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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM UNION COUNTY
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Appellate Case No. 2022-000853

Dwayne Thompson, …….. Respondent,

v.

LG Chem, Ltd., LG Chem America, Inc.,
and Rolling Fog Vapor Company, LLC, ……Defendants,

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

BRIEF OF RESPONDENT

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V. If preserved, whether the Circuit Court correctly denied Petitioner LG Chem, Ltd.'s Motion to Dismiss for insufficient service of process.

INTRODUCTION

This appeal should be dismissed for lack of appellate jurisdiction. Petitioners have appealed interlocutory Circuit Court Orders denying separate Rule 12(b)(2) motions to dismiss for lack of personal jurisdiction. Petitioners contend these orders are immediately appealable under S.C. Code Ann. § 14-3-330(2), because they "affect a substantial right." However, this Court was clear in *Mid-State Distributors, Inc. v. Century Importers, Inc.*, that such an order is not immediately appealable under S.C. Code § 14-3-330(2), precisely because "[t]he denial of a motion to dismiss for lack of jurisdiction does not impair a substantial right." 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 n.4 (1993). The Court of Appeals correctly dismissed this appeal on these grounds. This Court should affirm.

But even if the Orders did "affect a substantial right", they fail to satisfy the requisite second prong of section 14-3-330(2), because the Orders do not "in effect determine the action and prevent a judgment from which an appeal might be taken

or discontinue the action" or "grant or refuse a new trial" or "strike out an answer or any part thereof or any pleading in any action." S.C. Code Ann. § 14-3-330(2); *see also Mid-State Distrib., Inc.*, at 334 n.4, 426 S.E.2d at 780 n.4. This, too, is dispositive of whether the Court has appellate jurisdiction to hear this appeal.

Further, the Court need not reach the substance of Petitioners' Motions, because the Court of Appeals never considered or ruled on the merits of Petitioners' arguments regarding personal jurisdiction or service of process. Instead, the Court of Appeals' Order and Rehearing Order were based solely on the immediate appealability of the Circuit Court's Orders. Therefore, the Court should decline to rule on the merits of Petitioners' Motions.

If the Court does consider this appeal, the Court should affirm the Circuit Court's Orders finding it had specific personal jurisdiction over Petitioners in this case. Petitioners import, distribute, and market their products, including lithium-ion batteries, in South Carolina and have derived millions of dollars in revenue from such activities.[1] Notwithstanding, they argue these in-state activities are not sufficiently connected to the subject matter of this lawsuit – a defective lithium-ion battery sold

[1] In a publicly filed affidavit, LG Chem America, Inc. claims to have derived 1.27% of its yearly revenue from sales in South Carolina. Affidavit of Hyunsoo Kim, *Moore v. Planet Vapor, Inc. et al*, Civil Action No. 2018-CP-21-02884 (Dec. 21, 2018, 3:29 PM), https://publicindex.sccourts.org/Florence/PublicIndex/PIImageDisplay.aspx?ctagency=21002&doctype=D&docid=1545424593676-222&HKey=1 041095411410611676111655055100528712177568549113119113105518712187108741047447979910810448111816849517 7. Based on publicly available financial statements of its revenue in 2018, this extrapolates to roughly $3.6M. *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. While LG claimed in the *Moore* affidavit that its sales in South Carolina comprised of petrochemical products only, LG no longer denies selling lithium-ion batteries, including the 18650 battery, within South Carolina. (App. p. 290 ¶ 4).

in South Carolina, which malfunctioned and injured a South Carolina resident in South Carolina – to establish specific personal jurisdiction. The Circuit Court correctly rejected Petitioners' reasoning and denied their Motions to Dismiss for lack of personal jurisdiction. This Court should affirm.

COUNTERSTATEMENT OF THE CASE

This Appeal arises from a products liability action in which Respondent Dwayne Thompson sustained serious burns after an "18650" lithium-ion battery manufactured by Petitioner LG Chem, Ltd. ("LG") and distributed by Petitioner LG Chem America, Inc. ("LGCAI") exploded and burst into flames while in his pocket. (App. pp. 36-44). Respondent filed this products liability action in the Union County Court of Common Pleas on March 4, 2019. LG, a South Korean corporation, was served via the South Carolina Secretary of State as its statutorily designated agent for service of process within South Carolina under S.C. Code Ann. § 15-9-245 on March 22, 2019. (App. p. 45; Supp. App. p. 103).

On April 24, 2019, Petitioners filed Motions to Dismiss for a purported lack of jurisdictional contacts with South Carolina, despite United States Customs records showing that since 2006 Petitioners have imported hundreds of shipments of their products into South Carolina, including lithium-ion batteries, through the Port of Charleston. (App. pp. 104-13, 164-273, 286-92; Supp. App. pp. 177-213). LG also argued for dismissal based on insufficient service of process. (App. pp. 104-05). Petitioners filed memoranda in support of their Motions to Dismiss on September 18, 2019, relying solely on the affidavits of two employees to refute the allegations of

Respondent's Complaint. (App. pp. 114-125; 293-99). Respondent filed a memorandum in opposition on September 20, 2019, arguing that service on LG was in-state and was therefore not required to comply with the provisions of the Hague Service Convention, and that its uncontested allegations and United States Customs import data made a prima facie showing of personal jurisdiction. (App. pp. 138-149; 310-319).

Petitioners' Motions to Dismiss were heard by Judge Maddox on September 23, 2019. (App. pp. 46-57). Counsel for Petitioners made several unsupported arguments, including that there was no evidence Petitioners had sold lithium-ion batteries in South Carolina, that a "black market" was responsible for its 18650 battery being sold as a standalone battery to consumers, and that Petitioners did not sell individual 18650 batteries to individual consumers for any purpose. (App. p. 55, lines 12-24). Counsel for Respondent argued that the allegations of the Complaint were sufficient to support personal jurisdiction, that the import data proved Petitioners did in fact import lithium-ion batteries directly to customers in South Carolina, and that it was reasonable and fair for the Circuit Court to exercise jurisdiction over Petitioners. (App. p. 49, line 11 – p. 50, line 19; p. 52, lines 5-17). Judge Maddox stated, "I think factually there's just not enough information to grant or deny at this point" and therefore denied the Motions without prejudice to renew them after discovery. (App. p. 57, lines 9-13).

On December 6, 2019, Judge Maddox signed and filed an Order denying LG's Motion as to sufficiency of service of process and personal jurisdiction, but with leave

to renew the Motion as to personal jurisdiction. (App. pp. 1-4). LG did not timely appeal Judge Maddox's finding that service was sufficient. On December 16, 2019, Petitioners filed a Motion for Reconsideration, incorrectly arguing that Judge Maddox had not addressed sufficiency of service on LG and that discovery should be limited to jurisdictional issues. (App. pp. 378-383). On December 23, 2019, Judge Maddox signed and filed an Order denying LGCAI's Motion to Dismiss without prejudice. (App. pp. 5-6).

On April 17, 2020, Petitioners filed a memorandum in support of their Motion for Clarification or Reconsideration. (App. pp. 408-421). In their memorandum, Petitioners improperly argued new grounds for reconsideration not raised in their initial Motion, including (i) they should be allowed to supplement the record regarding service, (ii) Judge Maddox erred in finding service on LG was sufficient, and (iii) the issue of personal jurisdiction should be reconsidered. (App. pp. 409, 415-20).

On May 4, 2020, Respondent filed a memorandum in opposition to the Motion, arguing against all issues raised by Petitioners in their memorandum. (App. pp. 384-89). On July 20, 2020, Judge Maddox entered an Order denying Petitioners' request for reconsideration while also granting their request for discovery to be limited to jurisdictional discovery for a period of 90 days following entry of the Order, with leave for Petitioners to renew their Motions to Dismiss after the close of jurisdictional discovery. (App. pp. 7-10). Petitioners did not appeal this Order on the issue of

sufficiency of service within 30 days. Respondent served jurisdictional discovery requests on July 24, 2020. (Supp. App. pp. 136, 147, 152, 158).

One month later, Petitioners filed a Motion for a Protective Order asking to be excused from answering the majority of Respondent's jurisdictional discovery. (Supp. App. pp. 135-41). Petitioners also argued that they could not comply with discovery until entry of a Confidentiality Order but produced no evidence that the discovery requests sought confidential, trade secret information. (Supp. App. pp. 135-41). Petitioners objected to requests regarding (i) Petitioners' awareness that the subject battery was being sold in South Carolina, (ii) lawsuits filed within the United States, including South Carolina, concerning the subject battery, and (iii) Petitioners' general participation in the stream of commerce. (Supp. App. pp. 144-57).

