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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2022-000346

Reid Fleming,.....Appellant,

v.

LG Chem, Ltd.,.....Respondent.

RECORD ON APPEAL

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EXHIBIT
App'x E

[illegible]

EXHIBIT

App'x F

PRODUCT DESCRIPTION	ARRIVAL DATE	US PORT	CONSIGNEE	CONSIGNEE ADDRESS	SHIPPER	SHIPPER ADDRESS	GROSS WEIGHT (LB)	GROSS WEIGHT (KG)	FOREIGN PORT	VESSEL NAME	COUNTRY OF ORIGIN	MARKS & AMP, NUMBERS	ZIP CODE	NO. OF CONTAINERS	CONTAINER NUMBER	CONTAINER TYPE	QUANTITY	UNIT	MEASUREMENT	MEASUREMENT UNIT	BILL OF LADING	HOUSE VS MASTER	DISTRIBUTION PORT	MASTER B/L NUMBER	VOYAGE NUMBER	SEAL	SHIP REGISTERED IN	IN-BOND ENTRY TYPE	CARRIER CODE	CARRIER NAME	CARRIER CITY	CARRIER STATE	CARRIER ZIP	CARRIER ADDRESS	NOTIFY PARTY	NOTIFY ADDRESS	PLACE OF RECEIPT	
LITHIUM ION BATTERIES, UN3480, 9 POK LITHIUM	4/4/2020	Charleston, South Carolina	BMW MANUFACTURING (USA)	.1400 HIGHWAY 101 S, GREER SC 29615, GREER SC 29306 US	LG CHEM WROCLAW ENERGY SP. Z O.O.	.RNOWACYNA 1, BISKUPICE PODGORNE, KOBIERZYCE DS SS-040 PL	26941	12346	Stade	PALENA	Germany	NO MARKS NO MARKS NO MARKS	29306	3	FSCU5738969 TTNUEB05386 SCU90880980	4FR0 4FR0 4FR0	809	BOX	120	CM	ONEYHAMA22467A01	H		ONEYHAMA 22467A00	013W	0828399 0828245 0832447	LIBERIA		ONEY	ORATEL NETWORKS	TORONTO	ON	MSX IC7	SUITE 5700	100 KING STREET WEST	BLG LOGISTICS	.1400 HIGHWAY 101 S, GREER SC 29615, GREER SC 29550 US	HAMBURG, HH
LITHIUM ION BATTERIES, UN3480, 9 POK LITHIUM																																						
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LITHIUM ION BATTERIES, UN3480, 9 POK LITHIU	4/11/2020	Charleston, South Carolina	BMW MANUFACTURING (USA)	.1400 HIGHWAY 101 S, GREER SC 29615, SPARTANBURG SC 29611 US	LG CHEM WROCLAW ENERGY SP. Z O.O.	LG 1A, BISKUPICE PODGORNE, DS-040 K KOBIERZYCE WP SS-040 PL	19606	8912	Stade	AL BAHJA	Germany	FSCU5729118 NO MARKS SEGU908412 NO MARKS	29651	2	FSCU5729118 2 SEGU908412	4FR0 4FR0	588	BOX	80	CM	ONEYHAMA22495A01	H		ONEYHAMA 22495500	005W	0828397 0828398	LIBERIA		ONEY	ORATEL NETWORKS	TORONTO	ON	MSX IC7	SUITE 5700	100 KING STREET WEST	BLG LOGISTICS	.150 SOUTHPORT RD, SPARTANBURG SC 29139 SPARTANBURG SC 29306 US	HAMBURG, HH
LITHIUM ION BATTERIES, UN3480, 9 POK LITHIU																																						
LITHIUM ION BATTERIES, UN3480, 9 POK LITHIU																																						
LITHIUM ION BATTERIES UN3480, 9	6/18/2020	Charleston, South Carolina	BMW MANUFACTURING (USA)	.1400 HIGHWAY 101 S, GREER SC 29615, GREER SC 29651 US	LG CHEM WROCLAW ENERGY SP. Z O.O.	LG 1A, BISKUPICE PODGORNE, DS-040 K KOBIERZYCE DS SS-040 PL	6996	3180	Stade	PALENA	Germany	NO MARKS	29651	1	SZU9701853	4FR0	210	PKG	40	CM	ONEYHAMA63955A01	H		ONEYHAMA 63955400	015W	828392	LIBERIA		ONEY	ORATEL NETWORKS	TORONTO	ON	MSX IC7	SUITE 5700	100 KING STREET WEST	BLG LOGISTICS	.150 SOUTHPORT RD, SPARTANBURG SC 29139 GREER SC 29651 US	HAMBURG, HH
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LITHIUM ION BATTERIES UN3480, 9																																						
LITHIUM ION BATTERIES	7/15/2020	Charleston, South Carolina	BMW SLP, S.A. DE C.V.	BOULEVARD BMW NO. 855 VILLA DE REYES SLP 79526 MEXICO	LG CHEM WROCLAW ENERGY SP. Z O.O	UL LG 1A, BISKUPICE PODORNE, KOBIE KOBIELE WIELKE DS SS-040 POLAND	11878	5399	Bremerhaven	MSC FLAMINIA	Germany	NO MARKS	79526	1	MEDU901401 1 3	4532	339	BOX	0		MEDUN0991364		Greenville-Spartanburg, South Carolina		0275	828273	LIBERIA	61 - Immediate Transportation	MEDU	MSC MEDITERRANEAN SHIPPING COMPANY SA	GENEVA			BLG LOGISTICS	.150 SOUTHPORT RD SPARTANBURG SC 29306 UNITED STATES	BREMERHAVEN		

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
REID FLEMING,	)	Civil Action No. 2021-CP-1001663
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT LG CHEM, LTD.’S
	)	MOTION FOR LEAVE TO FILE
	)	REPLY MEMORANDUM OF
THE PLANET VAPE,	)	LAW IN FURTHER SUPPORT OF
LLC;SCECIGARETTE, LLC; LG CHEM,	)	ITS MOTION TO DISMISS
LTD.;	)	FOR LACK OF PERSONAL
	)	JURISDICTION
Defendants.	)	
_____	)	

Defendant LG Chem, Ltd. (“LG Chem”) respectfully moves this Court for leave to file a brief Reply Memorandum of Law in Further Support of its Motion to Dismiss Plaintiff’s Complaint against it for lack of personal jurisdiction, pursuant to South Carolina Rule of Procedure 12(b)(2). A copy of LG Chem’s proposed Reply brief and Notice of Supplemental Authority is attached to this Motion as **Exhibit A**.

The Court’s electronic notice of hearing on LG Chem’s Motion to Dismiss, currently set for January 18, 2022 at 2:30pm via WebEx, instructed that all “memos and briefs are to be submitted no later than January 7, 2022.” In compliance with the Court’s instructions, LG Chem filed its Memorandum in Support of its Motion to Dismiss for Lack of Personal Jurisdiction on January 7, 2022. Plaintiff also filed his Response in Opposition to LG Chem’s Motion to Dismiss for Lack of Personal Jurisdiction on January 7, 2022, in which Plaintiff raised matters that were not raised in Plaintiff’s Complaint and included an Affidavit of Counsel with nine supporting Exhibits.

Pursuant to SCRCP 6(d), LG Chem has filed the Reply Affidavit of Mr. Hwi Jae Lee in further support of its Motion to Dismiss, responding to factual assertions raised in Plaintiff's Opposition Brief and the Affidavit of Chris Moore. LG Chem respectfully requests leave to file a Brief after the date set by the Court for Memoranda (January 7, 2022) to address factual assertions newly raised in Plaintiff's Opposition Brief that were not included in Plaintiff's Complaint.

For these reasons, LG Chem respectfully requests that the Court (1) grant it leave to file its Reply Memorandum of Law in Further Support of its Motion to Dismiss Plaintiff's Complaint and Notice of Supplemental Authority that is attached as **Exhibit A** to this Motion; and (2) grant its Motion to Dismiss Plaintiff's claims against it for lack of personal jurisdiction based on the application of the principles of constitutional due process to the facts of this case.

Respectfully submitted,

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Attorneys for Defendant LG Chem, Ltd.

Columbia, South Carolina
January 11, 2022

EXHIBIT A

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
REID FLEMING,	)	Civil Action No. 2021-CP-1001663
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT LG CHEM, LTD.’S
	)	REPLY MEMORANDUM IN
THE PLANET VAPE,	)	FURTHER SUPPORT OF ITS
LLC;SCECIGARETTE, LLC; LG CHEM,	)	MOTION TO DISMISS
LTD.;	)	FOR LACK OF PERSONAL
	)	JURISDICTION AND NOTICE OF
Defendants.	)	SUPPLEMENTAL AUTHORITY
_____	)	

Pursuant to South Carolina Rule of Procedure 12(b)(2), Defendant LG Chem, Ltd. (“LG Chem”) respectfully submits this Reply Memorandum of Law in Further Support of its Motion to Dismiss for lack of personal jurisdiction and Notice of Supplemental Authority.

INTRODUCTION

LG Chem respectfully submits the following brief additional argument to address factual matters that were first raised in Plaintiff’s opposition brief and were not alleged in Plaintiff’s complaint. In particular, Plaintiff now appears to be arguing that LG Chem can be held subject to specific jurisdiction based on the activities of its separate and independent subsidiary, LG Chem America, Inc. (“LGCAI”) (which is headquartered in Georgia) even though Plaintiff did not make a single allegation regarding LGCAI in his Complaint.

Plaintiff’s Memorandum in Opposition to LG Chem’s Motion to Dismiss contains the following misstatements of fact and law:

- (1) Plaintiff states that LG Chem has been registered to do business in South Carolina since 2010, when in fact LG Chem has never been registered to do business in South Carolina.
- (2) Plaintiff relies on the *Celgard* decision as purported support for his factually incorrect argument (not alleged in his Complaint) that LG Chem distributed lithium ion batteries throughout the United States “through” a subsidiary, when, in fact, the subsidiary is a separate and independent legal entity and its actions cannot be imputed to LG Chem, even if this unsupported assertion were true, which it is not.
- (3) Plaintiff relies on the *Celgard* decision as purported support for his factually incorrect argument (not alleged in his Complaint) that LG Chem’s subsidiary distributed lithium ion batteries throughout the United States, including in South Carolina, when the *Celgard* court specifically observed that the subsidiary’s sales in North Carolina (the state at issue) were limited to petrochemical products.
- (4) Contrary to the unsupported inferences Plaintiff seeks to draw from the *Celgard* decision (not alleged in his Complaint), LG Chem’s subsidiary LGCAI did not distribute or sell any lithium ion battery cells to anyone in South Carolina and never supplied 18650 battery cells to any vape stores anywhere in the United States.
- (5) Finally, Plaintiff relies on the *Celgard* decision to support his “stream of commerce” argument without informing the Court that the *Celgard* court specifically ***rejected*** “stream of commerce” as a basis to exercise personal jurisdiction over LG Chem.

In addition, Plaintiff now appears to be asking the Court to decide the motion based on matters extraneous to his Complaint, and therefore the Court should also consider LG Chem's uncontested admissible evidence.

Finally, LG Chem respectfully submits as additional persuasive authority a recent decision rendered by the Fourth Circuit Court of Appeals addressing the "relatedness" element of the due process standard for specific jurisdiction in *Wallace v. Yamaha Motors Corp., U.S.A.*, No. 19-2459, 2022 WL 61430 (4th Cir. Jan. 6, 2022).

SUPPLEMENTAL FACTS

On Page 13, Plaintiff's Response incorrectly states that LG Chem has had a Certificate of Authority to do business in South Carolina "through a registered agent, LGCAI." However, the Certificate of Authority attached to Plaintiff's Response as Plaintiff's Exhibit 5 is plainly issued to LG Chem America, Inc., a separate and independent subsidiary, not to LG Chem, Ltd. In addition, LG Chem has never been registered to do business in South Carolina and does not have a registered agent in South Carolina. *See Ex. 1*, Supplemental Reply Affidavit of Mr. Hwi Jae Lee (dated 1/11/22) ("Lee Reply Aff.") at ¶ 6.

LG Chem America, Inc. ("LGCAI") is a Delaware corporation with its principal place of business in Atlanta, Georgia. LGCAI is a wholly-owned subsidiary of LG Chem, and it is a separate and independent corporation. It has its own corporate officers who reside near its corporate headquarters in Atlanta, Georgia and manages its own day-to-day activities. (*Ex. 1*, Lee Reply Aff., at ¶¶ 7-8.)

On page 6 of his Opposition, Plaintiff states that his Exhibit 3 shows "984 shipments through the Port of Charleston, with 818 of those shipments co-signed by LGCAI." Plaintiff creates the misimpression that those shipments are lithium ion battery products, when in fact not

a single one of the entries on the 59 page chart attached as Exhibit 3 to Plaintiff's Opposition reflects shipment of any type of lithium ion battery product to anyone in South Carolina. Instead, the shipment descriptions refer to "methyl acrylate", "ethyl hexyl acrylate", "resin ABS", "acrylic acid," and "synthetic rubber", among others, which are petrochemical products, not lithium ion battery products. *See also* Lee Reply Aff., at ¶ 9.

Also on page 6 of his Opposition, Plaintiff states that his Exhibit 4 shows "13 shipments of LG Chem lithium ion batteries went through the Port of Charleston and shipped out to businesses operating in South Carolina." In fact, the chart appears to show a single shipment to a South Carolina entity (a car manufacturer) prior to the date of Plaintiff's alleged incident on May 24, 2018. The chart also appears to show 8 other shipments to the same company in 2019 (after Plaintiff's incident) and 3 shipments on the same post-incident date (December 21, 2018) to a power company in Raleigh, North Carolina. Nothing in Plaintiff's Exhibit 4 supports the inference that the shipments were 18650 lithium ion battery cells. *See also*, Lee Reply Aff. at ¶ 10.

ARGUMENT

I. LG Chem has never been registered to do business in South Carolina, and its independent subsidiary's registration to do business in South Carolina is not relevant to LG Chem's motion to dismiss.

Although Plaintiff argues that "LG Chem has been registered to do business in South Carolina since 2010," the documents attached to his Opposition actually reflect a registration to do business for LGCAI, which is a separate and distinct legal entity, incorporated in Delaware with its principal place of business in Atlanta, Georgia.

Even if LGCAI's contacts could be imputed to LG Chem, which they cannot, registration to do business in South Carolina or having a registered agent does not confer personal jurisdiction over LGCAI. *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).

Any other conclusion would be inconsistent with U.S. Supreme Court precedents holding that a corporation is only subject to general jurisdiction where it is "at home", a standard that cannot be satisfied merely by registration to do business or having a registered agent. *See, e.g., Mallory v. Norfolk S. Ry. Co.*, No. 3 EAP 2021, 2021 WL 6067172, at *18 (Pa. Dec. 22, 2021) (finding **unconstitutional** in light of *Daimler* Pennsylvania's business registration statute which – unlike South Carolina's statute – required a company to consent to general jurisdiction as a condition to business registration).

In addition, Plaintiff has not alleged or offered any additional facts that could satisfy his heavy burden to show that LGCAI is an alter ego of LG Chem for purposes of imputing contacts, and there are none, as set forth in the Supplemental Reply Affidavit of Hwi Jae Lee. *See generally Ex. 1*, Reply Lee Aff., ¶¶ 7-8; *Black Magic, LLC v. Hartford Fin. Servs. Grp., Inc.*, No. 2:20-CV-1743-BHH, 2021 WL 964969, at *5 (D.S.C. Mar. 15, 2021); *J.R. v. Walgreens Boots All., Inc.*,

470 F. Supp. 3d 534, 549 (D.S.C. 2020); *Fitzhenry v. One on One Mktg. LLC*, No. 2:14-CV-4782-DCN, 2015 WL 4459023, at *5 (D.S.C. July 21, 2015).

II. LGCAI did not distribute 18650 battery cells throughout the United States, never supplied 18650 battery cells to retail vape stores, and never sold any 18650 battery cells to anyone in South Carolina.

Contrary to Plaintiff's unsupported factual assertions – not pled in his Complaint – regarding the purported activities of LG Chem's subsidiary, in fact LGCAI did not distribute LG Chem's 18650 lithium ion battery cells throughout the United States. LGCAI did not supply retail vape stores with 18650 battery cells (in South Carolina or anywhere else) and never sold 18650 battery cells (or any lithium ion batteries) to anyone in South Carolina – facts Plaintiff ignores even though they were put in evidence in the other South Carolina cases Plaintiff raises in his Complaint and Opposition Brief. *See Exhibit 2*, Affidavit of HyunSoo Kim at ¶ 10, filed in *Nicholas Keith Roberts v. The Planet Vape, LLC, et al.*, Case. No. 2020-CP-1000912 (Ct. Comm. Pleas, Charleston Cnty., April 2, 2020); *Exhibit 3*, Affidavit of HyunSoo Kim at ¶ 10, filed in *Eric "Chase" Williamson v. Pirate's Cove Vapor Lounge, LLC, et al.*, Case No. 2019-CP-0702270 (Ct. Comm. Pleas, Beaufort Cnty., March 31, 2020) (stating that LGCAI's business is primarily selling and distributing "various petrochemical materials and products including ABS resin, Engineered Plastic (EP), Rubbers, Acrylate, Super Absorbent Polymer (SAP), and Specialty Polymers" and that LGCAI earned no revenue from sales of 18650 battery cells in South Carolina).

To the extent Plaintiff attempts to rely on the *Celgard* court's decision to support his factually untrue statements, he ignores that part of the *Celgard* Order addressing LGCAI's business activities in North Carolina – which were exclusively related to sales of petrochemicals and not related to the allegedly infringing lithium ion batteries at issue in that case. *See Celgard*,

LLC v. LG Chem, Ltd., No. 3:14-CV-00043-MOC-DC, 2015 WL 2412467, at *26 (W.D.N.C. May 21, 2015).

Other plaintiffs and courts have dismissed LGCAI from other similar lawsuits after recognizing that LGCAI could not possibly have been involved in supplying vape stores with 18650 battery cells for sale to consumers as standalone, replaceable batteries. *See, e.g., Durham v. LG Chem, Ltd. et al*, No. 1:20-CV-01277-SDG, 2021 WL 1573899, at *2 (N.D. Ga. Apr. 22, 2021) *consolidated appeal filed* (dismissing LG Chem, Ltd. from five Georgia lawsuits for lack of personal jurisdiction and declining to transfer cases to other jurisdictions based on the plaintiffs' failure to establish personal jurisdiction in the transferee forums, the court also recognized that the plaintiffs in those cases had voluntarily dismissed LGCAI with prejudice because LGCAI "did not sell, manufacture, or distribute the batteries at issue in this litigation during the relevant time period.")

Therefore, to the extent Plaintiff attempts to show (by factually unsupported arguments raised in his Opposition Brief – not pled in his complaint and not supported by any evidence) that this case is like *Sumatra* because LG Chem purportedly distributed its batteries to consumers throughout the United States, including South Carolina, "through" its subsidiary acting as a distributor, the exact opposite is true.

III. The *Celgard* court rejected the exact "stream of commerce" argument Plaintiff makes here, and here LG Chem did not have any suit-related contacts with a South Carolina entity, which was the basis for the *Celgard* court's decision.

Plaintiff also relies on *Celgard* to highlight the legally irrelevant fact that LG Chem supposedly "made representations" in an unrelated action that it "targeted the U.S. market in the sale of lithium-ion batteries." (Plf.'s Opp'n at 5.)

Celgard was a patent infringement action that did not involve personal injury claims and had nothing whatsoever to do with consumers who acquired 18650 lithium ion battery cells from vape stores or misused them as standalone, replaceable batteries.

Importantly, the court in *Celgard* expressly rejected “stream of commerce” as a basis to exercise personal jurisdiction over LG Chem in that case. 2015 WL 2412467, at *24–25. Instead, the Court exercised specific jurisdiction over LG Chem based on its conclusion that the plaintiff’s state law claims arose out of LG Chem’s direct contacts with a North Carolina commercial entity in the course of a seven-year contractual relationship for the licensing and supply of material for a “separator” used in the manufacture of batteries for electronic devices and electric vehicles. *See* 2015 WL 2412467, at *19–21.

Here, LG Chem’s evidence filed in support of its Motion to Dismiss establishes that it lacks suit-related contacts with South Carolina. Plaintiff’s conclusory allegations regarding “lithium ion batteries” generally, and failure to plead or prove facts showing any connection between LG Chem’s alleged contacts with South Carolina and Plaintiff’s claims, are dispositive of the jurisdictional issue.

Just last week, the Fourth Circuit Court of Appeals addressed the “relatedness” element of the specific jurisdiction test, finding jurisdiction lacking over Yamaha, despite its extensive business in South Carolina (maintaining 106 authorized dealerships, sponsoring product demonstrations, marketing and advertising its products to consumers, offering extended service contracts to consumers for its products, and distributing the same make and model as the subject motorcycle in this state to consumers) because the plaintiff’s claims were unrelated to those contacts. *Yamaha*, 2022 WL 61430, at *4–5. Here, although the Plaintiff purchased and used the subject battery in the state, LG Chem’s evidence that it never served a consumer market in South

Carolina for standalone 18650 battery cells is uncontroverted, and dispositive of the jurisdictional issue because the “relatedness” element of the due process analysis cannot be satisfied.

IV. LG Chem’s Motion to Dismiss, unlike Plaintiff’s Complaint, is supported by concrete and specific evidence.

Finally, Plaintiff asserts that LG Chem’s Motion to Dismiss is supported by an Affidavit of conclusory, legal statements. To the contrary, LG Chem’s Motion is supported by the Affidavit of a knowledgeable witness who set forth concrete and specific facts. In particular, Mr. Lee attests that he worked at LG Chem for five years before LG Chem spun its battery business off in December 2020 and that his area of job responsibility included sales of battery packs and small application battery cells, including 18650 cylindrical lithium ion battery cells. Mr. Lee attests to the specific purpose for which LG Chem designed, manufactured, and sold its 18650 battery cells and specifically attests that LG Chem never did any business with the retailers that sold 18650 battery cells to Plaintiff as standalone consumer products and never authorized anyone to supply its 18650 cells (an industrial component product designed to be incorporated with protective circuitry in a battery pack) to individual consumers as a standalone, replaceable battery.

Indeed, while Mr. Lee’s Affidavit is not “conclusory,” Plaintiff’s complaint is. Plaintiff’s complaint studiously avoids making any allegation regarding the sale or distribution of 18650 battery cells. Plaintiff does not and could not in good faith allege that LG Chem was distributing 18650 battery cells to South Carolina consumers as standalone batteries, either directly or through engagement of a distributor [in sharp contrast to the Indonesian cigarette manufacturer in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008)].

Nothing in the exhibits attached to Plaintiff’s complaint contradict this evidence. In fact, in the 59 pages of “import records” (which are unauthenticated hearsay, and inadmissible in any

event)¹ attached to Plaintiff's Opposition Brief as Exhibit 3 and the single page at Exhibit 4, there is not a single entry that reflects shipment of 18650 battery cells to *anyone* in South Carolina. *See also, Ex. 1, Reply Lee Aff., at ¶¶ 9-10.*

Plaintiff repeatedly refers this Court to decisions of other South Carolina trial courts in other cases involving similar claims, but avoids any reference to the particular product at issue in those cases – 18650 lithium ion battery cells. For the reasons set forth in LG Chem's Memorandum in Support of its Motion to Dismiss, the decisions in those other cases, respectfully, were inconsistent with the requirements of constitutional due process. In addition, the complaints in those cases were not identical to the complaint in this case, and it is well-established that each case must be decided on its own facts. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

Here, the conclusory allegations of Plaintiff's complaint are legally insufficient to set forth a prima facie case of jurisdiction, and LG Chem's admissible and uncontroverted evidence establishes that Plaintiff cannot meet his burden of proof on the issue of personal jurisdiction.

In deciding the Motion, the Court is not limited to the allegations of the Complaint and, respectfully, should consider LG Chem's admissible evidence – particularly now that Plaintiff has chosen to put in facts rather than relying strictly on the allegations of his Complaint. *See Hidria,*

¹ *See* S.C. R. Evid. 901, Note (citing *State v. Jeffcoat*, 279 S.C. 167, 303 S.E.2d 855 (1983)); *see also State v. Anderson*, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009) ("The analysis regarding the admissibility . . . involves a two-prong approach. . . . If a hearsay exception is applicable, then the next consideration in assessing admissibility is authentication."). Beyond a lack of foundation and authentication, the exhibits to Plaintiff's affidavits and memorandum are inadmissible hearsay even if they were relevant, which they are not. Thus, relying on Plaintiff's exhibits would be error. *See Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153, 268 S.E.2d 42, 43 (1980) (finding that the court lacked personal jurisdiction and stating that plaintiff's counsel's affidavits were "conclusory in nature and based almost entirely on hearsay. We hold that they should have been excluded from the trial court's consideration").

USA, Inc. v. Delo, 415 S.C. 533, 538, 783 S.E.2d 839, 841 (Ct. App. 2016); *Power Prod. & Servs. Co. v. Kozma*, 379 S.C. 423, 428, 665 S.E.2d 660, 663 (Ct. App. 2008); *Grant v. Lowe's Home Centers LLC*, No. 9:20-CV-00764-DCN, 2020 WL 1494070, at *3 (D.S.C. Mar. 27, 2020).

Plaintiff has the burden of proof and has not offered any facts that could support a finding that LG Chem engaged in contacts with South Carolina related to the Plaintiff's claims. Therefore, constitutional due process is not satisfied, and LG Chem should be dismissed from this action

CONCLUSION

WHEREFORE, for the foregoing reasons, LG Chem respectfully requests that the Court 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, South Carolina
January 11, 2022

EXHIBIT 1



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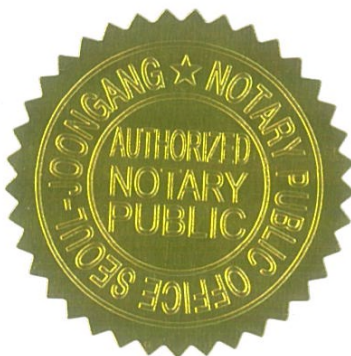
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ELECTRONICALLY FILED - 2022 Jan 11 2:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001663
ELECTRONICALLY FILED - 2022 Jan 11 12:03 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001663

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

REID FLEMING,) Civil Action No. 2021-CP-1001663
)
Plaintiff,)
)
vs.)
)
THE PLANET VAPE, LLC;)
SCECIGARETTE, LLC; LG CHEM,)
LTD.)
)
Defendants.)
)

**REPLY AFFIDAVIT OF HWI JAE LEE
IN FURTHER SUPPORT OF DEFENDANT LG CHEM, LTD.'S
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Personally appeared before me, Hwi Jae Lee, who first being duly sworn, deposes and says
as follows:

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



2. This Reply Affidavit is submitted in further support of LG Chem, Ltd.'s Motion to
Dismiss for Lack of Personal Jurisdiction, and I have been authorized by LG Chem, Ltd. ("LG
Chem") to execute this Affidavit for this purpose.

3. 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 applicable business records.

4. I was employed by LG Chem from 2015 until LG Chem spun-off its battery
division to LG Energy Solution, Ltd. My area of responsibility while employed by LG Chem

from 2015 until November 30, 2020 included sales of battery packs and small application battery cells, including 18650 cylindrical lithium ion battery cells. After November 30, 2020, I became employed by LG Energy Solution, Ltd., and my area of job responsibility remained the same.

5. I have reviewed Plaintiff's Response in Opposition to LG Chem, Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction ("Plaintiff's Response") and the Affidavit of Chris Moore ("Moore Affidavit) and Exhibits 1-9 attached to the Moore Affidavit.

6. On Page 13, Plaintiff's Response incorrectly states that LG Chem has had a Certificate of Authority to do business in South Carolina "through a registered agent, LGCAI. . . ." LG Chem has never been registered to do business in South Carolina and does not have a registered agent in South Carolina. I have also reviewed Exhibit 5 to the Moore Affidavit, and can see that it is a Certificate of Authority issued to LG Chem America, Inc., not to LG Chem, Ltd.

7. LG Chem America, Inc. ("LGCAI") is a Delaware corporation with its principal place of business in Atlanta, Georgia. Before the November 30, 2020 spin-off of LG Chem's battery division, LGCAI was a wholly-owned subsidiary of LG Chem Michigan, Inc., which was in turn a wholly-owned subsidiary of LG Chem. As part of the spin-off transaction, LGCAI became a wholly-owned subsidiary of LG Chem. Before and after the spinoff, LGCAI had and has its own corporate officers who reside near its corporate headquarters in Atlanta, Georgia.

