers of South Carolina. The number of bottles and cans of Foster's Lager Beer brewed by Carlton & United in Australia and shipped by it to South Carolina for consumption in South Carolina is not of record; but clearly it would be a vast number indeed.

b. Character and circumstances of the nonresident's conduct.

By this is meant the extent to which the nonresident defendant has purposefully availed itself of the privilege of conducting business in South Carolina. See Aviation Associates v. Jet Time, Inc., 303 S.C. 502, 402 S.E.2d 177 (1991).

Carlton & United's sales to South Carolina are not random, not fortuitous, not attenuated. See Hammond v. Butler, Means, Evins & Brown, 300 S.C. 458, 388 S.E.2d 796 (1990), citing Keaton v.

¹⁸ See, by contrast, Aviation Associates v. Jet Time, Inc., 303 S.C. 502, 402 S.E.2d 177 (1991).

Hustler Magazine, Inc., 465 U.S. 770, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984). They are planned, regular, deliberate. Most of the larger supermarkets in urban South Carolina carry Foster's Lager Beer on their shelves for sale to South Carolina consumers, shipped here by Carlton & United expressly for sale in this State. These sales are consummated through the medium of an American importer -- which is now beneficially half-owned by the same Australian company which owns the brewer, Carlton & United.¹⁹ But the presence of an importer -- even an independent importer, which Century is not -- does not obscure the basic fact that this Australian firm is selling beer destined from the moment it is brewed to be drunk by people in South Carolina.

When a non-resident purposefully directs activities at the forum jurisdiction, and it seeks to defeat jurisdiction, it must present a compelling case that the forum should not exercise jurisdiction.

Springmasters, Inc. v. D & M Mfg. Co., 303 S.C. 528, 534, 402 S.E.2d 192 (Ct. App. 1991), citing Allen v. Columbia Financial Management, Ltd., 297 S.C. 481, 377 S.E.2d 352 (Ct. App. 1988).

c. Inconvenience.

Carlton argues (Brief at 9) that it is entitled to special consideration because, as a foreigner, it is inconvenienced by being sued in America. The case law does not support that

¹⁹ "If International Shoe stands for anything, *** it is that a truly interstate business may not shield itself from suit by a careful but formalistic structuring of its business dealings." Vencedor Mfg. Co. v. Gougler Industries, Inc., 557 F.2d 886, 891 (1st Cir. 1977).

proposition. The dicta in Asahi cited in support was subscribed to by a minority of the Court. It has been criticized by legal writers, see, e.g., R. Weintraub, Commentary on the Conflict of Laws § 4.8, at 10 (1987 Supp.); Stravitz, "Sayonara to Minimum Contacts: Asahi Metal Industry Co. v. Superior Court," 40 S.C.L.Rev. 729 (1988), and finds no general support in the caselaw. See, e.g., McGee v. International Life Ins. Co., 355 U.S. 220, 223, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957). In this global village in which products like Australian beer are sold and consumed daily all around the world, it makes little practical difference in litigation whether the brewer is located in Melbourne, Australia or Melbourne, Florida. The choice presented to the Court by Carlton & United is not a choice between litigating this case in South Carolina, on the one hand, or in New Jersey or California or some other American jurisdiction, on the other. Their argument can only be that Mid-State must journey to Australia to sue them.²⁰ Since Carlton & United is obviously many times larger than Mid-State, any

²⁰ Carlton & United does not suggest that it is any more amenable to suit in some other American State than it is in South Carolina, or that it would be any less inconvenienced defending itself in any other State than in South Carolina. See Colite Industries, Inc. v. G. W. Murphy Constr. Co., 297 S.C. 426, 377 S.E.2d 321 (1989). If South Carolina's long-arm statute is typical, then the long-arm statutes of other States would not allow Mid-State to sue Carlton elsewhere. Mid-State's cause of action must arise out of Carlton's transaction of business here and its distribution of products here, and not elsewhere. Mid-State's cause of action would not arise out of Carlton & United's shipments to any other State or its transaction of business in any other State.

balancing of inconvenience could only result in South Carolina as the forum which minimizes inconvenience.²¹

d. State's interest in adjudicating the controversy.

South Carolina's beer franchise protection law is for the protection of South Carolina businesses and consumers. It was enacted in the exercise of the police power. South Carolina, thus, has an even greater interest in adjudicating this suit than it normally does in providing justice to its citizens through their own courts. See McGee v. International Life Ins. Co., 355 U.S. 220, 223, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957) ("states have a 'manifest interest in providing effective means of redress' for their residents"). An Australian court would be an unapt forum, unlikely to grasp the background of South Carolina law and practice in which our beer franchise law must be understood, applied, and vindicated.

²¹ Carlton & United bore the burden of submitting evidence on this issue but presented no specific evidence of inconvenience. Springmasters, Inc. v. D & M Mfg. Co., 303 S.C. 528, 402 S.E.2d 192 (Ct. App. 1991); Atlantic Wholesale Co. v. Solondz, 283 S.C. 36, 320 S.E.2d 720 (Ct. App. 1984).

CONCLUSION²²

The appeal should be dismissed without prejudice to Carlton & United's right to appeal the issue of personal jurisdiction after that issue has been finally determined in the circuit court.

On the merits, Carlton & United's purposeful importation of its product into South Carolina renders it subject to the jurisdiction of our courts in a controversy involving the franchise to distribute that product.

Mid-State therefore urges the Court to dismiss the appeal without prejudice, or to affirm on the merits.

All of which is respectfully submitted.

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October 5, 1992.

²² Appellant claims in its third Question Presented that the circuit judge was biased. Appellant knows that such an issue must be presented to the circuit court first, Butler v. Sea Pines Plantation Co., 282 S.C. 113, 317 S.E.2d 464 (Ct. App. 1984), but was not. The third Question Presented is just appellant's way of complaining about Judge McKellar's ironic comment at the hearing about South Carolina companies being held to suit in Australia, and respondent will not burden this brief with further comment about it.

EXHIBIT F
(Mid-State – Reply Brief of Appellant)

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

The Honorable L. Henry McKellar
Circuit Court Judge

RECEIVED

OCT. 14 1992

S. C. SUPREME COURT

Case No. 90-CP-40-4980

Mid-State Distributors, Inc., ... Respondent,

vs.

Century Importers, Inc., Carlton and United
Breweries Limited, Molson Breweries U. S.
Holdings, Inc., Fosters Brewing Group
Limited, f/k/a Elders IXL, and Capital Wine
and Beverage Distributing Co. of Columbia,
Inc.

OF WHOM

Carlton and United Breweries
Limited, is Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT

A. THE ORDER DENYING APPELLANT'S MOTION TO DISMISS FOR LACK FOR JURISDICTION OVER THE PERSON IS DIRECTLY APPEALABLE.

Respondent is incorrect in stating that no South Carolina case addresses the appealability of an order denying a motion to dismiss for lack of jurisdiction over the person. In National Exchange Bank v. Stelling, 32 S.C. 102, 10 S.E. 766 (1890), the court held that an order sustaining personal jurisdiction involved the merits and was immediately appealable. The court stated that "[h]ere the intermediate decree of Judge Norton, holding that Stelling had been properly made a party, was a vital one to the jurisdiction of the court over the person of Stelling; and he had certainly the right to have the judgement of the court of last resort on the question whether he was a party before he could determine whether he should answer or not." Id. at 768-69.

The Court has since upheld the National Exchange decision in Kay v. Meadors, 216 S.C. 483, 58 S.E.2d 893 (1950). See also, Keller v. Keller, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988); Atlantic Soft Drink Company of Columbia, Inc. v. South Carolina National Bank, 287 S.C. 228, 336 S.E.2d 876 (1985).