Petitioners admitted withholding responsive information regarding shipments of the subject battery into South Carolina; incompletely answered interrogatories asking them to identify businesses in South Carolina selling LG products and provide the type of LG products sold, distributed, and imported into South Carolina; and did not directly respond to Respondent's requests for admission. (App. pp. 769-73, 778-79, 784-85). On November 2, 2020, knowing that their Motion for Protective Order had not been heard, and knowing that they had generally ignored Respondent's discovery requests, Petitioners filed Renewed Motions to Dismiss.[2] (App. pp. 436-41, 787-91).

[2] Petitioners' tactical gaming of the discovery process in other lithium-battery cases has been documented by courts in other jurisdictions. (*See, e.g.* App. pp. 452-61).

The Motion for Protective Order and Renewed Motions to Dismiss were set for hearing by the Circuit Court on February 1, 2021. Due to Petitioners' strategic refusal to cooperate in jurisdictional discovery, the parties' memoranda were again based on the limited materials that were previously available for Judge Maddox's review at the September 23, 2019 hearing. (App. pp. 442-50, 529-48, 792-801, 879-97; Supp. App. pp. 106-131, 135-176). At the hearing, Petitioners argued (i) Respondent had not presented any new evidence of contacts with South Carolina (ii) without evidence that they had never knowingly supplied batteries to a distributor who was serving a consumer market for stand-alone batteries, (iii) they had never directly supplied a consumer market with the subject battery, and (iv) the subject battery arrived in South Carolina through the unilateral acts of third parties. (App. p. 67, line 1 – p. 69, line 18).

On March 19, 2021, the Circuit Court, Judge McKinnon, entered an Order denying Petitioners' Renewed Motions to Dismiss. (App. pp. 12-28). The Orders found Petitioners had sufficient minimal contacts, as demonstrated through the allegations and Customs import data, to make a prima facie showing of purposeful availment, that there was a sufficient nexus between Petitioners' in-state contacts, its lithium-ion batteries, and Respondent's lawsuit, and that the exercise of jurisdiction would be reasonable and fair due to the interest of South Carolina in adjudicating the action and the minimal inconvenience to Petitioners in defending the suit. (App. pp. 16-18). Petitioners filed Motions to Reconsider on March 29, 2021, which were denied by the

Circuit Court on April 21, 2021.[3] (App. pp. 29-31, 1100-15, 1123-37).

Petitioners filed and served a Notice of Appeal of the March 19 and April 21 Orders on May 19, 2021. (App. pp. 1237-1241). They also petitioned this Court for a writ in the Court's original jurisdiction or in the alternative, to certify the appeal directly to the Court. The petition and motion for certification were denied. (Supp. App. pp. 22-25). The Court of Appeals dismissed the appeal on March 10, 2022, ruling that an appeal from an order denying a motion to dismiss for lack of personal jurisdiction was not immediately appealable. (App. p. 32). Petitioners petitioned the Court for a writ of certiorari, which was granted on March 7, 2023.

ARGUMENT

I. An order denying a motion to dismiss for lack of personal jurisdiction is not immediately appealable under S.C. Code Ann. § 14-3-330(2).

The Court must dismiss this appeal for lack of appellate jurisdiction. The Constitution of South Carolina provides: "The Supreme Court shall constitute a court for the correction of errors at law under such regulations as the General Assembly may prescribe." S.C. Const. Art. V § 5. The General Assembly has set forth the parameters of this Court's appellate jurisdiction through its adoption of S.C. Code Ann. § 14-3-330.

Petitioners incorrectly contend that S.C. Code Ann. § 14-3-330(2) authorizes this interlocutory appeal of the Circuit Court's denial of their Motions to Dismiss for

[3] The issue of service of process was not ruled on by the Circuit Court in its March 19, 2021 Order, was not raised to the Circuit Court in Petitioners' Motions for Reconsideration, and is not preserved for review. (App. pp. 12-28, 1100-1144).

lack of personal jurisdiction. It does not. Section 14-3-330(2) grants the Court limited appellate jurisdiction over:

> [O]rder[s] 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, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

The jurisdictional inquiry under section 14-3-330(2) is two-pronged. *First*, the order must "affect[] a substantial right." *Second*, the order must "in effect determine the action and prevent a judgment from which an appeal might be taken or discontinue the action" or "grant or refuse a new trial" or "strike an answer or any pleading or part thereof." For appellate jurisdiction to lie with this Court, *both* prongs must be satisfied. As set forth below, the Circuit Court Orders fail to satisfy either prong.

A. Denial of a motion to dismiss for lack of personal jurisdiction does not impair a substantial right.

This Court made it clear in *Mid-State Distributors, Inc. v. Century Importers, Inc.,* that "[t]he denial of a motion to dismiss for lack of jurisdiction does not impair a substantial right" and so cannot give rise to appellate jurisdiction under S.C. Code Ann. § 14-3-330(2). *See* 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 n.4 (1993). Petitioners incorrectly argue that *Mid-State Distributors* "focused solely on the (sic) whether the subject order was sufficiently final such that it 'involved the merits'", as required to vest appellate jurisdiction under S.C. Code Ann. § 14-3-330(1). Pet. Brief, p. 9 (emphasis in original). Petitioners overlook the fact that the Court also addressed the viability of appellate jurisdiction under section 14-3-330(2):

> It should be noted that § 14-3-330 also allows appeal from an order affecting a substantial right. This is when such order would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense. ***The denial of a motion to dismiss for lack of personal jurisdiction does not impair a substantial right.*** . . . On the present facts, [the defendant] has not lost a defense; and in fact, their defense will remain viable until there is a final order in the case.

Mid-State Distributors, Inc., at 334 n.4, 426 S.E.2d at 780 n.4 (emphasis added).

Importantly, consistent with Rule 12(b)(2) and 12(h), SCRCP, the Court expressly recognized in *Mid-State Distributors,* that "lack of personal jurisdiction" is an affirmative defense that is "not lost" when it is denied, but "remains viable until there is a final order in the case." *Id.* Thus, Petitioners are incorrect in their assertion that the Circuit Court's denial of their Motions to Dismiss "affected a substantial right" and thereby vested this Court with appellate jurisdiction to hear this appeal.

Petitioners, ignoring the plain language of *Mid-State Distributors* and contending the Circuit Court's denial of their Motions "based on the sufficiency of due process affect[ed] a 'substantial right,'" conflate an affirmative defense with the due process concerns of the personal jurisdiction doctrine. Due process does not guarantee an individual the right to be free from litigation and its associated costs. The State has no power to compel an entity or individual to defend itself in a civil action and assume the associated costs and burdens of litigation; therefore, there is no substantial right to be free from a coercive power the State does not possess. Instead, the Due Process Clause only protects an individual's liberty interest in being free from the forum state's coercive power to bind him to an adverse final judgment in a forum "with which he has established no meaningful 'contacts, ties, or relations.'"

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 105 S. Ct. 2174, 2181, 85 L. Ed. 2d 528 (1985); *see J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 879-90, 131 S. Ct. 2780, 2786-87, 180 L. Ed. 2d 765 (2011). If personal jurisdiction does not in fact exist over Petitioners, then their substantial rights interest in not being subject to a binding judgment in a court of this state can be adequately protected by an appeal after final judgment, or even an earlier filed motion for summary judgment, and in fact the substantial right is not even implicated until after an adverse final judgment has been entered by the Circuit Court.

B. Denial of a motion to dismiss for lack of personal jurisdiction does not in effect determine the action and prevent a judgment from which an appeal might be taken or discontinue the action.

The second prong of the appellate jurisdictional inquiry requires that an order "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action" or "grants or refuses a new trial" or "strikes out an answer or any part thereof or any pleading in any action." S.C. Code Ann. § 14-3-330(2). The Orders at issue do not meet any of these criteria. The second prong is not superfluous; it is mandatory:

> To bring the case within this second subdivision of Section 11, it must appear to be an order affecting a substantial right, made in an action, when such order in effect determines the action, and prevents a judgment from which an appeal might be taken, and when such order grants or refuses a new trial. **It must therefore appear that the order in question is such as to prevent a judgment in an action**. The present order is not of that character. At most if affects the security of the plaintiff for the satisfaction of any judgment he may obtain, but does not preclude him from proceeding to judgment against the defendant.

Allen v. Partlow, 3 S.C. 417, 418 (1872) (emphasis added) (recognizing requirements for appellate jurisdiction under the statutory predecessor to S.C. Code Ann. § 14-3-330). "For the order to be appealable, it must not only affect a substantial right, but it must also in effect determine the action and prevent a judgment from which an appeal could be taken. . . ." *Garlington v. Copeland*, 25 S.C. 41, 43 (1886) (same).

Petitioners would have the Court ignore the entire second prong of section 14-3-330(2). *Mid-State Distributors* provides an explanation of why the subject Orders do not in effect determine the action by preventing an appeal or discontinuing the action:

> Carlton has not arrived at the end of the road. **A party who is denied a dismissal under Rule 12 has forfeited nothing, they must simply continue to trial** . . . . If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.