8. Before the spin-off transaction, LG Chem maintained a separate and independent corporate existence from LGCAI. LG Chem did not manage or control the day-to-day activities of LGCAI. LGCAI kept its own separate bank accounts and business records. LGCAI paid and managed its own employees. It is my understanding that LG Chem would maintain the same corporate separateness from LGCAI after the spin-off.



9. I have reviewed Exhibit 3 to the Moore Affidavit. On page 6 of Plaintiff's Response, he states that his Exhibit 3 shows "984 shipments through the Port of Charleston, with 818 of those shipments co-signed by LGCAI." I am unfamiliar with the format of this chart at Exhibit 3 and cannot verify the accuracy of the information contained therein. However, I have reviewed the chart and have not identified a single entry that appears to show a shipment of 18650 lithium ion battery cells to anyone in South Carolina. In fact, from my review of Exhibit 3, I do not see a single product shipment description that appears to identify any type of lithium ion battery product. The product descriptions that refer to "methyl acrylate", "ethyl hexyl acrylate", "resin ABS", "acrylic acid," and "synthetic rubber", for example, are not descriptions of lithium ion battery products. I am not aware of LGCAI ever consigning any shipment of any type of lithium ion battery products for delivery to anyone in South Carolina.

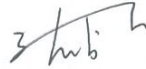
10. I have reviewed Exhibit 4 to the Moore Affidavit. On page 6 of Plaintiff's Response, he states that his Exhibit 4 shows "13 shipments of LG Chem lithium ion batteries went through the Port of Charleston and shipped out to businesses operating in South Carolina." I am unfamiliar with the format of this chart at Exhibit 4 and cannot verify the accuracy of the information contained therein. However, I have reviewed the chart and have not identified a single entry that appears to show a shipment of 18650 lithium ion battery cells to anyone in South Carolina. Instead, the chart appears to show: 3 shipments on December 21, 2021 to a company located in Raleigh, North Carolina; 1 shipment on April 4, 2021 to a company located in Ridgeville, South Carolina; and 9 shipments in 2019 to the same company located in Ridgeville, South Carolina. Based on my review of LG Chem's sales records and my knowledge regarding LG Chem's customers for its 18650 lithium ion battery cells, I can verify that LG Chem did not ship 18650 lithium ion battery cells to the companies listed on Plaintiff's Exhibit 4 on those dates.



I, Hwi Jae Lee, hereby declare under penalty of perjury that the foregoing statements made
by me are true and correct.

FURTHER AFFIANT SAYETH NOT.

Executed this 11th day of January, 2022.



Hwi Jae Lee

SWORN to and subscribed before me

This 11th day of January, 2022.

SONG JUNKIL (L.S.)

Notary Public for **SEOUL JOONGANG**

NOTARY PUBLIC OFFICE

My Commission Expires: 2030.04.16



서울 영등포구 여의나루로 67
(여의도동, 신송빌딩) 1401호
[별지 제42호서식]

서울중앙 공증인 합동사무소

(전화) 02-3478-8200
(팩스) 02-3478-5544

등부 2022 년 제 74호

Registered No. 2022-74

인 증

NOTARIAL CERTIFICATE

HWI JAE LEE -----

위 진술서 -----

에 기재된 이휘재 -----

는 본 공증인의 면전에서 위 사서증서에
자기가 서명 - 한 것임을 자인하였다.

personally appeared before me and
admitted his(her) subscription to the
attached AFFIDAVIT. -----

2022년 01월 11일
이 사무소에서 위 인증한다.

This is hereby attested on this
11th day of Jan. 2022 at this office.

서울중앙 공증인 합동사무소

NOTARY PUBLIC OFFICE
SEOUL-JOONGANG

서울남부지방검찰청 소 속

Seoul Southern
District Prosecutor's Office

서울 영등포구 여의나루로 67
(여의도동, 신송빌딩) 1401호

floor 14 Sinsong Bldg
67, yeouinaru-ro, yeongdeungpo-gu, Seoul, Korea

공증인

송 준 길




Signature of the Notary Public

Song Jun kil

본 사무소는 인가번호 제172호에 의거하여
2020년 04월 17일 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
17. Apr. 2020 Under Law No.172.

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
NICHOLAS KEITH ROBERTS,	)	Civil Action No. 2020-CP-1000912
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF HYUNSOO KIM
	)	
THE PLANET VAPE, LLC, ECIG	)	
CHARLESTON, LLC, LG CHEM,	)	
LTD., LG CHEM AMERICA, INC., and	)	
JOYETECH USA, 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, and I have been authorized by LGCAI to execute this Affidavit for this purpose.

4. LGCAI primarily 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.

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 own, lease, rent, purchase, or control any property in the State of South Carolina.

7. LGCAI does not maintain a bank account in the State of South Carolina.

8. LGCAI does not maintain a mailing address, telephone number, or telefax number in the State of South Carolina.

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

10. From 2009 to 2018, LGCAI generated approximately 1.3% of its total sales by activities in South Carolina. None of this revenue was generated by the sale of 18650 lithium-ion battery cells in South Carolina. Instead, LGCAI's sales in the State of South Carolina are limited to petrochemical products.

11. Plaintiff Nicholas Keith Roberts alleges he was injured on or about March 21, 2019, when a lithium-ion battery he was transporting in his pocket allegedly exploded and caught fire. (Compl., ¶¶ 1, 24–25.) Plaintiff identifies the subject battery as an “LG Brown Hg2 INR 18650 3000mAh 3.7V” battery. (Compl., ¶ 9.) Plaintiff alleges he purchased the subject battery from Defendant The Planet Vape, LLC, to use in his e-cigarette device. (Compl., ¶¶ 20–21.) Plaintiff also alleges that he purchased a “Joyetech USA Inc.[] Eleaf Aster mod” from Defendant ECig Charleston, LLC. (Compl., ¶¶ 13, 22.)

12. If the subject battery identified in Plaintiff's Complaint is, 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.

13. Plaintiff alleges that the retailer of the subject battery is Defendant The Planet Vape, LLC (“Planet Vape”), a South Carolina company with its principal place of business in Charleston County, South Carolina. (Compl., ¶¶ 9, 20–21.) LGCAI has never conducted any business with Planet Vape. LGCAI does not direct or control the actions of Planet Vape, and never authorized Planet Vape to advertise, distribute, or sell LG-brand 18650 lithium-ion cells for use by individual consumers as standalone, replaceable, rechargeable batteries in e-cigarette devices.

14. Plaintiff alleges that the retailer of the e-cigarette equipment he was carrying in his pocket, a “Joyetech USA Inc.[] Eleaf Aster mod,” is Defendant ECig Charleston, LLC (“E-Cig”), a South Carolina company with its principal place of business in Charleston County, South Carolina. (Compl., ¶¶ 13, 22.) LGCAI has never conducted any business with E-Cig. LGCAI does not direct or control the actions of E-Cig, and never authorized E-Cig to advertise, distribute, or sell LG-brand 18650 lithium-ion cells for use by individual consumers as standalone, replaceable, rechargeable batteries in e-cigarette devices.

15. Plaintiff alleges that the seller, importer, and distributor of the e-cigarette equipment he was carrying in his pocket, a “Joyetech USA Inc.[] Eleaf Aster mod,” is Defendant Joyetech USA, Inc. (“Joyetech”), a California company. (Compl., ¶¶ 14–15.) LGCAI has never conducted any business with Joyetech. LGCAI does not direct or control the actions of Joyetech, and never authorized Joyetech to advertise, distribute, or sell LG-brand 18650 lithium-ion cells for use by individual consumers as standalone, replaceable, rechargeable batteries in e-cigarette devices.

16. LGCAI has never distributed, advertised, or sold any lithium-ion cell for use by individual consumers as standalone, replaceable, rechargeable batteries in electronic cigarette devices in South Carolina or anywhere, and has never authorized any distributor, retailer, or reseller to distribute or sell any lithium-ion cells for use by individual consumers as standalone, replaceable, rechargeable batteries in e-cigarette devices.

Further Affiant Sayeth Naught.

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 31st day of March, 2020.



HyunSoo Kim

SWORN to and subscribed before me

this 31 day of March, 2020.

_____(L.S.)

Notary Public for Forsyth County, GEORGIA

My Commission Expires: June 17, 2023

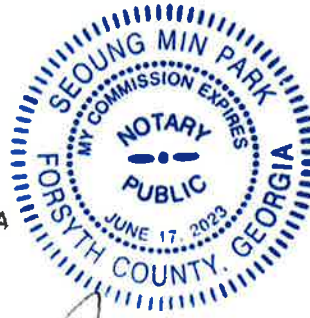


EXHIBIT 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
ERIC "CHASE" WILLIAMSON,	)	Civil Action No. 2019-CP-0702270
	)	
Plaintiff,	)	
	)	
vs.	)	<u>AFFIDAVIT OF HYUNSOO KIM</u>
	)	
PIRATE'S COVE VAPOR LOUNGE,	)	
LLC; LG CHEM CO. LTD.; & LG	)	
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 LG Chem America, Inc. for Lack of Personal Jurisdiction.

4. LGCAI primarily 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 own, lease, rent, purchase, or control any property in the State of South Carolina.

7. LGCAI does not maintain a bank account in the State of South Carolina.

8. LGCAI does not maintain a mailing address, telephone, or telefax number in the State of South Carolina.

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

10. From 2009 to 2018, LGCAI generated approximately 1.3% of its total sales from activities in South Carolina. None of this revenue was generated by the sales of 18650 battery cells in South Carolina. Instead, LGCAI's sales in the State of South Carolina are limited to petrochemical products.

11. Plaintiff Eric "Chase" Williamson alleges he was injured while carrying two "LG HG2 18650 lithium-ion batteries." Amended Compl., ¶¶ 25, 28–29. If the subject batteries identified in Plaintiff's Amended Complaint are, in fact, LG brand 18650 lithium-ion cells, the cells could not have been manufactured by LGCAI, as LGCAI does not have any manufacturing plants.

12. Plaintiff alleges that he purchased the subject batteries from Defendant Pirate's Cove Vapor Lounge, LLC to use in his vaping device. Amended Compl., ¶¶ 25, 28–29. Plaintiff alleges that the subject batteries were "imported and distributed" by Defendant D&A Distribution, LLC d/b/a Strictly E-Cig, a Georgia limited liability company with its principal place of business in Savannah, Georgia. *Id.*, ¶¶ 6, 25.

13. LGCAI has never conducted any business with Pirate's Cove Vapor Lounge or D&A Distribution, LLC d/b/a Strictly E-Cig, and does not direct or control their actions. LGCAI has never authorized Pirate's Cove Vapor Lounge or D&A Distribution, LLC d/b/a Strictly E-Cig to distribute or sell LG-brand lithium-ion cells for any purpose.

14. LGCAI has never distributed, advertised, or sold any lithium-ion cell for use by individual consumers as standalone, replaceable, rechargeable batteries in electronic cigarette devices, and 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 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 24 day of March, 2020.

HyunSoo Kim



SWORN to and subscribed before me

this 24 day of March, 2020.

_____(L.S.)

Notary Public for Forsyth County, Georgia

My Commission Expires: June 17, 2023



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Reid Fleming,

Plaintiff,

v.

The Planet Vape, LLC; SCECIGARETTE,
LLC; LG Chem Ltd.; John Doe Distributor
#1; John Doe Distributor #2; and John Doe
Distributor #3,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A no. 2021-CP-1001663

**PLAINTIFF'S MOTION TO
RECONSIDER**

On February 7, 2022, the Court entered an order granting LG Chem Ltd.'s motion to dismiss plaintiff's complaint for lack of personal jurisdiction. Plaintiff's respectfully seek reconsideration of that order under Rule 59(e), SCRPC. The reason for this request is that the Court's order is in error for two reasons: (1) it is based on a misunderstanding and / or misrepresentations of fact regarding LG Chem Ltd.'s products and LG's South Carolina contacts; and (2) it effectively leaves plaintiff with no forum in which to seek recourse against the entity that manufactured the product that harmed him.

I. Items for reconsideration

This matter was heard by the Court on January 18, 2022 via video hearing. In LG Chem's briefs and during the course of the hearing two points were repeatedly emphasized by Defendant LG Chem, Ltd. Those were (1) that plaintiff failed to show any suit-related contacts between LG Chem and South Carolina and (2) that LG Chem does not distribute any 18650 battery cells for use in e-cigarettes. The Order, drafted by counsel for LG Chem, highlights these points as a basis for the dismissal of the claims against LG Chem. For example, the Order finds that the import records submitted by plaintiff do not "reflect shipment of 18650 lithium ion cells to anyone in

South Carolina” Order at 6. Similarly, the Order finds, based on representations by LG Chem, that “LG Chem did not design, manufacture, distribute, advertise, or sell its 18650 battery cells to or for use by consumers, in South Carolina or anywhere else” Order at 8. This last statement was the basis for the Order distinguishing the present case from *Sumatra* and its stream of commerce analysis. Both of these findings are in error.

First, plaintiff submitted records reflecting over *fifty* individual shipments of “LITHIUM ION BATTERIES” to businesses located within South Carolina. *See* Decl. of Bonenfant, App’x. A, App’x B, electronically filed Jan. 11, 2022. For a small example:

LITHIUM	3/3/2019	Charleston,	VOLVO CAR US	1801	
ION		South	OPERATIONS	VOLVO	
BATTERY		Carolina	INC	CAR DR	
				RIDGEVILL	
				E SC	26752
				29472 US	(LBS.)

Id. at Appendix A (shipments from LG Chem to S.C.), at row 1010

LITHIUM	4/13/2019	Charleston,	VOLVO CAR		
ION		South	US	1801 VOLVO CAR	
BATTERY		Carolina	OPERATIONS	DR RIDGEVILLE	26752
			INC	SC 29472 US	(LBS.)
LITHIUM	4/13/2019	Charleston,	VOLVO CAR		
ION		South	US	1801 VOLVO CAR	
BATTERY		Carolina	OPERATIONS	DR RIDGEVILLE	26752
			INC	SC 29472 US	(LBS.)
LITHIUM	4/13/2019	Charleston,	VOLVO CAR		
ION		South	US	1801 VOLVO CAR	
BATTERY		Carolina	OPERATIONS	DR RIDGEVILLE	26752
			INC	SC 29472 US	(LBS.)

Id. at rows 1045-1047.

Despite LG Chem’s bald assertion that these are not similar to the subject product, the records to not bear this out one way or another. And, to be sure, the product at issue for purposes of this analysis is a lithium ion battery – regardless of form factor. Based on these records alone, it is clear LG Chem is doing substantial lithium-ion battery sales and business with companies in South

Carolina. As the parties have not conducted any merits or jurisdiction based discovery at this point, plaintiff is unable to determine whether these shipments contain the *exact* product at issue in this case. But clearly LG Chem is directing substantial lithium ion battery sales to South Carolina which is more than enough to exercise jurisdiction over them where a South Carolina resident is harmed by one of LG's lithium ion batteries.

Second, the Court's Order – and LG's argument – relies in large part on LG's repeated argument that LG Chem did not design or manufacture any 18650 batteries for use by consumers or with e-cigarette products. This is not true. LG Chem Ltd. designs, manufactures, and distributes an 18650 lithium ion battery that LG Chem *supplies to Phillip Morris for use in its IQOS e-cigarettes*. See Ex. A – Deposition of Joon Young Shin in *Bills v. Dixie's Vapor Shop, LLC, et al.*, State Court of Cobb County, Georgia, No. 17-A-773, Sept. 12, 2018 (redacted version); p.120-121. LG Chem, Ltd.'s employee (and frequent Rule 30(b)(6) witness), "Alex" Shin, testified in a Georgia case involving substantially similar allegations as here, that LG Chem Ltd. supplies an 18650 battery directly to Phillip Morris for use in a vaping device called an IQOS:

16 Q. Okay. Does LG Chem design or sell any
17 batteries that are intended for use in
18 E-Cigarettes? .

19 INTERPRETER (SEOUL):

20 Interpreting.

21 A. We are not in that kind of business.

22 Q. So the answer is no, LG Chem does not
23 manufacture, design, or sell lithium ion
24 batteries for use in E-Cigarettes, right?

25 INTERPRETER (SEOUL): .

1 Interpreting.

2 A. I don't know if I mentioned this, but in the
3 product device called IQOS which is manufactured
4 by Phillip Morris, which we refer to as an
5 E-Cigarette, all our batteries that we produce
6 are supplied.

7 Q. Okay. I am sorry. I missed the name of the
8 device.

9 INTERPRETER (SEOUL): That
10 would be IQOS, I-Q-O-S.

11 Q. Is it a lithium ion battery?

12 INTERPRETER (SEOUL):
13 Interpreting.

14 A. It is a lithium ion battery size 18650 that
15 we supply.

16 Q. What series?

17 INTERPRETER (SEOUL):
18 (Interpreting.)

19 A. It is not an HG2, it is a different model.

20 Q. What model?

21 INTERPRETER (SEOUL):
22 Interpreting.

23 A. Well, we call it E1S.

24 Q. Does it have to undergo the UL and IEC
25 testing?

Id. The false premise – that LG Chem’s 18650 batteries are in no way designed or intended to be used in conjunction with a vaping device – infects the Court’s stream of commerce analysis. To carefully avoid what LG Chem knew about its involvement in the e-cigarette / vaping industry, the Order (and affidavits and briefs) were carefully written to only apply to “standalone, replaceable” batteries. This is because LG Chem has known all along that it designs, manufactures, and

distributes 18650 lithium ion batteries – the product at issue here – for use in conjunction with vaping devices.

Last, the Court’s Order yields an inequitable result in that it finds in favor of a multinational company clearly profiting from its South Carolina directed business activities to the detriment of a South Carolina citizen now left with no recourse against the manufacturer of the product that injured him. Under the Court’s Order and LG Chem’s argument, Reid Fleming has only one option – to file suit in South Korea – to remedy the harm caused him. This is particularly harsh considering dozens of these victims are currently pursuing identical claims against this very defendant – including many here in South Carolina. A guiding touchstone of our constitutional right due process has always been fundamental fairness. How is this result fair to Reid Fleming?

II. Argument

The Court’s Order is in error for the following reasons:

A. Plaintiff makes a prima facie showing of personal jurisdiction.

“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 (Ct. App. 2012). When addressing motions to dismiss for want of personal jurisdiction the Court must “‘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 (1996) (internal citations omitted). In order to do this, plaintiff need only show that LG Chem has minimum contacts with South Carolina such that maintenance of this suit does not offend the traditional notions of fair play and substantial justice. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 509 (2005) (citing *Burger King Corp. v.*

Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)). In South Carolina, the long arm statute is coextensive with the due process clause, meaning the only question necessary to consider here is whether the exercise of personal jurisdiction would violate due process. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508.

Remarkably, the Court's Order finds plaintiff does not make a prima facie case despite clear allegations that LG Chem's conduct meets multiple sections of S.C. Code Ann. § 36-2-803, specifically:

(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;

...

(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.

To support its holding, the Court's Order finds that "Plaintiff did not allege or argue that LG Chem supplied 18650 lithium-ion cells to a consumer market for vaping batteries in South Carolina." Order at 4. This is an error of fact and law for two reasons. First, plaintiff *did* allege that LG Chem supplied lithium-ion batteries within South Carolina and that those goods caused tortious injury here. *See* Compl. at ¶¶ 9-10. Second, the specific purpose for which LG Chem supplied its products here is not relevant under the long-arm statute. Nowhere within its text does it require a plaintiff to show the specific purpose for why a defendant targeted a forum with its product. The due process / fairness inquiry of our statute simply requires that the product manufacturer derive substantial revenues from sales in the forum or has a reasonable expectation that its goods may be used or consumed here. Where, as here, LG Chem is in the business of manufacturing lithium-ion batteries for multiple applications – including, apparently, for powering vaping devices – it is hard to fathom how the long arm statute is not satisfied, and a prima facie case made, here.

By stating the issue far too narrowly and in conflict with the long arm statute, LG Chem has led the Court to error. As such, the Court should amend its Order to correct this restrictive interpretation of the long arm statute and find plaintiff does make a prima facie case for the Court's exercise of personal jurisdiction over LG Chem, Ltd.

B. LG Chem's lithium-ion battery related contacts to S.C. matter for purposes of a jurisdictional analysis

The Order erroneously finds that LG Chem's S.C. contacts involving the sale and distribution of lithium-ion batteries are not sufficiently related to plaintiff's claims to support jurisdiction. Again, LG Chem in drafting the Court's Order radically narrows the jurisdictional inquiry by holding that LG Chem's business activity involving *the same product* somehow cannot support the exercise of jurisdiction. Not so.

An obvious flaw is the citation to the *Goodyear* case which quotes a footnote relating to a *general* jurisdiction analysis. *Goodyear* involved a North Carolina products claim arising from a French bus accident where the defective tire was manufactured in Turkey by a foreign subsidiary of Goodyear Tire and Rubber Company. *Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915 (2010). In other words, the only connection to the forum was that the plaintiffs were residents. Had the foreign defendants directly supplied North Carolina with its tire products there is no question specific jurisdiction would have existed: "Flow of a manufacturer's products into the forum, we have explained, may bolster an affiliation germane to *specific* jurisdiction." *Goodyear*, 131 S.Ct. at 2855 (citing *World-Wide Volkswagen*, 444 U.S., at 297, 100 S.Ct. 559 (where "the sale of a product ... is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve... the market for its product in [several] 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*" (emphasis added)))). In other words, in

contrast to the Court's Order, a manufacturer's business activity in forum can subject it to specific jurisdiction.

This is particularly true where, as here, that business involves the same product – lithium ion batteries. And despite LG Chem's insistence that the vast number of lithium-ion batteries it is selling and shipping to South Carolina companies are not the precise model at issue in this case, that is something that has not been subjected to the crucible of merits discovery in this case. Even so, a lithium-ion battery is a lithium-ion battery despite LG Chem's attempt to narrow the jurisdictional analysis to sub-models and subtypes. The technology is the same. This attempt should be rejected emphatically now in light of the revelation that LG Chem actually designs, manufactures, and distributes 18650 lithium ion batteries for use with Phillip Morris's vaping device.

C. The stream of commerce theory supports specific jurisdiction over LG Chem

The Court's analysis regarding the application of *NV Sumatra* and stream of commerce is infected by LG Chem's misrepresentation that LG Chem did not design, manufacture, distribute, or sell its 18650 cells for use with vaping devices. As noted earlier, LG Chem is very very careful to phrase it differently by adding "as standalone, replaceable batteries" because they knew that they did, in fact, have an 18650 cell it designed for use explicitly with vaping devices. LG Chem repeatedly argued that jurisdiction was not proper because they did not intend the battery to be used with vaping products. This appears inaccurate in light of the Shin testimony cited above.

Because LG Chem clearly does intend for certain of its 18650 batteries to be used with vaping products, the Court's Order is premised on inaccurate factual findings. Even if LG Chem does not sell its product directly to consumers it is immaterial to the jurisdictional analysis. Would an airbag manufacturer be immune from suit arising from a defect in one of its airbags simply

because the airbag was not sold directly to the consumer? Of course not. The question would be could the airbag manufacturer reasonably anticipate being haled to court in a forum where it does business and can reasonably foresee its product being used there. Here, there is not question that LG Chem does business in South Carolina. And now we know LG Chem expects some its 18650 lithium ion batteries to be used with vaping devices made by Phillip Morris. Plaintiff is not required to show that LG Chem specifically targeted South Carolina with the one lithium ion battery that badly burned him. It is enough to show simply that the claim relates to a manufacturer's "efforts . . . to serve, directly *or indirectly*, the market for its product . . ." *World-Wide Volkswagen*, 444 U.S. at 297. When that is shown, "it is not unreasonable to subject the manufacturer to suit in one of those State if its allegedly defective merchandise has there been the source of an injury to its owner or to others." *Id.*

The Court should amend its Order to find the exercise of personal jurisdiction over LG Chem is proper here.

D. Fairness to Reid Fleming

Plaintiff also respectfully requests the Court reconsider the Order in light of the inequitable and harsh result it creates. LG Chem is litigating these cases nationwide. They are apparently doing substantial business in our state from the sale of lithium ion batteries and other products. They are defended nationally by the largest law firm in our state. The Court's Order effectively holds that this massive corporation cannot be subject to jurisdiction anywhere in the U.S. for these claims because LG Chem does not sell these batteries "as standalone, replaceable" power sources – despite the fact they do design and make some of them to be used with vaping devices. The other defendants in this case are uninsured and likely insolvent. Reid Fleming, who lives here, bought the battery here, used it here, and was injured by it here, is now required to litigate against

the manufacturer of the battery in a foreign land. All to the benefit of a multinational manufacturer. The fairness prong of South Carolina requires the Court to consider the plaintiff's interest in obtaining convenient and effective relief. Respectfully, the Court's Order fails to do so.

CONCLUSION

Respectfully, plaintiff asks the Court to reconsider its prior order and amend it to DENY LG Chem's motion to dismiss and to exercise personal jurisdiction over LG Chem for plaintiff's claims. Alternatively, plaintiff seeks leave of court to conduct jurisdictional discovery into the issues regarding LG Chem's South Carolina contacts and the lithium ion batteries it designs for use with vaping devices for Phillip Morris.