B. RESPONDENT SEEKS TO SUBJECT APPELLANT TO JURISDICTION IN A SUIT UNRELATED TO THE BREWING OF FOSTER'S LAGER.

Respondent incorrectly argues that the South Carolina long arm statute is broad enough to extend the jurisdiction of the South Carolina courts to the Appellant in a contract dispute

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between a South Carolina distributor and its U.S. supplier merely because the Appellant manufactured the product which is the subject of the distribution contract. S.C. Code Ann. § 36-2-803 (Law. Co-op. 1976), South Carolina's long arm statute, confers personal jurisdiction to the court for "causes of action arising from" a person's specific listed activities in this state. The statute does not confer personal jurisdiction over nonresidents for all causes of action.

The causes of action alleged in the Complaint arise from an alleged breach of a franchise contract between the U.S. importer and its South Carolina distributor. This cause of action does not "arise from" the activities of Appellant Carlton and United Breweries, Ltd. ("Carlton").¹ The U.S. importer, Century Importers, Inc. ("Century"), and not Carlton, contracts with, and sells Fosters Lager to, the South Carolina distributors. Thus, Carlton is not a party to the franchise agreement, whose alleged breach is the subject of the Complaint.

Respondent argues that the instant case is analogous to a suit arising from Foster's Lager being deleterious and causing a personal injury to a resident of South Carolina. In such case, under the South Carolina long arm statute, Carlton would constitutionally be subject to personal jurisdiction in South Carolina. The instant case, however, arises from facts which are not analogous to Respondent's example. Because the South

¹ Carlton brews a product in Australia, which is sold to the United States importer, Century Importers, Inc., then sold to a South Carolina distributor, and eventually consumed in South Carolina.

Carolina long arm statute confers specific, not general, jurisdiction upon the nonresident defendant, a closer analogy to the instant case would be a suit brought by an Australian employee of Carlton suing Carlton in South Carolina for breach of his employment contract. Clearly in such case Carlton would not be subject to personal jurisdiction in South Carolina.

C. RESPONDENT CONFUSES THE CONTRACTS OF CENTURY IMPORTERS, INC. IN SOUTH CAROLINA WHEN DISCUSSING THE MINIMUM CONTACTS OF APPELLANT CARLTON AND UNITED BREWERIES, LTD.

Respondent incorrectly confuses the contacts of Century with those of Carlton in determining whether Carlton has sufficient minimum contacts with South Carolina to subject it to personal jurisdiction in South Carolina's courts. In discussing the minimum contacts of a nonresident corporation, the focus of attention must be the contacts generated by the defendant nonresident corporation, and not the unilateral actions of some other entity. Aviation Associates And Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 402 S.E.2d 177, 180 (1991); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490, 501 (1980); Helicopteros Nacionales v. Hall, 466 U.S. 408, 417, 104 S.Ct. 1868, 1873, 80 L.Ed. 404, 412 (1984) ("unilateral activity of another party or a third person is not an appropriate consideration").

Carlton brews the Fosters Lager and then sells it to Century, the United States Importer. Carlton, on behalf of, and pursuant to the instructions of Century, places the beer on

ships bound for ports in the U.S. At no time does Carlton, import or sell beer in South Carolina. The following are examples in the Initial Brief of Respondent of Respondent's confusing Century's activities in South Carolina with the alleged contacts of Carlton:

1. "Each order of an American distributor (e.g., Mid-State) is shipped from Australia by Carlton & United specifically to fill the order of the American distributor." (Respondent's Initial Brief p. 5).

2. "If Carlton & United were to stop distributing beer into South Carolina, there would be no suit. . . ." (Respondent's Initial Brief p. 11).

3. "Moreover, Carlton & United's shipment of thousands of cases of Foster's Lager Beer over many years into South Carolina is the transaction of business here, within the long-arm statute's meaning." (Respondent's Initial Brief p. 11).

4. "Carlton & United regularly ships Foster's Lager Beer directly into South Carolina for distribution by Foster's franchisees to retailers, thence to be sold to and consumed by South Carolina customers." (Respondent's Initial Brief p. 13).

5. "Carlton & United has been exporting Foster's Lager Beer to South Carolina since at least 1983." (Respondent's Initial Brief p. 15).

6. "This is a steady, long-standing course of conduct by Carlton & United directed at the consumers of South Carolina. The number of bottles and cans of Foster's Lager Beer brewed by Carlton & United in Australia and shipped by it to South

Carolina for consumption in South Carolina is not of record. .

. ." (Respondent's Initial Brief p. 15).

7. "Carlton & United's sales to South Carolina are not random, not fortuitous, not attenuated." (Respondent's Initial Brief p. 15).

Each of these are the acts of importers, not of Carlton & United.

Respondent also argues that because Century and Carlton are "half-sister" corporations, the fact that these are separate entities should be dismissed by the court, and the contacts of Century should be vicariously considered the contacts of Carlton. For the same reasons the foreign parent of a domestic subsidiary is not subject to personal jurisdiction in South Carolina, Respondent's argument is without merit. See, Yarborough & Co. v. Schoolfield Furniture Industries, Inc., 275 S.C. 151, 268 S.E.2d 42, 44 (1980); Cannon Manufacturing Co. v. Cudahy, 267 U.S. 333, 45 S.Ct. 250, 69 L.Ed. 634 (1924).

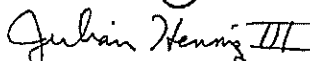
CONCLUSION

For the reasons set forth above, Respondent failed to meet its burden of establishing jurisdiction over Carlton and the lower court's denial of its motion to dismiss, as a result, was

without support in the evidence and was manifestly controlled by error of law. The lower court's Order should, therefore, be reversed.

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

The Honorable L. Henry McKellar
Circuit Court Judge

Case No. 90-CP-40-4980

Mid-State Distributors, Inc., ... Respondent,

vs.

Century Importers, Inc., Carlton and United
Breweries Limited, Molson Breweries U. S.
Holdings, Inc., Fosters Brewing Group
Limited, f/k/a Elders IXL, and Capital Wine
and Beverage Distributing Co. of Columbia,
Inc.

OF WHOM

Carlton and United Breweries
Limited, is Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Initial Reply
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Jul 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

Appellate Case No. 2021-000557

Civil Action No. 2019-CP-4400054

Dwayne Thompson, ... Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are
the.....

Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for LG Chem, Ltd. and LG Chem America, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow by manner identified below, pursuant to Supreme Court Order, as Amended May 29, 2020, § (g)(3), on May 21, 2021, and a copy of that electronic mail is attached to this certificate.

Pleading(s): **Appellants' Memorandum in Support of Immediate Appealability**

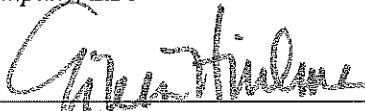
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July 19, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

May 21 2021

SC Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

Civil Action No. 2019-CP-4400054

Dwayne Thompson, ... Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are
the.....

Appellants.

NOTICE OF APPEAL

LG Chem, Ltd. ("LG Chem") and LG Chem America, Inc. ("LGCAI") timely appeal the lower court's Orders denying (1) LG Chem's Renewed Motion to Dismiss and Quash Service of Process; (2) LG Chem's Motion to Reconsider March 19, 2021 Order Denying its Renewed Motion to Dismiss and Quash Service of Process; (3) LGCAI's Renewed Motion to Dismiss; and (4) LGCAI's Motion to Reconsider March 19, 2021 Order Denying its Renewed Motion to Dismiss. Copies of the written orders are attached as **Exhibit A**. Appellants received written notice of the entry of the Orders denying LG Chem's and LGCAI's Motions to Reconsider March 19, 2021 Orders Denying their Renewed Motions to Dismiss on April 21, 2021. *See* Rule 203(b)(1), SCAR; Rule 59(f), SCRCP.