Id. at 334-35, 426 S.E.2d at 780 (citations omitted) (emphasis added). Therefore, according to this Court, the denial of Petitioners' Motions did not in effect determine the action, prevent an appeal, or discontinue the action, as *Petitioners have forfeited nothing* and can raise their personal jurisdiction defenses again on a motion for summary judgment or at trial. Petitioners cannot satisfy their burden of proving that all the requirements of section 14-3-330(2) have been met, and consequently the Court does not have appellate jurisdiction.

Here, the subject Orders did not determine Respondent's action, discontinue it, or prevent a final judgment from which Petitioners could appeal. Petitioners argue that due to the significance of the due process rights implicated by personal

jurisdiction, the Circuit Court's Orders eradicate their ability to seek meaningful redress by appeal – but this argument is directly contradicted by the Court's recognition in *Mid-State Distributors* that denial of a motion for lack of personal jurisdiction does not impair a substantial right, and that "lack of personal jurisdiction" is an affirmative defense that remains viable until entry of a final order in the case.

The logic of Petitioners' argument is not only unsound, it also wholly ignores the second prong of section 14-3-330(2). Under Petitioners' rationale, every interlocutory order affecting a "substantial right" would be immediately appealable, regardless of whether it in effect determined the action, prevents a final judgment, or discontinued the action. Interlocutory discovery orders affecting trade secrets, confidential private information, confidential business information, or involving expansive, costly discovery would be subject to the same logic, as would interlocutory orders involving jurisdictional issues such as service of process and sufficiency of process, privilege, and orders granting or denying motions to change venue. Such an interpretation of the statute would render its second prong superfluous, would open virtually all Rule 12(b) motions to immediate appeal, and would constitute legal error. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("In that vein, we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law."); (Supp. App. p. 35) ("The substantial-right doctrine is the

door through which many – if not most – interlocutory orders are appealed. Most of the appellate decisions highlighted in this Guide are based on the substantial-right doctrine").

C. Petitioners incorrectly argue this Court has granted immediate appeal of interlocutory orders based solely on the first prong of section 14-3-330(2).

Petitioners refer to several South Carolina cases to convince the Court that immediate appeal is permissible based exclusively on an order affecting a "substantial right," even when it does not satisfy the second prong of § 14-3-330(2). Petitioners incorrectly contend that *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), is one instance in which the Court ignored the second prong to find that an interlocutory order was immediately appealable merely because it affected a substantial right.

In *Hagood*, the Court held that an order disqualifying a party's counsel of choice affected a substantial right, satisfying the first prong of section 14-3-330(2). *Id.* at 197, 607 S.E.2d at 710. The Court then found that such an order *also* satisfied the second prong of the statute, stating that an appeal after final judgment following an order disqualifying a party's counsel of choice would not adequately protect a party's interests because it would be "impossible" for an appellate court to ascertain whether prejudice resulted from the lack of a preferred attorney, thus it was one of the "rare" orders which in effect could determine the action and prevent a judgment from which an appeal might be taken or could discontinue the action, due to the order's impact on the attorney-client relationship. *Id.* at 197-98, 607 S.E.2d at 710.

In other words, such an order could have a determinative impact on the outcome of the litigation that could never be appealed by the litigant.

Petitioners also cite *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004), to support their argument that an order may be immediately appealable if it solely affects a substantial right. This is incorrect. In *Bateman*, the court ultimately found that the subject order denying a request for a jury trial involved the mode of trial and was therefore immediately appealable pursuant to this Court's holding in *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997). Notably, *Lester* leads to a line of cases holding that an order denying a request for a particular mode of trial is immediately appealable. This line of cases stretches back to *Alston v. Limehouse*, 61 S.C. 1, 39 S.E. 192 (1901). None of those cases purport to analyze the proposition that an order involving the mode of trial is immediately appealable under section 14-3-330(2) or any of its predecessors. Instead, they all make a blanket assertion that orders involving the mode of trial are immediately appealable as a matter of course.

In *McLaughlin v. Strickland*, 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983), the Court of Appeals found a family court order denying a request for leave to file a late answer and permission to withdraw a signed consent to adoption affected a substantial right and foreclosed the litigant's ability to contest the case on the merits and was therefore immediately appealable, citing section 14-3-330 and *Ayer v. Chassereau*, 18 S.C. 597 (1882), without further explanation. *McLaughlin*, 279 S.C. at 516, 309 S.E.2d at 790. *Ayer* held that an order denying a motion for leave to file a

late answer and granting default judgment is immediately appealable. *Ayer*, 18 S.C. at 597. Therefore, both decisions stand for the proposition that an order preventing a defendant from contesting the merits determines or discontinues the action and is immediately appealable. *McLaughlin* and *Ayer* are distinguishable from this case because the subject Orders do not prevent Petitioners from contesting the merits of Thompson's claims.

Lastly, Petitioners rely on *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988), in which the Court of Appeals reviewed a family court order denying the appellant's motion to dismiss for lack of personal jurisdiction. First, it is unclear whether the *Keller* order was immediately appealed or appealed after a final judgment. The decision does not address the immediate appealability of interlocutory orders or refer to section 14-3-330, indicating the order was not appealed until after a final order was entered, which explains why *Mid-State Distributors* did not overrule it. Thus, *Keller* is neither relevant nor helpful to this Appeal.

When read in detail, it is apparent that none of the authorities Petitioners cite support their argument that the second prong of section 14-3-330(2) can be ignored, or that an order is immediately appealable simply because it affects a substantial right.

D. Ignoring section 14-3-330(2)'s second prong would violate the separation of powers doctrine.

Petitioners encourage the Court to violate the separation of powers doctrine by ignoring the second prong of section 14-3-330(2), Article I, section 8 of the Constitution of South Carolina provides that "[i]n the government of this State, the

legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." The separation of powers mandate encompasses Article V, which preserves for the General Assembly the power to define the Court's appellate jurisdiction in law cases. *See State ex rel. McLeod v. McInnis*, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982).

The General Assembly has limited the Court's appellate jurisdiction of interlocutory orders only to those orders (i) affecting a substantial right and (ii) effectively determining the action and preventing a judgment from which an appeal might be taken, discontinuing the action, granting or refusing a new trial, or striking an answer or pleading or any part thereof. S.C. Code Ann. § 14-3-330(2). Thus, an interlocutory order that does not meet these criteria is not within this Court's appellate jurisdiction, and appellate review of such order would judicially expand the Court's jurisdiction beyond the outer limits defined by the General Assembly.

Petitioners encourage the Court to usurp the General Assembly's authority by disregarding the second prong of section 14-3-330(2). Petitioners make no effort to convince the Court that the second prong has been met, or that they have been prevented from effectively seeking an appeal of a final judgment in this case. In fact, Petitioners do the opposite, suggesting to the Court that "[t]he availability of eventual appeal after trial is not dispositive of the issue of immediate appealability." (Pet'rs' Br. 8). The Court's interpretation of the second prong of section 14-3-330(2) should

be strictly construed in this case and all others to avoid confrontation with the separation of powers mandate.

E. South Carolina precedent prohibits immediate appeal of an interlocutory order under section 14-3-330(2) unless both prongs are satisfied.

The Court should uphold its prior decisions that an interlocutory order denying a motion is not immediately appealable under section 14-3-330(2) unless both prongs of that statute are met. Stare decisis is used to foster stability and certainty in the law and applies "with full force with respect to questions of statutory interpretation". *McLeod v. Starnes*, 396 S.C. 647, 655, 723 S.E.2d 198, 203 (2012).

As noted above, this Court held in *Mid-State Distributors*, that the denial of a motion to dismiss under Rule 12(b)(2), SCRCP, is interlocutory and not directly appealable under § 14-3-330(2) because such denial does not impair a substantial right of the movant, the first prong of the jurisdictional inquiry. 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 n.4 (1993). The Court reached an analogous conclusion as it related to an interlocutory appeal of an order denying a motion for non-suit in *Agnew v. Adams*, 24 S.C. 86 (1885), under the predecessor to section 14-3-330(2):

> The second subdivision of that section provides for an appeal from "an order affecting a substantial right made in an action, when such order, in effect, determines the action, and prevents a judgment from which an appeal might be taken, or discontinues the action, when such order grants or refuses a new trial, or when such order strikes out an answer, or any part thereof, or any pleading in an action . . . ." **It is very clear that the refusal of a motion for non-suit cannot be brought under any of the cases provided for in subdivision 2, for while it may affect a substantial right, it does not in effect determine the action, or prevent a judgment from which an appeal might be taken, nor does it discontinue the action; and it certainly does**

> **not fall under any of the other cases provided for in that subdivision.**"

Id. at 88 (emphasis added); *Peterkin v. Brigman*, 319 S.C. 367, 368, 461 S.E.2d 809, 810 (1995) ("Under § 14-3-330(2), an order which affects a substantial right and in effect determines the action and prevents a judgment from which an appeal may be taken is immediately appealable. The order in this case does not prevent a judgment from being rendered in the action, and appellant can seek review of the current order in any appeal from final judgment."); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 541, 773 S.E.2d 144, 147 (2015) (Kittredge, J., dissenting) (noting that even if the subject order had implicated a substantial right it did not discontinue the action or prevent a final judgment from which an appeal could be taken).