Respectfully,

**RICHARDSON, THOMAS, HALTIWANGER
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February 17, 2022

CONDENSED

EXHIBIT

1

In the Matter Of:

DEVIN BILLS vs DIXIE'S VAPOR SHOP, LLC

17-A-773

JOON YOUNG SHIN

September 12, 2018

REDACTED



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Page 1		Page 3	
1	CONFIDENTIAL TRANSCRIPT	1	Also Present:
2	IN THE STATE COURT OF COBB COUNTY	2	Page Brantley, Videographer
3	STATE OF GEORGIA	3	Jason Lee, Interpreter
4		4	Luis Lopez, Videographer (Seoul, Korea)
5	DEVIN BILLS, :	5	Amber Kim, Interpreter (Seoul, Korea)
6	Plaintiff, :	6	Rong Yuan, Expert for Plaintiff
7	vs. :	7	
8	DIXIE'S VAPOR SHOP, LLC; :	8	
9	E-CIG MONSTER, LLC A/K/A :	9	
10	RAD VAPOR; JOHN DOE :	10	
11	DESIGN/MANUFACTURING :	11	
12	COMPANIES 1-5; JOHN DOE :	12	
13	IMPORTER COMPANIES 1-5; AND :	13	
14	JOHN DOE :	14	
15	DISTRIBUTOR/WHOLESALER :	15	
16	COMPANIES 1-5; LG CHEM, :	16	
17	LTD., :	17	
18	Defendants. :No. 17-A-773	18	
19		19	
20	WITNESS: JOON YOUNG SHIN (Video) (VTC)	20	
21	PAGES: 1 through 152	21	
22	PLACE: Lewis, Brisbois, Bisgaard & Smith	22	
23	1180 Peachtree Street NE	23	
24	Suite 2900	24	
25	Atlanta, Georgia 30309	25	
	DATE: Wednesday, September 12, 2018		
	TIME: 5:00 p.m.		
	Court Reporter: CELESTE PERLA, CSR, MERIT		
Page 2		Page 4	
1	APPEARANCES OF COUNSEL:	1	CONTENTS
2	On behalf of the Plaintiff:	2	WITNESSES: PAGE
3	DAVID A. SLEPPY, ESQUIRE	3	JOON YOUNG SHIN
4	Cathey & Strain, LLC	4	Examination by Mr. Sleppy 14
5	649 Irvin Street	5	Examination by Mr. Becker 144
6	P.O. Box 689	6	Examination by Ms. Sheridan None
7	Cornelia, Georgia 30531	7	Examination by Mr. Williams None
8	dsleppy@catheyandstrain.com	8	***
9	On behalf of Dixie Vapor Shop:	9	EXHIBITS
10	ANDREW BECKER, ESQUIRE	10	EXHIBITS: MARKED RECEIVED
11	Merbaum & Becker, PC	11	Plf 1 Defendant LG Chem, Ltd.'s
12	5755 North Point Parkway	12	Responses to Plaintiff's
13	Suite 284	13	First Interrogatories 27
14	Alpharetta, Georgia 30022	14	Plf 2 Verification 37
15	abecker@merbaumlaw.com	15	Plf 3 Fig 1.
16	On behalf of E-Cig Monster, LLC:	16	Subject Battery 51
17	KIMBERLY C. SHERIDAN, ESQUIRE	17	
18	KGordon & Rees	18	Plf 4 Negative center tab had
19	3455 Peachtree Road	19	width change around Aug
20	Suite 1500	20	2016 from 3mm to 3.5 mm 52
21	Atlanta, Georgia 30326	21	
22	ksheridan@grsm.com	22	Plf 5 LG HGS bottom before
23	On behalf of LG Chem, Ltd.:	23	Aug 2016 53
24	MARC E. WILLIAMS, ESQUIRE	24	Plf 6 Comparison between Subject
25	AND	25	and Exemplar LG 59
	MARK JONES, ESQUIRE (Seoul, Korea)		
	AND		
	JIM IRVIN, ESQUIRE (Seoul, Korea)		
	Nelson Mullins		
	949 Third Avenue		
	Suite 200		
	Huntington, WV 25701		
	marc.williams@nelsonmullins.com		
	P. MICHAEL FREED, ESQUIRE		
	Lewis, Brisbois, Bisgaard & Smith		
	1180 Peachtree Street		
	Suite 2900		
	Atlanta, Georgia 30309		
	mfreed@lbbbslaw.com		

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1	EXHIBITS CONTINUED		1	-----	
2	EXHIBITS:	MARKED RECEIVED	2	VIDEO OPERATOR (SEOUL): Here	
3	Plf 13	Min. distance between	3	begins Disc Number 1 in the videotaped	
4		pos. and neg. 60	4	deposition of Alex Shin in the matter	
5	Plf 14	UL 1642 104	5	of Bills, et al versus LG Chem,	
6	Plf 15	International Standard	6	Limited, in the State Court of Cobb	
7		Norme Internationale	7	County, State of Georgia, Case Number	
8	Plf 16	IEC 62133 110	8	17-A-773.	
9	Plf 17	LG HG2 Warning Changes 93	9	Today's date is September	
10	Plf 18	CIS: Current Interruptive	10	13th, 2018. The time on the video	
11	Plf 19	Device 103	11	monitor is 6:18.	
12		PCB 130	12	The videographer today is Luis	
13	Plf 20	Photograph of cell with	13	Lopez representing Defend (sic) Depos.	
14		label 132	14	This video deposition is	
15	Plf 21	External positive	15	taking place at Best Western Premier	
16	Plf 22	connection for	16	Seoul Garden Hotel in Seoul, Korea.	
17		protection circuit 132	17	Will counsel please introduce	
18	Plf 23	3D render of the exterior	18	themselves and who they represent.	
19		of the cell 133	19	MR. SLEPPY: I am David Sleppy	
20	Plf 24	External connection to	20	representing the Plaintiff Mr. Bills.	
21		positive terminal 133	21	INTERPRETER: My name is Jason	
22	Plf 25	Top of cell showing	22	Lee, I am a Korean -- my name is Jason	
23	Deft 26	external positive	23	Lee, I am Korean interpreter.	
24	Deft 27	connection for	24	MR. BECKER: This is Andrew	
25		protection circuit 133	25	Becker, I am the attorney for Dixie's	
		Safety Warning: E-Cigarettes,			
		Vape Products & Li-Ion			
		Battery Cells 136			
		LG Chem 135			
		UL 1642 145			
		International Standard			
		Norme Internationale			
		IEC 62133 145			
Page 6			Page 8		
1	CERTIFIED QUESTION	PAGE	1	Vapor Shop, LLC.	
2			2	MS. SHERIDAN: This is Kim	
3	Q. Okay. Have you reviewed any documents to		3	Sheridan, I represent E-Cig Monster,	
4	prepare for this deposition? 17		4	LLC.	
5			5	MR. FREED: Michael Freed on	
6			6	behalf of LG Chem, Limited.	
7			7	MR. WILLIAMS: Marc Williams	
8			8	on behalf of LG Chem.	
9			9	All right. Let's do a read by	
10			10	the videographer who is here before we	
11			11	get started and then I have something I	
12			12	need to put on the record.	
13			13	VIDEO OPERATOR: This is the	
14			14	video deposition of Joon Young Shin in	
15			15	the matter of Devin Bills versus Dixie	
16			16	Vapor Shop, LLC on September 12th,	
17			17	2018. The time is 5:20 p.m.	
18			18	My name is Page Brantley, I am	
19			19	the videographer. The court reporter	
20			20	is Celeste Perla. We've already	
21			21	introduced the attorneys, so we can	
22			22	swear in the witness.	
23			23	MR. WILLIAMS: Okay. Before	
24			24	we swear the witness, let me put	
25			25	something on the record.	

Page 9 1 The parties have had a 2 discussion regarding the terms of the 3 confidentiality agreement. We have not 4 yet reached an agreement on that. We 5 anticipate we will reach an agreement 6 at some point, but in order to allow 7 this deposition to proceed, we've 8 agreed that the entire transcript will 9 be treated as confidential and will not 10 be shared with anyone who is not a 11 party to the lawsuit or representing a 12 party to the lawsuit. 13 The plaintiff's expert, we 14 also need to get her on the record. So 15 if we can have Plaintiff's expert 16 identify herself and spell her name for 17 the record, that would be great. 18 MR. SLEPPY: Rong, can you 19 introduce yourself. 20 MS. YUAN: Yes. This is Rong 21 Yuan. I am technical expert in this 22 case for the Plaintiff working with Mr. 23 David Sleppy. 24 MR. WILLIAMS: And could you 25 spell your name for the record, please.	Page 11 1 all objections will be preserved except 2 objections as to the form? 3 MR. SLEPPY: Form of the 4 question, responsiveness of the answer. 5 MR. WILLIAMS: Okay. Counsel, 6 any objection to that? 7 MS. SHERIDAN: No objection. 8 MR. BECKER: No objection. 9 MR. WILLIAMS: Okay. With 10 that, I think we can begin. 11 MR. SLEPPY: Okay. I will 12 just say a few words. 13 Mr. Shin, my name is Dave 14 Sleppy, I am just going to do a little 15 stipulation. That this will be the 16 deposition of Joon Young Shin taken by 17 agreement of counsel and pursuant to 18 notices, taken for purposes of 19 discovery and cross examination of an 20 agent of an adverse party. 21 I believe we covered 22 objections. It all will be reserved 23 until the time of trial or other use of 24 the depositions -- deposition. 25 Do you want to read and sign?
Page 10 1 MS. YUAN: Okay. First name 2 is Rong spelled, R-O-N-G. Last name is 3 YUAN spelled Y-U-A-N. 4 MR. WILLIAMS: And where are 5 you located? 6 MS. YUAN: Berkley, 7 California. 8 MR. WILLIAMS: My 9 understanding is that the expert has 10 SIGNED the agreement to confide with 11 the confidentiality provisions; is that 12 correct, counsel? 13 MR. SLEPPY: Correct. 14 MR. WILLIAMS: After the -- 15 once we get the terms of the 16 confidentiality order worked out, we 17 will designate portions of the 18 transcript that should be treated as 19 confidential and in accordance with the 20 terms of that order and, if necessary, 21 we may need to have the expert sign a 22 new order, a new agreement that 23 complies with that order, but we will 24 take that up as need be. 25 Parties also stipulate that	Page 12 1 MR. WILLIAMS: Yes. Do we 2 need to have an agreement that, with 3 the court reporter, not being in 4 present with the witness, that we are 5 waiving any objections as to that? 6 MR. SLEPPY: Yes. 7 MR. WILLIAMS: Okay. All 8 right. Also, is there anybody else 9 other than the expert in Berkley that 10 is listening in? 11 MR. SLEPPY: No. 12 MR. WILLIAMS: All right. 13 MR. SLEPPY: And who all do we 14 have in Seoul, South Korea? We have 15 Mr. Shin, we have Luis, who else? 16 MR. FREED: The interpreter. 17 MR. SLEPPY: The interpreter. 18 Is there a lawyer over there? 19 MR. WILLIAMS: Yes. 20 MR. SLEPPY: And what is his 21 -- have him introduce himself. 22 MR. JONES: Mark Jones, 23 (inaudible). 24 MR. IRVIN: And my name is Jim 25 Irvin (inaudible) on behalf of LG Chem.

Page 13

1 MR. SLEPPY: Okay. Are you
2 all there with the witness?
3 MR. WILLIAMS: Yes.
4 MR. IRVIN: Yes.
5 MR. SLEPPY: Just one more
6 question.
7 Are there any in-house counsel
8 present at that location in Seoul, or
9 is it outside lawyers? I just want to
10 know who all's there, that is all?
11 MR. JONES: Not in the room
12 with us here.
13 MR. SLEPPY: Okay. So no LG
14 Chem or LG in-house lawyer there?
15 MR. WILLIAMS: That is what he
16 said. My understanding.
17 MR. SLEPPY: Okay. Is that
18 right?
19 MR. JONES: They are not in
20 the room. No, they are not in the room
21 with us here.
22 MR. SLEPPY: We are square.
23 Let's swear the witness.
24 -----
25 JOON YOUNG SHIN, having been

Page 14

1 duly sworn, was examined and testified
2 as follows:
3 -----
4 DIRECT EXAMINATION
5 -----
6 BY MR. SLEPPY:
7 Q. Okay. Mr. Shin, can you hear me okay?
8 INTERPRETER (SEOUL):
9 Interpreting.
10 A. I can hear you.
11 Q. Okay. I am Dave Sleppy, I represent Mr.
12 Bills.
13 Have you given a deposition before?
14 INTERPRETER (SEOUL):
15 Interpreting.
16 A. Yes, I have.
17 Q. Okay. So you are familiar with the process?
18 INTERPRETER (SEOUL):
19 Interpreting.
20 A. I would say that I have.
21 Q. I am sorry?
22 A. Yes, I would say so.
23 Q. Okay. Could you state your full name
24 please, sir?
25 INTERPRETER (SEOUL):

Page 15

1 Interpreting.
2 A. My name is Shin Joon Young. Last name
3 Shin, first name Joon Young.
4 Q. Okay. And do you go by Alex?
5 INTERPRETER (SEOUL):
6 Interpreting.
7 A. Yes, that is what I introduce myself as to
8 my customers.
9 Q. Okay. And do you understand that you are
10 here to testify on behalf of LG Chem, Limited,
11 correct?
12 INTERPRETER (SEOUL):
13 Interpreting.
14 A. Well, that is not my understanding.
15 Q. Okay. What is your understanding?
16 INTERPRETER (SEOUL):
17 Interpreting.
18 A. I believe I am here in a personal capacity.
19 Q. Okay.
20 MR. WILLIAMS: It's not a
21 30(b)(6) deposition.
22 MR. SLEPPY: Understood.
23 BY MR. SLEPPY:
24 Q. You are right. And I wanted to ask you, you
25 are an employee of LG Chem, Ltd, correct?

Page 16

1 INTERPRETER (SEOUL):
2 Interpreting.
3 A. Yes, that is correct.
4 Q. What is your position with LG Chem?
5 INTERPRETER (SEOUL):
6 Interpreting.
7 A. I am the CS team leader.
8 Q. CS, meaning customer service?
9 INTERPRETER (SEOUL):
10 Interpreting.
11 A. Yes, that is right.
12 Q. What are your job duties as team leader of
13 the customer service team?
14 INTERPRETER (SEOUL):
15 Interpreting.
16 A. I provide support to my team members so that
17 they can better field complaints and queries from
18 the customers who purchase the products that we
19 supply.
20 Q. Okay. Do you speak fluent English?
21 INTERPRETER (SEOUL):
22 Interpreting.
23 A. No, I do not.
24 Q. Okay. Where did you get your Bachelor's
25 Degree?

Page 117

1 prior to 2016?

2 MR. WILLIAMS: Object to the

3 form.

4 INTERPRETER (SEOUL):

5 Interpreting.

6 THE WITNESS: Yes, that's

7 right.

8 Q. Okay. Does LG Chem have a marketing

9 department in South Korea?

10 INTERPRETER (SEOUL):

11 Interpreting.

12 A. Yes, that's right.

13 Q. And who does -- well, does LG Chem have a

14 marketing department that targets the United

15 States at all?

16 MR. WILLIAMS: Object to the

17 form.

18 INTERPRETER (SEOUL):

19 Interpreting.

20 A. We do not conduct our marketing efforts

21 focused or targeting to one -- to a particular

22 countries. We sell our products to those

23 business that require our products and they are

24 located all over the world.

25 Q. Okay. So it's a worldwide marketing effort

Page 118

1 by LG Chem, fair?

2 INTERPRETER (SEOUL):

3 Interpreting.

4 A. I think that expression is slightly off, but

5 I guess you can say that's true.

6 Q. Okay. Did you or to your knowledge, folks

7 at LG Chem know that lithium ion batteries

8 generally were being sold on the internet to vape

9 stores prior to 2016?

10 MR. WILLIAMS: Object to the

11 form. He can only testify to what he

12 knows.

13 INTERPRETER (SEOUL):

14 Interpreting.

15 A. I didn't know.

16 Q. And so you didn't know whether or not

17 lithium ion batteries were being sold and

18 marketed by internet companies like Alibaba for

19 use in E-Cigarettes prior to 2016?

20 MR. WILLIAMS: Object to form.

21 INTERPRETER (SEOUL):

22 Interpreting.

23 A. Not only myself but I believe though no one

24 at the company would have known of that.

25 Q. Okay. Do you see people in Korea using

Page 119

1 E-Cigarette vaping devices just out in the world

2 and walking around in the city?

3 INTERPRETER (SEOUL):

4 Interpreting.

5 A. Yes, I have seen them.

6 Q. Do you remember when you first became aware

7 of this practice of vaping or smoking E-Cigarette

8 devices just by your own observation?

9 INTERPRETER (SEOUL):

10 Interpreting.

11 A. This was after I became first aware about

12 these E-Cigarette related issues.

13 Q. So after -- well, in 2016?

14 INTERPRETER (SEOUL):

15 Interpreting.

16 A. It was after 2016 that I began to take an

17 interest.

18 Q. Okay. Do you know if anybody from LG Chem

19 attends product conventions in the United States

20 to sell its lithium ion batteries or market them

21 or listen to presentations, etcetera, like a

22 convention?

23 INTERPRETER (SEOUL):

24 Interpreting.

25 A. I am not sure.

Page 120

1 Q. Okay. Do you agree that its LG's

2 responsibility to design a lithium ion battery,

3 including the HG2 that should not explode or

4 cause a fire even when it's externally short

5 circuited?

6 MR. WILLIAMS: Object to the

7 form. Misstates legal the standard.

8 Outside of the area of the witness'

9 expertise.

10 INTERPRETER (SEOUL):

11 Interpreting.

12 A. Well, I believe that our products should not

13 have safety issues. I also believe that our

14 products should meet all safety category on the

15 international standards.

16 Q. Okay. Does LG Chem design or sell any

17 batteries that are intended for use in

18 E-Cigarettes?

19 INTERPRETER (SEOUL):

20 Interpreting.

21 A. We are not in that kind of business.

22 Q. So the answer is no, LG Chem does not

23 manufacture, design, or sell lithium ion

24 batteries for use in E-Cigarettes, right?

25 INTERPRETER (SEOUL):

Page 121 1 Interpreting. 2 A. I don't know if I mentioned this, but in the 3 product device called IQOS which is manufactured 4 by Phillip Morris, which we refer to as an 5 E-Cigarette, all our batteries that we produce 6 are supplied. 7 Q. Okay. I am sorry. I missed the name of the 8 device. 9 INTERPRETER (SEOUL): That 10 would be IQOS, I-Q-O-S. 11 Q. Is it a lithium ion battery? 12 INTERPRETER (SEOUL): 13 Interpreting. 14 A. It is a lithium ion battery size 18650 that 15 we supply. 16 Q. What series? 17 INTERPRETER (SEOUL): 18 (Interpreting.) 19 A. It is not an HG2, it is a different model. 20 Q. What model? 21 INTERPRETER (SEOUL): 22 Interpreting. 23 A. Well, we call it E1S. 24 Q. Does it have to undergo the UL and IEC 25 testing?	Page 123 1 INTERPRETER (SEOUL): 2 Interpreting. 3 A. To be clear, the model that we supply to 4 Phillip Morris is E1S, so that is alphabet E and 5 the number 1S. And on the E1S there is CID, PTC 6 and other safety features. 7 Q. Other safety features meaning a PCB? 8 INTERPRETER (SEOUL): 9 Interpreting. 10 A. It is my understanding that when we supply 11 to Phillip Morris, the products are -- come with 12 PCB. This means to say, that we first ship to 13 packers and it is the packers who place the PCB 14 on the product and that in turn is supplied to 15 Phillip Morris. 16 Q. When you say the product, do you mean the 17 single cell E1S? 18 INTERPRETER (SEOUL): 19 Interpreting. 20 A. Yes, that's right. 21 Q. Can a lithium ion battery be designed with a 22 PCB in it? 23 INTERPRETER (SEOUL): 24 Interpreting. 25 A. No, it cannot.
Page 122 1 INTERPRETER (SEOUL): 2 Interpreting. 3 A. All of the products that we make are 4 required to be certified by UL and IEC. 5 Generally for a product to be sold in the North 6 American market, it needs to be UL certified. 7 For a product to be sold in the European market, 8 it has to be IEC certified? 9 Q. Right. When did you start to manufacture -- 10 design and manufacture these batteries for an 11 E-Cigarette? 12 MR. WILLIAMS: For the Phillip 13 Morris cigarette? 14 BY MR. SLEPPY: 15 Q. For Phillip Morris? 16 INTERPRETER (SEOUL): 17 Interpreting. 18 A. So for the E1S model, I don't know exactly 19 when the company began developing and producing 20 this model. But as for our supply Phillip 21 Morris, the supply began in 2017. So the 22 production and manufacturer for that began before 23 2017. 24 Q. Does the IQOS Phillip Morris E-Cigarette 25 battery have a CID?	Page 124 1 Q. Okay. How about with an HG2? Can LG Chem 2 design and manufacture the PCB into the cell 3 prior to sale out there in the world? 4 INTERPRETER (SEOUL): 5 Interpreting. 6 A. Are you asking me if it is possible to place 7 PCB inside the cell? 8 Q. Yes. During production before you sell it 9 to your first customer. 10 INTERPRETER (SEOUL): 11 Interpreting. 12 A. We have not considered that. It is my 13 determination that if we were to include the PCB 14 inside the cell, then we would have to 15 contemplate a different design. And it is also 16 my belief that that different design would not be 17 in keeping with the kind of cell that HG2 has 18 with its performance properties. 19 Q. So it would have to be a different design 20 and it would affect the HG2 performance; is that 21 right? 22 INTERPRETER (SEOUL): 23 Interpreting. 24 A. For the HG2 to perform as intended, I don't 25 believe that a PCB can be placed on the inside of

Page 125

1 a cell.
2 Q. Is that because it would change the
3 dimensions or it would change the energy density
4 or why?
5 INTERPRETER (SEOUL):
6 Interpreting.
7 A. Well, if we were to assume that a PCB is put
8 inside of the cell, then this means the size of
9 the jelly roll would shrink and that would mean
10 that the HG2 would not perform at the level of
11 3000 milliampere hours. To maintain this
12 capacity of 3000 milliampere hours, then we would
13 have to bring about changes in the dimension.
14 And, furthermore, to allow for the emission of DC
15 currents over 20 amps, then the PCB design would
16 also have to be changed to accommodate that which
17 I think is very difficult.
18 Q. Okay. Thank you, Mr. Shin. You mentioned
19 the change in dimensions. Would that mean that
20 the battery would have to be -- with the addition
21 of the PCB, would that mean that the battery
22 would have to be longer or thicker or both?
23 INTERPRETER (SEOUL):
24 Interpreting.
25 A. I think that would depend on how you choose

Page 126

1 to design it, but I think it could be longer and
2 it could be thicker.
3 Q. Can you add a PCB to a lithium ion battery
4 and it would still keep the same dimensions?
5 INTERPRETER (SEOUL):
6 Interpreting.
7 A. Well, to accommodate that, I would think the
8 capacity would be downsized or you would have to
9 bring about entirely new design changes.
10 Q. But, in any event, LG Chem does sell a
11 lithium ion battery for use in the Phillip Morris
12 E-Cigarette device, this IQOS, knowing that a PCB
13 is going to be added before it goes into the
14 vaping device; is that true?
15 INTERPRETER (SEOUL):
16 Interpreting.
17 A. Yes, that's right. Just for your
18 information, the batteries that we supplied to
19 Phillip Morris are used for the vaping device and
20 not actually used for your information --
21 Q. Not used for what?
22 A. Not used for anything. For your information,
23 the batteries that we supplied to Phillip Morris
24 go into, are used to charge the vaping device.
25 They are not used for the actual E-Cigs.

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1 Q. Okay. Is the E1S a battery?
2 INTERPRETER (SEOUL):
3 Interpreting.
4 A. That is the name of the model. It's a
5 battery cell.
6 Q. Okay. So it's the name of the cell. And
7 are you saying that the cell does not go in the
8 vaping device?
9 INTERPRETER (SEOUL):
10 Interpreting.
11 A. It is used to charge the vaping stick.
12 Q. Okay. It's an 18650 and does it get
13 inserted into the charger for the IQOS?
14 INTERPRETER (SEOUL):
15 Interpreting.
16 A. So the IQOS product is composed of two
17 parts, the device used to inhale the cigarettes
18 and the house to contain it in a separate house.
19 INTERPRETER (US): Housing.
20 INTERPRETER (SEOUL): Housing.
21 Q. Okay. And where is the PCB on this device?
22 INTERPRETER (SEOUL):
23 Interpreting.
24 A. I don't know exactly, but the PCB is
25 designed to go in where the stick is charged and

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1 the battery is not replaceable.
2 Q. But it's rechargeable?
3 INTERPRETER (SEOUL):
4 Interpreting.
5 A. It is proper as such that it could place the
6 stick that it is recharged.
7 Q. Okay. PCBs is an acronym for protection
8 circuit board, correct?
9 INTERPRETER (SEOUL):
10 Interpreting.
11 A. Yes, that is what we typically call it.
12 Q. Also known --
13 A. Some might also refer to it as print circuit
14 board.
15 Q. PCM. I mean, you also use the acronym PCM,
16 protection circuit module?
17 INTERPRETER (SEOUL):
18 Interpreting.
19 A. Yes, we refer to it as a protection circuit
20 module.
21 Q. Do you also refer to it as a BMS, battery
22 management system?
23 INTERPRETER (SEOUL):
24 Interpreting.
25 A. Conceptually speaking, the BMS has function

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
REID FLEMING,	)	Civil Action No. 2021-CP-1001663
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT LG CHEM, LTD.'S
	)	MEMORANDUM IN
THE PLANET VAPE,	)	OPPOSITION TO PLAINTIFF'S
LLC;SCECIGARETTE, LLC; LG CHEM,	)	MOTION TO RECONSIDER
LTD.;	)	
	)	
Defendants.	)	
_____	)	

FILED
2022 FEB 22 PM 4:48
CLERK OF COURT
DCA

Defendant LG Chem, Ltd. (“LG Chem”) hereby responds in Opposition to Plaintiff’s Motion to Reconsider Order Granting LG Chem, Ltd.’s Motion to Dismiss. For the reasons that follow, the Motion should be denied.

SUMMARY OF RESPONSE

Plaintiff asks the Court to reconsider its prior ruling for two reasons: (1) Plaintiff argues that the Order was issued based on “a misunderstanding and/or misrepresentations of fact” regarding LG Chem’s products and contacts with South Carolina; and (2) Plaintiff argues the result is unfair because Plaintiff is left “with no forum” and “no recourse” for his claims.

The Court correctly applied the law to the facts of this case, and correctly concluded that specific jurisdiction is lacking because Plaintiff failed to meet his burden of proving that his claims “arise out of or relate to” contacts formed by LG Chem with South Carolina, as required by constitutional due process. The Court also correctly applied the constitutional standard, established by the Due Process Clause of the Fourteenth Amendment to the United States

Constitution, when concluding that it would be fundamentally unfair and inconsistent with due process to require LG Chem to defend this suit in this forum.

In an attempt to persuade the Court that LG Chem’s counsel misrepresented facts on which the Court relied to make its decision (which she did not), Plaintiff selectively quotes portions of sentences from the Court’s Order in a way that changes their meaning and misstates what Plaintiff describes as LG Chem’s “primary argument.”

The Order states exactly what LG Chem argued, what the evidence supports, and what the Court found: “LG Chem’s admissible evidence shows that LG Chem did not design, manufacture, distribute, advertise, or sell its 18650 battery cells directly to or for use by consumers, in South Carolina or anywhere else, as standalone, replaceable batteries and that it never authorized anyone else to do so either. These important facts distinguish *Sumatra* from the case here.” Truncating that sentence to change its meaning cannot support the relief Plaintiff seeks.

A motion to reconsider is not the appropriate time to raise matters that could have been—but were not—raised before the Court ruled on the Motion. And for good reason. Had Plaintiff introduced the irrelevant facts about the IQOS device in his Opposition brief, or during the hearing, or when the Court asked if Plaintiff had any objections to the proposed Order, LG Chem would have had the opportunity to address them and the Court would have had the opportunity to consider them before making its decision. LG Chem objects to Plaintiff’s improper attempt to raise new facts and arguments after the Court already rendered its judgment.

Further, the new facts are irrelevant. Like a laptop computer, power drill, or e-bike, the IQOS device is powered by a cell that is embedded with protective circuitry and not accessible to the consumer. That is completely different from the vaping device at issue in this case, which was designed by third parties to be used with 18650 cells sold by third parties to consumers as

standalone, replaceable batteries. LG Chem's counsel addressed the difference between these types of e-cigarette devices generally at the hearing. LG Chem's argument – emphasized in the briefing and at oral argument – was that LG Chem never sold its 18650 lithium ion cells to anyone for sale to consumers as standalone, replaceable batteries for any purpose – not limited to the vaping industry. Plaintiff offered nothing to contradict these facts before the Court issued its ruling, and has offered nothing to contradict these facts now.

The Court correctly applied the law to the facts. Plaintiff is dissatisfied with the result. That is not a basis on which to move for reconsideration, and Plaintiff's Motion should be denied.

FACTS

Plaintiff Reid Fleming alleges on or around May 24, 2018, he was injured when an 18650 lithium ion battery he was carrying loose in his pocket as a standalone power source for his e-cigarette device exploded in his pocket.

LG Chem, Ltd. is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. LG Chem moved to dismiss Plaintiff's complaint for lack of personal jurisdiction.

In support of its motion, LG Chem provided the affidavit of Mr. Hwi Jae Lee, dated July 13, 2021 and January 11, 2022. LG Chem's admissible evidence showed that LG Chem never designed, manufactured, distributed, advertised, or sold *any* lithium ion cells directly to or for use by individual consumers as standalone, replaceable batteries and never authorized anyone else to do so either.

In opposition to the Defendant's Motion to Dismiss, Plaintiff provided the affidavit of Plaintiff's counsel, dated January 7, 2022, attaching copies of LG Chem's 2018 and 2017 financial statements; import data; a Certificate of Authority and Business Registration for a subsidiary of LG Chem; and orders from a North Carolina federal district court and other South Carolina trial

courts. Plaintiff also provided the Declaration of Nickie Bonenfant, and Appendices, that was dated August 10, 2021, but was not filed until January 11, 2022.

The Court conducted a lengthy hearing on January 18, 2022, during which the Court asked many questions, and both parties were allowed ample opportunity to argue the facts and the applicable law. (**Exhibit A**, Hearing Transcript.)

The Court thereafter notified the parties by email on January 26, 2022 that LG Chem’s Motion to Dismiss was granted and directed LG Chem to submit a proposed order. (**Exhibit B**.) On February 2, 2022, LG Chem submitted its proposed order. (**Exhibit C**.) The Court inquired whether Plaintiff had any objections. Plaintiff’s counsel responded, in pertinent part, as follows: “Here is the proposed order with my one objection regarding the factual depiction of our allegations. It is on page four. Plaintiff respectfully objects to the overall analysis in the Defendant’s proposed order but obviously defers to the Court as to the content of its order.” (**Exhibit D**.) Plaintiff’s counsel submitted LG Chem’s proposed order, with his one objection included, as follows:

that LG Chem supplied 18650 lithium ion cells to a consumer market for laptop batteries in South Carolina. Instead, Plaintiff generically alleged that LG Chem conducted business in South Carolina and that LG Chem placed its product into the stream of commerce with the reasonable expectation that it would be used in South Carolina. Plaintiff did not plead any jurisdictional facts specific to the particular product at issue in this suit—a 18650 lithium ion cell that was re-sold as a standalone consumer battery. Plaintiff also did not plead any facts showing a connection between his claims

CM **Chris Moore**
Plaintiff objects to the factual accuracy of this section. Plaintiff specifically alleges that LG Chem distributes batteries and battery products to, and through, South Carolina. Compl. At para. 9. This was also argued at the hearing. And plaintiff submitted import records showing battery shipments from LG to South Carolina ports.

(*Id.*) Plaintiff raised no other objections to the proposed order.