As the Supreme Court recently reiterated, whether an order is immediately appealable *must be determined on a case-by-case basis*. *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868,

870 (2019) (emphasis added). For interlocutory orders, the appealability statute permits appellate jurisdiction when the order either involves the merits or affects a substantial right. S.C. Code Ann. § 14-3-330. In relevant part, the statute explains that an order affects a substantial right when it “(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330(2).

In interpreting this language, the Supreme Court has stated that an order “involves the merits” when it “finally determine[s] some substantial matter forming the whole or part of some cause of action or defense.” *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (quoting *Jefferson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)). Moreover, an order affects a substantial right “in situations where the substantial right could not be vindicated on appeal after the case,” such as for orders affecting the “mode of trial.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000).

Although the Supreme Court first held in 1993 that “the denial of a motion to dismiss under Rule 12(b)(2), SCRCp, is interlocutory and not directly appealable,” *Mid-State Distribs.*, 310 S.C. at 336, 426 S.E.2d at 781, Appellants raised several arguments to the lower court that were not before the *Mid-State* court. Importantly, in *Mid-State*, the Supreme Court’s opinion focused solely on whether the subject order was sufficiently final such that it “involved the merits.” *Id.* at 336–37, 426 S.E.2d at 780–81. The court **did not** expressly address whether a ruling that the defendant had sufficient minimum contacts—such that exercising personal jurisdiction would comport with due process—implicated a substantial right. *Mid-State* expressly overruled two prior cases to the extent they conflicted with the current definition of “involving the merits.” Notably, however, the

court *did not* expressly overrule *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988), which permitted an interlocutory appeal from an order denying a motion to dismiss for lack of personal jurisdiction when the sufficiency of minimum contacts was at issue. Finally, *Mid-State* is also factually inapposite due to the entirely different procedural posture there.

South Carolina courts have previously indicated that an order implicating a party's constitutional rights is immediately appealable because it affects a substantial right. *See, e.g., Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004). Here, the Appellants' constitutional guarantee of due process is at issue when the trial court finds sufficient minimum contacts and denies a motion to dismiss for lack of personal jurisdiction on that basis. The constitutional ramifications are heightened after the United States Supreme Court recently revisited the issue of personal jurisdiction in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021), on Thursday, March 25, 2021, and reiterated the continued vitality of the precedents and principles supporting LG Chem's and LGCAI's motions to dismiss based on lack of personal jurisdiction, principles that are contrary to prior South Carolina Supreme Court precedent in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 90, 666 S.E.2d 218, 222-23 (2008) (basing jurisdiction on a finding that "Sumatra has minimum contacts with the United States as a whole and, via the stream of commerce theory, the State has shown Sumatra has minimum contacts with South Carolina").

If the Appellants are unable to immediately appeal the trial court's rulings, their only appellate remedy would otherwise be to appeal the final judgment following a trial years in the future, all the while being compelled to litigate in the absence of minimum contacts required to support personal jurisdiction under U.S. Supreme Court precedent.

Finally, South Carolina courts have frequently looked to North Carolina law for guidance on questions regarding whether an order is immediately appealable. *See, e.g., Salmonsens v. CGD, Inc.*, 377 S.C. 442, 451, 661 S.E.2d 81, 86–87 (2008); *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991); *Pocisk v. Sea Coast Constr. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) (all looking to North Carolina case law on immediate appeal questions). North Carolina’s appealability statute is similar to South Carolina’s and also permits interlocutory appeals of orders “affecting a substantial right.” *See* N.C. Gen. Stat. Ann. § 7A-27(b)(3). Although the North Carolina statutory language has an additional provision permitting “immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant,” N.C. Gen. Stat. § 1-277(b), the North Carolina courts have interpreted this right to be *limited* to where the appeal raises questions concerning due process and minimum contacts, finding that those are the questions *affecting a substantial right*. As the North Carolina Court of Appeals explained in *Hardee ex rel. White v. Lowe’s Companies, Inc.*, 640 S.E.2d 445, 2007 WL 329176 (N.C. Ct. App. 2007) (table), this is because a substantial right exists when the interlocutory order denying a motion to dismiss for lack of personal jurisdiction “raises questions concerning due process and minimum contacts.” *Id.* at *2; *see also A.R. Haire, Inc. v. St. Denis*, 625 S.E.2d 894, 898 (N.C. Ct. App. 2006) (“Although this appeal is interlocutory, we note that it affects a substantial right which is one of the exceptions to the rule barring an immediate appeal from an interlocutory order. Indeed, motions to dismiss for lack of personal jurisdiction affect a substantial right and are immediately appealable.”) (citations omitted). This rule ensures that parties who have less than minimum contacts with the state “will never be forced to trial against their wishes,” “promotes judicial economy[,] and protects the constitutional rights of foreign

defendants.” *Love v. Moore*, 291 S.E.2d 141, 146 (N.C. 1982). The same concerns and points support appealability under South Carolina’s appealability statute, which also permits immediate appeals “affecting a substantial right.”

Therefore, in light of the foregoing authorities and the requirement that appealability must be determined on a case-by-case basis, immediate appeal of the lower court’s order is proper. However, to the extent the Court has any doubt or concern regarding appealability, Appellants respectfully request the opportunity to provide more fulsome briefing and analysis regarding the propriety of immediate appeal under these facts.

Respectfully submitted,

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May 21, 2021

STATE OF SOUTH CAROLINA

COUNTY OF UNION

DWAYNE THOMPSON,

Plaintiff,

v.

LG CHEM, LTD., LG CHEM AMERICA,
INC., and ROLLING FOG VAPOR
COMPANY, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2019-CP-44-00054

**ORDER DENYING LG CHEM, LTD.'S
MOTION TO DISMISS****RECEIVED****May 21 2021****SC Court of Appeals**

This matter came before the Court for a hearing on February 1, 2020, on Defendant LG Chem LTD.'s ("LG Chem") renewed motion to dismiss for lack of personal jurisdiction. After reviewing the parties' submissions and hearing argument of counsel, the Court denies LG Chem's motion for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

This is a product liability action involving an allegedly defective lithium-ion battery used for an e-cigarette device. Plaintiff, a South Carolina citizen, alleges that on July 27, 2018, the battery, while in his pants pocket, exploded and burst into flames, causing severe burn injuries. The injuries occurred in Spartanburg, South Carolina. Defendant Rolling Fog Vapor Company, LLC, is a retail store in Spartanburg, South Carolina, that sold the battery and e-cigarette device to Plaintiff. (Cmplt. ¶ 2). Defendant LGA, a Delaware corporation, and Defendant LG Chem, Ltd., ("LG"), a South Korean corporation, allegedly designed, manufactured, imported, and sold the battery. *Id.* at ¶¶ 3-6.

On March 4, 2019, Plaintiff filed this action in Union County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. Plaintiff alleges LG Chem has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On November 2, 2020, LG Chem filed a renewed motion to dismiss for lack of personal jurisdiction, along with an affidavit of Sung Han Ryu, an LG Chem representative. Mr. Ryu states, *inter alia*, that LG Chem is a Korean company with its headquarters and principal offices in Seoul, South Korea. (Aff. ¶4). It does not own or lease property in South Carolina. *Id.* at ¶ 7. Mr. Ryu attests that LG Chem does not design, manufacture, distribute or sell a lithium-ion battery for use by individual consumers. *Id.* at ¶ 13.