Petitioners ask the Court to disregard and overturn precedent by considering their appeal in this case, based upon their argument that the Circuit Court's Order ostensibly satisfied only one prong of section 14-3-330(2), but not the other. This Court has previously held that it lacks appellate jurisdiction in such cases, and should reach the same conclusion in this case.

F. Other states' practice of permitting immediate appeals as a right represents an extreme minority approach advocated by only five states, and unlike here, does not run afoul of those states' appellate jurisdiction statutes.

Petitioners' reliance on North Carolina law is misguided and encourages the Court to overstep its constitutional constraints. Petitioners fail to advise the Court that the statute upon which the North Carolina cases it cites are based, N.C. Gen.

Stat. Ann. § 7A-27(b)(3), differs substantively from S.C. Code Ann. § 14-3-330(2). Specifically, the North Carolina statute provides an interlocutory order may be appealed if it does ***any*** of the following: "a. Affects a substantial right. b. In effect determines the action and prevents a judgment from which an appeal might be taken. c. Discontinues the action. d. Grants or refuses a new trial." Conversely, South Carolina's statute requires that, to be immediately appealable, an interlocutory order must satisfy ***both*** (a.) *and* one of either (b.) or (c.) to be immediately appealable. Thus, Petitioners' argument for following North Carolina's model is fatally flawed in that it ignores this key distinction between the boundaries of appellate jurisdiction in North Carolina and South Carolina.

North Carolina's model also appears to be an extreme minority position. To the undersigned's knowledge, only North Carolina, Minnesota, Texas, Florida, and New York permit immediate appeal of interlocutory orders denying a motion to dismiss for lack of personal jurisdiction without interlocutory certification or an application procedure. Three of the states, Texas, Florida, and New York, have either (i) appellate jurisdiction statutes or rules identical to that of North Carolina, or (ii) rules or statutes that specifically permit the appeal of orders denying motions to dismiss for lack of personal jurisdiction. Tex. Civ. Prac. & Rem. Code § 51.014(a)(7); Fla. R. App. P. 9.130(a)(3)(C)(i); N.Y. C.P.L.R. 5701(a)(2)(v). Minnesota appellate courts have an even broader grant of appellate jurisdiction and are essentially allowed to find that any order is appealable. Minn. R. Civ. App. P. 103.03(j).

Section 14-3-330(2) renders South Carolina's appellate jurisdiction much narrower than that of these states by requiring an interlocutory order to affect a substantial right *and* to discontinue an action or prevent a final judgment from which an appeal may be taken before such an order can be immediately appealed. And there is no rule of appellate procedure in this State granting sweeping appellate power to review interlocutory orders such as the one at issue in this case. Thus, South Carolina's law is easily distinguishable from the aforementioned states in that it heavily curtails the Court's appellate jurisdiction over interlocutory orders in a manner not practiced by many other states.

Petitioners may reply that certain other states have allowed immediate appeals of interlocutory orders denying motions to dismiss for lack of personal jurisdiction under other mechanisms, but this argument again ignores the distinction between those States' and South Carolina's statutes and rules giving rise to appellate jurisdiction. A review of Petitioners' citations reveals none of these states have statutes or rules defining appellate jurisdiction as narrowly as section 14-3-330(2). A broad review of other states' laws concerning the appealability of the Circuit Court's Orders reveals the following categories: (i) five states have statutes or rules explicitly allowing such orders to be immediately appealed, (ii) some states have statutes or rules allowing certification or application for such appeal, (iii) some states have statutes or rules permitting discretionary appeal of interlocutory orders, and (iv)

some states, such as South Carolina, recognize extraordinary writ mechanisms through which litigants may petition an appellate court for relief.[4]

The laws of the aforementioned states differ so drastically from section 14-3-330(2) that interpretation of those laws is neither relevant nor helpful to the Court on this appeal. South Carolina has no statute or rule permitting certification or discretionary review of interlocutory orders. It also has no statute or rule providing for the immediate appeal of orders affecting personal jurisdiction.[5] South Carolina does recognize extraordinary writs of certiorari and writs of mandamus in the Court's original jurisdiction for the review of orders from which an appeal may not provide effectual relief, and Petitioners have already petitioned the Court for such a writ, to no avail. (Supp. App. pp. 22-25). Thus, decisions cited by Petitioners are not persuasive, primarily because most if not all of them do not implicate an appellate jurisdiction statute that is as restrictive as South Carolina's, and instead rely on statutes and rules that have not been enacted or promulgated in South Carolina.

And contrary to Petitioners' assertions, the allowance of the immediate appeal of interlocutory orders affecting a substantial right has opened the floodgates in North Carolina to interlocutory appeal, leading the North Carolina Bar Association's Appellate Rules Committee to observe that the majority of appeals from interlocutory orders in North Carolina result from the substantial right doctrine, which arguably encompasses orders based on sovereign immunity, legislative or quasi-judicial

[4] For a summary of the case law, see Petitioners' response to Respondent's Motion to Dismiss. (Supp. App. pp. 97-101)

[5] *But see* Rule 54(b), SCRCP, allowing for certification of some claims for immediate appeal when there are multiple claims for relief presented in an action.

immunity, the public-duty doctrine, absolute privilege, and a range of other issues. (Supp. App. pp. 53-76).

II. Petitioners' personal jurisdiction and service of process arguments are not preserved for review.

An issue is not preserved for this Court's review when the Court of Appeals does not address the issue and the appellant does not petition for rehearing for the Court of Appeals to consider it. *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 516, 426 S.E.2d 304, 305 (1993). The Court of Appeals did not address or rule on the issues of personal jurisdiction or service of process in its March 10, 2022 Order. (App. p. 32). Petitioners did not raise the issues of personal jurisdiction or service of process or ask the Court of Appeals to rule on them in its Petition for Rehearing. (App. pp. 1265-78). Thus these issues are not preserved for the Court's review. Regardless, Respondent will address the issues raised by Petitioners' personal jurisdiction and service of process arguments without waiving his position that they are not preserved.

III. The Circuit Court correctly denied Petitioners' Renewed Motions to Dismiss for lack of personal jurisdiction.

A. Statement of Facts.

Respondent Dwayne Thompson, a resident of South Carolina, suffered third-degree burns after an LG 18650 lithium-ion battery he purchased in South Carolina exploded while in his right front pocket.[6] (App. P. 38-39). Thompson required

[6] LG argued to the Circuit Court that it did not in fact design, manufacture, import, distribute, or sell this particular battery. This argument was not supported by any evidence introduced to the Circuit Court and is not supported by any evidence in the Appendix. *In re Gonzalez*, 409 S.C. 621, 636 n.3, 763 S.E.2d 210, 218 n.3 (2014) (stating that arguments of counsel are not evidence). The Circuit Court and this Court are required on a motion to dismiss for lack of personal jurisdiction to take Thompson's allegations as true unless they

extensive medical treatment, including skin grafts, and he continues to suffer from pain, disfigurement, and emotional suffering as a result. (App. pp. 39-40).

Thompson had purchased the battery from Rolling Fog Vapor Company, LLC, in Spartanburg, South Carolina. (App. p. 38-39). The battery was designed and manufactured by LG, a corporation with its principal place of business in Seoul, South Korea. (App. p. 38). The battery had been imported into the United States by LGCAI, which is involved in the business of selling and distributing LG products in the United States, including 18650 batteries. (App. p. 39).

LG imports its products into the Port of Charleston, and other ports, with South Carolina as a final destination for many shipments. (App. pp. 164-273). United States Customs data from November 1, 2006, show 984 shipments from LG through the Port of Charleston. [7] (*Id.*). Of these shipments, 818 were consigned by LGCAI (*Id.*). The data include entries demonstrating the distribution of lithium-ion batteries to Volvo in Ridgeville. (App. pp. 165, 180; Supp. pp. 178, 195).[8] The import data also

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are contradicted by evidence, so for the purposes of this Appeal, it is undisputed that the subject battery was designed, manufactured, imported, distributed, and sold by LG. *See Brown*, 323 S.C. at 399, 475 S.E.2d at 766.