LG Chem’s counsel then submitted an amended proposed order, which clarified the allegations that Plaintiff requested by substituting the words “lithium ion batteries and battery products” in place of the word “products” so the first sentence would read:

Instead, Plaintiff generically alleged that LG Chem conducted business in South Carolina and that LG Chem placed its lithium ion batteries and battery products into the stream of commerce with the reasonable

expectation that they would be used in South Carolina.

(**Exhibit E.**) LG Chem filed the Amended Proposed Order, and Plaintiff raised no further objections.

On February 7, 2022, the Court entered its Order granting the Motion to Dismiss. On February 17, 2022, Plaintiff filed his Motion to Reconsider, attaching portions of a transcript of the personal deposition of an LG Chem employee taken in September 2018 in a lawsuit in Georgia. Non-Confidential portions of the deposition excerpts attached to Plaintiff's Motion—that Plaintiff does not quote or otherwise bring to the Court's attention—explain that the IQOS device is designed to incorporate a lithium ion cell with protective circuitry in a charging unit and that, unlike the vaping device at issue in this suit, is not designed or manufactured to be powered by 18650 lithium ion cells sold directly to consumers as standalone, replaceable batteries.¹ Instead, the 18650 cell is incorporated with protective circuitry and inaccessible to the consumer, similar to laptop computers, power drills, e-bikes, and other consumer electronics manufactured using 18650 lithium ion cells embedded in battery packs with protective circuitry.²

¹ In his deposition, Mr. Shin explained that "PCB" is an acronym for "protection circuit board" (Plf's Exhibit at 128:7-11), which is also known as protective circuitry. Mr. Shin testified that LG Chem first shipped the 18650 cells to "packers who place the PCB [protective circuitry] on the product and that in turn is supplied to Phillip Morris." (*Id.* at 123:10-15.) Mr. Shin also explained that the cells "supplied to Phillip Morris go into, are used to charge the vaping device. They are not used for the actual E-Cigs[.]" (*Id.* at 126:22-25[.]) and "the PCB is designed to go in where the stick is charged and the battery is not replaceable." (*Id.* at 127:24-128:1.) This testimony makes clear that for the IQOS device, LG Chem sells 18650s to another manufacturer for use as an industrial component part that is incorporated inside the IQOS charging unit with protective circuitry. The IQOS design does not use 18650 cells as if they were replaceable batteries. In contrast, the vaping devices at issue in this case are designed to use 18650s sold directly to consumers as if they are replaceable, consumer batteries, even though they are not.

² As an aside, publicly available information shows that the IQOS device was first approved by FDA for sale in the United States nearly a year after Plaintiff's alleged incident. *See* <https://www.fda.gov/news-events/press-announcements/fda-permits-sale-iqos-tobacco-heating-system-through-premarket-tobacco-product-application-pathway>.

At the hearing in this case on January 18, 2022, LG Chem’s counsel explained to the Court the difference between e-cigarette devices powered by an embedded battery and the type of vaping device at issue in this case, which is a type designed by third parties, acting without LG Chem’s authorization, to be powered by 18650 cells used as standalone, replaceable batteries. (*See Ex A.*, Hr’g Tr. at 18:15–19:19; *see also id.* at 11:6– 23 (describing the different LG Chem products in general and their purposes); 24:10–22 (describing generally that LG Chem did not sell 18650 cells to be handled by consumers but instead to “go to a manufacturer that would incorporate it with protective circuitry embedded in a device”); 26:8–10 (same).

In support of his Motion to Reconsider, Plaintiff also provided the Court with native excel files for the Appendices to the Declaration of Nickie Bonenfant that had previously been filed in “PDF” format. In his Motion, Plaintiff states that he cannot tell from the excel spreadsheets which type of lithium ion battery was involved in the shipments to the car manufacturers in South Carolina, ignoring LG Chem’s admissible evidence supporting the conclusion that the shipments to car companies were not 18650 lithium ion cells and also ignoring the fact that his appendices can be searched for “18650”, resulting in two entries for shipments that arrived in the United States at a California port for delivery to a manufacturer located in California.³

In addition, more importantly, the basis for the Court’s ruling was that shipment of lithium

³ During the hearing, undersigned counsel stated she had seen only one shipment that appeared to be an 18650 cell. (*Ex. A*, Hr’g Tr., at 9:10–10:5.) Undersigned counsel avers that she personally reviewed each of the appendices before the hearing and, after searching for “18650”, concluded that there was only one entry that appeared to relate to shipment of 18650 lithium ion cells. On further review after receipt of Plaintiff’s Motion, undersigned counsel can now see that there were actually two entries appearing to reflect shipments of 18650 cells to the same entity in Long Beach, California. The entries were close in time on Appendix C, and undersigned counsel mistook them for the same shipment, but certainly did not misrepresent any fact to the Court, and the difference between one and two shipments is immaterial. No entries on any of the other Appendices appear to refer to shipment of 18650 cells to anyone, nor has Plaintiff pointed to any.

ion battery cells or batteries to sophisticated manufacturers in South Carolina was not related in any way to Plaintiff's claim that he was injured by use of an 18650 lithium ion cell as a standalone, replaceable battery. Therefore, even if the shipments to the car manufacturer were 18650 cells, or if Plaintiff had shown there were shipments of 18650 cells to other equipment manufacturers in South Carolina, due process would still not be satisfied because such activities are not related to Plaintiff's claims. Therefore, the Court correctly concluded that Plaintiff's allegations, even if true, would not support the exercise of specific jurisdiction and further that, considering evidence outside the pleadings that was offered by both parties, due process was not satisfied.

LEGAL STANDARD

A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). "A party *may* wish to file such a 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." *Id.* at 24, 602 S.E.2d at 780. "A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.*

However, it is well settled that "[a] party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to judgment, but was not." *Poch v. Bayshore Concrete Prods.*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009); *see also Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (finding that party's failure to raise an alternate remedy was not preserved because it was first raised in a Rule 59 motion); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 566–67, 762 S.E.2d 693, 695 (2014) (finding that it was error for the court of appeals to consider an argument that was improperly

raised for the first time in a Rule 59(e) motion to amend judgment after trial court granted partial summary judgment in favor of plaintiff).

ARGUMENT

I. Plaintiff's motion improperly raises new facts and arguments.

Plaintiff relies on an excerpt from a deposition transcript taken in 2018 in a case in Georgia in support of his argument that LG Chem's counsel misrepresented facts at the hearing. In addition to being incorrect and irrelevant, Plaintiff's argument suffers from the defect that it is untimely and has been waived.

Prior to the Court's ruling, Plaintiff had never alleged or argued that LG Chem supplied 18650 cells for use by Phillip Morris in manufacturing its IQOS device. Plaintiff did not allege that he used an IQOS device, and Plaintiff did not offer or raise any evidence or facts concerning the IQOS device. Therefore, there was no reason or occasion for LG Chem's counsel to discuss the IQOS device by its product name, although LG Chem's counsel addressed at the hearing the important difference between products designed to use an 18650 lithium ion cell as a standalone, replaceable battery (like the vaping mod at issue here) and products designed to use an 18650 lithium ion cell as an embedded power source (like laptop computers, power drills, e-bikes, and e-cigarette devices with embedded batteries).

Plaintiff also never previously asked for jurisdictional discovery. Instead, Plaintiff argued that his pleadings alone were sufficient to satisfy his burden of proof. Alternatively, he argued that his import records showing shipment of lithium ion batteries to car manufacturers were sufficient because "LG Chem does business in South Carolina selling lithium ion battery products." (Ex. A, Hearing Tr., at 34:9–11.)

Had Plaintiff previously requested this alternative relief, LG Chem would have had the opportunity to address it, and the Court would have had the opportunity to consider it before rendering its decision. Instead, Plaintiff improperly raises this request for alternative relief for the first time in this Rule 59 motion, which is too late. In addition, as discussed below, even if Plaintiff had timely requested this alternative relief, the Court would have been correct to deny it.

II. Plaintiff mischaracterizes the record to create the demonstrably false impression that LG Chem’s counsel misrepresented facts to the Court when she did not.

Plaintiff is wrong in stating that LG Chem represented to the Court that “LG Chem did not design or manufacture any 18650 battery cells for use by consumers or with e-cigarette products.” (Pl.’s Mot. at 3; *see also* 1, 3-5.) Plaintiff is also wrong in saying that this purported misrepresentation was a “false premise” that “infected” the Court’s analysis regarding stream of commerce and the *Sumatra* case. (*Id.* at 4, 8.) The record proves that Plaintiff is wrong.

In support of this accusation, Plaintiff quotes a portion of the Order to read that “LG Chem did not design, manufacture, distribute, advertise, or sell its 18650 battery cells to or for use by consumers, in South Carolina or anywhere else” (Pl.’s Mot. at 2, quoting Order at 8.) The quote, however, omits the rest of the quoted sentence, which changes its meaning. When quoted in full, the sentence reads:

LG Chem did not design, manufacture, distribute, advertise, or sell its 18650 battery cells to or for use by consumers, in South Carolina or anywhere else **as standalone, replaceable batteries and that it never authorized anyone else to do so either.**

(Order at 8 (emphasis added).) Elsewhere in the brief, Plaintiff complains that “LG Chem is very very careful to phrase it differently by adding ‘as standalone, replaceable batteries’ because they knew that they did, in fact, have an 18650 cell it designed for use explicitly with vaping devices.” (Pl.’s Mot. at 8.) LG Chem *was* careful to present the facts accurately so that the Court and the other parties would understand its argument that Plaintiff could not meet his burden of proof on due

process because LG Chem never designed, manufactured, distributed, advertised, or sold 18650 lithium ion cells directly to or for use by consumers as standalone, replaceable batteries for any purpose. This is the opposite of a misrepresentation.

In the briefs and at the hearing, LG Chem’s counsel repeatedly emphasized that LG Chem did not supply a market for 18650 cells sold to consumers as standalone, replaceable batteries. “What I’m saying is that LG Chem was not involved in supplying any consumer market to be buying these cells as a standalone consumer product.” (Ex. A, Hearing Tr., at 26:8-10.) “[T]he only way that consumers are getting their hands on these cells to use them as standalone batteries is entirely through the efforts of third parties.” (*Id.*, at 21:20-25) “LG Chem, Ltd. which is a Korean company manufactured these battery cells to sell them to sophisticated companies who would encase them with protective circuitry and put them in battery packs; never sold them to individual consumers to carry around in their pockets as standalone replaceable batteries.” (*Id.*, at 8:1-6.) These facts were the basis for the Court’s ruling, and these are correct and accurate statements, supported by the evidence.

III. The Court correctly found specific jurisdiction lacking based on the same arguments Plaintiff makes again here.

Plaintiff again argues that he has made a prima facie showing that LG Chem imported other products into South Carolina and that even dissimilar products, such as lithium ion batteries shipped to car manufacturers, are all he needs to show. The Court correctly relied on *Ford* to reject Plaintiff’s argument that sales to South Carolina of any type of lithium ion battery products would satisfy due process, and Plaintiff has failed to show that “the Court has misunderstood, failed to fully consider, or perhaps failed to rule” on this issue. *Elam*, 361 S.C. at 24, 602 S.E.2d at 780.

Plaintiff’s argument that “a lithium ion battery is a lithium ion battery” was previously raised in his briefs and at the hearing, and correctly rejected, because it is incompatible with *Ford*

Motor Co. v. Montana Eighth Judicial District Court, 141 S. Ct. 1017, 1028 (2021) (“Ford had advertised, sold, and serviced those two car models in both States for many years. (*Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region.*) In other words, Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States.”) (emphasis added).)

The Court also correctly relied on *Ford* to conclude that generic allegations that LG Chem shipped lithium ion batteries and battery products to South Carolina were not sufficient to satisfy due process because Plaintiff did not include any factual allegations showing a connection between any conduct LG Chem directed to South Carolina and Plaintiff’s claims, nor could he. *See Ford*, 141 S. Ct. at 1028.

Plaintiff incorrectly argues that citation in the Order to *Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915, 919 n.6 (2010) is flawed because that case related to a *general* jurisdiction analysis. Plaintiff’s argument completely misses the point of that citation, which supports settled Supreme Court law holding that even when the manufacturer has extensive in-state contacts for the very same product at issue, these contacts cannot support the exercise of specific jurisdiction if unrelated to the litigation; to find otherwise would impermissibly expand general jurisdiction. In *Bristol Myers* the United States Supreme Court cited and quoted *the same* footnote from *Goodyear* when determining that the state court did not have *specific* jurisdiction over the defendants’ claims. *See Bristol-Myers*, 137 S. Ct. at 1781; *see also Wallace v. Yamaha Motors Corp., U.S.A.*, No. 9:19-CV-0730-DCN, 2019 WL 6170419, at *4 (D.S.C. Nov. 20, 2019) (citing and quoting *Goodyear*’s footnote 6 to support the court’s finding that “[t]he fact that Yamaha sells or markets the same type of motorcycle as the one involved in Wallace’s accident in

South Carolina is not a connection between Wallace's claims and Yamaha's contacts that might support specific jurisdiction”), *aff'd sub nom. Wallace v. Yamaha Motors Corp, U.S.A.*, No. 19-2459, 2022 WL 61430 (4th Cir. Jan. 6, 2022)).

Therefore, the Court correctly found that Plaintiff’s allegation that LG Chem “supplied lithium ion batteries and lithium ion battery products to South Carolina entities” was not sufficient to establish specific jurisdiction because the allegations did not show facts supporting any connection between shipments of lithium ion battery products (whether 18650 or any other type) to industrial manufacturers and Plaintiff’s claim for personal injury arising from his use of an 18650 cell as a standalone, replaceable battery.

VII. The Court correctly found that the exercise of personal jurisdiction over LG Chem would be constitutionally unfair.

Plaintiff raises a new argument in his motion in which he requests that the Court find that the fairness prong is met based on the possible insolvency of codefendants. Plaintiff also again reminds the Court that other similar cases are proceeding in South Carolina against LG Chem, over its objection that personal jurisdiction is lacking.

If the exercise of personal jurisdiction would be inconsistent with due process, as it is in this case, it cannot be exercised, “[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; [and] even if the forum State is the most convenient location for litigation.” *World-Wide Volkswagen Corp v. Woodson*, 444 U.S. 286, 294 (1980). Therefore, the Court correctly found that it need not reach the fairness prong, because the power prong was not satisfied.

In addition, the Court also correctly found that, even if Plaintiff is inconvenienced by a foreign forum, Plaintiff’s desire to litigate in his home state cannot outweigh the fundamental

unfairness of subjecting a South Korean defendant to the burden of defending a case in a foreign state where it had no contacts with the state related to the Plaintiff's claims.

VIII. Plaintiff's untimely request to set aside the Court's judgment for discovery should be denied.

For the first time in this litigation, Plaintiff asks for the alternative remedy of allowing jurisdictional discovery. (Pl.'s Mot. at 10.) Plaintiff has offered no reason for his failure to request this alternative relief until after this Court has invested the time devoted to reaching its decision. Therefore, the Court should deny this belated request as untimely. *See Dixon*, 362 S.C. at 399, 608 S.E.2d at 854 (party's failure to raise an alternate remedy was not preserved because it was improperly first raised in a Rule 59 motion).

In addition, even if Plaintiff had requested jurisdictional discovery before the Court entered its judgment—which he did not do—the Court would have been correct in denying any such request. Plaintiff has not explained how the information he purports to need might support the exercise of jurisdiction. Instead, he leaves to the concluding paragraph of his Motion to “seek leave of court to conduct jurisdictional discovery into the issues regarding LG Chem’s South Carolina contacts and the lithium ion batteries it designs for use with vaping devices for Phillip Morris.” (Pl.'s Mot. at 10) Discovery regarding the IQOS device cannot possibly be relevant to the jurisdictional issue, when the information Plaintiff already has establishes that the IQOS device is manufactured using a cell embedded in a pack with protective circuitry – not designed for consumers to use with 18650 cells sold as standalone, replaceable batteries. Plaintiff does not specify what other “South Carolina contacts” could purportedly change the outcome of the due process analysis, and LG Chem has already shown there are none.

CONCLUSION

WHEREFORE, for the foregoing reasons, LG Chem respectfully requests that the Court deny Plaintiff's Motion to Reconsider and such other and further relief the Court deems just and proper.

Respectfully submitted,

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EXHIBIT A

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2021-CP-10-1663
	)	
	)	
REID FLEMING	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
THE PLANET VAPE, LLC, et al	)	
	)	
Defendants	)	
	)	TRANSCRIPT OF RECORD
	)	January 18, 2022
	)	WebEx videoconferencing

B E F O R E:

THE HONORABLE ROGER M. YOUNG, SR., JUDGE

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

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Attorney for the Plaintiff

RACHEL ATKIN HEDLEY, ESQ.
Attorney for Defendant LG Chem, Ltd.

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Transcript Provided for: Nelson Mullins]

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No exhibits were introduced

Reid Fleming v The Planet Vape, LLC, et al
Defendant's Motion to Dismiss for Lack of Personal Jurisdiction
January 18, 2022

1 PROCEEDINGS

2 THE COURT: Good afternoon. Can y'all hear me?

3 MS. HEDLEY: Good afternoon, Your Honor.

4 MR. MOORE: Good afternoon, Your Honor.

5 THE COURT: All right. So y'all are here on

6 Fleming verses The Planet Vape?

7 MR. MOORE: Yes, sir.

8 THE COURT: All right. Are we waiting on anybody

9 else?

10 MR. MOORE: I'm not waiting on anyone else, Judge.

11 I do have an incoming new attorney who is finishing up

12 her third year of law school that told me she was going

13 to try to watch out of curiosity. And so I don't know if

14 she is in a cue and has to be let in.

15 Her name Grace Babcock. If she doesn't belong here,

16 that's fine. If she is available to join us I'd ask that

17 she be permitted to do so but obviously that's totally up

18 to the Court.

19 THE COURT: Sure. It's a public forum. Anybody

20 can watch. But we're not waiting on her.

21 MR. MOORE: That's fine. If she's not here, she's

22 not here so we can get started.

23 THE COURT: Okay. This is the defense's motion to

24 dismiss. Are you handling that, Ms. Hedley?

25 MS. HEDLEY: Yes. Thank you, Your Honor.

Reid Fleming v The Planet Vape, LLC, et al
Defendant's Motion to Dismiss for Lack of Personal Jurisdiction
January 18, 2022

1 THE COURT: All right. Go ahead.

2 MS. HEDLEY: May it please the Court? Thank you,
3 Your Honor. My name is Rachel Hedley and I'm appearing
4 on behalf of defendant LG Chem, Ltd. As Your Honor noted
5 we are here on LG Chem's motion to dismiss.

6 Of course we submitted fairly lengthy briefing and I
7 just wanted to briefly mention our motion was supported
8 of course by the affidavit of Mr. Lee that we filed with
9 the motion. We filed a memo of law on January 7th. We
10 filed a reply affidavit of Mr. Lee and then we filed a
11 very short motion for leave to file a short reply brief.

12 So that's in the record. If there is no opposition
13 -- but we did that consistent with the Court's request
14 for memos by January 7th. So I just wanted to mention
15 that.

16 THE COURT: Okay.

17 MS. HEDLEY: Thank you, Your Honor. So, I'm going
18 to talk just very briefly about some basic case facts and
19 just touch on the high points of our argument. Again,
20 we're here seeking a dismissal for lack of personal
21 jurisdiction.

22 THE COURT: Let me ask you a question.

23 MS. HEDLEY: Of course.

24 THE COURT: The plaintiffs sent me I think five
25 orders that's on the same thing. Y'all have lost five

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1 times? Is there anything different about those other
2 five that distinguishes them from this case?

3 MS. HEDLEY: Well, there are a couple of things I
4 think, Your Honor. And first off respectfully to those
5 other Courts our position is that they were not decided
6 consistently with constitutional due process. One of
7 them is on appeal with the Court of Appeals considering
8 that issue.

9 One of them I wanted to mention and I'm going out of
10 order but since Your Honor asked one of the cases which
11 was Nicholas Roberts Judge Price denied the motion. And
12 then subsequently the plaintiff determined that the
13 battery that they thought was an LG brand because it was
14 sold as an LG brand, it turned out it wasn't an LG brand
15 and they dismissed the case.

16 And I bring that up only because it's part of this
17 discussion about this chain of distribution, this supply
18 chain. And in this case one thing that is different is
19 that in this case the plaintiff appears to concede and
20 pleads even in the complaint recognizing that LG Chem is
21 not supplying these battery cells to individual consumers
22 to Vape stores into this market.

23 And so some of the things that I think are different
24 in addition to again respectfully my view that those were
25 wrongly decided, some of they were decided before a more

1 recent decision by the United States Supreme Court as
2 well as the complaint. And in each one of those cases
3 what the plaintiffs argued was all we have to do is make
4 certain allegations in the complaint and then we're off
5 to the races. And so the allegations in this complaint
6 are relevant and I think plaintiff has made that argument
7 here.

8 And I don't think that taking those allegations as
9 true satisfies the plaintiff's burden. But the
10 allegations are different. And for example what Judge
11 McKinnon had said in one of the cases which is on appeal
12 right now was that look, I'm not saying there is
13 jurisdiction. I'm just saying the plaintiff has done
14 enough to sort of get past this threshold.

15 Y'all go ahead and you know fight it out and you can
16 always bring your motion later at summary judgment, you
17 can contest it after trial. I'm not finding that there
18 is jurisdiction; I'm just saying that it is enough for
19 the plaintiff to go forward.

20 And so in that regard I think the complaint is very
21 relevant and the allegations in this complaint are
22 different. I also don't think there is any reason to
23 think that the plaintiff could amend it to make it better
24 or more specific because there is not a good faith basis
25 to allege the facts that would be needed. And then of

1 course the plaintiff has submitted various exhibits and
2 things and asking the Court to look beyond the pleadings.
3 So with that said that's my basis for distinguishing.

4 And then with the Court's permission I want to just
5 briefly talk about general jurisdiction. I don't know if
6 that is being opposed initially; I would not have thought
7 so. I see Mr. Moore shaking his head so if that's not
8 opposed I'll move on. Okay, thank you. I appreciate
9 that.

10 So, the case facts, as the Court is aware from the
11 briefing, is that the plaintiff in this case bought his
12 batteries from either one or two stores. He says Planet
13 Vape or South Carolina e-cigarette. Of course LG Chem
14 did not do business with those stores or any Vape stores.
15 I don't think that's in dispute.

16 The date of the incident was in May of 2018. And he
17 alleges that he went to a Vape store, bought an 18650
18 battery cell as a standalone battery carrying it around
19 in his pocket and it exploded and caused injury. That's
20 the nature of the claim.

21 So LG Chem and of course I don't think it's in
22 dispute but LG Chem no longer manufacturers these
23 batteries due to a spin off transaction, which plaintiff
24 acknowledges is not relevant. It happened after the
25 incident so that's not relevant. But at the relevant

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1 time LG Chem, Ltd. which is a Korean company manufactured
2 these battery cells to sell them to sophisticated
3 companies who would encase them with protective circuitry
4 and put them in battery packs; never sold them to
5 individual consumers to carry around in their pockets as
6 standalone replaceable batteries.

7 And additionally, and I think the sort of elephant
8 in the room the Sumatra case. And I know the plaintiff
9 has taken the position that Sumatra is binding on this
10 Court and controls the outcome. Sumatra is the South
11 Carolina Supreme Court's most recent decision on personal
12 jurisdiction involving a stream of commerce allegations.
13 It was in 2008.

14 The United States Supreme Court has issued several
15 important decisions on specific jurisdiction since then.
16 And whether or not Sumatra can withstand scrutiny after
17 those cases I think is open to question. I don't think
18 it can but I'm not asking this Court to find against
19 Sumatra. I think Sumatra is distinguishable, readily
20 distinguishable on its facts and dealt with a different
21 issue.

22 So before I talk about the legal principles that
23 control the outcome I want to go out of order for a
24 second. And I want to flip to talk about the
25 spreadsheets, the lengthy spreadsheets that the plaintiff

1 submitted to the Court. And those spreadsheets were
2 first attached I think with plaintiff's opposition and
3 then they were attached to a declaration of Mr. Bonafont
4 [phonetic]. I would object to them as inadmissible.

5 I don't think that Mr. Bonafont [phonetic] is
6 capable of authenticating records purportedly summarized
7 and kept by the United States government. He's purported
8 to authenticate U.S. customs records. So for the record
9 I object that they are not admissible. But more
10 importantly I think they are irrelevant.

11 And the reason I want to bring it up is that I have
12 carefully reviewed those records. And I'm glad; I don't
13 want to try the Court's patience about going through each
14 and every one of these appendices.

15 But I will say this; out of all those attachments
16 and exhibits that purports to be import records for a
17 period of 15 years from 2006 until 2021 many, many many
18 years before the incident and several years after the
19 incident.

20 In that time period of 15 years and all those
21 spreadsheets I saw what appeared to be one, one entry
22 that had anything to do with an 18650 lithium ion cell,
23 which is the product at issue in this case. And that was
24 a shipment that came into the United States in Long
25 Beach, California that was delivered to an equipment

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1 manufacturer in California. That's it. So all these
2 spreadsheets and all these exhibits do not have any
3 entries anywhere showing that LG Chem was shipping mass
4 quantities or on those spreadsheets any quantities of
5 18650 battery cells into South Carolina.

6 So coming back to the main points of my argument on
7 specific jurisdiction are first of all that the relevant
8 contacts have to be contacts with the forum that were
9 formed by the defendant, LG Chem, Ltd. They can't be
10 formed by third parties; even a subsidiary although there
11 aren't any subsidiary contacts really at issue here.

12 But even a subsidiary would not count but more
13 importantly all of these third party entities, whoever
14 they may be and I don't know who they are but whoever it
15 is that supplied Planet Vape or South Carolina e-
16 cigarette or any one of the many Vape stores where you
17 could go buy a battery LG Chem had nothing to do with
18 that.

19 And the United States Supreme Court's recent
20 decisions make abundantly clear that specific
21 jurisdiction requires a showing that the plaintiff's
22 claims arise out of or relate to contacts the defendant
23 formed with the foreign state.

24 So I think one thing that sets this case very much
25 apart from Sumatra in Sumatra you had an Indonesian

1 manufacturer of United brand cigarettes. Sumatra sold
2 them to a distributor for the purpose of distributing
3 them throughout the United States and that distributor
4 sold something like seven million cigarettes to South
5 Carolina consumers.

6 LG Chem does not manufacture these battery cells for
7 some distributor to turn around and sell them to all
8 these consumers. In fact, LG Chem for the most part
9 directly supplies its customers in the United States with
10 these cells. They have three types or had at the time
11 three types of customers in the United States; original
12 equipment manufacturers, battery packers, and two
13 distributors.

14 Those two distributors were not located in South
15 Carolina. And they only resold the batteries to battery
16 packers who were incorporating them with protective
17 circuitry in various battery pack devices such as for
18 example medical monitoring equipment.

19 Some of these packers might put them in power
20 drills, cordless power tools; something I would never
21 use, laptop computers and those types of products. But
22 LG Chem was directly supplying to its customers and the
23 customers were putting them into these products.

24 There is no allegation that somehow through those
25 chains of distribution they were getting to these

1 consumers. But more importantly there is absolutely no
2 allegation in the complaint and there is no evidence and
3 nothing attached to the plaintiff's response that would
4 allow the Court to find that LG Chem was supplying 18650
5 battery cells enmasse extensively into the state of South
6 Carolina.

7 Now, I would argue that even if they were that still
8 would not support jurisdiction and just a few weeks ago a
9 California Court of Appeal made that very conclusion,
10 which of course is not binding on this Court but it's the
11 same analysis and I think it's relevant.

12 But in any event that's not the case here. So I
13 don't think the Court needs to decide that issue because
14 there is no evidence or allegation. And even if there
15 were limited shipments coming into South Carolina
16 plaintiff hasn't offered any evidence of that and hasn't
17 alleged it.

18 To talk about lithium ion batteries generally we've
19 talked about this in our briefing but I think again the
20 United States Supreme Court's recent decisions
21 particularly in Bristol Myers and in Ford made very clear
22 and in Daimler make very clear that it is not unrelated
23 business contacts. You cannot take a company and say
24 this is a huge company. The sell all kinds of products
25 and they do a lot of business. And I think that was the

1 plaintiff's argument, look at all these import records,
2 look at all this business they were doing; that's good
3 enough. But the Supreme Court of the United States says
4 no, it's not good enough. It does not matter how
5 extensive those contacts are if they're not related to
6 the plaintiff's claims then they can't support the
7 exercise of specific jurisdiction.

8 And even in Ford the Supreme Court took care to say
9 we're talking about Ford Explorers and Crown Victorias;
10 not even any kind of car. And so here an 18650 is a
11 particular type of product. It's a standard in the
12 industry.

13 I don't use their products, not a consumer product
14 but it is a component and it just means the 18 is the 18
15 millimeters diameter, the 65 millimeters is the length,
16 zero is cylindrical. So that's a size.