On January 28, 2021, Plaintiff filed a memorandum in opposition to the renewed motion to dismiss, along with hundreds of import records for the Port of Charleston. The import records show that from December 2016 to February 2019 alone, LG Chem had approximately 296 shipments to the Port of Charleston in South Carolina. (Ex. 1 – Import Data). The import data indicates shipments to Carolina Coverttech in North Augusta, Continental Tire in Sumter, Covidien in Greenwood, Fitesa in Simpsonville, Flex in West Columbia, Milliken Company in Spartanburg, and Volvo Car US Operations, Inc. in Ridgeville. (Ex. 1 – Import Data).

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton &*

Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in his favor, the Court finds there are sufficient minimum contacts between LG Chem and South Carolina to support exercising specific personal jurisdiction¹ over LG Chem.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there.” *Id.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco*

¹ Plaintiff did not dispute LG Chem’s argument as to general jurisdiction.

Trading, Co., 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).² “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.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the fairness prong, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction.” *Id.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LG Chem has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient

² See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LG Chem possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina's long-arm statute,

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's: (1) transacting any business in this State; (2) contracting to supply services or things in the State; . . . (4) causing tortious injury or death in this State by an act or omission outside this State 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 State.

S.C. Code Ann. § 36-2-803(A). LG Chem has a presence in South Carolina in the form of continuously and regularly using a South Carolina port to conduct its business activities, and deriving revenue from South Carolina. Along with the evidence of LG Chem's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 296 product shipments from LG Chem through the Port of Charleston, South Carolina, from December 2016 to February 2019. Plaintiff also demonstrated that these products are delivered to seven (7) different locations in South Carolina. This is ample evidence that LG Chem transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 ("W.W. Norton's continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis."); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) ("By using

the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”). LG Chem participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied.

LG Chem does not dispute that they distribute and sell various products that come through the Port of Charleston. However, they argue that because, according to them, they do not ship lithium-ion batteries through a South Carolina port that this Court does not have jurisdiction over them. Defendant concedes, however, that vehicle batteries were shipped through Charleston. Defendants are correct that both *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011) and *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773 (2017) provide that the conduct in question in the forum state must be “related” or “connected” to the injuries. The Court finds the sale of batteries is a sufficient connection. Defendant seeks to have the Court impose a rule that unless the evidence indicates Defendant sold the particular product in question to buyers in the forum state, specific jurisdiction is not proper. The Court does not find either *J. McIntyre* or *Bristol-Myers* mandate such a narrow view of specific jurisdiction.

The exercise of personal jurisdiction is also reasonable and fair. First, LG Chem has conducted activities in South Carolina for a sufficient duration. The import records show its use of the Port for over ten years. Second, the character and circumstances of the commission of LG Chem’s acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LG Chem. LG Chem is actively litigating cases around the country involving the same type of battery at issue in this case. Fourth, South Carolina has an interest in exercising jurisdiction over LG Chem. “South Carolina has an interest in

providing redress for its citizens.” *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”)). Finally, three other circuit court judges in South Carolina have examined this precise issue and determined that South Carolina has personal jurisdiction over LG Chem. (Ex. 2, Order from the Honorable Michael G. Nettles, Ex. 3, Order from the Honorable Courtney Clyburn Pope, and Ex. 4, Order from the Honorable Bentley Price). The Court has specific personal jurisdiction over LG Chem.

CONCLUSION

After reviewing all relevant cases presented by the parties, the Court is bound by *Sumatra*. Based on *Sumatra* and the additional authority cited above, the Court denies LG Chem’s motion.³

AND IT IS SO ORDERED.

Dated: _____

York, South Carolina

William A. McKinnon
Circuit Court Judge

³ Defendant also asserts the Court’s Order is inconsistent with Judge Maddox’s July 20, 2020 Order. The Court disagrees, as Judge Maddox specifically states “lack of information prevents a decision” – declining to decide is not the same as finding a lack of personal jurisdiction.



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al

Case Number: 2019CP4400054

Type: Order/Dismissal

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

Electronically signed on 2021-03-19 12:30:08 page 8 of 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF UNION	)	CIVIL ACTION NO.: 2019-CP-44-00054
	)	
DWAYNE THOMPSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING LG CHEM
	)	AMERICA, INC.'S
	)	MOTION TO DISMISS
LG CHEM, LTD., LG CHEM AMERICA,	)	
INC., and ROLLING FOG VAPOR	)	
COMPANY, LLC,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court for a hearing on February 1, 2020, on Defendant LG Chem America, Inc.'s ("LGA") motion to dismiss for lack of personal jurisdiction. After reviewing the parties' submissions and hearing argument of counsel, the Court denies LGA's motion for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

This is a product liability action involving an allegedly defective lithium ion battery used for an e-cigarette device. Plaintiff, a South Carolina citizen, alleges that on July 27, 2018, the battery, while in his pants pocket, exploded and burst into flames, causing severe burn injuries. The injuries occurred in Spartanburg, South Carolina. Defendant Rolling Fog Vapor Company, LLC, is a retail store in Spartanburg, South Carolina, that sold the battery and e-cigarette device to Plaintiff. (Cmplt. ¶ 2). Defendant LGA, a Delaware corporation, and Defendant LG Chem, Ltd., ("LG"), a South Korean corporation, allegedly designed, manufactured, imported, and sold the battery. *Id.* at ¶¶ 3-6.

On March 4, 2019, Plaintiff filed this action in Union County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. As to LGA, Plaintiff alleges LGA has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On November 2, 2020, LGA filed a renewed motion to dismiss for lack of personal jurisdiction, along with an affidavit of HyunSoo Kim, an LGA Compliance Manager. Mr. Kim states, *inter alia*, that LGA is incorporated in Delaware with its principal place of business in Georgia. (Aff. ¶5). It does not own or rent property in South Carolina. *Id.* at ¶ 6. Mr. Kim attests that LGA did not design, manufacture, distribute or sell a lithium-ion battery for use by individual consumers. *Id.* at ¶ 10.

On January 28, 2021, Plaintiff filed a memorandum in opposition to the renewed motion to dismiss, along with a South Carolina Certificate of Authority for LGA and hundreds of import records for the Port of Charleston. On September 15, 2010, LGA obtained a Certificate of Authority from the South Carolina Secretary of State that authorizes it to transact business in South Carolina. (Ex. 1). LGA maintains a registered agent in Columbia, South Carolina. *Id.* The import records show that from December 2016 to February 2019, LGA received as consignee approximately 244 product shipments from LG to the Port of Charleston in South Carolina. (Ex. 2). LGA is a wholly-owned subsidiary of LG, and LGA’s business activities for LG are “sales and trading” of its products within the United States.¹

¹ See LG Chem, Ltd. and Subsidiaries, *Consolidated Interim Financial Statements*, June 30, 2018 and 2017, http://www.lgchem.com/upload/file/audit-report/2018_2Q_ConFS_ENG.pdf at p. 10.

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in his favor, the Court finds there are sufficient minimum contacts between LGA and South Carolina to support exercising specific personal jurisdiction² over LGA.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and

² Plaintiff did not dispute LGA’s argument as to general jurisdiction.

substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there.” *Id.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).³ “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.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the fairness prong, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction.” *Id.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LGA has

³ See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

“continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LGA possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina’s long-arm statute,

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s: (1) transacting any business in this State; (2) contracting to supply services or things in the State; . . . (4) causing tortious injury or death in this State by an act or omission outside this State 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 State.