[7] Petitioners argue this data is inadmissible, irrelevant, and unauthenticated evidence under Rules 801(c) and 901, SCRE, and that the Circuit Court erred by considering it. It is relevant because Petitioners have not refuted that the lithium-ion batteries detailed in the data are 18650 batteries. Further, the evidence falls within a hearsay exception as a record of regularly conducted activity or a public record and report, *see* Rules 803(6) and 803(8), SCRE, and could be authenticated by the United States Customs and Border Protection agency. It is not necessary for evidence to be presented in a form that would be admissible at trial on a motion to dismiss for lack of personal jurisdiction, so long as the contents of the evidence *would* be admissible at trial. *Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003). This is obvious, as Petitioners' affidavits are hearsay as well.

[8] The United States Customs import data included in the Appendix by Petitioners omits portions of the table as represented in Table 1 and Table 2. Specifically, the data within the Appendix omit a column containing a description of the products being imported. A contemporaneously filed Motion to Supplement the Appendix will seek to introduce complete

include shipments to Carolina Covertech in North Augusta, Continental Tire in Sumter, Covidien in Greenwood, Fitesa Simpsonville in Simpsonville, Flex in West Columbia, Milliken Company in Spartanburg, and Volvo Car US Operations, Inc. in Ridgeville. Thus, neither LG nor LGCAI can deny they availed themselves of the benefits and protection of South Carolina law in seeking to serve a market in South Carolina for their products. These data constitute a prima facie showing that LG and LGCAI sold, imported, and distributed 18650 lithium-ion batteries into South Carolina, when viewed in a light most favorable to Respondent.

Petitioners have not introduced competent evidence that the lithium-ion batteries described in the Customs import data are not 18650 batteries. (App. p. 96, lines 10-14) (Petitioners' counsel argued: "But there are not – that I'm aware of – shipments of 18650 battery cells, and if there are they are very limited . . . .", but this is not evidence).[9] The only evidence submitted by Petitioners consists of the affidavits of two employees, Sung Han Ryu of LG and HyunSoo Kim of LGCAI. The affidavits claim LG and LGCAI have no connection to South Carolina regarding 18650 batteries. However, what is omitted from the affidavits is more informative than what is actually stated in them.

The affidavits do not deny that LG designs and manufactures 18650 batteries. (App. p. 111). They do not deny that Petitioners sell or distribute 18650 batteries into South Carolina. (App. pp. 111, 290). They do not deny Petitioners distribute, sell, and

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reproductions of the data into the record accurate to the form in which they were submitted to the Circuit Court.

[9] *See* n.10, *supra*.

advertise 18650 batteries for use by individual consumers in South Carolina as rechargeable batteries. (App. pp. 111, 291). They do not deny Petitioners authorize distributors, retailers, and re-sellers to distribute and sell 18650 batteries for use by individual consumers for other purposes within South Carolina. (App. pp. 111, 291). They do not deny the lithium-ion batteries included in the import data are 18650 batteries, or that 18650 batteries are not a component of the Electric Vehicle batteries disclosed in the data. Importantly, they do not deny Petitioners knew that LG-brand 18650 batteries were sold to individual customers in South Carolina for vaping applications. The affidavits do not rule out Petitioners' service of a consumer market for standalone 18650 lithium-ion batteries in South Carolina. The affidavits only support that Petitioners did not intentionally design, manufacture, distribute, or sell 18650 batteries for use by *individual consumers in vape pens*. (App. pp. 291).

In sum, Petitioners' affidavits do not refute the evidence upon which the Circuit Court's Orders were based: (i) Customs import evidence of the distribution of 18650 lithium-ion batteries within South Carolina, (ii) the allegation that Petitioners designed, manufactured, sold, imported, and distributed the subject battery within South Carolina, and (iii) the allegation that Petitioners' continuous contacts with South Carolina through the distribution and sale of its goods created a reasonable expectation that their products, including its 18650 lithium-ion battery, would be used within South Carolina. Thus, because evidence in the record supports the Circuit Court's Orders, Petitioners have not carried their burden on appeal, and the Circuit Court's Orders should be affirmed.

B. Standard of Review.

Personal jurisdiction over a nonresident defendant is a question to 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 error of law." *Id.* The party seeking to invoke personal jurisdiction over a non-resident defendant by using South Carolina's long-arm statute bears the burden of establishing jurisdiction. *S. Plastics Co. v. S. Com. Bank*, 310 S.C. 256, 259, 423 S.E.2d 128, 130 (1992). "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." *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 328, 594 S.E.2d 878, 882 (Ct. App. 2004). On a motion to dismiss for lack of personal jurisdiction, the court must take the allegations in the complaint and plaintiff's evidence as true and resolve all factual disputes in the plaintiff's favor. *Brown v. Inv. Mgmt. and Rsch., Inc.*, 323 S.C. 395, 399, 475 S.E.2d 754, 766 (1996). The evidence must be looked at in a light most favorable to the plaintiff. *Mid-State Distribs.*, 310 S.C. at 333, 426 S.E.2d at 779.

C. The record supports the Circuit Court's Orders finding it had specific personal jurisdiction over Petitioners.

"Specific personal jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803 (2003)." *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007) (citing *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611

S.E.2d 505 (2005)). Whether a court may exercise personal jurisdiction involves a two-step analysis under which the court must "(1) determine whether the South Carolina long-arm statute applies and (2) whether the nonresident's contacts in South Carolina are sufficient to satisfy due process." *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012) (citations omitted).

1. <u>Petitioners' undisputed contacts with South Carolina meet the requirements of the state's long-arm statute.</u>

South Carolina's long-arm statute establishes specific jurisdiction over a foreign corporation for claims arising from the corporation's:

> (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; . . . ; or (8) 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.

S.C. Code Ann. § 36-2-803.

Subsection (A)(4) of the long-arm statute focuses on a defendant's direct, personal contacts within the forum state, whereas subsection (A)(8) relies on the stream of commerce theory based on a foreign manufacturer or distributor's reasonable expectation that its products will be used or consumed in South Carolina. The allegations of Respondent's Complaint and the U.S. Customs import data satisfy the requirements of each of these subsections. Specifically, Respondent has alleged (1) LG designed, manufactured, sold, imported, and distributed the subject battery into this State with the knowledge and expectation that those products would be used in this State, (2) LG derived substantial revenue from the sale of its goods in this

State, and (3) that his injuries arose from his purchase and use of the subject battery in South Carolina. (App. pp. 38-39). Petitioners have not produced evidence refuting these allegations. Further, the U.S. Customs data shows that Petitioners in fact designed, manufactured, sold, imported, and distributed its products – including lithium-ion batteries – into the forum with the knowledge and expectation the products would be used here. Petitioners have not presented evidence contrary to Respondent's allegations and argue only that the U.S. Customs data is "unauthenticated" and should not be considered.

Petitioners incorrectly argue that *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (Ct. App. 2012), requires Thompson to plead specific facts demonstrating precise contacts with South Carolina. However, *Sullivan*, which focused exclusively on subsection (A)(4) of the statute, merely holds that recitation of the long-arm statute is insufficient to support a finding of personal jurisdiction. *Id.* at 150-51, 723 S.E.2d at 839. *Sullivan* does not state that on a motion to dismiss, the uncontested allegations of a complaint in conjunction with extrinsic evidence cannot satisfy the long-arm statute. In fact, it states the opposite: "A prima facie showing of personal jurisdiction can be made through factual allegations in the complaint or through affidavits . . . ." *Id.* Here, as noted above, Respondent both alleged and presented evidence of Petitioners' contacts with South Carolina. (App. p. 39 ¶ 5; App. pp. 164-273). Outside of arguments of counsel, Petitioners have not made any showing that Respondent's injuries did not arise from this course of conduct. Accordingly, Respondent's allegations (which must be taken as true at this procedural

posture) and the Customs import data constitute a prima facie showing that satisfies both subsections (A)(4) and (A)(8) of the long-arm statute.

2. <u>The exercise of specific jurisdiction over LG is consistent with due process.</u>

"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." *Power Prods. and Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 665 (Ct. App. 2008). Due process also mandates the defendant have sufficient minimum contacts with the forum "such that he could reasonably anticipate being haled into court there." *Id.* at 431-32, 665 S.E.2d at 665.