17 LG Chem was not the only manufacturer. Other
18 manufacturers Panasonic, Sony, and Samsung made them.
19 Somehow these entities are getting a hold of them and
20 supplying them into this market but LG Chem was not doing
21 that.

22 But additionally that particular size, that 18650
23 has many different models. And I'm not focused on the
24 specific model, whatever it may be that the plaintiff
25 claims was at issue but any type of 18650. The records

1 that they submitted talking about selling car batteries
2 to companies in South Carolina there were some shipments
3 again on those inadmissible spreadsheets. But that's not
4 at all the same product.

5 It can't be confused. It's not the same size. It's
6 not the same shape. And that's not something that goes
7 to a car dealership where people go in there to buy that
8 that goes to be included with the car; with an electric
9 vehicle.

10 And so our position, Your Honor, is that the
11 plaintiff cannot meet the burden, which is admittedly the
12 plaintiff's burden of establishing that their claims
13 arise out of or relate to any contacts that LG Chem
14 formed with South Carolina.

15 That's the relevant standard. That's what the
16 United States Supreme Court says. And nothing that the
17 plaintiff has offered none of these import records and
18 the allegations in the complaint are simply not specific
19 enough.

20 And so with respect to what the other trial court
21 decisions are which of course are not binding on this
22 court, we would respectfully ask that the Court carefully
23 review the allegations of the complaint. And carefully
24 review the exhibits that the plaintiff has offered and
25 the more recent decisions by the United States Supreme

1 Court and some of the other authorities we have shared
2 showing what other courts have done in other neighboring
3 jurisdictions in North Carolina, in Georgia, the Supreme
4 Court of Missouri, Courts of Appeal in various states and
5 recognize that constitutional due process cannot support
6 the exercise of specific jurisdiction here.

7 And LG Chem should not be required to go through the
8 burden of following this case through to then challenge
9 jurisdiction again after trial when the plaintiff has not
10 shown anything that would be constitutionally sufficient
11 and consistent with the due process guarantees of the
12 Constitution. And therefore, we ask that the Court grant
13 the motion and dismiss LG Chem. Thank you, Your Honor.

14 THE COURT: How would your client ever get sued in
15 the United States under your theory that they don't sell
16 the individual product to an individual but they only
17 sell it to manufacturers who repackage it someplace and
18 then sell it in all the other states?

19 Basically, they are immune from suit if their
20 product causes any harm under your theory. If they don't
21 individually sell that battery to an individual but it's
22 just something that gets used by a manufacturer who sells
23 it as part of a bigger thing they can't be sued for that.

24 MS. HEDLEY: Well, yes, I appreciate the Court's
25 question. And Your Honor, I was asked the very same

1 question by the justices on the Missouri Supreme Court
2 and said is it your position that LG Chem could not be
3 sued anywhere in the United States on a similar type of
4 claim. And after my answer the Missouri Supreme Court
5 agreed and said you're right there is no jurisdiction
6 here.

7 And my answer to Your Honor would be we're not
8 talking about any type of lawsuit. I'm not talking, I'm
9 not taking a position on a lawsuit where if LG Chem
10 supplied a sale to a battery packer and they put it in a
11 battery pack for a power drill and there was some problem
12 that's not what I'm talking about.

13 But I would respectfully submit that there is
14 nothing that LG Chem is doing to supply to be part of
15 this distribution chain. And so if LG Chem had never
16 even sold these cells in the United States at all, just
17 had never done it at all, we would be having the same
18 situation.

19 The plaintiff would still say some other party
20 wherever they got it if LG Chem exclusively sold to
21 Europe or to Asia or somewhere else and never sold to
22 anywhere in the United States it wouldn't change anything
23 because they're not part of this chain of distribution.

24 And so due process contemplates fairness. Why
25 should LG Chem expect to be sued by an individual

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1 consumer that only got their hands on this product
2 because of what third parties did? And I'm not talking
3 about Ford where Ford said look, we sell cars ad nauseam
4 to consumers. We didn't sell this car. That's not what
5 I'm saying. I'm not saying that LG Chem sells these
6 cells to consumers but not this one. Our position is
7 that LG Chem does not sell these cells to consumers
8 anywhere.

9 And I don't think it's relevant to the
10 jurisdictional issue but I will just address plaintiff
11 pled in the complaint that LG Chem hasn't tried to stop
12 it. And that's just respectfully just not true. I mean
13 there are, the LG Chem website if some plaintiff or
14 individual consumer thought should I put one of these
15 batteries in my device? You know the Vape store told me
16 it's a great idea.

17 If they went to LG Chem's website it would say do
18 not do it. There would be a big pop up warning do not do
19 it. There were ads run in the full page ads in the New
20 York Times do not do it. There are web campaigns that
21 worked with you know it was in the industry ---

22 THE COURT REPORTER: --- I'm so sorry Ms. Hedley.
23 Could you slow down just a little bit? Can you slow down
24 just a bit?

25 MS. HEDLEY: I'm sorry. My apologies. I'm a

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1 native New Yorker. I've lived here 20 years but
2 sometimes I still talk too fast. I apologize for that.

3 THE COURT: Let me ask you this.

4 MS. HEDLEY: Yes?

5 THE COURT: I guess I'm having a little bit of
6 well, I don't understand what the product is that -- this
7 battery goes in like a Vape thing which I gather is some
8 kind of electronic cigarette.

9 So this battery, where would this person have gotten
10 this battery if not in a store in the United States?
11 Are you saying well, they must have been in Europe or
12 Mexico and bought it there and came back in. But you
13 can't buy this product in the United States or in South
14 Carolina?

15 MS. HEDLEY: No. What I'm saying Your Honor is yes
16 I think a vaping device these Vape stores, so there might
17 be there are certain devices that you might have seen. I
18 don't Vape but I think you could buy them at any gas
19 station. And it would just be sort of a contained thing
20 that almost looks like a cigarette. You can't open it.
21 You just sort of smoke it until it's done and then you
22 throw it out.

23 These are a different kind of device; it's like a
24 Mod. It's probably maybe the size of a fist, my fist, I
25 have small hands; my children tease me, the size of a

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1 small hand maybe a fist. And then the cell, which is
2 being sold as a battery they put in and out of this
3 device and sometimes in and out of a charger.

4 And because it's such a powerful cell what really
5 ends up happening is that over time the wrapper can
6 become degraded. And if somebody has it in their pocket
7 which I believe is what happened in this case and then it
8 touches something else like a key or a coin it can cause
9 an interaction that sparks the cell.

10 And so -- but what I'm saying is that whatever this
11 industry or the companies that makes these devices LG
12 Chem does not do business with them. There are companies
13 that manufacture these devices and they design them to
14 use these very powerful cells.

15 People want to Vape and blow big clouds and they
16 want more power so this sort of side industry has
17 developed without the approval or authorization of LG
18 Chem or these other legitimate manufacturers who are
19 careful about who they sell to.

20 But somehow somewhere and I don't know where or how
21 someone has gotten hold of these and brought them into
22 the United States. My point was simply that if you look
23 at these import records that the plaintiff has attached
24 and again without waiver of my objections they are not
25 admissible. But if you look at them you do not see these

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1 cells coming into ports. I don't know how they're coming
2 in. Maybe if the plaintiff has searched for somebody in
3 the vaping industry it would show where they were coming
4 from. But my point is that LG Chem is not supplying a
5 consumer marker in South Carolina or anywhere in the
6 United States with these cells ---

7 THE COURT: --- so these aren't like little
8 batteries that I can go into the grocery store and
9 they're at the checkout counter in double A's and triple
10 A's and B's and C's? It's not that kind of battery?

11 MS. HEDLEY: It is not. And I'm glad you asked
12 that because there is a place in the briefing where the
13 plaintiff is quoting some phrases out of this Celgard
14 decision from North Carolina.

15 And because of the way the quote is selectively
16 removing words from the Court's actual opinion it makes
17 it sound as though that LG Chem had said you're going to
18 take our batteries off the shelves of Walmart and Best
19 Buy.

20 That's not what that case was about by the way. It
21 had nothing to do with the consumer Vaping market. No
22 one even knew about that I don't think at the time. It
23 was a technology dispute.

24 But if you read the full quote out of that decision
25 they were saying that consumers who want to go to Walmart

1 and Best Buy and buy consumer electronic products that
2 are manufactured with these cells embedded in them they
3 won't be able to. You can't go get your laptop; you
4 can't go buy your power drill because this supply chain
5 will shut down.

6 And so no, LG Chem never sold these cells. You
7 can't go to Target or Best Buy or Walmart and when you
8 walk up to the end counter and you want to buy a battery
9 there is no 18650 battery cells there.

10 It's just this industry that has popped up, this
11 consumer Vaping industry, these Vape stores. Some of
12 them are online. And a lot of them are brick and mortar
13 stores.

14 And I don't know who's supplying it. I know that LG
15 Chem is not. And so it's not like I'm saying that well
16 sure, somebody else could have gone to Target and bought
17 an 18650 battery cell and just popped it in the back of
18 their power drill or cut the grass or trimmed the hedges;
19 obviously not power drills. I don't use power drills.

20 But no, that's not what I'm saying. You can't do
21 that. And so the only way that consumers are getting
22 their hands on these cells to use them as standalone
23 batteries is entirely through the efforts of third
24 parties. LG Chem is not making contacts with South
25 Carolina or anyone else in the United States.

1 But it's not making contacts with South Carolina to
2 supply consumers with batteries. And so that is a very,
3 very critical distinguishing feature from Sumatra, for
4 example, again regardless of whether it is still viable
5 after more recent cases. In Sumatra the United brand
6 cigarettes sold them to the distributor so that the
7 distributor would then sell them to American consumers,
8 which is what the distributor did.

9 That is not what we have here. And we've put in
10 admissible evidence. LG Chem did not supply them to
11 anyone with knowledge that whoever was buying them was
12 turning around doing this. So they were selling them to
13 specific customers for a specific purpose.

14 And those customers in the U.S. it was a straight
15 transaction was LG Chem directly to that battery pack.
16 It was LG Chem directly to that original equipment
17 manufacturer. And then the very limited cases that I
18 mentioned these two distributors in other states.

19 So that's what I mean when I say -- if none of that
20 were happening easily this whatever this industry is that
21 had developed could still be acquiring these cells.
22 And so that's why I take it all the way back to World-
23 Wide Volkswagen that said a chattel cannot become an
24 agent for service of process. The fact that a product
25 that LG Chem manufactured somehow made its way into this

1 state is not enough under United States Supreme Court
2 precedent. There has to be this relatedness. And a good
3 example in my view is the Bristol Myers case.

4 Now in Bristol Myers you had out of state plaintiffs
5 so that's a little bit different. But you had the
6 defendant had an in-state distributor had I believe 250
7 sales representatives in the state, had research labs in
8 the state, sold 900 million of the exact same pill in the
9 state.

10 And the United States Supreme Court said that's a
11 lot of contacts for that same exact drug, Plavix but
12 that's not enough because there is no relationship to the
13 claims by these out-of-state plaintiffs.

14 So here it flips it on its head. You've got an in-
15 state plaintiff and that plaintiff bought that battery in
16 the state but there is no connection to anything LG Chem
17 did. And so that's why again, our position is that these
18 more recent decisions don't change the law; they make it
19 clear.

20 But the focus and particularly in the Ford case in
21 March of last year made very clear that there has got to
22 be that relatedness. And there is no relatedness here
23 between the allegations in the complaint, which are too
24 vague, or the exhibits that the plaintiff has attached
25 and the plaintiff's claims. So nothing that LG Chem did

1 no contact with South Carolina it is anyway related to
2 the plaintiff's claims. And that's why constitutional
3 due process is not satisfied. Thank you.

4 THE COURT: All right. Let me ask you this because
5 I'm still I guess trying to understand the product and
6 arguably understand it by analogy. So this battery it
7 actually fit into the Vape, okay, it's just it was too
8 powerful for the particular Vape and was it designed to
9 go in it?

10 MS. HEDLEY: Well, it wasn't designed to ever be
11 handled by a consumer. It was only designed to go to a
12 manufacturer who would incorporate it with protective
13 circuitry embedded in a device; so you're not touching
14 it.

15 Consumers are not supposed to be touching them. And
16 that's not what they were manufactured or sold for and
17 that's not what LG Chem's chain of distribution supplied
18 them for.

19 And so whoever it is who got them out of that chain
20 of distribution and put them in the hands of consumers
21 the problem arises not by the manufacturer of the sale.
22 The problem arises when the consumer is handling them.

23 And as I mentioned earlier the outside is getting
24 degraded because they're in and out of these chargers
25 where they're not supposed to be. They're not being

1 handled properly because they were never meant to be
2 handled by consumers in the first place.

3 THE COURT: So when this thing blew up in the
4 plaintiff's pocket was it inside of a Vape or was it just
5 did he just have the battery in his pocket?

6 MS. HEDLEY: I would have to defer to plaintiff's
7 counsel on that. I don't know which way it was. But
8 I've seen instances in both situations. Often it's just
9 loose in the pocket and people carry them around loose.
10 I know that often Vape stores tell people don't carry it
11 around loose in your pocket.

12 If you're going to carry it in your pocket put it in
13 a plastic case. And the reason to do that is if the
14 exterior wrapper is degraded and it's in a plastic case
15 and it's in your pocket and then you put you know a
16 quarter in there or your keys if anyone has metal keys
17 anymore, but whatever you put in your pocket if it
18 touches that degraded wrapper that's what causes, it
19 could cause a short circuit.

20 And so that's why I think Vape stores often say put
21 it in a plastic container. If you go to LG Chem's
22 website they would say or any of the campaigns that I
23 mentioned earlier and the website warnings and all the
24 various efforts to stop people from doing this cease and
25 desist letter campaigns all of these efforts to stop this

1 said individual consumers are not meant to be handling
2 these cells. And so it's not like a double A battery
3 that you just go to Target and buy.

4 And so I'm not suggesting that well, if you've gone
5 to Target and bought the battery and used it for your
6 power drill we'd be fine. But because you used it for
7 your Vape we're not fine.

8 What I'm saying is that LG Chem was not involved in
9 supplying any consumer market to be buying these cells as
10 a standalone consumer product.

11 THE COURT: So this is some kind of black market
12 sort of thing, the super charged Vapes? I'm so not aware
13 of the -- I know, I see these stores, I see people
14 smoking electronic things but I don't have a clue as to
15 what actually happens there. So there is like a black
16 market to super charge these things?

17 MS. HEDLEY: Right. So ---

18 THE COURT: --- and just use them as replacement
19 batteries in the event that something goes bad, which is
20 -- or both?

21 MS. HEDLEY: Well I think -- and it's funny Your
22 Honor uses that phrase because I believe that's the
23 phrase that Federal District Court in Washington State
24 used a couple of years ago when granting a similar motion
25 to dismiss and focusing on how did the product get to the

1 state? Was it the result of some chain of distribution
2 of this defendant? No. And I think he used that same
3 phrase that Your Honor is using, this market.

4 But I think it's not just -- I think it's because
5 they're so powerful that they can create these extra
6 clouds. And so it's the manufacturers of the devices
7 which generally I do not believe are U.S. companies are
8 designing them to use with these cells but they're not
9 affiliated with the cell manufacturer, they're not
10 affiliated with LG Chem. And LG Chem's entire public
11 communications about this are don't do it. Don't touch
12 them.

13 It's not like we're saying it's okay to use it for
14 your camera but don't use it for your Vape. These
15 particular cells are meant to be an industrial component
16 product, not a standalone consumer product. So an
17 industrial component that goes to entities that know how
18 to handle them, put them pack them with protective
19 circuitry.

20 And the reason for that is they're now in a battery
21 pack or in the back of your laptop computer where you're
22 not going to open it and touch it. I mean you can't
23 touch it, you can't handle it, you're not sliding it in
24 and out of a charger so it's less likely for that wrapper
25 to degrade and ultimately lead to this type of incident.

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1 THE COURT: Okay. All right, well Mr. Moore?

2 MR. MOORE: Thank you, Your Honor. A couple of
3 things really quickly before I forget. We would submit
4 that our pleadings are substantially similar at least to
5 those involved in the other claims for which you have
6 orders in South Carolina. And I have an identical
7 motion.

8 In fact, I'm not aware of any Court in South
9 Carolina granting this particular motion. And I'm aware
10 of other Courts denying these motions against this
11 particular defendant as well albeit there are some that
12 have granted it.

13 I'm not sure that there are since the most recent
14 Ford v Bandemer and the Montana cases but Ms. Hedley
15 could probably speak to that better than I. You know I
16 don't really know and have not been able to verify the
17 veracity of this claim that you know at no point in time
18 did LG ever intend or sell or intend for these cells to
19 be used individually or distribute or sell them for that
20 purpose. We've always kind of taken them at their word
21 on that.

22 And one of the reasons we're very specific in our
23 complaint even in this case to at least on its face
24 accept that is because I think I sued LG probably in 2015
25 or 2016 in Federal Court here in the district of South

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1 Carolina in a case in which consequently they waived
2 their personal jurisdiction defenses or consented to the
3 Court's jurisdiction.

4 And so they have known and there were cases I
5 believe before mine if I'm not mistaken but they've known
6 at least since the Dietrich [phonetic] case in 2015 that
7 this industry was utilizing its battery products to power
8 their devices.

9 And so one of the things we allege in addition to
10 product defect and lack of certain safety features that
11 these batteries sometime utilize is that they've done
12 precious little to actually take command of their
13 distribution chain to get their arms around why are these
14 batteries ending up in Vape stores across the nation.

15 Why are they defending over a 100 lawsuits in the
16 U.S. related to people really hurting themselves as a
17 result of their batteries having exploded while being
18 individually used? And it's not just the Vape.

19 Obviously that's the industry that has I guess
20 exploded in popularity over the last six or seven years
21 and utilizes it probably the most. But I've also seen
22 these cells used in flashlights and other individual
23 applications.

24 In fact I've seen not necessarily with LG but in the
25 case of Samsung, which makes the same type of battery,

1 they actually included in product spec sheets from the
2 early 2000's individual warnings like don't put this in a
3 purse or don't carry this around with loose change
4 individually because it can hurt you.

5 And they do hurt people. They cause very violent
6 explosions when they experience a short circuit event.
7 And in all of these cases we're dealing with fairly
8 serious burn injuries. And so what the strategy has been
9 both for LG and for Samsung is to narrow the focus of
10 this jurisdictional inquiry to an 18650 lithium ion
11 battery, okay? Fair enough. That may be a merits
12 defense.

13 All of this business about hey, we don't design
14 these for individual use or oh, we don't want people
15 using these individually that's fine. That's something
16 we can talk about in the merits and that can be a defense
17 for the litigation and they can defend this kind of
18 passive warning strategy that they have where rather than
19 find out what their customers are doing with their cells
20 and why there are millions of these batteries that people
21 are using individually in the U.S.

22 And just so you know up until you know the last two
23 or three years before this you could probably buy an LG
24 individual battery on Amazon. You can probably still buy
25 them on Alibaba and some of these foreign e commerce

1 websites. But in any event we don't think the
2 jurisdictional focus is so narrow. And that's because
3 the 18650 is a form factor. What LG Chem makes and
4 claims to be a global leader, a Ford Motor Company so to
5 speak, is lithium ion batteries.

6 There are 18650 lithium ion batteries; there are
7 22650 lithium ion batteries. There are lithium polymer
8 batteries which are pouches which power LG Chem phones --
9 I'm sorry, LG electronic phones, LG tablets, power tools,
10 e bikes, vehicles. It would not surprise me Your Honor
11 that there is some device in your office right now that
12 is being powered by an LG Chem lithium ion battery.

13 That's what they make and that's what they sell
14 throughout the U.S. and across the world lithium ion
15 batteries. And I point that out because I think there is
16 a jurisdictional inquiry. That's the point. That's the
17 main question. And Ms. Hedley said she went through the
18 spreadsheets and found one reference to the 18650 lithium
19 ion cell shipment.

20 And that may be true but there are dozens of them in
21 these spreadsheets that we have submitted that say
22 lithium ion batteries or reference battery products
23 including I think -- and even more recently they're
24 shipping battery products to Volvo I believe or even to
25 Ford; not in South Carolina but through the port of

1 Charleston to Volvo in South Carolina. And I don't think
2 they would take the position with Your Honor today that
3 they don't sell products and intend to serve the market
4 in the state of South Carolina or use our ports to
5 further their business interests in South Carolina and
6 other states in the southeast.

7 And I think that is what matters. They're drawing
8 this distinction of 18650 that would be like the Sumatra
9 case and then drawing a distinction between light
10 cigarettes and ultra light cigarettes or Sumatra red
11 cigarettes.

12 And in that case the Supreme Court, and it's still
13 good law here says regardless of how the cigarettes
14 arrived in South Carolina the minimum contact was
15 established by the fact that Sumatra intended to serve a
16 market in the U.S. with its cigarette products.

17 That was the law in World-Wide Volkswagen and since
18 the recent decision in Ford that is still the law. Now
19 my friend drew this distinction between Bristol Myers and
20 the Ford cases to suggest that somehow you know we fall
21 outside of what is constitutionally permissible.

22 In Bristol Myers yes, the Court said look we've got
23 all of these California contacts. But you plaintiffs
24 that don't have any business in the California courts you
25 cannot bring your claims here because none of you bought

1 the product in California, none of you used the product
2 in California and none of you were injured by the product
3 in California. It was classes of out of state plaintiffs
4 that were trying to bring similar claims in California.

5 And that's fine so the Supreme Court looked at this
6 issue again in Ford just last year and they said Ford
7 you've got a ton of Montana and Minnesota contacts. You
8 sell vehicles everywhere in these states. And yes, this
9 particular vehicle that was involved in these two fatal
10 collisions was not sold there. They were sold in another
11 state and then brought into the state by the plaintiffs.

12 They said it doesn't matter. The injury happened in
13 your state. The plaintiffs lived in that state and the
14 suit-related conduct that was important for the
15 relatedness test was that those types of things happened
16 within that state.

17 And it said look, we think these states have an
18 interest in regulating products that are sold within
19 their borders or products that are used within their
20 borders. And it's not unfair to subject Ford Motor
21 Company jurisdiction there because they sell cars here.
22 Just because they didn't sell that one car here doesn't
23 matter.

24 And nothing about the Bristol case or the Ford case
25 is inconsistent with the exercise of jurisdiction here.

1 And that's because Mr. Fleming bought the battery here,
2 he was hurt by the battery here, and he lives here; he's
3 a South Carolina resident.

4 I think for the relatedness they have described it,
5 they being the Supreme Court describes it as requiring a
6 mere affiliation. Obviously, we have an affiliation with
7 the state of South Carolina because he bought it here, he
8 got hurt here, he lives here, he used it here.

9 He never took it outside of state lines. LG Chem
10 does business in South Carolina selling lithium ion
11 battery products. LG Chem and it's now whatever it is
12 called now knows that its batteries are ubiquitous in the
13 United States in every LG electronic phone, any LG device
14 that is powered by one of their batteries -- because LG
15 Chem is a part of the LG global family unit; they all
16 cross pollinate and utilize each other's products.

17 It is not a valid basis to deny jurisdiction just
18 because this one widget you know we don't know exactly
19 how it got there because they are putting all kinds of
20 widgets into our market and they enjoy the benefits of
21 that.

22 And although she is right that some of the case law
23 says you can't use one subsidiary's connection to a state
24 as the basis for jurisdiction using the parent. I do
25 think it is telling as to what type of business contacts

1 and their intent to utilize the South Carolina business
2 market is that their wholly owned subsidiary LG Chem
3 America, Incorporated has a certificate of authority to
4 do business in South Carolina.

5 What would be the purpose of that other than to
6 further the parent company's business? And so I think
7 it's just kind of a strange reason to suggest that the
8 constitutional inquiry is just limited to this one widget
9 or this one 18650 when in the reality LG Chem wants and
10 expects for South Carolinians to utilize their battery
11 products in various applications every single day.

12 You know this move towards automotive -- electric
13 automotive -- electric automobiles that's one of their
14 biggest markets right now. They're trying and they've
15 got LG Chem Michigan that they've set up now to make
16 batteries to put into Ford cars or put into other
17 electric vehicles.

18 And they're going to be all over the roads. I mean
19 it's just -- this is not like the Supreme Court discussed
20 in the oral argument in the Ford case you know a
21 woodworker in Maine who is going to get sucked up into
22 litigation in California because he sent a bird house
23 there over the Internet.

24 That's not this case. This is a multi-national
25 global manufacturer that knows that its lithium ion

1 products are being sent to and utilized in South
2 Carolina. And there is nothing unfair about subjecting
3 them to jurisdiction here just as the other South
4 Carolina Circuit Courts have found.

5 They have the ability to defend the case on the
6 merits about what the design intent for these individual
7 batteries were or this quote unquote black market
8 unauthorized use if in fact that is true. That is
9 something that we can just litigate on the merits.

10 But there is nothing undue or unfair about
11 subjecting them to jurisdiction here. And I think that's
12 it. I'd be happy to answer any questions Your Honor has.
13 I'm sorry for rambling on. It's an interesting issue.

14 THE COURT: All right. Ms. Hedley, do you want to
15 respond?

16 MS. HEDLEY: Yes. Thank you, Your Honor. There
17 are a couple of points that counsel raised that I want to
18 mention. But first, I'm just going to quote so I'm
19 looking down as I'm reading but from Ford. The Supreme
20 Court said:

21 Ford had advertised, sold, and serviced those two
22 car models in both states for many years. And then in
23 parenthesis contrast a case which we did not address in
24 which Ford marketed the models in only a different state
25 or region. And that's 141 S. Ct. at 1028.

1 So to the extent that counsel is arguing that hey,
2 lithium ion batteries it's all just one big thing; it
3 doesn't matter what kind. I think the Ford case makes
4 clear that it does. And I think counsel's argument is
5 also hey look, this is a big company. This is not a Mom
6 and Pop shop. This is not a small woodworker.

7 But that is exactly -- when Bristol Myers was
8 decided the California Supreme Court had adopted what the
9 Supreme Court described as a sliding scale approach to
10 jurisdiction. In other words the bigger the company and
11 the more business it did in the state the more attenuated
12 that connection could be.

13 And so if you had a big company that did a lot of
14 business California Supreme Court said just as counsel is
15 saying you know we don't have to look so hard at this.
16 But the United States Supreme Court said no, that is not
17 the law.

18 Case-linked jurisdiction means exactly what it says.
19 General jurisdiction is different but case-linked
20 jurisdiction it matters what the claim is. It matters
21 particularly what the specific claims at issue are in the
22 case.

23 We're not talking about electric vehicles. We're
24 not talking about electric buses; we're not talking about
25 scooters. We're not talking about a product that was

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1 manufactured with a cell that LG Chem had sold. And
2 there are many different fact patterns that we could be
3 talking about if that were the case that we're not. It
4 would matter whether LG Chem you know the manufacturer
5 was in the state of South Carolina or was somewhere else
6 in the United States, or was somewhere else in the world.

7 But we're not talking about any of those things. I
8 think counsel is sort of deferring attention away from
9 these spreadsheets and is not wanting to say whether it
10 is accurate or it's not accurate about how many 18650
11 cells are on any of those voluminous charts which my eyes
12 are, I'll admit my eyes are a little old to read charts
13 but they are searchable.

14 And so you can zoom in and scan them down which I've
15 done and I've also searched them. And any of the
16 products that counsel is talking about that say anything
17 about being a lithium ion battery in South Carolina are
18 going to car manufacturers.

19 And again, they're not going to Target and Best Buy
20 and Walmart for people to go pluck them off the shelves.
21 They're going to car manufacturers to put in cars. But
22 again it wouldn't matter. They can't be confused;
23 they're not the same product. And the Supreme Court in
24 recent years in Bristol Myers, in Goodyear, in Ford has
25 made very clear that case-linked jurisdiction has to be

1 exactly that; case-linked. And coming in and saying that
2 this is a big defendant, they sell a lot of products,
3 they do a lot of business and therefore you should hold
4 them subject to jurisdiction. Respectfully, that's just
5 not the law.

6 I do think it is telling that counsel brings up this
7 subsidiary again because again referring to these other
8 cases I'll just mention in some of these other cases,
9 these orders, these trial court orders, LGCAI the
10 subsidiary entity which is headquartered in Georgia was
11 sued as a defendant. That's not the case here.

12 But in some of those other courts LGCAI was sued as
13 a defendant. And those courts said you know what you've
14 done enough. There is personal jurisdiction over LG Chem
15 and LG Chem America; let's go ahead. But there was
16 evidence put in those cases which we submitted to the
17 Court with our reply where LG Chem America said we never
18 ever, never ever had any revenue from supplying lithium
19 ion batteries into South Carolina.