S.C. Code Ann. § 36-2-803(A). LGA has a presence in South Carolina in the form of being registered to transact business here, having a registered process agent here, continuously and regularly using a State port to conduct its business activities, and deriving revenue from South Carolina. Plaintiff points to LGA’s Certificate of Authority to transact business as evidence that supports the exercise of personal jurisdiction. The Court agrees. Section 33-15-101 of the South Carolina Code lists 13 categories of activities that are **not** considered transacting business in South Carolina. S.C. Code Ann. § 33-15-101. LGA’s decision to obtain a Certificate of Authority demonstrates that its activities in South Carolina are more substantial than those listed in § 33-15-101. Further, by obtaining a Certificate of Authority, LGA agreed at a minimum to the jurisdiction of the South Carolina Department of Revenue and our Courts to determine its South Carolina tax

liability. S.C. Code Ann. § 33-15-105(d). Along with the evidence of LGA's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 244 product shipments from LG to LGA as consignee through the Port of Charleston, South Carolina, from December 2016 to February 2019. This is ample evidence that LGA transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 ("W.W. Norton's continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis."); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) ("By using the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."). LGA participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied and it should come as no surprise to LGA that the subject battery ended up in South Carolina and injured a South Carolina citizen.

The exercise of personal jurisdiction is also reasonable and fair. First, LGA has conducted activities in South Carolina for a sufficient duration. It obtained a Certificate of Authority to transact business in South Carolina over ten years ago and the import records show its use of the Port for over ten years. Second, the character and circumstances of the commission of LGA's acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LGA. It is a U.S. corporation with a Certificate of Authority and

registered agent in South Carolina. Fourth, South Carolina has an interest in exercising jurisdiction over LGA. “South Carolina has an interest in providing redress for its citizens.” *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”)). Finally, four other circuit court judges in South Carolina have examined this precise issue and determined that South Carolina has personal jurisdiction over LGA. (Ex. 3, Order from the Honorable Michael G. Nettles, Ex. 4, Order from the Honorable Courtney Clyburn Pope, Ex. 5, Order from the Honorable Perry M. Buckner, III, and Ex. 6, Order from the Honorable Bentley Price). The Court has specific personal jurisdiction over LGA.

CONCLUSION

After reviewing all relevant cases presented by the parties, the Court is bound by *Sumatra*. Based on *Sumatra* and the additional authority cited above, the Court denies LGA’s motion.⁴

AND IT IS SO ORDERED.

Dated: _____

York, South Carolina

William A. McKinnon
Circuit Court Judge

⁴ Defendant also asserts the Court’s Order is inconsistent with Judge Maddox’s July 20, 2020 Order. The Court disagrees, as Judge Maddox specifically states “lack of information prevents a decision” – declining to decide is not the same as finding a lack of personal jurisdiction.



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al

Case Number: 2019CP4400054

Type: Order/Dismissal

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

Electronically signed on 2021-03-19 12:28:48 page 9 of 9

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Union
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4400054

Dwayne Thompson
PLAINTIFF(S)

Lg Chem, Ltd. et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendants' Motions to Reconsider the Court's March 19, 2021 orders are denied, for the reasons stated by the Court in its prior orders.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/21/2021 .

Rolling Fog Vapor Company, Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al

Case Number: 2019CP4400054

Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

Electronically signed on 2021-04-21 11:38:00 page 3 of 3



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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July 09, 2021

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Re: Dwayne Thompson v. LG Chem, Ltd.
Appellate Case No. 2021-000557

Dear Counsel:

This Court has received your notice of appeal. A preliminary review of the order challenged on appeal indicates it might not be appealable.

Accordingly, it is requested that you serve and file a memorandum addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the Court's consideration of the memorandum.

Very truly yours,

A handwritten signature in cursive script, reading "Catherine J. Flannery, deputy".

CLERK

Clark, Tyler P.

From: Clark, Tyler P.
Sent: Friday, July 9, 2021 4:59 PM
To: 'mitch.brown@nelsonmullins.com'; 'rachel.hedley@nelsonmullins.com';
'matt.bogan@nelsonmullins.com'; 'blake.cummings@cummingslewis.com';
'alex.lewis@cummingslewis.com'; 'rcrosby@pmped.com'; 'wbarnes@pmped.com';
'acrosby@pmped.com'
Cc: 'eileen.hindman@nelsonmullins.com'; 'roxanne.englin@nelsonmullins.com';
'wbcummings@bellsouth.net'; 'teamrcrosby@pmped.com'; 'teambarnes@pmped.com';
'teamacrosby@pmped.com'
Subject: Dwayne Thompson v. LG Chem, Ltd. 2021-000557
Attachments: Thompson v. LG Chem - Letter.pdf

Dear Counsel,

Please find correspondence from the Court of Appeals.

Sincerely,

Tyler Clark

Appeals Specialist
SC Court of Appeals
1220 Senate St.
Columbia, SC 29201
Ph. (803) 734-1890
F. (803) 734-1839

RECEIVED

Mar 25 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

Civil Action No. 2019-CP-4400054

Dwayne Thompson, ... Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are
the.....

Appellants.

LG CHEM, LTD. AND LG CHEM AMERICA, INC.'S PETITION FOR REHEARING

Pursuant to Rule 221(a) SCACR, LG Chem, Ltd. ("LG Chem") and LG Chem America, Inc. ("LGCAI") respectfully petition the Court for a rehearing of their May 21, 2021 Notice of Appeal, which this Court denied by Order dated March 10, 2022 based on the Court's decision that the underlying circuit court orders are not immediately appealable.

In reaching the decision to deny Appellants' appeal, this Court relied on *Mid-State Distributors v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993), which Appellants contend is not controlling in this case. Specifically, *Mid-State* is not controlling because (1) it is materially distinguishable on the facts; and (2) the arguments that Appellants have made in this case were not raised in *Mid-State*, which does not expressly address whether a ruling that a foreign defendant could be required to defend a lawsuit—based on conclusory allegations that minimum contacts existed even though the conclusory allegations were contradicted by admissible evidence proving

minimum contacts were absent—affects a substantial right, which gives rise to immediate appealability under South Carolina’s appealability statute, Code § 14-3-330.

Appellants ask the Court to reconsider and address all the arguments below—which were overlooked and/or misapprehended and left unaddressed by the Court—and grant rehearing, and issue a revised opinion in favor of LG Chem and LGCAI on the issue of appealability. These points below are raised again because if this Court denies rehearing, Appellants intend to seek certiorari review, and therefore raise all arguments here to preserve them for presentation in a certiorari petition, pursuant to the South Carolina Rules of Appellate Procedure. *See* Rule 221(a), SCACR (stating that a petition for rehearing “shall state with particularity the points supposed to have been overlooked or misapprehended by the court”); Rules 242(c) (stating that a decision of the Court of Appeals is not final for the purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been acted on by the Court of Appeals”).¹

LAW AND ANALYSIS

The Court has overlooked or misapprehended arguments raised by Appellants on appealability, and as noted in LG Chem’s and LGCAI’s briefing on appealability, the suit should be dismissed against LG Chem and LGCAI, as jurisdiction is lacking.

I. The South Carolina Code and prior precedent, such as *Mid-State Distributors*, do not foreclose a finding that this case is immediately appealable.

Although the Order found that this case is not immediately appealable—based solely on South Carolina Code Section 14-3-330 and *Mid-State Distributors v. Century Importers*, 310 S.C.