The due process minimum contacts analysis has two prongs. *Id.* at 432, 665 S.E.2d at 665. The first prong, known as the "power" prong, inquires whether the court has the "power" to adjudicate the action. *Id.* The power prong involves two inquiries: (i) whether the defendant directed its activities to residents of South Carolina and (ii) whether the plaintiff's cause of action arises out of or relates to those activities. *Id.* The second prong, known as the "fairness" prong, asks whether the court's exercise of jurisdiction is reasonable and fair. *Id.*

a. <u>The "power" prong: Respondent's claims arise out of and relate to Petitioners' purposeful activities directed toward residents of South Carolina.</u>

The United State Supreme Court reaffirmed in *Ford Motors Co. v. Montana Eighth Judicial District Court* that "when a corporation has 'continuously and deliberately exploited [a State's] market, it must reasonably anticipate being haled

into [that State's] court[s]' to defend actions 'based on' products causing injury there." 592 U.S. ---, 141 S.Ct. 1017, 1027 (2021) (quoting *Keeton v. Hustler Magazine*, 465 U.S. 770, 781, 104 S.Ct. 1473 (1984)). *Ford Motor Company* centered upon whether due process permitted the exercise of specific jurisdiction over a product manufacturer, where the manufacturer had neither designed, manufactured, nor sold the injurious product into the forum state, but had "regularly conduct[ed]" business and "systematically served a market" in the forum through advertising, servicing, and sale of similar and identical products – in that case, vehicles. *Id.* at 1028-29. The Court explained in no uncertain terms:

> [I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its products in [several or all] other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.

Id. at 1027 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 580 (1980)).

The facts of this case fit squarely within the confines of specific jurisdiction as set forth in *Ford Motor Company*. Respondent has alleged and the U.S. Customs data submitted in this case shows that Petitioners have directly and indirectly served the South Carolina market with LG-brand products generally, including lithium-ion batteries such as the one at issue in this case. (App. pp. 165, 180; Supp. pp. 178, 195). Petitioners have not produced evidence refuting that they placed their products, including 18650 lithium-ion batteries or even the subject battery, into the stream of commerce with the expectation and intent that those products would be purchased

and used in South Carolina by consumers. In fact, Petitioners readily admit that they market and sell the 18650 battery for use in consumer electronics that are sold in all states, including South Carolina. (App. p. 68, line 24 – p. 69, line 4).

Petitioners argue that despite the fact that they have cultivated a market for lithium-ion batteries in this State, they cannot be subject to specific jurisdiction in *this case* because they did not market lithium-ion batteries for the use employed by Respondent.[10] However, this distinction is irrelevant to the jurisdictional inquiry under *Ford Motor Co.,* which does not focus on *how* the consumer used the defendant's product, but whether the defendant knowingly and intentionally served the local market with the product such that it could reasonably anticipate being haled into court if the product malfunctioned and injured a user.

Petitioners cite *Bristol-Myers* to argue that their in-state contacts as demonstrated by the Customs import data are insufficient to support personal jurisdiction here. However, *Bristol-Myers* is inapplicable. As noted in *Ford Motor Co.*, *Bristol-Myers* involved resident and nonresident plaintiffs in a class-action products liability case and stemmed from the fact that nonresidents were claiming specific personal jurisdiction over a foreign defendant in a forum, California, where none of the conduct relevant to them occurred. *Bristol-Myers*, 582 U.S. at 258-61, 137 S. Ct. at 1777-79.

[10] In its Brief, LG also argues that it has never distributed or sold 18650 batteries for use by individual consumers as a standalone replaceable battery in vape pens or for any other purpose. The affidavits do not support this argument, and only state it has not marketed the subject battery for standalone use in e-cigarette applications. (App. pp. 111, 291).

The majority in *Bristol-Myers* held that there was an insufficient nexus between the nonresidents' claims and California despite the defendant's extensive activity within the state; it did not reach the same conclusion for plaintiffs who were residents of California. *Id.* at 264-69, 137 S. Ct. at 1781-84. The "sliding scale" approach referred to by LG in its arguments was only rejected as to *nonresidents* who were claiming specific personal jurisdiction in a forum state to which they and their claims had no connection. (Pet'rs' Br. 15). As noted in *Ford Motor Co.*, the *Bristol-Myers* decision was necessary to limit forum shopping, which does not exist here.

In the alternative, even if Petitioners had never personally imported, distributed, and sold 18650 batteries in South Carolina, they could still be subject to a South Carolina court's personal jurisdiction under a stream of commerce theory. *See State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008). Demonstrating contacts via a stream of commerce theory allows a plaintiff to satisfy both the long-arm statute and due process's minimum contacts requirement.[11] *Id.*; S.C. Code Ann. § 36-2-803(A)(8).

[11] Petitioners argue South Carolina's long-arm statute retains a but-for causal requirement that is additional to the constitutional due process analysis, and so a foreign defendant's course of conduct could satisfy constitutional due process but not the long-arm statute. (Pet'rs' Br. 25 n.9). Petitioners' arguments are unsupported by the law. This Court has construed the long-arm statute as a grant of jurisdiction as broad as constitutionally permissible, with the parameters of the statute restricted only by due process limitations, and not by novel interpretations of the statute's language narrower than the jurisdiction granted by the due process analysis. *Cozi Invs. v. Schneider*, 272 S.C. 354, 358, 252 S.E.2d 116, 118 (1979). Thus, the determination of personal jurisdiction in South Carolina on a practical level only involves a due process assessment of minimum contacts and fair play, and not a narrow parsing of the long-arm statute's language. *See Moosally*, 358 S.C. at 329, 594 S.E.2d at 883 (Ct. App. 2004).

The stream of commerce theory is the law of this State and has never been overruled by the United States Supreme Court. The theory derives from *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980), where a majority of the Court endorsed it:

> Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly *or indirectly*, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or others. 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.

Id. at 297-98, 100 S. Ct. at 567 (emphasis added). In his concurrence to the plurality opinion in *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987), Justice Brennan described the test as follows:

> The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise. Nor will the litigation present a burden for which there is no corresponding benefit. 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. Accordingly, most courts and commentators have found that jurisdiction premised on the placement of a product into the stream of commerce is consistent with the Due Process Clause, and have not required a showing of additional conduct.

Id. at 117, 107 S. Ct. at 1034-35 (Brennan, J., concurring). South Carolina has embraced the stream of commerce theory and declined to adopt a "stream of commerce plus" test, which would require some additional conduct of the foreign defendant directed to the forum state. *NV Sumatra*, 379 S.C. at 89 n.5, 666 S.E.2d at 222 n.5.

Petitioners incorrectly argue that *NV Sumatra* and its "nationwide" analysis of the stream of commerce theory has been overruled by subsequent decisions of the United States Supreme Court, and that due process cannot be satisfied by the acts of third parties such as distributors. (Pet'rs' Br. 18). This is a misstatement of the law, which has always been that due process cannot be satisfied by the *unilateral, isolated, fortuitous* acts of third parties such as consumers in bringing a defective product to a forum state. *Asahi*, 480 U.S. at 120, 107 S. Ct. 1026 ("The Court in *World-Wide Volkswagen* thus took great care to distinguish '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.'"). Petitioners have presented no evidence that the subject battery reached South Carolina by a unliteral, isolated, fortuitous act outside of its known and intended chain of distribution.

The U.S. Supreme Court has never held that the acts of a third party cannot justify the exercise of personal jurisdiction over a foreign defendant who seeks to exploit a forum state's market through third parties, notwithstanding Petitioners' assertions otherwise. *See Walden v. Fiore*, 571 U.S. 277, 286, 134 S. Ct. 1115, 1123, 188 L. Ed. 2d 12 (2014) (stating that while a defendant's relationship with a third

party alone was an insufficient basis for jurisdiction, a defendant's contacts with a forum state could be made through and intertwined with its transactions with a third party); *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., San Francisco Cnty.*, 582 U.S. 255, 268, 137 S. Ct. 1773, 1783, 198 L. Ed. 2d 395 (2017) (quoting *Walden*); *Ford Motor Co.*, 141 S. Ct. at 1027 (stating that when a corporation has "continuously and deliberately exploited [a State's] market, it must reasonably anticipate being haled into [that State's] court[s]" to defend actions "based on" products causing injury there).

Petitioners argue, without evidentiary support, that the subject battery reached Respondent through black-market actors, not through an authorized chain of distribution or its own efforts, and that it is "uncontroverted" that the subject battery arrived in South Carolina through the "unilateral actions of third parties". (Pet'rs' Br. 19). The affidavits Petitioners submitted support only that they did not purposefully import lithium-ion batteries into South Carolina *as a standalone product for use in e-cigarette devices*. The affiants do not deny Petitioners have imported 18650 lithium-ion batteries into South Carolina for use in South Carolina by individual consumers in other applications.

Petitioners are also incorrect in their argument that *NV Sumatra*'s stream of commerce test has been overruled. The stream of commerce theory set forth in *World-Wide Volkswagen* is still good law and has never been rejected by a majority of the U.S Supreme Court or this Court.[12] Petitioners cite to a plurality decision of the U.S.

[12] In support of its argument, LG cites to *J. McIntyre*, *Goodyear*, *Walden*, *Daimler AG v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014), and *BNSF Railway Co. v.*

Supreme Court, *J. McIntyre*, to support its contention that the "nationwide" stream of commerce theory is insufficient to bring Petitioners into a South Carolina court's jurisdiction, and that the correct test is "stream of commerce plus." However, *J. McIntyre*, a split decision that set forth competing analytical frameworks for determining the scope of the minimum contacts analysis in stream of commerce cases, is neither binding nor determinative.