20 And so on those import charts if Your Honor looks at
21 them, and there are a lot of statements made in the
22 briefs that was in the import charts. But I'll tell you
23 what's not in the import charts. There is not an import
24 which is showing lithium ion batteries coming into South
25 Carolina that LG Chem America is supplying. That's not

1 there because that's not what they were doing. They were
2 distributing petrochemical products, methacrylate, and
3 latex and silicic or acrylic acid and products like that.

4 So again we do think the specific product matters
5 and the specific type of claims matters and that's the
6 Supreme Court case law. I'm not going to go into talking
7 about the merits because I think that specific
8 jurisdiction and due process in general is the point of
9 it is not to talk about the merits; who's right, who's
10 wrong, what are the merits of the claims.

11 There is no place for that in a jurisdictional
12 analysis. It doesn't matter how big the company is.
13 What matters is whether the claims arise out of or relate
14 to contacts the defendant formed with the forum state.
15 Here they do not.

16 And to the extent counsel suggested that since the
17 Supreme Court's decision in Ford other courts in other
18 jurisdictions had rejected this argument. Respectfully I
19 would like to correct the record on that.

20 And just in neighboring Georgia the District Court
21 there granted similar motions to dismiss seven cases.
22 Those were out-of-state plaintiffs. But also, but also
23 those out-of-state plaintiffs asked that Federal Court to
24 transfer the cases to the states where they bought the
25 battery, used the battery, and claimed injury. And the

1 federal judge denied that and said no, you haven't shown
2 that there is jurisdiction in that state where you want
3 to go and so I'm not going to transfer it there. So that
4 is relevant.

5 And so that's seven cases by this District Court as
6 well as several appellate decisions in Texas and in
7 California, just a few weeks ago in California that we
8 referenced to the Court. That was decided on I believe
9 December 16th. And the cases that I'm talking about were
10 decided after Ford.

11 So in addition to the many, many courts that have
12 applied the same standard arises out of or relates to.
13 And that was the standard that was applied by the Supreme
14 Court of Missouri, by the Court of Appeals in Washington
15 state, by Courts of Appeal in Texas and California.

16 And what has happened here in South Carolina in
17 these trial courts those decisions are what they are.
18 Two of them didn't provide any reasoning. For example,
19 the Holtzendorff case, it was just a Form 4 order that
20 said denied.

21 And so there is no reasoning there. And if the
22 Court were actually to read those decisions I think Your
23 Honor would find a lot of different reasons supporting
24 those decisions, which furthers my point that the reason
25 that there is not a consistent analysis is because again

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1 respectfully the law says that due process is not
2 satisfied here.

3 And so again we respectfully request that the Court
4 grant the motion and dismiss LG Chem for lack of personal
5 jurisdiction. Thank you, Your Honor.

6 THE COURT: All right. Well, it's interesting and
7 worthy of some review. I've got a lot of evidence to go
8 through so I'll take it under advisement and let y'all
9 know what I decide, okay.

10 MS. HEDLEY: Thank you, Your Honor.

11 MR. MOORE: Thank you, Judge.

12 THE COURT: All right.

13 *****END OF TRANSCRIPT OF RECORD*****
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is, to the best of my ability, a complete
Transcript of Record of the proceedings had, using WebEx
videoconferencing, and evidence introduced in the trial
of the captioned case, relative to appeal, in the Court
of Common Pleas for Charleston County, South Carolina on
the 18th day of January, 2022.

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

January 28, 2022

Joyce C. Rueger, CVR-M
Court Reporter

EXHIBIT B

From: Young, Roger Law Clerk (Michael Secrist) <ryounglc@sccourts.org>
Sent: Wednesday, January 26, 2022 9:24 AM
To: Rachel Hedley
Cc: chris@richardsonthomas.com; john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise; Deirdre McCool
Subject: RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Good morning Counsel,
Defendant's Motion to Dismiss is GRANTED. Defendant Counsel will prepare a proposed order for Judge Young's review and signature.

Michael E. Secrist
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Young, Roger Law Clerk (Michael Secrist)
Sent: Tuesday, January 11, 2022 3:45 PM
To: 'Rachel Hedley' <rachel.hedley@nelsonmullins.com>
Cc: chris@richardsonthomas.com; john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>
Subject: RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Received, thank you Ms. Hedley.

Michael E. Secrist
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Rachel Hedley <rachel.hedley@nelsonmullins.com>
Sent: Tuesday, January 11, 2022 3:23 PM
To: Young, Roger Law Clerk (Michael Secrist) <ryounglc@sccourts.org>
Cc: chris@richardsonthomas.com; john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>
Subject: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Mr. Secrist,

We represent Defendant LG Chem, Ltd. ("LG Chem") in the above-referenced matter. The hearing on LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction is currently scheduled before Judge Young on January 18, 2022, at 2:30pm via WebEx (currently No. 8 on the court motions roster).

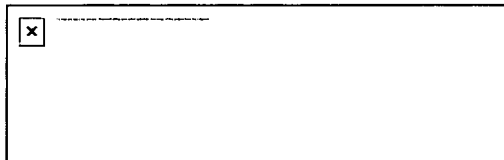
Please find attached a courtesy electronic copy of documents filed in support of LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction, including:

1. LG Chem's Motion to Dismiss supported by the Affidavit of Hwi Jae Lee, filed on July 15, 2021.
2. Memorandum in Support of LG Chem, Ltd.'s Motion to Dismiss, filed on January 7, 2022, the date set by the Court to submit memoranda.
3. Reply Affidavit of Mr. Hwi Jae Lee in further support of LG Chem's Motion to Dismiss, filed today (January 11, 2022) pursuant to SCRCP 6(d).
4. LG Chem's Motion for Leave to File Reply Memorandum of Law and Notice of Supplemental Authority, with attached proposed Reply Brief and three exhibits, filed today (January 11, 2022) in further support of LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction.

Opposing counsel are copied on this email.

We appreciate the Court's time and consideration.

Respectfully submitted,
Rachel Hedley



RACHEL ATKIN HEDLEY PARTNER

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# EXHIBIT C

---

**From:** Rachel Hedley  
**Sent:** Wednesday, February 2, 2022 11:58 AM  
**To:** Young, Roger Law Clerk (Michael Secrist)  
**Cc:** chris@richardsonthomas.com; john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise; Deirdre McCool  
**Subject:** Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663  
**Attachments:** Fleming v. Planet Vape et al. Proposed Order granting Defendant's Motion to Dismiss.docx

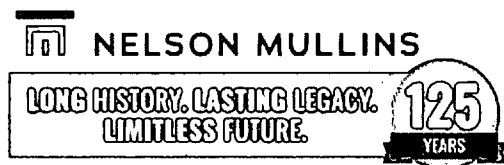
Good morning, Mr. Secrist,

Please see attached in Word a Proposed Order granting Defendant LG Chem, Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, for Judge Young's review.

We will also file the Proposed Order today.

We appreciate the Court's time and consideration.

Respectfully submitted,  
Rachel Hedley



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rachel.hedley@nelsonmullins.com  
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**From:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Sent:** Wednesday, January 26, 2022 9:24 AM  
**To:** Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>  
**Cc:** [chris@richardsonthomas.com](mailto:chris@richardsonthomas.com); [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>  
**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Good morning Counsel,

Defendant's Motion to Dismiss is GRANTED. Defendant Counsel will prepare a proposed order for Judge Young's review and signature.

**Michael E. Secrist**

Law Clerk to The Honorable Roger M. Young, Sr.  
100 Broad Street  
Charleston, South Carolina 29401  
Office: (843) 958-2015  
Email: [RYounglc@sccourts.org](mailto:RYounglc@sccourts.org)

**From:** Young, Roger Law Clerk (Michael Secrist)

**Sent:** Tuesday, January 11, 2022 3:45 PM

**To:** 'Rachel Hedley' <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>

**Cc:** [chris@richardsonthomas.com](mailto:chris@richardsonthomas.com); [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>

**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Received, thank you Ms. Hedley.

**Michael E. Secrist**

Law Clerk to The Honorable Roger M. Young, Sr.  
100 Broad Street  
Charleston, South Carolina 29401  
Office: (843) 958-2015  
Email: [RYounglc@sccourts.org](mailto:RYounglc@sccourts.org)

**From:** Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>

**Sent:** Tuesday, January 11, 2022 3:23 PM

**To:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>

**Cc:** [chris@richardsonthomas.com](mailto:chris@richardsonthomas.com); [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>

**Subject:** Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Dear Mr. Secrist,

We represent Defendant LG Chem, Ltd. ("LG Chem") in the above-referenced matter. The hearing on LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction is currently scheduled before Judge Young on January 18, 2022, at 2:30pm via WebEx (currently No. 8 on the court motions roster).

Please find attached a courtesy electronic copy of documents filed in support of LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction, including:

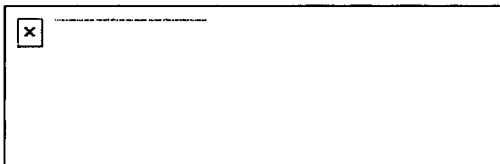
1. LG Chem's Motion to Dismiss supported by the Affidavit of Hwi Jae Lee, filed on July 15, 2021.
2. Memorandum in Support of LG Chem, Ltd.'s Motion to Dismiss, filed on January 7, 2022, the date set by the Court to submit memoranda.

3. Reply Affidavit of Mr. Hwi Jae Lee in further support of LG Chem's Motion to Dismiss, filed today (January 11, 2022) pursuant to SCRCP 6(d).
4. LG Chem's Motion for Leave to File Reply Memorandum of Law and Notice of Supplemental Authority, with attached proposed Reply Brief and three exhibits, filed today (January 11, 2022) in further support of LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction.

Opposing counsel are copied on this email.

We appreciate the Court's time and consideration.

Respectfully submitted,  
Rachel Hedley



RACHEL ATKIN HEDLEY PARTNER  
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| | | |
|---------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON |) | NINTH JUDICIAL CIRCUIT |
| REID FLEMING, |) | Civil Action No. 2021-CP-1001663 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | (PROPOSED) OPINION AND |
| |) | ORDER GRANTING |
| THE PLANET VAPE, |) | DEFENDANT LG CHEM, LTD.’S |
| LLC;SCECIGARETTE, LLC; LG CHEM, |) | MOTION TO DISMISS FOR |
| LTD.; |) | LACK OF PERSONAL |
| |) | JURISDICTION |
| Defendants. |) | |
| _____ |) | |

Before the Court is Defendant LG Chem, Ltd.’s (“LG Chem”) Motion to Dismiss for Lack of Personal Jurisdiction. Having fully considered all of the parties’ arguments raised in the motions, memoranda, exhibits, submissions, and the arguments of counsel at the video hearing held on January 18, 2022, the Court grants LG Chem’s Motion to Dismiss for Lack of Personal Jurisdiction.

FACTS

The relevant facts are as follows: Plaintiff Reid Fleming is a resident of Anderson County, South Carolina. (Complaint, filed April 12, 2021, ¶ 1.) Plaintiff alleges that prior to the accident at issue, he purchased a number of lithium ion batteries from Defendants The Planet Vape (“Planet Vape”) and SCECIGARETTE, LLC (“SC E-Cigarette”) for use with his vaping device. He further alleges that these retailers marketed or represented the batteries as being an LG brand. (*Id.* ¶¶ 20, 21) Plaintiff also alleges that on or around May 24, 2018, he was injured when one of these lithium ion batteries exploded in his pocket (*id.* ¶ 31).

LG Chem, Ltd. is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. (Aff. of Hwi Jae Lee, dated July 13, 2021, ¶ 7; Compl., ¶ 4.) The uncontroverted evidence shows the following: LG Chem has never designed, manufactured, distributed, advertised, or sold its lithium ion battery cells to consumers for use as standalone, replaceable batteries in South Carolina or anywhere else. (Lee Aff., ¶¶ 16–17.) Instead, the 18650 lithium ion cells that LG Chem manufactured are industrial component parts; they are not standalone, replaceable consumer batteries, and they were not designed to be handled by consumers. (*Id.* ¶ 16). LG Chem never authorized anyone to advertise, distribute, or sell its lithium ion cells to individual consumers for use as standalone, replaceable batteries in South Carolina, or anywhere else. (*Id.* ¶¶ 20, 21.)

In support of its motion, LG Chem provided two affidavits of Mr. Hwi Jae Lee, dated July 13, 2021 and January 11, 2022. In opposition to the Defendant’s Motion to Dismiss, Plaintiff provided the Affidavit of Plaintiff’s counsel, dated January 7, 2022, attaching copies of LG Chem’s 2018 and 2017 financial statements; import data; a Certificate of Authority and Business Registration for a subsidiary of LG Chem; and orders from a North Carolina federal district court and other South Carolina trial courts. Plaintiff also provided the Declaration of Nickie Bonenfant, dated August 10, 2021, and Appendices.

LEGAL STANDARD

“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). “Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.” *Brown v. Inv. Mgmt. & Research*,

Inc., 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (resolving, in plaintiff’s favor, conflicting facts set forth in affidavits from witnesses in opposing parties).

Jurisdiction may be general or specific. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). Plaintiff conceded at the hearing that general jurisdiction is not at issue. To establish specific jurisdiction, a plaintiff must show that both South Carolina’s long-arm statute and constitutional due process are satisfied. Due process requires that a defendant has sufficient minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

To satisfy due process, the Court must find that (1) the defendant has the requisite minimum contacts with the forum, without which the court does not have the power to adjudicate the action (the power prong); and (2) the exercise of jurisdiction would be “reasonable” or “fair” (the fairness prong). *See S. 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*, 363 S.C. at 491–94, 611 S.E.2d at 509–10; *Power Prods.*, 379 S.C. at 433–35, 665 S.E.2d at 665–67; *Ford Motor Co. v. Montana Eighth Jud. Dist.*, 141 S. Ct. 1017, 1025 (2021); *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; *Power Prods.*, 379 S.C. at 432, 665 S.E.2d at 665.

DISCUSSION

The Court concludes that Plaintiff has not satisfied his burden of establishing personal jurisdiction over LG Chem, Ltd.

Plaintiff's suit arises from injuries he allegedly suffered from use of a 18650 lithium ion battery to power his electronic cigarette device. Plaintiff alleges he purchased the battery from either Defendant Planet Vape or SC E-Cigarette and that the battery was originally manufactured by LG Chem. LG Chem's motion was supported by admissible evidence that (1) it never designed, manufactured, distributed, advertised, or sold 18650 lithium ion cells for sale to or use by individual consumers as standalone, replaceable batteries; and (2) it never authorized anyone to sell its 18650 lithium ion cells directly to consumers as standalone, replaceable batteries.

1. The allegations of Plaintiff's complaint do not establish a prima facie case of jurisdiction.

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 (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012).

The Court agrees with Defendant that the allegations of Plaintiff's complaint, even if true, are not sufficient to make a prima facie showing of jurisdiction. Plaintiff did not allege or argue that LG Chem supplied 18650 lithium ion cells to a consumer market for vaping batteries in South Carolina. Instead, Plaintiff generically alleged that LG Chem conducted business in South Carolina and that LG Chem placed its product into the stream of commerce with the reasonable expectation that it would be used in South Carolina. Plaintiff did not plead any jurisdictional facts specific to the particular product at issue in this suit—a 18650 lithium ion cell that was re-sold as a standalone consumer battery. Plaintiff also did not plead any facts showing a connection between his claims and any action of the Defendant directed to South Carolina. Therefore, if the Court decided the motion based solely on the pleadings, the motion should be granted.

2. LG Chem’s evidence that it did not serve a consumer market for standalone 18650 batteries in South Carolina was uncontroverted.

Additionally, “[w]hen 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. LG Chem supported its Motion with affidavits, and Plaintiff filed his own Affidavit, Declaration, and voluminous exhibits with attachments in opposition to the Motion.

None of the facts offered by the Plaintiff in opposition supported his burden of proof on jurisdiction. LG Chem’s financial statements and the Certificate of Authority for its subsidiary do not provide evidence of any suit-related contacts between LG Chem and South Carolina. LG Chem submitted an uncontroverted affidavit showing that its subsidiary LG Chem America, Inc. (“LGCAI”), which is not a party to the case, is a separate and distinct entity with its own separate bank accounts, business records, and corporate officers, that manage and control its own day-to-day activities. (*See* Reply Lee Aff., ¶¶ 7–8.) Plaintiff did not show that non-party LGCAI’s contacts could be imputed to LG Chem and, even if he had, he also did not show that non-party LGCAI engaged in any suit-related contacts with South Carolina.

In addition, the various charts described as import data, including those attached to the Affidavit of Plaintiff’s Counsel and those attached to the Declaration of Nickie Bonenfant, do not provide information showing any suit-related contacts between LG Chem and South Carolina. Instead, at best, if admissible,¹ the charts would show only that LG Chem directed unrelated

¹ LG Chem objected that the records, which purport to be summaries of information maintained by the United States Department of Customs, lack authentication and foundation and are inadmissible hearsay. The Court need not decide the issue of admissibility because it agrees with Defendant that, even if admissible, the records do not provide any information that would support Plaintiff’s burden of proof. Instead, the records further support LG Chem’s admissible evidence

business to South Carolina entities, including shipment of petrochemical products such as “methyl acrylate,” “acrylic acid,” and “synthetic rubber,” as well as shipment of electric vehicle batteries to car manufacturing companies. None of Plaintiff’s exhibits reflect shipment of 18650 lithium ion cells to anyone in South Carolina, let alone anyone engaged in the consumer vaping industry.

3. Business activities unrelated to the claims at issue do not support specific jurisdiction over LG Chem.

At the hearing, Plaintiff argued it was enough to show that LG Chem supplied other type of lithium ion battery products (such as electric vehicle batteries) to South Carolina entities and that such activities were sufficiently “related” to his claims to satisfy constitutional due process.

The U.S. Supreme Court has repeatedly made clear that unrelated business activities in the forum state cannot support the exercise of specific jurisdiction, no matter how extensive those in-state activities are. Even sales of the **very same product** at issue cannot support the exercise of specific jurisdiction if unrelated to the litigation. *Bristol-Myers*, 137 S. Ct. at 1781 (“[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.”) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 930 n.6 (2011)).

And in *Ford*, the Supreme Court took care to point out that its decision was based on Ford’s admitted in-state activities for the specific vehicles at issue—not just Ford cars, but specifically Ford Explorers and Crown Victorias. *Ford*, 141 S. Ct. at 1028 (“Ford had advertised, sold, and serviced *those two car models* in both States for many years. (*Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region.*) In other words, Ford had systematically served a market in Montana and Minnesota for the very vehicles that the

that it did not supply 18650 lithium ion cells to a consumer market in South Carolina for standalone 18650 batteries.

plaintiffs allege malfunctioned and injured them in those States.”) (emphasis added).

Therefore, the Court finds that even if Plaintiff’s exhibits were admissible, shipping petrochemical products or lithium ion batteries to manufacturers in South Carolina is not sufficiently related to Plaintiff’s personal injury claims to satisfy constitutional due process.

4. The “stream of commerce” theory does not support the exercise of specific jurisdiction over LG Chem on the facts of this case.

Plaintiff relied on a “stream of commerce” theory of jurisdiction as set forth in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 88, 666 S.E.2d 218, 221 (2008). Defendant argued that *Sumatra* is inconsistent with more recent U.S. Supreme Court precedents and that it is factually distinguishable in any event.

The Court need not resolve the question whether the *Sumatra* Court’s formulation of the “stream of commerce” theory of jurisdiction is consistent with more recent U.S. Supreme Court decisions because the facts of this case are materially distinguishable. *Id.* at 88, 666 S.E.2d at 221 (“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.”).

In *Sumatra*, the Indonesian cigarette manufacturer admitted that it intended to sell its cigarettes to consumers throughout the United States, including almost seven million cigarettes sold to consumers in South Carolina in one year as the direct result of its intended chain of distribution. *Id.* at 87–92, 666 S.E.2d at 221–24. Further, in *Sumatra*, the Indonesian manufacturer sold its cigarettes to its designated distributor, which then distributed the cigarettes to South Carolina for the specific purpose of distributing them to consumers as a consumer product. *Id.* at 86, 666 S.E.2d at 220.

By contrast here, even if LG Chem was the original manufacturer of the 18650 lithium ion cells (which has not been established), Plaintiff did not allege that LG Chem distributed its 18650

lithium ion cells directly to South Carolina consumers as a standalone product, or to any distributor or other intermediary for the purpose of supplying the cells directly to South Carolina consumers as a standalone product. And LG Chem's admissible evidence shows that LG Chem did not design, manufacture, distribute, advertise, or sell its 18650 battery cells directly to or for use by consumers, in South Carolina or anywhere else, as standalone, replaceable batteries and that it never authorized anyone else to do so either. These important facts distinguish *Sumatra* from the case here.

Further, the fact that the Plaintiff purchased and used the Defendant's product in South Carolina is not sufficient, even if the Defendant was aware that third parties might sell its product to consumers in the state without its authorization. "[I]t is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 883 (2011) (plurality op.); *Ford*, 141 S. Ct. at 1025 (the relevant "contacts must be the defendant's own choice").

As the South Carolina Supreme Court recognized in *Sumatra*, "[t]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." *Sumatra*, 379 S.C. at 89, 666 S.E.2d at 222 (emphasis added) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). This standard was met in *Sumatra* in light of the volume of cigarettes the defendant admittedly distributed for sale to consumers throughout the United States, including seven million cigarettes to consumers in South Carolina. This standard is not met here, where LG Chem submitted uncontroverted evidence to establish that it did not distribute any 18650 battery cells to anyone for sale as a standalone product to consumers in South Carolina or anywhere else. (Affidavit of Hwi Jae Lee, ¶¶ 16–17, 19–21.)

5. Because Plaintiff has not met the “power prong” of the long-arm statute, the Court need not reach the fairness prong.

Because the power prong cannot be satisfied, the Court need not reach the fairness prong. Regardless, under the fairness prong, courts analyze 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.” *S. Plastics Co.*, 310 S.C. at 263, 423 S.E.2d at 132 (citing *World-Wide Volkswagen*, 444 U.S. 286). Subjecting LG Chem to specific jurisdiction in South Carolina would be constitutionally unreasonable and unfair when LG Chem has no contacts with South Carolina related to the claims at issue. Accordingly, even if the power prong were satisfied, which it is not, the exercise of specific jurisdiction over LG Chem would not comport with fundamental fairness.

CONCLUSION

Based on the above principles, the Court concludes that due process does not allow the exercise of personal jurisdiction over LG Chem in this case. It is undisputed that general jurisdiction is lacking. As to specific jurisdiction, Plaintiff has not shown that his claims “arise out of or relate to” any contacts formed by LG Chem with South Carolina. The Court therefore finds that Plaintiff has not met his burden of establishing that this Court can exercise personal jurisdiction over LG Chem.

It is therefore ORDERED that LG Chem, Ltd.’s Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED.

It is further ORDERED that LG Chem, Ltd. is DISMISSED from this action without prejudice.

This the ____ day of _____, 2022.

Roger M. Young, Sr.
Circuit Court Judge, 9th Judicial Circuit

EXHIBIT D

From: Chris Moore <chris@richardsonthomas.com>
Sent: Wednesday, February 2, 2022 2:53 PM
To: Young, Roger Law Clerk (Michael Secrist); Rachel Hedley
Cc: john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise; Deirdre McCool
Subject: RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663
Attachments: LGC prop order with Plaintiffs objections.docx

Michael,

Here is the proposed order with my one objection regarding the factual depiction of our allegations. It is on page four.

Plaintiff respectfully objects to the overall analysis in the Defendant's proposed order but obviously defers to the Court as to the content of its order.

Thank you for the opportunity to note our objection.

Respectfully,

CHRIS MOORE



From: Young, Roger Law Clerk (Michael Secrist) <ryounglc@sccourts.org>
Sent: Wednesday, February 2, 2022 2:24 PM
To: Chris Moore <chris@richardsonthomas.com>; Rachel Hedley <rachel.hedley@nelsonmullins.com>
Cc: john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>
Subject: RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Thank you Mr. Moore, please send me any objections to the language by 4pm tomorrow.

Michael E. Secrist

Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Chris Moore <chris@richardsonthomas.com>
Sent: Wednesday, February 2, 2022 2:05 PM
To: Young, Roger Law Clerk (Michael Secrist) <ryounglc@sccourts.org>; Rachel Hedley <rachel.hedley@nelsonmullins.com>
Cc: john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>
Subject: RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

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We were not provided an advance copy but were copied on the email to the Court.

If we can have until tomorrow to note any objections to the content of the order I'd appreciate it.

CHRIS MOORE



From: Young, Roger Law Clerk (Michael Secrist) <ryounglc@sccourts.org>
Sent: Wednesday, February 2, 2022 12:44 PM
To: Rachel Hedley <rachel.hedley@nelsonmullins.com>
Cc: Chris Moore <chris@richardsonthomas.com>; john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>
Subject: RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Thank you Ms. Hedley, does opposing counsel have any objections to the order before it is reviewed by Judge Young?

Michael E. Secrist

Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Rachel Hedley <rachel.hedley@nelsonmullins.com>
Sent: Wednesday, February 2, 2022 11:58 AM
To: Young, Roger Law Clerk (Michael Secrist) <ryounglc@sccourts.org>
Cc: chris@richardsonthomas.com; john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>
Subject: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

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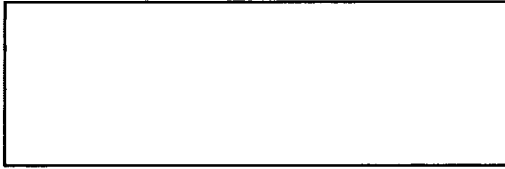
Good morning, Mr. Secrist,

Please see attached in Word a Proposed Order granting Defendant LG Chem, Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, for Judge Young's review.

We will also file the Proposed Order today.

We appreciate the Court's time and consideration.

Respectfully submitted,
Rachel Hedley



RACHEL ATKIN HEDLEY PARTNER
rachel.hedley@nelsonmullins.com
MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.5565 F 803.256.7500
NELSONMULLINS.COM VCARD VIEW BIO

From: Young, Roger Law Clerk (Michael Secrist) <ryounglc@sccourts.org>
Sent: Wednesday, January 26, 2022 9:24 AM
To: Rachel Hedley <rachel.hedley@nelsonmullins.com>
Cc: chris@richardsonthomas.com; john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>
Subject: RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Good morning Counsel,
Defendant's Motion to Dismiss is GRANTED. Defendant Counsel will prepare a proposed order for Judge Young's review and signature.

Michael E. Secrist
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Young, Roger Law Clerk (Michael Secrist)
Sent: Tuesday, January 11, 2022 3:45 PM
To: 'Rachel Hedley' <rachel.hedley@nelsonmullins.com>
Cc: chris@richardsonthomas.com; john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>
Subject: RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Received, thank you Ms. Hedley.

Michael E. Secrist
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015

Email: RYounglc@sccourts.org

From: Rachel Hedley <rachel.hedley@nelsonmullins.com>

Sent: Tuesday, January 11, 2022 3:23 PM

To: Young, Roger Law Clerk (Michael Secrist) <ryounglc@sccourts.org>

Cc: chris@richardsonthomas.com; john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>

Subject: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Mr. Secrist,

We represent Defendant LG Chem, Ltd. ("LG Chem") in the above-referenced matter. The hearing on LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction is currently scheduled before Judge Young on January 18, 2022, at 2:30pm via WebEx (currently No. 8 on the court motions roster).

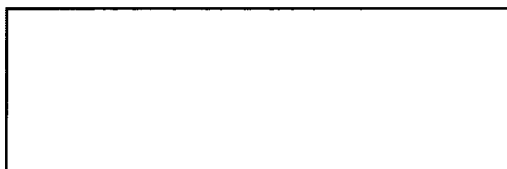
Please find attached a courtesy electronic copy of documents filed in support of LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction, including:

1. LG Chem's Motion to Dismiss supported by the Affidavit of Hwi Jae Lee, filed on July 15, 2021.
2. Memorandum in Support of LG Chem, Ltd.'s Motion to Dismiss, filed on January 7, 2022, the date set by the Court to submit memoranda.
3. Reply Affidavit of Mr. Hwi Jae Lee in further support of LG Chem's Motion to Dismiss, filed today (January 11, 2022) pursuant to SCRCP 6(d).
4. LG Chem's Motion for Leave to File Reply Memorandum of Law and Notice of Supplemental Authority, with attached proposed Reply Brief and three exhibits, filed today (January 11, 2022) in further support of LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction.

Opposing counsel are copied on this email.

We appreciate the Court's time and consideration.