¹ If this Court denies rehearing, Appellants intend to raise the issues raised herein in a petition for writ of certiorari to the South Carolina Supreme Court. Appellants urge that *Mid-State* be distinguished or narrowed in application. Alternatively, Appellants will ask the South Carolina Supreme Court for the alternative relief of modifying its prior precedent if it interprets *Mid-State Distributors v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993) as controlling on the issue of appealability, which it should not.

330, 426 S.E.2d 777 (1993), the Order overlooked or misapprehended authority and analysis submitted by Defendants showing that the Court should allow immediate appeal in this particular case. Neither the appealability statute nor *Mid-State* require dismissal because (1) this appeal affects Appellants' substantial constitutional rights to Due Process under the appealability statute; (2) *Mid-State* does not require blanket dismissal in all cases, and this case is an exception to the general rule in *Mid-State* because the arguments presented and decided by the Supreme Court in *Mid-State* court are materially different from those in this case; (3) this Court's Order effectively forecloses appeal on personal jurisdiction, and (4) allowing immediate appealability in this case will not "open the floodgates" to the appellate courts.

- (1) As allowed by statute and prior precedent, the Order is immediately appealable because it affects a substantial right.

The Order does not explain how Section 14-3-330 requires dismissal, and the language of the statute and prior precedent from the South Carolina Supreme Court *support* immediate appealability in this case. First, Section 14-3-330(2) provides that "[a]n order affecting a substantial right" is immediately appealable if it "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." *Id.* Thus, the statute supports immediate appeal rather than dismissal because this Court has previously indicated that an order implicating a party's constitutional rights is immediately appealable because it concerns a substantial right. *See, e.g., Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004). Here, the constitutional guarantee of due process is implicated where the court finds there are sufficient minimum contacts to subject a foreign defendant to the burden of litigation and trial. In this case, the circuit court's orders at issue were based on Respondent's conclusory allegations that minimum contacts are satisfied, even though Appellants introduced admissible, uncontroverted evidence showing the constitutional minimum contacts were absent and even

though Respondent disclaimed any interest or need to pursue discovery to obtain admissible facts to support his burden of proving jurisdiction. This alone warrants a finding of immediate appealability, as explained further below.

South Carolina courts have frequently looked to North Carolina law for guidance in addressing whether an order is immediately appealable. *See, e.g., Salmonsens v. CGD, Inc.*, 377 S.C. 442, 451, 661 S.E.2d 81, 86-87 (2008); *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991); *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) (all looking to North Carolina case law on immediate appeal questions). North Carolina's appealability statute is similar to South Carolina's and likewise permits interlocutory appeals of orders "affecting a substantial right." *See* N.C. Gen. Stat. Ann. § 7A-27(b)(3). Although the North Carolina statutory language has an additional provision permitting "immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant," N.C. Gen. Stat. § 1-277(b), the North Carolina courts have interpreted this right to be *limited* to where the appeal raises questions concerning due process and minimum contacts, because those are the questions *affecting a substantial right*.

As the North Carolina Court of Appeals explained in *Hardee ex rel. White v. Lowe's Companies, Inc.*, 640 S.E.2d 445 (N.C. Ct. App. 2007) (table), this is because a substantial right exists where the interlocutory order denying a motion to dismiss for lack of personal jurisdiction "raises questions concerning due process and minimum contacts." *Id.* at *2. This ensures that parties who have less than minimum contacts with the state "will never be forced to trial against their wishes," "promotes judicial economy[,] and protects the constitutional rights of foreign defendants." *Love v. Moore*, 291 S.E.2d 141, 146 (N.C. 1982). The same concerns and points

support appealability under South Carolina's appealability statute, which also permit immediate appeals "affecting a substantial right."

Therefore, in light of the foregoing authorities and the requirement that appealability must be determined on a case-by-case basis, immediate appeal is proper in this narrow circumstance in which the question of constitutional minimum contacts is at issue, and especially when, as here, one circuit judge ruled that Respondent's showing *was not* enough to determine whether minimum contacts existed and a second circuit judge then decided the *same* showing *was* enough.

With respect to a ruling affecting a substantial right for appealability purposes, this case should be viewed like *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). In *Hagood*, the South Carolina Supreme Court found that an order disqualifying a party's counsel of their choice was an immediately appealable order. The respondent there argued any error could be corrected on appeal after final judgment. Yet, the Supreme Court, looking to the points made by other courts concerning the appealability of such an order—including a decision from North Carolina—held that the order affected a substantial right and should be immediately appealable.

The orders appealed here require a foreign defendant who has put forth admissible evidence negating any constitutional minimum contacts with South Carolina, to nonetheless defend itself fully in litigation here without any showing by Respondent of admissible facts establishing the defendant engaged in sufficient suit-related minimum contacts with South Carolina to satisfy due process. This affects the substantial right of the foreign defendant to the constitutional guarantee of due process. North Carolina law should again be taken into account and followed with respect to allowing immediate appellate review of such orders.

(2) Mid-State does not require dismissal in this case of the appeal.

Although the Order relies on *Mid-State* as authority for finding the order denying Defendants’ motion to dismiss is not immediately appealable, the Order overlooks the fact that *Mid-State* did not explicitly require dismissal in all cases in which a defendant appeals a trial court’s denial of its motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2) of the South Carolina Rules of Civil Procedure. As the Supreme Court has recognized “by its nature, . . . the question of whether an order is immediately appealable is determined on a *case-by-case basis*.” *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) (emphasis added). Therefore, this Court should analyze the circumstances presented here to determine appealability and find that this case is both distinguishable and is also an exception to the *Mid-State* rule.

Although the Supreme Court in *Mid-State* held in 1993 that “the denial of a motion to dismiss under Rule 12(b)(2) is interlocutory and not directly appealable,” that case differs materially from the case here. At issue here, are several arguments that Appellants raised to the circuit court that were not before the *Mid-State* court, and Appellants raise arguments regarding appealability itself that were not before the *Mid-State* court. Importantly, *Mid-State* **did not** expressly address whether a ruling that a foreign defendant could be required to defend suit—based on conclusory allegations that minimum contacts existed even though the conclusory allegations were contradicted by admissible evidence proving minimum contacts were absent—affects a substantial right.

As this Court’s Order recognizes, *Mid-State* expressly overruled two prior cases (*National Exchange Bank v. Stelling*, 32 S.C. 102, 10 S.E. 766 (1890) and *Agnew v. Adams*, 24 S.C. 86 (1885)) to the extent they conflicted with the *Mid-State* ruling. However, the Order overlooks the fact that the *Mid-State* court did not expressly overrule *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988)—the most recent case of the cases that was cited by the *Mid-State* appellant

(and, unlike *Stelling* and *Agnew*, addressed minimum contacts and denial of a 12(b)(2) motion under the Rules of Civil Procedure and applied post-19th Century U.S. Supreme Court authority)—and which *permitted* an interlocutory appeal from an order denying a motion to dismiss for lack of personal jurisdiction in which the sufficiency of minimum contacts was at issue, as it is here.

The South Carolina Supreme Court briefing in *Mid-State*, which Appellants submitted in their Memorandum in Support of Immediate Appealability, confirms that the arguments raised by Appellants here were not before the court there. (*See generally* Pets.’ Mem. in Supp. of Immediate Appealability, filed July 19, 2021, Ex. D, Br. of Appellant Century Importers, Inc.; Ex. E, Br. of Resp’t Mid-State Distributors, Inc.; and Ex. F, Reply Br. of Appellant.) The *Mid-State* appellant did not address appealability in its opening brief. (*See generally* Ex D.)² The *Mid-State* respondent, however, challenged appealability in its brief by highlighting the lack of finality and comparing the subject ruling to an order denying a motion to dismiss under 12(b)(6). (Br. of Resp. at 6–7.) The respondent also contended that permitting interlocutory appeal would “open the floodgates” to appeals of orders denying motions to dismiss for lack of personal jurisdiction. (*Id.* at 7–8.) In response to the *Mid-State* respondent’s appealability argument, the appellant’s reply consisted *solely* of a short point citing *Stelling* that the appellant contended supported immediate appealability, along with three subsequent cases that were in accord.³ (*See* Reply Br. at 1.) The appellant there did not specifically address the respondent’s arguments on finality or judicial economy. Most importantly, the appellant there did not raise *any* arguments about the sufficiency

² Appellants incorporate by reference to Exhibits filed in support of their Memorandum in Support of Appealability, filed on July 19, 2021.