When the U.S. Supreme Court issues split opinions such as that in *J. McIntyre*, the holding "may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. U.S.*, 430 U.S. 188, 193, 97 S. Ct. 990, 993, 51 L. Ed. 2d 260 (1977). In *J. McIntyre*, the concurrence agreed with the plurality solely based on prior Supreme Court precedents but did not reject the stream of commerce theory. *Id.* at 887-890, 131 S. Ct. at 2791-92. Thus, the U.S. Supreme Court has not endorsed the "stream of commerce plus" theory or indirectly overruled *NV Sumatra*'s "nationwide" stream of commerce theory. And as previously stated, South Carolina has explicitly rejected the "stream of commerce plus" theory.

Further, this case is factually distinguishable from *J. McIntyre*. In that case, J. McIntyre, an English manufacturer of metal shearing machines, was named as a defendant in a products-liability suit in New Jersey. *Id.* at 878, 131 S. Ct. at 2786. There was no evidence J. McIntyre had any direct contacts with New Jersey or that

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Tyrrell, 581 U.S. 402, 137 S. Ct. 1549, 198 L. Ed. 2d 36 (2017). Of these cases, only in *J. McIntyre* was the stream of commerce theory at issue in establishing specific personal jurisdiction. The remainder of the cases either concerned general personal jurisdiction or did not entail the stream of commerce theory and are therefore inapposite and unavailing to LG's arguments.

more than one machine had ended up in New Jersey. *Id.*; *Nicastro v. McIntyre Mach. Am., Ltd.*, 201 N.J. 48, 54-56, 987 A.2d 575, 578-79 (N.J. 2010). Here, there is evidence Petitioners have direct contacts with South Carolina connected to their sale and distribution of lithium-ion batteries, among other consumer products. (App. pp. 165, 180). And it is apparent from the eight lawsuits filed in this State concerning exploding lithium-ion batteries[13] that the presence of LG-brand lithium-ion batteries within this state is not the result of an isolated occurrence.

The record shows LG has imported hundreds of its products, including lithium-ion batteries, into South Carolina, for consumer use in South Carolina. LG's own arguments in prior litigation demonstrate that it has actual knowledge that its 18650 batteries will end up on store shelves in every state, including this State, through legitimate chains of distribution. (App. P. 68, line 24 – 69, line 4); *see also Celgard, LLC v. LG Chem., Ltd.*, No. 3:14 cv 00043, 205 WL 2412467, at *25 (W.D.N.C. May 21, 2015). Even under a more stringent "stream of commerce plus" test, there is prima facie evidence that LG has personally made direct contacts with South Carolina in connection with its lithium-ion battery products. This evidence, in conjunction with the uncontested allegations of Thompson's Complaint, reasonably establishes a prima facie case of sufficient minimum contacts with South Carolina under a due process analysis.

[13] The Court may take notice of adjudicative facts when they are absolutely reliable and are not disputable. *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984).

NV Sumatra's stream of commerce theory is still good law and is applicable here. Petitioners ask the Court to overrule *NV Sumatra* by holding that placing a product into the stream of commerce with knowledge or an expectation that it will eventually be purchased or used by consumers in South Carolina is insufficient to establish purposeful availment. (Pet'rs' Br. 19). Petitioners argue the Court should replace the theory with a "stream of commerce plus" test requiring the foreign defendant to individually make contact with the forum state to be subject to personal jurisdiction. They offer no valid legal or policy arguments for why the Court should do so.

b. <u>The "fairness" prong: The exercise of personal jurisdiction over Petitioners is both reasonable and fair.</u>

The second prong of the jurisdictional analysis requires the court to consider whether the exercise of jurisdiction is "reasonable" or "fair." *S. Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 131. To do so, Courts look to the following factors: (1) the burden on the defendant of litigating in the forum; (2) the interest of the forum state in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the shared interest of the states in obtaining efficient resolution of disputes; and (5) the interests of the states in furthering substantive social policies. *Id.* at 263, 423 S.E.2d at 132.

Petitioners do little to address how the Circuit Court erred in finding the exercise of personal jurisdiction was reasonable and fair. The Orders state Petitioners would not be inconvenienced or burdened by litigating in a South Carolina court,

citing evidence that Petitioners had availed themselves of South Carolina's laws and markets, and that South Carolina had an interest in furthering a policy of providing redress for its citizens, satisfying the first and second of the above-cited factors. Nothing in *S. Plastics Co.* states that a trial court must analyze each factor to conduct the analysis. Regardless, the record reflects a scenario in which all five factors are met.

Petitioners do not complain that maintenance of this suit in South Carolina is inconvenient or burdensome, nor can they. They enjoy profits in the millions of dollars for the sale of their products in South Carolina. It is not unfair to require Petitioners to appear in a South Carolina court when one of their products malfunctions and injures a resident. Any burden Petitioners might undertake in defending themselves in South Carolina will be minimal. Even if the case were tried elsewhere, Petitioners would have to come to South Carolina to investigate and gather the evidence. Moreover, because the accident occurred here, South Carolina law will apply under most choice of law analyses. No other forum has a more compelling connection to this case.

It is primarily in the interest of this Court, not a South Korean court or some other forum, to adjudicate the merits of this dispute. The majority of evidence, from medical records, witnesses, to the subject battery itself are present within the State. Petitioners sent their products into this state for their own profit. Not only is it fair and constitutionally reasonable for Petitioners to be required to defend the products they send into South Carolina when they injure a South Carolina citizen within the

boundaries of the State, it would be blatantly unfair to require Respondent to seek a remedy against LG in South Korea or some other forum. Respondent has no means to seek a judgment from a South Korean court. LG's premise that it is not subject to the specific personal jurisdiction of any of the fifty states represents a distortion of our personal jurisdiction jurisprudence that would leave Thompson and other plaintiffs without a means of redress against LG. If that is not offensive to "traditional notions of fair play and substantial justice," then nothing is.

IV. The Circuit Court's Orders did not overrule a prior Circuit Court's decision denying Petitioners' Motions.

Petitioners confusingly argue that the Circuit Court's Orders improperly overruled Judge Maddox's earlier Order denying its Motions without prejudice to permit jurisdictional discovery. However, the subject Orders addressed *renewed* motions that were filed after the original motions were denied without prejudice, and thus do not seek to modify Judge Maddox's Order in any fashion.

> [T]he prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge, except in cases where [*inter alia*] 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).

Importantly, Judge Maddox's Order did not rule on the issue of personal jurisdiction. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (finding an order does not impermissibly overrule a prior order if no specific ruling on the issue was made in the prior order). In fact, the Order denied Petitioners' original Motion to Dismiss without prejudice and allowed 90 days for

jurisdictional discovery with permission for Petitioners to renew their Motions to Dismiss after jurisdictional discovery ended. (App. p. 10). Judge Maddox explicitly did not rule on the issue of personal jurisdiction, noting that he could not make a decision based on the record (App. p. 57, lines 8-13).[14] Plainly, if he had made a binding ruling as Petitioners contend, he would have granted the Motions to Dismiss or denied them with prejudice.

V. Respondent's service of the Summons and Complaint on LG complied with South Carolina law and constituted valid service.

This issue is not preserved for review. LG has not argued that an order denying a motion to dismiss for insufficient service of process is immediately appealable and, even so, LG failed to timely appeal the issue within 30 days of Judge Maddox's July 20, 2020 Order. Rule 203(b), SCACR. LG did not file and serve a notice of appeal until May 21, 2021.

LG fails to recognize that service under S.C. Code Ann. § 15-9-245 is completed in-state and does not authorize service abroad. LG argues the proper means of serving it is through compliance with the Hague Service Convention. LG ignores that the Secretary of State is authorized to accept service in-state on behalf of LG because it controls LGCAI, which is a wholly owned subsidiary corporation that does business in South Carolina. S.C. Code §§ 15-9-245(a) and 33-15-101. The Customs import data

[14] To the extent that his Order finds that jurisdictional discovery was needed to determine whether LG *manufactured* the subject battery, that issue is irrelevant to personal jurisdiction. Additionally, he was required by the procedural posture of the case to take the allegations of Thompson's Complaint, which set forth that LG manufactured, distributed, and sold the subject battery, as true since LG did not introduce any evidence contesting that it manufactured the battery and solely relied on arguments of counsel at the September 23, 2019 hearing. (App. p. 56, line 9 – p. 57, line 7).

demonstrates LG and LGCAI continuously engage in the importing business in South Carolina, and LG does not have a certificate of authority to conduct business within the State. (App. pp. 164-273). LG also ignores that the requirements of the Hague Service Convention apply only when service of process has been effectuated abroad; here service was completed in-state through a statutorily designated domestic agent.