Respectfully submitted,
Rachel Hedley



RACHEL ATKIN HEDLEY PARTNER
rachel.hedley@nelsonmullins.com

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1320 MAIN STREET | COLUMBIA, SC 29201
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|                                 |   |                                  |
|---------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA         | ) |                                  |
|                                 | ) | IN THE COURT OF COMMON PLEAS     |
| COUNTY OF CHARLESTON            | ) | NINTH JUDICIAL CIRCUIT           |
| REID FLEMING,                   | ) | Civil Action No. 2021-CP-1001663 |
|                                 | ) |                                  |
| Plaintiff,                      | ) |                                  |
|                                 | ) |                                  |
| vs.                             | ) | <b>(PROPOSED) OPINION AND</b>    |
|                                 | ) | <b>ORDER GRANTING</b>            |
| THE PLANET VAPE,                | ) | <b>DEFENDANT LG CHEM, LTD.'S</b> |
| LLC;SCECIGARETTE, LLC; LG CHEM, | ) | <b>MOTION TO DISMISS FOR</b>     |
| LTD.;                           | ) | <b>LACK OF PERSONAL</b>          |
|                                 | ) | <b>JURISDICTION</b>              |
| Defendants.                     | ) |                                  |
| _____                           | ) |                                  |

Before the Court is Defendant LG Chem, Ltd.'s ("LG Chem") Motion to Dismiss for Lack of Personal Jurisdiction. Having fully considered all of the parties' arguments raised in the motions, memoranda, exhibits, submissions, and the arguments of counsel at the video hearing held on January 18, 2022, the Court grants LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction.

#### **FACTS**

The relevant facts are as follows: Plaintiff Reid Fleming is a resident of Anderson County, South Carolina. (Complaint, filed April 12, 2021, ¶ 1.) Plaintiff alleges that prior to the accident at issue, he purchased a number of lithium ion batteries from Defendants The Planet Vape ("Planet Vape") and SCECIGARETTE, LLC ("SC E-Cigarette") for use with his vaping device. He further alleges that these retailers marketed or represented the batteries as being an LG brand. (*Id.* ¶¶ 20, 21) Plaintiff also alleges that on or around May 24, 2018, he was injured when one of these lithium ion batteries exploded in his pocket (*id.* ¶ 31).

LG Chem, Ltd. is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. (Aff. of Hwi Jae Lee, dated July 13, 2021, ¶ 7; Compl., ¶ 4.) The uncontroverted evidence shows the following: LG Chem has never designed, manufactured, distributed, advertised, or sold its lithium ion battery cells to consumers for use as standalone, replaceable batteries in South Carolina or anywhere else. (Lee Aff., ¶¶ 16–17.) Instead, the 18650 lithium ion cells that LG Chem manufactured are industrial component parts; they are not standalone, replaceable consumer batteries, and they were not designed to be handled by consumers. (*Id.* ¶ 16). LG Chem never authorized anyone to advertise, distribute, or sell its lithium ion cells to individual consumers for use as standalone, replaceable batteries in South Carolina, or anywhere else. (*Id.* ¶¶ 20, 21.)

In support of its motion, LG Chem provided two affidavits of Mr. Hwi Jae Lee, dated July 13, 2021 and January 11, 2022. In opposition to the Defendant’s Motion to Dismiss, Plaintiff provided the Affidavit of Plaintiff’s counsel, dated January 7, 2022, attaching copies of LG Chem’s 2018 and 2017 financial statements; import data; a Certificate of Authority and Business Registration for a subsidiary of LG Chem; and orders from a North Carolina federal district court and other South Carolina trial courts. Plaintiff also provided the Declaration of Nickie Bonenfant, dated August 10, 2021, and Appendices.

#### **LEGAL STANDARD**

“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). “Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.” *Brown v. Inv. Mgmt. & Research*,

*Inc.*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (resolving, in plaintiff’s favor, conflicting facts set forth in affidavits from witnesses in opposing parties).

Jurisdiction may be general or specific. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). Plaintiff conceded at the hearing that general jurisdiction is not at issue. To establish specific jurisdiction, a plaintiff must show that both South Carolina’s long-arm statute and constitutional due process are satisfied. Due process requires that a defendant has sufficient minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

To satisfy due process, the Court must find that (1) the defendant has the requisite minimum contacts with the forum, without which the court does not have the power to adjudicate the action (the power prong); and (2) the exercise of jurisdiction would be “reasonable” or “fair” (the fairness prong). See *S. 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*, 363 S.C. at 491–94, 611 S.E.2d at 509–10; *Power Prods.*, 379 S.C. at 433–35, 665 S.E.2d at 665–67; *Ford Motor Co. v. Montana Eighth Jud. Dist.*, 141 S. Ct. 1017, 1025 (2021); *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; *Power Prods.*, 379 S.C. at 432, 665 S.E.2d at 665.

#### **DISCUSSION**

The Court concludes that Plaintiff has not satisfied his burden of establishing personal jurisdiction over LG Chem, Ltd.

Plaintiff's suit arises from injuries he allegedly suffered from use of a 18650 lithium ion battery to power his electronic cigarette device. Plaintiff alleges he purchased the battery from either Defendant Planet Vape or SC E-Cigarette and that the battery was originally manufactured by LG Chem. LG Chem's motion was supported by admissible evidence that (1) it never designed, manufactured, distributed, advertised, or sold 18650 lithium ion cells for sale to or use by individual consumers as standalone, replaceable batteries; and (2) it never authorized anyone to sell its 18650 lithium ion cells directly to consumers as standalone, replaceable batteries.

**1. The allegations of Plaintiff's complaint do not establish a prima facie case of jurisdiction.**

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 (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012).

The Court agrees with Defendant that the allegations of Plaintiff's complaint, even if true, are not sufficient to make a prima facie showing of jurisdiction. Plaintiff did not allege or argue that LG Chem supplied 18650 lithium ion cells to a consumer market for vaping batteries in South Carolina. Instead, Plaintiff generically alleged that LG Chem conducted business in South Carolina and that LG Chem placed its product into the stream of commerce with the reasonable expectation that it would be used in South Carolina. Plaintiff did not plead any jurisdictional facts specific to the particular product at issue in this suit—a 18650 lithium ion cell that was re-sold as a standalone consumer battery. Plaintiff also did not plead any facts showing a connection between his claims and any action of the Defendant directed to South Carolina. Therefore, if the Court decided the motion based solely on the pleadings, the motion should be granted.

**Commented [CM1]:** Plaintiff objects to the factual accuracy of this section. Plaintiff specifically alleges that LG Chem distributes batteries and battery products to, and through, South Carolina. Compl. At para. 9. This was also argued at the hearing. And plaintiff submitted import records showing battery shipments from LG to South Carolina ports.

**2. LG Chem's evidence that it did not serve a consumer market for standalone 18650 batteries in South Carolina was uncontroverted.**

Additionally, “[w]hen 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. LG Chem supported its Motion with affidavits, and Plaintiff filed his own Affidavit, Declaration, and voluminous exhibits with attachments in opposition to the Motion.

None of the facts offered by the Plaintiff in opposition supported his burden of proof on jurisdiction. LG Chem's financial statements and the Certificate of Authority for its subsidiary do not provide evidence of any suit-related contacts between LG Chem and South Carolina. LG Chem submitted an uncontroverted affidavit showing that its subsidiary LG Chem America, Inc. (“LGCAI”), which is not a party to the case, is a separate and distinct entity with its own separate bank accounts, business records, and corporate officers, that manage and control its own day-to-day activities. (*See Reply Lee Aff.*, ¶¶ 7–8.) Plaintiff did not show that non-party LGCAI's contacts could be imputed to LG Chem and, even if he had, he also did not show that non-party LGCAI engaged in any suit-related contacts with South Carolina.

In addition, the various charts described as import data, including those attached to the Affidavit of Plaintiff's Counsel and those attached to the Declaration of Nickie Bonenfant, do not provide information showing any suit-related contacts between LG Chem and South Carolina. Instead, at best, if admissible,<sup>1</sup> the charts would show only that LG Chem directed unrelated

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<sup>1</sup> LG Chem objected that the records, which purport to be summaries of information maintained by the United States Department of Customs, lack authentication and foundation and are inadmissible hearsay. The Court need not decide the issue of admissibility because it agrees with Defendant that, even if admissible, the records do not provide any information that would support Plaintiff's burden of proof. Instead, the records further support LG Chem's admissible evidence

business to South Carolina entities, including shipment of petrochemical products such as “methyl acrylate,” “acrylic acid,” and “synthetic rubber,” as well as shipment of electric vehicle batteries to car manufacturing companies. None of Plaintiff’s exhibits reflect shipment of 18650 lithium ion cells to anyone in South Carolina, let alone anyone engaged in the consumer vaping industry.

**3. Business activities unrelated to the claims at issue do not support specific jurisdiction over LG Chem.**

At the hearing, Plaintiff argued it was enough to show that LG Chem supplied other type of lithium ion battery products (such as electric vehicle batteries) to South Carolina entities and that such activities were sufficiently “related” to his claims to satisfy constitutional due process.

The U.S. Supreme Court has repeatedly made clear that unrelated business activities in the forum state cannot support the exercise of specific jurisdiction, no matter how extensive those in-state activities are. Even sales of the **very same product** at issue cannot support the exercise of specific jurisdiction if unrelated to the litigation. *Bristol-Myers*, 137 S. Ct. at 1781 (“[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.”) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 930 n.6 (2011)).

And in *Ford*, the Supreme Court took care to point out that its decision was based on Ford’s admitted in-state activities for the specific vehicles at issue—not just Ford cars, but specifically Ford Explorers and Crown Victorias. *Ford*, 141 S. Ct. at 1028 (“Ford had advertised, sold, and serviced *those two car models* in both States for many years. (*Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region.*) In other words, Ford had systematically served a market in Montana and Minnesota for the very vehicles that the

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that it did not supply 18650 lithium ion cells to a consumer market in South Carolina for standalone 18650 batteries.

plaintiffs allege malfunctioned and injured them in those States.”) (emphasis added).

Therefore, the Court finds that even if Plaintiff’s exhibits were admissible, shipping petrochemical products or lithium ion batteries to manufacturers in South Carolina is not sufficiently related to Plaintiff’s personal injury claims to satisfy constitutional due process.

**4. The “stream of commerce” theory does not support the exercise of specific jurisdiction over LG Chem on the facts of this case.**

Plaintiff relied on a “stream of commerce” theory of jurisdiction as set forth in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 88, 666 S.E.2d 218, 221 (2008). Defendant argued that *Sumatra* is inconsistent with more recent U.S. Supreme Court precedents and that it is factually distinguishable in any event.

The Court need not resolve the question whether the *Sumatra* Court’s formulation of the “stream of commerce” theory of jurisdiction is consistent with more recent U.S. Supreme Court decisions because the facts of this case are materially distinguishable. *Id.* at 88, 666 S.E.2d at 221 (“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.”).

In *Sumatra*, the Indonesian cigarette manufacturer admitted that it intended to sell its cigarettes to consumers throughout the United States, including almost seven million cigarettes sold to consumers in South Carolina in one year as the direct result of its intended chain of distribution. *Id.* at 87–92, 666 S.E.2d at 221–24. Further, in *Sumatra*, the Indonesian manufacturer sold its cigarettes to its designated distributor, which then distributed the cigarettes to South Carolina for the specific purpose of distributing them to consumers as a consumer product. *Id.* at 86, 666 S.E.2d at 220.

By contrast here, even if LG Chem was the original manufacturer of the 18650 lithium ion cells (which has not been established), Plaintiff did not allege that LG Chem distributed its 18650

lithium ion cells directly to South Carolina consumers as a standalone product, or to any distributor or other intermediary for the purpose of supplying the cells directly to South Carolina consumers as a standalone product. And LG Chem's admissible evidence shows that LG Chem did not design, manufacture, distribute, advertise, or sell its 18650 battery cells directly to or for use by consumers, in South Carolina or anywhere else, as standalone, replaceable batteries and that it never authorized anyone else to do so either. These important facts distinguish *Sumatra* from the case here.

Further, the fact that the Plaintiff purchased and used the Defendant's product in South Carolina is not sufficient, even if the Defendant was aware that third parties might sell its product to consumers in the state without its authorization. "[I]t is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 883 (2011) (plurality op.); *Ford*, 141 S. Ct. at 1025 (the relevant "contacts must be the defendant's own choice").

As the South Carolina Supreme Court recognized in *Sumatra*, "[t]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." *Sumatra*, 379 S.C. at 89, 666 S.E.2d at 222 (emphasis added) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). This standard was met in *Sumatra* in light of the volume of cigarettes the defendant admittedly distributed for sale to consumers throughout the United States, including seven million cigarettes to consumers in South Carolina. This standard is not met here, where LG Chem submitted uncontroverted evidence to establish that it did not distribute any 18650 battery cells to anyone for sale as a standalone product to consumers in South Carolina or anywhere else. (Affidavit of Hwi Jae Lee, ¶¶ 16–17, 19–21.)

**5. Because Plaintiff has not met the “power prong” of the long-arm statute, the Court need not reach the fairness prong.**

Because the power prong cannot be satisfied, the Court need not reach the fairness prong. Regardless, under the fairness prong, courts analyze 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.” *S. Plastics Co.*, 310 S.C. at 263, 423 S.E.2d at 132 (citing *World-Wide Volkswagen*, 444 U.S. 286). Subjecting LG Chem to specific jurisdiction in South Carolina would be constitutionally unreasonable and unfair when LG Chem has no contacts with South Carolina related to the claims at issue. Accordingly, even if the power prong were satisfied, which it is not, the exercise of specific jurisdiction over LG Chem would not comport with fundamental fairness.

**CONCLUSION**

Based on the above principles, the Court concludes that due process does not allow the exercise of personal jurisdiction over LG Chem in this case. It is undisputed that general jurisdiction is lacking. As to specific jurisdiction, Plaintiff has not shown that his claims “arise out of or relate to” any contacts formed by LG Chem with South Carolina. The Court therefore finds that Plaintiff has not met his burden of establishing that this Court can exercise personal jurisdiction over LG Chem.

It is therefore ORDERED that LG Chem, Ltd.’s Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED.

It is further ORDERED that LG Chem, Ltd. is DISMISSED from this action without prejudice.

This the \_\_\_\_ day of \_\_\_\_\_, 2022.

---

Roger M. Young, Sr.  
Circuit Court Judge, 9th Judicial Circuit

# EXHIBIT E

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**From:** Rachel Hedley  
**Sent:** Thursday, February 3, 2022 9:11 AM  
**To:** Young, Roger Law Clerk (Michael Secrist); Chris Moore  
**Cc:** john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise; Deirdre McCool  
**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663  
**Attachments:** Fleming v. Planet Vape et al. Amended Proposed Order granting Defendant's Motion to Dismiss.docx

Good morning, Mr. Secrist,

Please see attached in Word an Amended Proposed Order granting Defendant LG Chem, Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction. The only changes are that the title is changed to (Amended Proposed) Opinion and Order and the one sentence at issue has been revised as set forth in my email below.

We will also file the Amended Proposed Order today.

Respectfully submitted,  
Rachel Hedley



RACHEL ATKIN HEDLEY PARTNER  
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**From:** Young, Roger Law Clerk (Michael Secrist) <ryounglc@sccourts.org>  
**Sent:** Thursday, February 3, 2022 8:52 AM  
**To:** Rachel Hedley <rachel.hedley@nelsonmullins.com>; Chris Moore <chris@richardsonthomas.com>  
**Cc:** john@griffithlawyer.com; tosanders@sanderslawfirm.com; david@sanderslawfirm.com; Scott Moise <scott.moise@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>  
**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Thank you Ms. Hedley. Yes, please send me a revised order.

**Michael E. Secrist**  
Law Clerk to The Honorable Roger M. Young, Sr.

100 Broad Street  
Charleston, South Carolina 29401  
Office: (843) 958-2015  
Email: [RYounglc@sccourts.org](mailto:RYounglc@sccourts.org)

**From:** Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>

**Sent:** Wednesday, February 2, 2022 3:21 PM

**To:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>; Chris Moore <[chris@richardsonthomas.com](mailto:chris@richardsonthomas.com)>

**Cc:** [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>

**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

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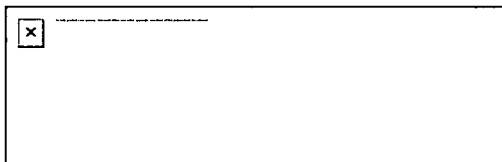
Dear Mr. Secrist,

Thank you for your email. Having reviewed Mr. Moore's comments, we believe both sentences are accurate as drafted, but we can revise the first sentence to substitute the words "lithium ion batteries and battery products" for the word "product" so the sentence more specifically states:

"Instead, Plaintiff generically alleged that LG Chem conducted business in South Carolina and that LG Chem placed its lithium ion batteries and battery products into the stream of commerce with the reasonable expectation that they would be used in South Carolina."

Please let me know if you would like us to submit a revised proposed Order.

Respectfully submitted,  
Rachel Hedley



RACHEL ATKIN HEDLEY PARTNER  
[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)

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**From:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>

**Sent:** Wednesday, February 2, 2022 3:02 PM

**To:** Chris Moore <[chris@richardsonthomas.com](mailto:chris@richardsonthomas.com)>; Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>

**Cc:** [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>  
**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Ms. Hedley,

Does Defendant wish to make that change proposed by Plaintiff counsel or is it Defendant's contention that that is how it should read?

**Michael E. Secrist**

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100 Broad Street  
Charleston, South Carolina 29401  
Office: (843) 958-2015  
Email: [RYounglc@sccourts.org](mailto:RYounglc@sccourts.org)

**From:** Chris Moore <[chris@richardsonthomas.com](mailto:chris@richardsonthomas.com)>  
**Sent:** Wednesday, February 2, 2022 2:53 PM  
**To:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>; Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>  
**Cc:** [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>  
**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

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Michael,

Here is the proposed order with my one objection regarding the factual depiction of our allegations. It is on page four.

Plaintiff respectfully objects to the overall analysis in the Defendant's proposed order but obviously defers to the Court as to the content of its order.

Thank you for the opportunity to note our objection.

Respectfully,

CHRIS MOORE

 **RICHARDSON  
THOMAS**

**From:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Sent:** Wednesday, February 2, 2022 2:24 PM  
**To:** Chris Moore <[chris@richardsonthomas.com](mailto:chris@richardsonthomas.com)>; Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>  
**Cc:** [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>  
**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Thank you Mr. Moore, please send me any objections to the language by 4pm tomorrow.

**Michael E. Secrist**

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Charleston, South Carolina 29401  
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**From:** Chris Moore <[chris@richardsonthomas.com](mailto:chris@richardsonthomas.com)>  
**Sent:** Wednesday, February 2, 2022 2:05 PM  
**To:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>; Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>  
**Cc:** [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>  
**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

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We were not provided an advance copy but were copied on the email to the Court.

If we can have until tomorrow to note any objections to the content of the order I'd appreciate it.

CHRIS MOORE



**From:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Sent:** Wednesday, February 2, 2022 12:44 PM  
**To:** Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>  
**Cc:** Chris Moore <[chris@richardsonthomas.com](mailto:chris@richardsonthomas.com)>; [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>  
**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Thank you Ms. Hedley, does opposing counsel have any objections to the order before it is reviewed by Judge Young?

**Michael E. Secrist**

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**From:** Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>  
**Sent:** Wednesday, February 2, 2022 11:58 AM  
**To:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Cc:** [chris@richardsonthomas.com](mailto:chris@richardsonthomas.com); [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>  
**Subject:** Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

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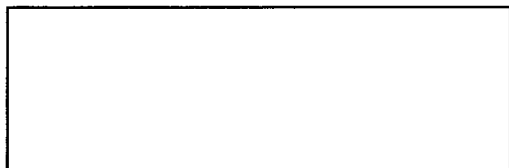
Good morning, Mr. Secrist,

Please see attached in Word a Proposed Order granting Defendant LG Chem, Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, for Judge Young's review.

We will also file the Proposed Order today.

We appreciate the Court's time and consideration.

Respectfully submitted,  
Rachel Hedley



**RACHEL ATKIN HEDLEY PARTNER**

[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)

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**From:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>

**Sent:** Wednesday, January 26, 2022 9:24 AM

**To:** Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>

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**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Good morning Counsel,

Defendant's Motion to Dismiss is GRANTED. Defendant Counsel will prepare a proposed order for Judge Young's review and signature.

**Michael E. Secrist**

Law Clerk to The Honorable Roger M. Young, Sr.

100 Broad Street

Charleston, South Carolina 29401

Office: (843) 958-2015

Email: [RYounglc@sccourts.org](mailto:RYounglc@sccourts.org)

**From:** Young, Roger Law Clerk (Michael Secrist)  
**Sent:** Tuesday, January 11, 2022 3:45 PM  
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**Subject:** RE: Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

Received, thank you Ms. Hedley.

**Michael E. Secrist**  
Law Clerk to The Honorable Roger M. Young, Sr.  
100 Broad Street  
Charleston, South Carolina 29401  
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**From:** Rachel Hedley <[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)>  
**Sent:** Tuesday, January 11, 2022 3:23 PM  
**To:** Young, Roger Law Clerk (Michael Secrist) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Cc:** [chris@richardsonthomas.com](mailto:chris@richardsonthomas.com); [john@griffithlawyer.com](mailto:john@griffithlawyer.com); [tosanders@sanderslawfirm.com](mailto:tosanders@sanderslawfirm.com); [david@sanderslawfirm.com](mailto:david@sanderslawfirm.com); Scott Moise <[scott.moise@nelsonmullins.com](mailto:scott.moise@nelsonmullins.com)>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)>  
**Subject:** Reid Fleming vs. Planet Vape, LLC, et al., Case No. 2021CP1001663

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Dear Mr. Secrist,

We represent Defendant LG Chem, Ltd. ("LG Chem") in the above-referenced matter. The hearing on LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction is currently scheduled before Judge Young on January 18, 2022, at 2:30pm via WebEx (currently No. 8 on the court motions roster).

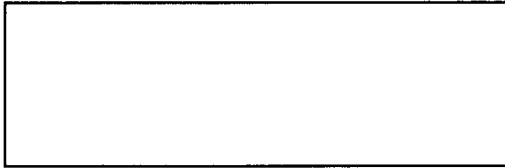
Please find attached a courtesy electronic copy of documents filed in support of LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction, including:

1. LG Chem's Motion to Dismiss supported by the Affidavit of Hwi Jae Lee, filed on July 15, 2021.
2. Memorandum in Support of LG Chem, Ltd.'s Motion to Dismiss, filed on January 7, 2022, the date set by the Court to submit memoranda.
3. Reply Affidavit of Mr. Hwi Jae Lee in further support of LG Chem's Motion to Dismiss, filed today (January 11, 2022) pursuant to SCRCP 6(d).
4. LG Chem's Motion for Leave to File Reply Memorandum of Law and Notice of Supplemental Authority, with attached proposed Reply Brief and three exhibits, filed today (January 11, 2022) in further support of LG Chem's Motion to Dismiss for Lack of Personal Jurisdiction.

Opposing counsel are copied on this email.

We appreciate the Court's time and consideration.

Respectfully submitted,  
Rachel Hedley



**RACHEL ATKIN HEDLEY PARTNER**

[rachel.hedley@nelsonmullins.com](mailto:rachel.hedley@nelsonmullins.com)

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

**CERTIFICATE OF TECHNICAL FAILURE
OR TECHNICAL DIFFICULTIES**

REID FLEMING,

Plaintiff,

vs.

THE PLANET VAPE, LLC;
SCECIGARETTE, LLC; LG CHEM, LTD.

Defendants.

Case No.: 2021-CP-1001663

FILED
2022 FEB 22 PM 4:09
CLERK OF COURT
JULIE A. WATKINS
SCCA

Pursuant to the *South Carolina Electronic Filing Policies and Guidelines*, Rachel Hedley, Attorney for the Defendant LG Chem, Ltd., seeks to file the attached Defendant LG Chem, Ltd.'s Memorandum in Opposition to Plaintiff's Motion to Reconsider and Exhibits A-E by a Traditional Filing Method based on the inability to Electronically File the document. The inability to Electronically File the document was caused by:

- ☐ An announced Technical Failure of the Electronic Filing System;
- ☒ A technical difficulty that prevented the successful E-Filing of this document, which is described in detail below, including a statement certifying compliance with Section 9(d) of the Policies and Guidelines:

The above referenced document is being filed today at my direction through traditional filing method by delivering the document to the Clerk of Court's office during normal hours of operation. The e-filing system is unavailable for this filing. My client, Defendant LG Chem, Ltd., was dismissed for lack of personal jurisdiction by Ordered entered February 7, 2022, and was thereafter removed as an e-filing party by the Clerk's office. The Clerk's office has been contacted, but I am advised that the changes may not take effect for 24 hours. Defendant's deadline to file the above-referenced pleading is February 22, 2022, and therefore the pleading is filed by traditional means, with all parties served by electronic mail or regular mail, according to the Certificate of Service filed together with the above-referenced document and described below. I therefore certify compliance with Section 9(d) of the Policies and Guidelines.

☐ A Repeated Technical Difficulty, which is described in detail below, including a statement certifying compliance with Section 9(f) of the Policies and Guidelines:

; or

☐ The document is excluded from the requirement that it be E-Filed in accordance with Section 2(d) of the Policies and Guidelines.

I will serve this notice and the attached Defendant LG Chem, Ltd.'s Memorandum in Opposition to Plaintiff's Motion to Reconsider and Exhibits A-E on all parties to this action by: (1) Electronic Mail to Mr. Chris Moore, Esq. Counsel for the Plaintiff Reid Fleming, and Mr. Thomas O. Sanders, Esq. Counsel for the Defendant SCECIGARETTE, LLC; and (2) by U.S. Mail to Mr. John Griffith, Esq., Counsel for Plaintiff Reid Fleming and Mr. Christopher Brown, Registered Agent for Defendant The Planet Vape, LLC.

I declare under penalty of perjury that the foregoing is true and correct.

/S/Rachel Hedley

Attorney for Defendant LG Chem, Ltd.

1320 Main Street, 17th Floor

Columbia, SC 29223

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| | | |
|-----------------------------|---|----------------------------|
| STATE OF SOUTH CAROLINA |) | THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF CHARLESTON |) | DOCKET NO. 2021-CP-10-1663 |
| |) | |
| |) | |
| REID FLEMING |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| vs. |) | |
| |) | |
| THE PLANET VAPE, LLC, et al |) | |
| |) | |
| Defendants |) | |
| |) | TRANSCRIPT OF RECORD |
| |) | January 18, 2022 |
| |) | WebEx videoconferencing |

B E F O R E:

THE HONORABLE ROGER M. YOUNG, SR., JUDGE

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

CHRISTOPHER JAMES MOORE, ESQ.
Attorney for the Plaintiff

RACHEL ATKIN HEDLEY, ESQ.
Attorney for Defendant LG Chem, Ltd.

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Copy of Transcript Provided to: Chris Moore, Esq.]

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Reid Fleming v The Planet Vape, LLC, et al
Defendant's Motion to Dismiss for Lack of Personal Jurisdiction
January 18, 2022

PROCEEDINGS

THE COURT: Good afternoon. Can y'all hear me?

MS. HEDLEY: Good afternoon, Your Honor.

MR. MOORE: Good afternoon, Your Honor.

THE COURT: All right. So y'all are here on
Fleming verses The Planet Vape?

MR. MOORE: Yes, sir.

THE COURT: All right. Are we waiting on anybody
else?

MR. MOORE: I'm not waiting on anyone else, Judge.
I do have an incoming new attorney who is finishing up
her third year of law school that told me she was going
to try to watch out of curiosity. And so I don't know if
she is in a cue and has to be let in.

Her name Grace Babcock. If she doesn't belong here,
that's fine. If she is available to join us I'd ask that
she be permitted to do so but obviously that's totally up
to the Court.

THE COURT: Sure. It's a public forum. Anybody
can watch. But we're not waiting on her.

MR. MOORE: That's fine. If she's not here, she's
not here so we can get started.

THE COURT: Okay. This is the defense's motion to
dismiss. Are you handling that, Ms. Hedley?

MS. HEDLEY: Yes. Thank you, Your Honor.

Reid Fleming v The Planet Vape, LLC, et al
Defendant's Motion to Dismiss for Lack of Personal Jurisdiction
January 18, 2022

1 THE COURT: All right. Go ahead.

2 MS. HEDLEY: May it please the Court? Thank you,
3 Your Honor. My name is Rachel Hedley and I'm appearing
4 on behalf of defendant LG Chem, Ltd. As Your Honor noted
5 we are here on LG Chem's motion to dismiss.