³ Notably *Mid-State* did not discuss three cases detailed in the Appellant’s reply brief: *Keller; Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat’l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985); and *Kay v. Meadors*, 216 S.C. 483, 58 S.E.2d 893 (1950).

of a defendant's minimum contacts or due process or provide any analysis regarding whether the challenged rulings implicated a substantial right, which is the basis Appellants raise here. (*See id.*)

Mid-State also came before the Supreme Court under an entirely different procedural posture from this matter. In *Mid-State* the case had been pending 18 months when the motion to dismiss was heard and denied, and the court had previously heard and denied a motion for summary judgment and found there were genuine issues of material fact for trial. The case was nearly up for trial at the time of the hearing on the motion to dismiss in *Mid-State*. (*See* Appellants' Mem. in Supp. of Immediate Appealability, filed July 19, 2021, at Ex. E (Initial Br. of Resp. Mid-State Distributors, Inc., at 1–2 & n.1.) The Court's Order overlooked the fact that the present matter is far different procedurally from *Mid-State*. Here, there has been no merits discovery, the case is likely several years away from a trial, and Respondent specifically argued to the trial court that it could decide the question of jurisdiction based solely on the allegations of the complaint. In fact, after the first circuit judge to consider the issues decided that *more information was required* before it could decide the issue of personal jurisdiction, Respondent later argued to the second circuit judge that he did not need additional facts, that he was waiving his opportunity to pursue jurisdictional discovery, and that the issue could—and should—be decided solely on the pleadings.

(3) The Court's Order effectively precludes meaningful appeal by Defendants on constitutional personal jurisdiction grounds and adversely affects Substantial Rights.

The Court has overlooked or misapprehended the effect of its Order, which views *Mid-State* as a blanket rule on the appealability of a circuit court's denial of 12(b)(2) motions, with no exceptions, prohibiting immediate appealability of all orders. The Court's ruling overlooks the effect of such a decision, which forecloses appellants from safeguarding their due process rights in derogation of both the state and federal Constitutions and fails to give guidance to circuit courts

when—as here—the law on personal jurisdiction has changed significantly in the decades since *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008), was decided.

A litigant has an arduous road in the absence of immediate appellate consideration of a denial of a motion to dismiss for lack of personal jurisdiction and, particularly, a ruling regarding the sufficiency of minimum contacts. The litigant under such circumstances cannot ever appeal until after final judgment and, only then, if the litigant loses on one or more issues. *See* S.C. Code Ann. § 18-1-30 (“Any party aggrieved may appeal . . .”); *State v. Looper*, 421 S.C. 384, 388–89, 807 S.E.2d 203, 205 (2017) (“[A]n aggrieved party is one who is injured in a legal sense or has suffered an injury to person or property.”). Even if the litigant loses the final judgment and appeals, it must then establish that the order was reversible error. This process would likely take many years, and Appellants would be forced through the entirety of these proceedings all the while being compelled to litigate in the absence of minimum contacts supporting personal jurisdiction.

Further, a litigant who loses at trial will likely have multiple potential appellate issues and must make a tactical decision about which issues—and how many issues—are important enough and strong enough to raise in its appellate brief.⁴ And even if a litigant raises a jurisdictional issue on appeal, an appellate court may not reach the issue. *See Skydive Myrtle Beach, Inc. v. Horry Cty.*, 428 S.C. 638, 643 n.1, 837 S.E.2d 485, 488 n.1 (2020) (noting an appellate court need not address an issue if its ruling on another issue is dispositive (citing *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999))); *Ledford v. Dep’t of Pub.*

⁴ *See, e.g., Jones v. Barnes*, 463 U.S. 745, 751–52 (1983) (“Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.”); *State v. Pelletier*, 552 A.2d 805, 807–08 (Conn. 1989) (“Most cases present only one, two, or three significant questions. . . . Usually . . . if you cannot win on a few major points, the others are not likely to help. . . . The effect of adding weak arguments will be to dilute the force of the stronger ones.” (alterations in original) (quoting R. Stern, *Appellate Practice in the United States* 266 (1981))).

Safety, 428 S.C. 387, 392 n.5, 835 S.E.2d 509, 511 n.5 (2019) (citing *Futch*); *cf. Davis*, 409 S.C. at 281, 762 S.E.2d at 543 (addressing a contempt ruling but declining to address the underlying discovery orders).

The lack of appellate review of circuit court orders finding sufficient minimum contacts creates, in turn, a lack of precedent addressing what is constitutionally sufficient. Trial judges and counsel are left to apply outdated principles with little guidance, as the trial court did here, relying on a decision rendered in 2008 without further guidance as to the three separate decisions issued by the U.S. Supreme Court in 2011, 2017, and 2021 addressing the very constitutional standard at issue in this case. Published decisions addressing the modern confines of personal jurisdiction will create uniformity and stability within the state judicial system, avoid disparate treatment by the trial bench, and reduce costs because litigants will not fight over matters governed by precedent.

The guarantees of due process are illusory if there is no opportunity for appellate review until after final judgment simply because a trial court finds a plaintiff's conclusory allegations of minimum contacts are sufficient to proceed with subjecting the foreign defendant to the burden of litigation. Recognizing this potentially harsh result, the federal courts and a number of states permit interlocutory appeal of jurisdictional orders, whether by right,⁵ by direct application to an intermediate appellate court,⁶ or by asking the trial court to certify the issue for discretionary appellate review.⁷ South Carolina, however, has no such discretionary procedure, other than direct

⁵ *See, e.g.*, N.Y. C.P.L.R. § 5701(a)(2)(v); Fla. R. App. P. 9.130(a)(3)(C)(i); N.C. Gen. Stat. § 1-277(b); Texas Civil Practice and Remedies Code § 51.014(a)(7).

⁶ *See, e.g.*, N.J. R.A.R. 2:2-4; Mich. Ct. R. 7.203(b); Ill. R. S. Ct. 306.

⁷ *See, e.g.*, 28 U.S.C. § 1292(b) (permitting district judge to certify issue for interlocutory appeal where it presents a controlling question of law as to which there is substantial ground for difference of opinion and immediate appeal from the order may materially advance the ultimate termination of the litigation); Ga. O.C.G.A. § 5-6-34(b); C.A.R. 4.2(b); M. R. A. P. 5; Pa. R.A.P. 311(b) (permitting interlocutory appeal as of right of order sustaining personal jurisdiction where the

petition to the Supreme Court for an extraordinary writ of certiorari in its original jurisdiction. Therefore, because this matter implicates Appellants' substantial constitutional right to due process, the facts of this case illustrate why interlocutory review as of right is appropriate when, as here, the U.S. Constitution limits the authority of the trial court to subject a foreign defendant to the burden of litigation and trial.

4. Recognizing the propriety of immediate review regarding sufficiency of minimum contacts will not "open the floodgates" to the appellate courts.