The South Carolina Rules of Civil Procedure permit a corporation to be served by delivering a copy of the summons and complaint to any "agent authorized by appointment or by law to receive service of process . . . ." Rule 4(d)(3), SCRCP. LG was properly served through an agent authorized by statute with a copy of the Summons and Complaint under S.C. Code Ann. § 15-9-245(a), which states:

> Every foreign business or nonprofit corporation which is not authorized to do business in this State, by doing in this State, either itself or through an agent, any business, including any business activity for which authority need not be obtained as provided by Section 33-15-101, is considered to have designated the Secretary of State as its agent upon whom process against it may be served in any action or proceeding arising in any court in this State out of or in connection with the doing of any business in this State.

S.C. Code Ann. § 15-9-245(a) (1976).

This Court has held that a plaintiff's service of process on a foreign defendant under § 15-9-245 is effective, complete, and legally sufficient to charge the defendant with notice of the pending action once process is delivered in-state to the Secretary of State. *Holman v. Warwick Furnace Co.*, 318 S.C. 201, 204, 456 S.E.2d 894, 895-96 (1995). Service under § 15-9-245 is complete once the summons and complaint have been delivered to the Secretary of State. *Id.*; *Hammond v. Honda Motor Co.*, 128 F.R.D. 638, 642 (D.S.C. 1989).

On the other hand, the Hague Service Convention only applies when service has been effectuated abroad. The Convention is a multilateral treaty that was "intended to provide a simpler way to serve process abroad . . . ." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698, 108 S. Ct. 2104, 2107 (1988) (emphasis added). "Article 1 defines the scope of the Convention, which is the subject of controversy in this case. It says: 'The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document **for service abroad**.'" *Id.* at 699, 108 S. Ct. at 2108 (emphasis added) (quoting Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965 (Hague Service Convention), [1969] 20 U.S.T. 361, 362, T.I.A.S. No. 6638).

The Court in *Schlunk* goes on to state that

> The Convention does not specify the circumstances in which there is "occasion to transmit" a complaint "for service abroad." But at least the term "service of process" has a well-established technical meaning. Service of process refers to a formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action. The legal sufficiency of a formal delivery of documents must be measured against some standard. The Convention does not prescribe a standard, so we almost necessarily must refer to the internal law of the forum state.

Schlunk, 486 U.S. at 700, 108 S. Ct. at 2108 (citations omitted). The Court later explains that "service abroad" is to be solely defined according to the law of the state that is requesting service of process, i.e., the forum state:

> The Yugoslavian delegate offered a proposal to amend Article 1 to make explicit that service abroad is defined according to the law of the state that is requesting service of process . . . . The inference we draw from

> this history is that the Yugoslavian proposal was rejected because it was superfluous, not because it was inaccurate, and that "service abroad" has the same meaning in the final version of the Convention as it had in the preliminary draft.

Id. at 701-02, 108 S. Ct. at 2109.

Ultimately, the Court found that "where service on a domestic agent is valid and complete under both state law and the Due Process Clause, our inquiry ends and the Convention has no further implications." *Id.* at 707, 108 S. Ct. at 2112. The Court proceeded to hold that the Hague Service Convention did not apply to the in-state service at issue in *Schlunk*, and that service was proper because the Illinois long-arm statute authorized the plaintiff to serve a statutorily designated domestic agent without having to serve the defendant abroad. *Id.* at 706, 108 S. Ct. at 2111.

LG does not acknowledge that in *Holman*, 318 S.C. 201, this Court explicitly held that service under S.C. Code Ann. § 15-9-245 is complete upon delivery to the South Carolina Secretary of State and is effectuated in-state, not abroad, because such an acknowledgement would be fatal to its argument that domestic service on the Secretary of State is within the scope of the Hague Service Convention. Here, the law of the state that is requesting service of process, South Carolina, designates the South Carolina Secretary of State as a domestic agent for in-state service on foreign corporations who are engaged in business activity within the State without a certificate of authority, rather than requiring service abroad: "Service of process is made by delivering to and leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of the process, notice, or demand." S.C. Code Ann. § 15-9-245.

Rule 4(d)(3), SCRCP, provides that service on a corporation may be had through an agent authorized by statute by mailing a copy of the summons and complaint to the defendant if the statute so requires. Additionally, *Schlunk* contained dicta stating that "[i]f the internal law of the forum state defines the applicable method of serving process as requiring the transmittal of documents abroad, then the Hague Service Convention applies." *Schlunk*, 486 U.S. at 700, 108 S. Ct. at 2108. By its terms section 15-9-245(b) explicitly does not require the transmittal of the documents to the defendant to effect service. Although section 15-9-245(b) instructs the Secretary of State, as the statutorily designated agent for in-state service of process, to immediately forward one of the copies of the process to the foreign defendant, it does not require that the process be actually transmitted: the in-state service is still effective and complete even if the defendant refuses to accept delivery of the process. S.C. Code Ann. § 15-9-245(b-c) ("[T]he refusal to accept delivery of the certified mail or to sign the return receipt shall not affect the validity of the service . . . ."); *Holman,* 318 S.C. at 204-05 n.3, 456 S.E.2d at 896 n.3.

Essentially, the forwarding of one of the copies of the process to the foreign defendant is analogous to a registered agent handing the summons and complaint to its principal. While it is a step that is taken following service, it is not part of the act of serving process. In any event, when the above statement from *Schlunk* is read within the context of the entire decision, it becomes clear that the Court was referring to the "transmittal of documents abroad" as a necessary step to effectuate service abroad, whereas in the present case the Secretary of State's forwarding of the process

is simply a notice requirement that is performed after service has already been effected in-state:

> [Defendant] explains that, as a practical matter, [statutorily designated in-state agent] was certain to transmit the complaint to Germany to notify [defendant] of the litigation. Indeed, as a legal matter, the Due Process Clause requires every method of service to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." [Defendant] argues that, because of this notice requirement, every case involving service on a foreign national will present an "occasion to transmit a judicial . . . document for service abroad" within the meaning of Article 1 . . . . We reject this argument . . . . The only transmittal to which the Convention applies is a transmittal abroad that is required as a necessary part of service. And, contrary to [defendant's] assertion, the Due Process Clause does not require an official transmittal of documents abroad every time there is service on a foreign national.

Schlunk, 486 U.S. at 707, 108 S. Ct. at 2112 (citations omitted) (emphasis added).

Under section 15-9-245 and in the present circumstances, service was never effectuated by certified mail sent abroad, because LG had already been effectively served in-state before the Summons and Complaint were ever forwarded to South Korea. The court in *Hammond* is not alone in concluding that complete service on a domestic agent precludes the application of the Hague Service Convention, regardless of whether the process is subsequently forwarded to the defendant by the agent. *See Melia v. Les Grands Chais de France*, 135 F.R.D. 28, (D.R.I. 1991) ("Although the statute requires the secretary of state to forward notice to the defendant corporation, other states with similar statutes have interpreted the statutes to mean that service is complete when the secretary is served . . . . Thus, because the statute does not require that plaintiff mail notice directly to the defendant in addition to the service

on the secretary of state, service may be completed without the transmission of documents abroad and the Hague Convention does not apply."); *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 104 F.R.D. 95, 97 (S.D. Fla. 1985) ("By its terms, The Hague Convention is applicable only to attempts to serve process in foreign countries . . . . There is nowhere among the provisions of The Hague Convention any indication that it is to control attempts to serve process on foreign corporations or agents of foreign corporations within the State of origin."); *McHugh v. Int'l Components Corp.*, 461 N.Y.S.2d 166, 167-68 (1983) ("Marcon Japan's reliance on the 'Hague Convention' is misplaced. The purpose of that treaty, as is clearly set forth in its title and declarations, is for assuring sufficient notice when service is made in a foreign country. Here, service was made within the United States . . . .").

The Secretary of State accepted service on behalf of LG on March 22, 2019. (App. p. 45). Thompson's service of process upon the South Carolina Secretary of State clearly does not fall within the ambit of the Hague Service Convention, which specifically contemplates the service of process abroad. *Schlunk*, 486 U.S. at 700, 108 S. Ct. at 2108. Here, substituted service was completed by in-state delivery of the Summons and Complaint to the Secretary of State. *See Holman*, 318 S.C. at 204, 456 S.E.2d at 895-96 ("[T]his Court has held that service is effected when the designated agent is served"). This clearly meets the requirements of the South Carolina Rules of Civil Procedure and South Carolina statutory law, specifically Rule 4, SCRCP, S.C.

Code §§ 15-9-245 and 33-15-110, and therefore service was properly completed in-state and outside the scope of the Hague Service Convention.

CONCLUSION

For these reasons, Respondent respectfully requests that the Court affirm the decisions of the Court of Appeals and the Circuit Court.

Respectfully submitted,

By: 

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