To the extent the Court was concerned with the potential ramifications of approving of an immediate appeal in this matter, the facts of this case both highlight the necessity for a foreign defendant to have access to appellate review when its constitutional rights are at stake and illustrate that opening the door here will not "open the floodgates" to the appellate courts.

The South Carolina Supreme Court has long recognized that "[w]ithout minimum contacts, the court does not have the "power" to adjudicate the action." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 508 (2005) (quoting *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131(1992).)

This Court has also previously recognized that, in order to establish a prima facie case based on the allegations in his complaint, a plaintiff must set forth *specific facts*, not just conclusory allegations, to establish the minimum contacts constitutionally necessary to invoke

lower court finds a substantial issue of jurisdiction is presented); Ind. R. App. P. 14(B)(1) (permitting interlocutory appeal upon trial court's certification if one of three grounds are met: (1) appellant will suffer substantial expense, damage or injury if the order is erroneous and the determination of the error is withheld until after judgment; (2) the order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case; or (3) the remedy by appeal after final judgment is otherwise inadequate); Tenn. R. App. P. 9 (permitting interlocutory appeal by permission where discretionary approval is given by both the trial court and appellate court and where there is a need "to prevent irreparable injury," "to prevent needless, expensive, and protracted litigation," and "to develop a uniform body of law").

specific jurisdiction. *See Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 433, 434, 436, 665 S.E.2d 660, 665–67 (Ct. App. 2008). In *Mid-State*, the Supreme Court recognized that this standard was modeled after the federal court rule and commented that “[i]t is sound public policy to modify the procedure currently in place and conform our case law to the established limits of constitutionality.” 310 S.C. at 335. Appellants submit that “a correction is needed to conform the case law to the established limits of constitutionality.”⁸

Federal law is in accord with this Court’s precedent establishing that facts (as opposed to conclusory allegations) are needed to make a prima facie showing of minimum contacts, *including* numerous federal courts that have *granted* motions to dismiss filed by LG Chem in cases involving materially indistinguishable facts. *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 397, 403 (4th Cir. 2003) (affirming order dismissing defendant for lack of personal jurisdiction and finding no abuse of discretion when trial court denied request for jurisdictional discovery “based on bare allegations in the face of specific denials made by defendants”); *Reyes v. Freedom Smokes, Inc.*, No. 5:19-CV-2695, 2020 WL 1677480, at *2 (N.D. Ohio Apr. 6, 2020) (dismissing LG Chem, Ltd. from a similar action, the Ohio federal court stated, “[w]hen faced with a properly supported 12(b)(2) motion, “the plaintiff may not stand on his pleadings but must, by

⁸ Numerous federal and state appellate courts in other jurisdictions have found that constitutional due process is not satisfied by the exercise of personal jurisdiction over Appellant LG Chem, Ltd. in other states based on similar facts, including the Supreme Court of Missouri, which found personal jurisdiction lacking in a writ proceeding challenging a trial court’s order that had been decided on a similarly erroneous view of stream of commerce jurisdiction, *State ex rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899 (Mo. 2020), and a California Court of Appeal that affirmed the dismissal of LG Chem from a case for lack of personal jurisdiction in a case where the trial court initially denied LG Chem’s motion seeking dismissal but that decision was vacated after the California Court of Appeal granted LG Chem relief in an extraordinary writ proceeding, *Kadow v. LG Chem, Ltd.*, No. B309854, 2021 WL 5935657 (Cal. Ct. App. Dec. 16, 2021), *review filed* (Jan. 24, 2022); *see also, Eriksen v. ECX, LLC, et al.*, No. 79473-I, 2020 WL 6395534 (Wash. Ct. App. Nov. 2, 2020) (unpublished); *Schexnider v. E-Cig Central, LLC*, No. 06-20-00003, 2020 WL 6929872 (Tex. Ct. App. Nov. 25, 2020), *reh’g denied* (Dec. 15, 2020); *Miller v. LG Chem, Ltd. et al.*, 2022-NCCOA-55 (N.C. Ct. App. Feb. 1, 2022) (affirming trial court’s order granting LG Chem, Ltd.’s and LG Chem America, Inc.’s motions to dismiss for lack of personal jurisdiction).

affidavit or otherwise, set forth specific facts showing that the court has jurisdiction.”); *Walsh v. LG Chem Am.*, No. CV-18-01545-PHX-SPL, 2019 WL 4394550, at *1 (D. Ariz. Sept. 13, 2019), *aff’d sub nom. Walsh v. LG Chem Ltd.*, 834 F. App’x 310 (9th Cir. 2020) (dismissing LG Chem, Ltd. from a similar action, the Arizona federal court stated, “[t]he Court may not, however, “assume the truth of allegations in a pleading that are controverted by affidavit.”)) Under the federal rule, if a court postpones the decision to permit discovery (which is what the first circuit judge did here), the plaintiff’s burden at that point shifts to a preponderance of the evidence standard. *Informaxion Sols., Inc. v. Vantus Grp.*, 130 F. Supp. 3d 994, 998 (D.S.C. 2015).

Here, the circuit court found the following conclusory allegations were sufficient to meet Respondent’s burden:

[LG Chem and LGCAI have] continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are used in this state.

(Ex. A, Compl., filed 3/4/19, ¶ 7.) These allegations were comparable to the allegations this court found to be insufficient in *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835, 838 (Ct. App. 2012), and amount to nothing more general legal conclusions, unsupported by a single fact. Respondent argued that the above conclusory allegations were sufficient to satisfy the standard in this state, and the second circuit judge agreed, even after the first circuit judge found Respondent’s showing was not sufficient to decide the issue. By contrast, Appellants’ introduced ***admissible, uncontroverted*** evidence establishing that they did not serve a consumer market in South Carolina for the product at issue in this case (lithium ion battery cells sold as standalone, replaceable batteries) and that they did not engage in any activities in or directed to South Carolina related in any way to Respondent’s claims.

The constitutional protections guaranteed by the Due Process Clause of the United States Constitution, and the above-cited authorities of this Court, demand more than subjecting a foreign defendant to the burdens of litigation in the courts of this state simply based on conclusory and formulaic allegations in a complaint, unsupported by *admissible* evidence, particularly when the defendants introduced *admissible, uncontroverted* evidence showing that constitutional minimum contacts were lacking.

Conclusion

This Court should grant Appellants' petition for rehearing to correctly recognize that South Carolina Code Section 14-3-330 and *Mid-State Distributors* do not support a finding that this case is not immediately appealable and to allow this appeal to go forward on the merits.

Respectfully submitted,

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Columbia, SC
March 25, 2022

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Mar 25 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

Civil Action No. 2019-CP-4400054

Dwayne Thompson, ... Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are
the.....

Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for LG Chem, Ltd. and LG Chem America, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified, pursuant to the Supreme Court Order 2021-08-2502, and a copy of that electronic mail is attached to this certificate.

Pleading(s): **LG Chem, Ltd. and LG Chem America, Inc.'s Petition
for Rehearing**

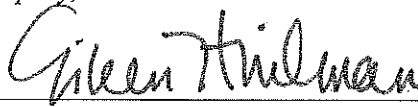
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March 25, 2022

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Subject: Dwayne Thompson v. LG Chem, Ltd.
Attachments: Thompson (SC) LGC's and LGCAI's Petition for Rehearing (Court of Appeals).pdf; Thompson Proof of Service.pdf

Good afternoon.

Attached for service upon you in the above matter please find LG Chem, Ltd. and LG Chem America, Inc.'s Petition for Rehearing and Proof of Service. Service is made via email pursuant the Supreme Court's August 25, 2021 Administrative Order.

Thank you



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