6 Of course we submitted fairly lengthy briefing and I
7 just wanted to briefly mention our motion was supported
8 of course by the affidavit of Mr. Lee that we filed with
9 the motion. We filed a memo of law on January 7th. We
10 filed a reply affidavit of Mr. Lee and then we filed a
11 very short motion for leave to file a short reply brief.

12 So that's in the record. If there is no opposition
13 -- but we did that consistent with the Court's request
14 for memos by January 7th. So I just wanted to mention
15 that.

16 THE COURT: Okay.

17 MS. HEDLEY: Thank you, Your Honor. So, I'm going
18 to talk just very briefly about some basic case facts and
19 just touch on the high points of our argument. Again,
20 we're here seeking a dismissal for lack of personal
21 jurisdiction.

22 THE COURT: Let me ask you a question.

23 MS. HEDLEY: Of course.

24 THE COURT: The plaintiffs sent me I think five
25 orders that's on the same thing. Y'all have lost five

1 times? Is there anything different about those other
2 five that distinguishes them from this case?

3 MS. HEDLEY: Well, there are a couple of things I
4 think, Your Honor. And first off respectfully to those
5 other Courts our position is that they were not decided
6 consistently with constitutional due process. One of
7 them is on appeal with the Court of Appeals considering
8 that issue.

9 One of them I wanted to mention and I'm going out of
10 order but since Your Honor asked one of the cases which
11 was Nicholas Roberts Judge Price denied the motion. And
12 then subsequently the plaintiff determined that the
13 battery that they thought was an LG brand because it was
14 sold as an LG brand, it turned out it wasn't an LG brand
15 and they dismissed the case.

16 And I bring that up only because it's part of this
17 discussion about this chain of distribution, this supply
18 chain. And in this case one thing that is different is
19 that in this case the plaintiff appears to concede and
20 pleads even in the complaint recognizing that LG Chem is
21 not supplying these battery cells to individual consumers
22 to Vape stores into this market.

23 And so some of the things that I think are different
24 in addition to again respectfully my view that those were
25 wrongly decided, some of they were decided before a more

1 recent decision by the United States Supreme Court as
2 well as the complaint. And in each one of those cases
3 what the plaintiffs argued was all we have to do is make
4 certain allegations in the complaint and then we're off
5 to the races. And so the allegations in this complaint
6 are relevant and I think plaintiff has made that argument
7 here.

8 And I don't think that taking those allegations as
9 true satisfies the plaintiff's burden. But the
10 allegations are different. And for example what Judge
11 McKinnon had said in one of the cases which is on appeal
12 right now was that look, I'm not saying there is
13 jurisdiction. I'm just saying the plaintiff has done
14 enough to sort of get past this threshold.

15 Y'all go ahead and you know fight it out and you can
16 always bring your motion later at summary judgment, you
17 can contest it after trial. I'm not finding that there
18 is jurisdiction; I'm just saying that it is enough for
19 the plaintiff to go forward.

20 And so in that regard I think the complaint is very
21 relevant and the allegations in this complaint are
22 different. I also don't think there is any reason to
23 think that the plaintiff could amend it to make it better
24 or more specific because there is not a good faith basis
25 to allege the facts that would be needed. And then of

1 course the plaintiff has submitted various exhibits and
2 things and asking the Court to look beyond the pleadings.
3 So with that said that's my basis for distinguishing.

4 And then with the Court's permission I want to just
5 briefly talk about general jurisdiction. I don't know if
6 that is being opposed initially; I would not have thought
7 so. I see Mr. Moore shaking his head so if that's not
8 opposed I'll move on. Okay, thank you. I appreciate
9 that.

10 So, the case facts, as the Court is aware from the
11 briefing, is that the plaintiff in this case bought his
12 batteries from either one or two stores. He says Planet
13 Vape or South Carolina e-cigarette. Of course LG Chem
14 did not do business with those stores or any Vape stores.
15 I don't think that's in dispute.

16 The date of the incident was in May of 2018. And he
17 alleges that he went to a Vape store, bought an 18650
18 battery cell as a standalone battery carrying it around
19 in his pocket and it exploded and caused injury. That's
20 the nature of the claim.

21 So LG Chem and of course I don't think it's in
22 dispute but LG Chem no longer manufacturers these
23 batteries due to a spin off transaction, which plaintiff
24 acknowledges is not relevant. It happened after the
25 incident so that's not relevant. But at the relevant

1 time LG Chem, Ltd. which is a Korean company manufactured
2 these battery cells to sell them to sophisticated
3 companies who would encase them with protective circuitry
4 and put them in battery packs; never sold them to
5 individual consumers to carry around in their pockets as
6 standalone replaceable batteries.

7 And additionally, and I think the sort of elephant
8 in the room the Sumatra case. And I know the plaintiff
9 has taken the position that Sumatra is binding on this
10 Court and controls the outcome. Sumatra is the South
11 Carolina Supreme Court's most recent decision on personal
12 jurisdiction involving a stream of commerce allegations.
13 It was in 2008.

14 The United States Supreme Court has issued several
15 important decisions on specific jurisdiction since then.
16 And whether or not Sumatra can withstand scrutiny after
17 those cases I think is open to question. I don't think
18 it can but I'm not asking this Court to find against
19 Sumatra. I think Sumatra is distinguishable, readily
20 distinguishable on its facts and dealt with a different
21 issue.

22 So before I talk about the legal principles that
23 control the outcome I want to go out of order for a
24 second. And I want to flip to talk about the
25 spreadsheets, the lengthy spreadsheets that the plaintiff

1 submitted to the Court. And those spreadsheets were
2 first attached I think with plaintiff's opposition and
3 then they were attached to a declaration of Mr. Bonafont
4 [phonetic]. I would object to them as inadmissible.

5 I don't think that Mr. Bonafont [phonetic] is
6 capable of authenticating records purportedly summarized
7 and kept by the United States government. He's purported
8 to authenticate U.S. customs records. So for the record
9 I object that they are not admissible. But more
10 importantly I think they are irrelevant.

11 And the reason I want to bring it up is that I have
12 carefully reviewed those records. And I'm glad; I don't
13 want to try the Court's patience about going through each
14 and every one of these appendices.

15 But I will say this; out of all those attachments
16 and exhibits that purports to be import records for a
17 period of 15 years from 2006 until 2021 many, many many
18 years before the incident and several years after the
19 incident.

20 In that time period of 15 years and all those
21 spreadsheets I saw what appeared to be one, one entry
22 that had anything to do with an 18650 lithium ion cell,
23 which is the product at issue in this case. And that was
24 a shipment that came into the United States in Long
25 Beach, California that was delivered to an equipment

1 manufacturer in California. That's it. So all these
2 spreadsheets and all these exhibits do not have any
3 entries anywhere showing that LG Chem was shipping mass
4 quantities or on those spreadsheets any quantities of
5 18650 battery cells into South Carolina.

6 So coming back to the main points of my argument on
7 specific jurisdiction are first of all that the relevant
8 contacts have to be contacts with the forum that were
9 formed by the defendant, LG Chem, Ltd. They can't be
10 formed by third parties; even a subsidiary although there
11 aren't any subsidiary contacts really at issue here.

12 But even a subsidiary would not count but more
13 importantly all of these third party entities, whoever
14 they may be and I don't know who they are but whoever it
15 is that supplied Planet Vape or South Carolina e-
16 cigarette or any one of the many Vape stores where you
17 could go buy a battery LG Chem had nothing to do with
18 that.

19 And the United States Supreme Court's recent
20 decisions make abundantly clear that specific
21 jurisdiction requires a showing that the plaintiff's
22 claims arise out of or relate to contacts the defendant
23 formed with the foreign state.

24 So I think one thing that sets this case very much
25 apart from Sumatra in Sumatra you had an Indonesian

1 manufacturer of United brand cigarettes. Sumatra sold
2 them to a distributor for the purpose of distributing
3 them throughout the United States and that distributor
4 sold something like seven million cigarettes to South
5 Carolina consumers.

6 LG Chem does not manufacture these battery cells for
7 some distributor to turn around and sell them to all
8 these consumers. In fact, LG Chem for the most part
9 directly supplies its customers in the United States with
10 these cells. They have three types or had at the time
11 three types of customers in the United States; original
12 equipment manufacturers, battery packers, and two
13 distributors.

14 Those two distributors were not located in South
15 Carolina. And they only resold the batteries to battery
16 packers who were incorporating them with protective
17 circuitry in various battery pack devices such as for
18 example medical monitoring equipment.

19 Some of these packers might put them in power
20 drills, cordless power tools; something I would never
21 use, laptop computers and those types of products. But
22 LG Chem was directly supplying to its customers and the
23 customers were putting them into these products.

24 There is no allegation that somehow through those
25 chains of distribution they were getting to these

1 consumers. But more importantly there is absolutely no
2 allegation in the complaint and there is no evidence and
3 nothing attached to the plaintiff's response that would
4 allow the Court to find that LG Chem was supplying 18650
5 battery cells enmasse extensively into the state of South
6 Carolina.

7 Now, I would argue that even if they were that still
8 would not support jurisdiction and just a few weeks ago a
9 California Court of Appeal made that very conclusion,
10 which of course is not binding on this Court but it's the
11 same analysis and I think it's relevant.

12 But in any event that's not the case here. So I
13 don't think the Court needs to decide that issue because
14 there is no evidence or allegation. And even if there
15 were limited shipments coming into South Carolina
16 plaintiff hasn't offered any evidence of that and hasn't
17 alleged it.

18 To talk about lithium ion batteries generally we've
19 talked about this in our briefing but I think again the
20 United States Supreme Court's recent decisions
21 particularly in Bristol Myers and in Ford made very clear
22 and in Daimler make very clear that it is not unrelated
23 business contacts. You cannot take a company and say
24 this is a huge company. The sell all kinds of products
25 and they do a lot of business. And I think that was the

1 plaintiff's argument, look at all these import records,
2 look at all this business they were doing; that's good
3 enough. But the Supreme Court of the United States says
4 no, it's not good enough. It does not matter how
5 extensive those contacts are if they're not related to
6 the plaintiff's claims then they can't support the
7 exercise of specific jurisdiction.

8 And even in Ford the Supreme Court took care to say
9 we're talking about Ford Explorers and Crown Victorias;
10 not even any kind of car. And so here an 18650 is a
11 particular type of product. It's a standard in the
12 industry.

13 I don't use their products, not a consumer product
14 but it is a component and it just means the 18 is the 18
15 millimeters diameter, the 65 millimeters is the length,
16 zero is cylindrical. So that's a size.

17 LG Chem was not the only manufacturer. Other
18 manufacturers Panasonic, Sony, and Samsung made them.
19 Somehow these entities are getting a hold of them and
20 supplying them into this market but LG Chem was not doing
21 that.

22 But additionally that particular size, that 18650
23 has many different models. And I'm not focused on the
24 specific model, whatever it may be that the plaintiff
25 claims was at issue but any type of 18650. The records

1 that they submitted talking about selling car batteries
2 to companies in South Carolina there were some shipments
3 again on those inadmissible spreadsheets. But that's not
4 at all the same product.

5 It can't be confused. It's not the same size. It's
6 not the same shape. And that's not something that goes
7 to a car dealership where people go in there to buy that
8 that goes to be included with the car; with an electric
9 vehicle.

10 And so our position, Your Honor, is that the
11 plaintiff cannot meet the burden, which is admittedly the
12 plaintiff's burden of establishing that their claims
13 arise out of or relate to any contacts that LG Chem
14 formed with South Carolina.

15 That's the relevant standard. That's what the
16 United States Supreme Court says. And nothing that the
17 plaintiff has offered none of these import records and
18 the allegations in the complaint are simply not specific
19 enough.

20 And so with respect to what the other trial court
21 decisions are which of course are not binding on this
22 court, we would respectfully ask that the Court carefully
23 review the allegations of the complaint. And carefully
24 review the exhibits that the plaintiff has offered and
25 the more recent decisions by the United States Supreme

1 Court and some of the other authorities we have shared
2 showing what other courts have done in other neighboring
3 jurisdictions in North Carolina, in Georgia, the Supreme
4 Court of Missouri, Courts of Appeal in various states and
5 recognize that constitutional due process cannot support
6 the exercise of specific jurisdiction here.

7 And LG Chem should not be required to go through the
8 burden of following this case through to then challenge
9 jurisdiction again after trial when the plaintiff has not
10 shown anything that would be constitutionally sufficient
11 and consistent with the due process guarantees of the
12 Constitution. And therefore, we ask that the Court grant
13 the motion and dismiss LG Chem. Thank you, Your Honor.

14 THE COURT: How would your client ever get sued in
15 the United States under your theory that they don't sell
16 the individual product to an individual but they only
17 sell it to manufacturers who repackage it someplace and
18 then sell it in all the other states?

19 Basically, they are immune from suit if their
20 product causes any harm under your theory. If they don't
21 individually sell that battery to an individual but it's
22 just something that gets used by a manufacturer who sells
23 it as part of a bigger thing they can't be sued for that.

24 MS. HEDLEY: Well, yes, I appreciate the Court's
25 question. And Your Honor, I was asked the very same

1 question by the justices on the Missouri Supreme Court
2 and said is it your position that LG Chem could not be
3 sued anywhere in the United States on a similar type of
4 claim. And after my answer the Missouri Supreme Court
5 agreed and said you're right there is no jurisdiction
6 here.

7 And my answer to Your Honor would be we're not
8 talking about any type of lawsuit. I'm not talking, I'm
9 not taking a position on a lawsuit where if LG Chem
10 supplied a sale to a battery packer and they put it in a
11 battery pack for a power drill and there was some problem
12 that's not what I'm talking about.

13 But I would respectfully submit that there is
14 nothing that LG Chem is doing to supply to be part of
15 this distribution chain. And so if LG Chem had never
16 even sold these cells in the United States at all, just
17 had never done it at all, we would be having the same
18 situation.

19 The plaintiff would still say some other party
20 wherever they got it if LG Chem exclusively sold to
21 Europe or to Asia or somewhere else and never sold to
22 anywhere in the United States it wouldn't change anything
23 because they're not part of this chain of distribution.

24 And so due process contemplates fairness. Why
25 should LG Chem expect to be sued by an individual

1 consumer that only got their hands on this product
2 because of what third parties did? And I'm not talking
3 about Ford where Ford said look, we sell cars ad nauseam
4 to consumers. We didn't sell this car. That's not what
5 I'm saying. I'm not saying that LG Chem sells these
6 cells to consumers but not this one. Our position is
7 that LG Chem does not sell these cells to consumers
8 anywhere.

9 And I don't think it's relevant to the
10 jurisdictional issue but I will just address plaintiff
11 pled in the complaint that LG Chem hasn't tried to stop
12 it. And that's just respectfully just not true. I mean
13 there are, the LG Chem website if some plaintiff or
14 individual consumer thought should I put one of these
15 batteries in my device? You know the Vape store told me
16 it's a great idea.

17 If they went to LG Chem's website it would say do
18 not do it. There would be a big pop up warning do not do
19 it. There were ads run in the full page ads in the New
20 York Times do not do it. There are web campaigns that
21 worked with you know it was in the industry ---

22 THE COURT REPORTER: --- I'm so sorry Ms. Hedley.
23 Could you slow down just a little bit? Can you slow down
24 just a bit?

25 MS. HEDLEY: I'm sorry. My apologies. I'm a

1 native New Yorker. I've lived here 20 years but
2 sometimes I still talk too fast. I apologize for that.

3 THE COURT: Let me ask you this.

4 MS. HEDLEY: Yes?

5 THE COURT: I guess I'm having a little bit of
6 well, I don't understand what the product is that -- this
7 battery goes in like a Vape thing which I gather is some
8 kind of electronic cigarette.

9 So this battery, where would this person have gotten
10 this battery if not in a store in the United States?
11 Are you saying well, they must have been in Europe or
12 Mexico and bought it there and came back in. But you
13 can't buy this product in the United States or in South
14 Carolina?

15 MS. HEDLEY: No. What I'm saying Your Honor is yes
16 I think a vaping device these Vape stores, so there might
17 be there are certain devices that you might have seen. I
18 don't Vape but I think you could buy them at any gas
19 station. And it would just be sort of a contained thing
20 that almost looks like a cigarette. You can't open it.
21 You just sort of smoke it until it's done and then you
22 throw it out.

23 These are a different kind of device; it's like a
24 Mod. It's probably maybe the size of a fist, my fist, I
25 have small hands; my children tease me, the size of a

1 small hand maybe a fist. And then the cell, which is
2 being sold as a battery they put in and out of this
3 device and sometimes in and out of a charger.

4 And because it's such a powerful cell what really
5 ends up happening is that over time the wrapper can
6 become degraded. And if somebody has it in their pocket
7 which I believe is what happened in this case and then it
8 touches something else like a key or a coin it can cause
9 an interaction that sparks the cell.

10 And so -- but what I'm saying is that whatever this
11 industry or the companies that makes these devices LG
12 Chem does not do business with them. There are companies
13 that manufacture these devices and they design them to
14 use these very powerful cells.

15 People want to Vape and blow big clouds and they
16 want more power so this sort of side industry has
17 developed without the approval or authorization of LG
18 Chem or these other legitimate manufacturers who are
19 careful about who they sell to.

20 But somehow somewhere and I don't know where or how
21 someone has gotten hold of these and brought them into
22 the United States. My point was simply that if you look
23 at these import records that the plaintiff has attached
24 and again without waiver of my objections they are not
25 admissible. But if you look at them you do not see these

1 cells coming into ports. I don't know how they're coming
2 in. Maybe if the plaintiff has searched for somebody in
3 the vaping industry it would show where they were coming
4 from. But my point is that LG Chem is not supplying a
5 consumer marker in South Carolina or anywhere in the
6 United States with these cells ---

7 THE COURT: --- so these aren't like little
8 batteries that I can go into the grocery store and
9 they're at the checkout counter in double A's and triple
10 A's and B's and C's? It's not that kind of battery?

11 MS. HEDLEY: It is not. And I'm glad you asked
12 that because there is a place in the briefing where the
13 plaintiff is quoting some phrases out of this Celgard
14 decision from North Carolina.

15 And because of the way the quote is selectively
16 removing words from the Court's actual opinion it makes
17 it sound as though that LG Chem had said you're going to
18 take our batteries off the shelves of Walmart and Best
19 Buy.

20 That's not what that case was about by the way. It
21 had nothing to do with the consumer Vaping market. No
22 one even knew about that I don't think at the time. It
23 was a technology dispute.

24 But if you read the full quote out of that decision
25 they were saying that consumers who want to go to Walmart

1 and Best Buy and buy consumer electronic products that
2 are manufactured with these cells embedded in them they
3 won't be able to. You can't go get your laptop; you
4 can't go buy your power drill because this supply chain
5 will shut down.

6 And so no, LG Chem never sold these cells. You
7 can't go to Target or Best Buy or Walmart and when you
8 walk up to the end counter and you want to buy a battery
9 there is no 18650 battery cells there.

10 It's just this industry that has popped up, this
11 consumer Vaping industry, these Vape stores. Some of
12 them are online. And a lot of them are brick and mortar
13 stores.

14 And I don't know who's supplying it. I know that LG
15 Chem is not. And so it's not like I'm saying that well
16 sure, somebody else could have gone to Target and bought
17 an 18650 battery cell and just popped it in the back of
18 their power drill or cut the grass or trimmed the hedges;
19 obviously not power drills. I don't use power drills.

20 But no, that's not what I'm saying. You can't do
21 that. And so the only way that consumers are getting
22 their hands on these cells to use them as standalone
23 batteries is entirely through the efforts of third
24 parties. LG Chem is not making contacts with South
25 Carolina or anyone else in the United States.

1 But it's not making contacts with South Carolina to
2 supply consumers with batteries. And so that is a very,
3 very critical distinguishing feature from Sumatra, for
4 example, again regardless of whether it is still viable
5 after more recent cases. In Sumatra the United brand
6 cigarettes sold them to the distributor so that the
7 distributor would then sell them to American consumers,
8 which is what the distributor did.

9 That is not what we have here. And we've put in
10 admissible evidence. LG Chem did not supply them to
11 anyone with knowledge that whoever was buying them was
12 turning around doing this. So they were selling them to
13 specific customers for a specific purpose.

14 And those customers in the U.S. it was a straight
15 transaction was LG Chem directly to that battery pack.
16 It was LG Chem directly to that original equipment
17 manufacturer. And then the very limited cases that I
18 mentioned these two distributors in other states.

19 So that's what I mean when I say -- if none of that
20 were happening easily this whatever this industry is that
21 had developed could still be acquiring these cells.
22 And so that's why I take it all the way back to World-
23 Wide Volkswagen that said a chattel cannot become an
24 agent for service of process. The fact that a product
25 that LG Chem manufactured somehow made its way into this

1 state is not enough under United States Supreme Court
2 precedent. There has to be this relatedness. And a good
3 example in my view is the Bristol Myers case.

4 Now in Bristol Myers you had out of state plaintiffs
5 so that's a little bit different. But you had the
6 defendant had an in-state distributor had I believe 250
7 sales representatives in the state, had research labs in
8 the state, sold 900 million of the exact same pill in the
9 state.

10 And the United States Supreme Court said that's a
11 lot of contacts for that same exact drug, Plavix but
12 that's not enough because there is no relationship to the
13 claims by these out-of-state plaintiffs.

14 So here it flips it on its head. You've got an in-
15 state plaintiff and that plaintiff bought that battery in
16 the state but there is no connection to anything LG Chem
17 did. And so that's why again, our position is that these
18 more recent decisions don't change the law; they make it
19 clear.

20 But the focus and particularly in the Ford case in
21 March of last year made very clear that there has got to
22 be that relatedness. And there is no relatedness here
23 between the allegations in the complaint, which are too
24 vague, or the exhibits that the plaintiff has attached
25 and the plaintiff's claims. So nothing that LG Chem did

1 no contact with South Carolina it is anyway related to
2 the plaintiff's claims. And that's why constitutional
3 due process is not satisfied. Thank you.

4 THE COURT: All right. Let me ask you this because
5 I'm still I guess trying to understand the product and
6 arguably understand it by analogy. So this battery it
7 actually fit into the Vape, okay, it's just it was too
8 powerful for the particular Vape and was it designed to
9 go in it?

10 MS. HEDLEY: Well, it wasn't designed to ever be
11 handled by a consumer. It was only designed to go to a
12 manufacturer who would incorporate it with protective
13 circuitry embedded in a device; so you're not touching
14 it.

15 Consumers are not supposed to be touching them. And
16 that's not what they were manufactured or sold for and
17 that's not what LG Chem's chain of distribution supplied
18 them for.

19 And so whoever it is who got them out of that chain
20 of distribution and put them in the hands of consumers
21 the problem arises not by the manufacturer of the sale.
22 The problem arises when the consumer is handling them.

23 And as I mentioned earlier the outside is getting
24 degraded because they're in and out of these chargers
25 where they're not supposed to be. They're not being

1 handled properly because they were never meant to be
2 handled by consumers in the first place.

3 THE COURT: So when this thing blew up in the
4 plaintiff's pocket was it inside of a Vape or was it just
5 did he just have the battery in his pocket?

6 MS. HEDLEY: I would have to defer to plaintiff's
7 counsel on that. I don't know which way it was. But
8 I've seen instances in both situations. Often it's just
9 loose in the pocket and people carry them around loose.
10 I know that often Vape stores tell people don't carry it
11 around loose in your pocket.

12 If you're going to carry it in your pocket put it in
13 a plastic case. And the reason to do that is if the
14 exterior wrapper is degraded and it's in a plastic case
15 and it's in your pocket and then you put you know a
16 quarter in there or your keys if anyone has metal keys
17 anymore, but whatever you put in your pocket if it
18 touches that degraded wrapper that's what causes, it
19 could cause a short circuit.

20 And so that's why I think Vape stores often say put
21 it in a plastic container. If you go to LG Chem's
22 website they would say or any of the campaigns that I
23 mentioned earlier and the website warnings and all the
24 various efforts to stop people from doing this cease and
25 desist letter campaigns all of these efforts to stop this

1 said individual consumers are not meant to be handling
2 these cells. And so it's not like a double A battery
3 that you just go to Target and buy.

4 And so I'm not suggesting that well, if you've gone
5 to Target and bought the battery and used it for your
6 power drill we'd be fine. But because you used it for
7 your Vape we're not fine.

8 What I'm saying is that LG Chem was not involved in
9 supplying any consumer market to be buying these cells as
10 a standalone consumer product.

11 THE COURT: So this is some kind of black market
12 sort of thing, the super charged Vapes? I'm so not aware
13 of the -- I know, I see these stores, I see people
14 smoking electronic things but I don't have a clue as to
15 what actually happens there. So there is like a black
16 market to super charge these things?

17 MS. HEDLEY: Right. So ---

18 THE COURT: --- and just use them as replacement
19 batteries in the event that something goes bad, which is
20 -- or both?

21 MS. HEDLEY: Well I think -- and it's funny Your
22 Honor uses that phrase because I believe that's the
23 phrase that Federal District Court in Washington State
24 used a couple of years ago when granting a similar motion
25 to dismiss and focusing on how did the product get to the

1 state? Was it the result of some chain of distribution
2 of this defendant? No. And I think he used that same
3 phrase that Your Honor is using, this market.

4 But I think it's not just -- I think it's because
5 they're so powerful that they can create these extra
6 clouds. And so it's the manufacturers of the devices
7 which generally I do not believe are U.S. companies are
8 designing them to use with these cells but they're not
9 affiliated with the cell manufacturer, they're not
10 affiliated with LG Chem. And LG Chem's entire public
11 communications about this are don't do it. Don't touch
12 them.

13 It's not like we're saying it's okay to use it for
14 your camera but don't use it for your Vape. These
15 particular cells are meant to be an industrial component
16 product, not a standalone consumer product. So an
17 industrial component that goes to entities that know how
18 to handle them, put them pack them with protective
19 circuitry.

20 And the reason for that is they're now in a battery
21 pack or in the back of your laptop computer where you're
22 not going to open it and touch it. I mean you can't
23 touch it, you can't handle it, you're not sliding it in
24 and out of a charger so it's less likely for that wrapper
25 to degrade and ultimately lead to this type of incident.

1 THE COURT: Okay. All right, well Mr. Moore?

2 MR. MOORE: Thank you, Your Honor. A couple of
3 things really quickly before I forget. We would submit
4 that our pleadings are substantially similar at least to
5 those involved in the other claims for which you have
6 orders in South Carolina. And I have an identical
7 motion.

8 In fact, I'm not aware of any Court in South
9 Carolina granting this particular motion. And I'm aware
10 of other Courts denying these motions against this
11 particular defendant as well albeit there are some that
12 have granted it.

13 I'm not sure that there are since the most recent
14 Ford v Bandemer and the Montana cases but Ms. Hedley
15 could probably speak to that better than I. You know I
16 don't really know and have not been able to verify the
17 veracity of this claim that you know at no point in time
18 did LG ever intend or sell or intend for these cells to
19 be used individually or distribute or sell them for that
20 purpose. We've always kind of taken them at their word
21 on that.

22 And one of the reasons we're very specific in our
23 complaint even in this case to at least on its face
24 accept that is because I think I sued LG probably in 2015
25 or 2016 in Federal Court here in the district of South

1 Carolina in a case in which consequently they waived
2 their personal jurisdiction defenses or consented to the
3 Court's jurisdiction.

4 And so they have known and there were cases I
5 believe before mine if I'm not mistaken but they've known
6 at least since the Dietrich [phonetic] case in 2015 that
7 this industry was utilizing its battery products to power
8 their devices.

9 And so one of the things we allege in addition to
10 product defect and lack of certain safety features that
11 these batteries sometime utilize is that they've done
12 precious little to actually take command of their
13 distribution chain to get their arms around why are these
14 batteries ending up in Vape stores across the nation.

15 Why are they defending over a 100 lawsuits in the
16 U.S. related to people really hurting themselves as a
17 result of their batteries having exploded while being
18 individually used? And it's not just the Vape.

19 Obviously that's the industry that has I guess
20 exploded in popularity over the last six or seven years
21 and utilizes it probably the most. But I've also seen
22 these cells used in flashlights and other individual
23 applications.

24 In fact I've seen not necessarily with LG but in the
25 case of Samsung, which makes the same type of battery,

1 they actually included in product spec sheets from the
2 early 2000's individual warnings like don't put this in a
3 purse or don't carry this around with loose change
4 individually because it can hurt you.

5 And they do hurt people. They cause very violent
6 explosions when they experience a short circuit event.
7 And in all of these cases we're dealing with fairly
8 serious burn injuries. And so what the strategy has been
9 both for LG and for Samsung is to narrow the focus of
10 this jurisdictional inquiry to an 18650 lithium ion
11 battery, okay? Fair enough. That may be a merits
12 defense.

13 All of this business about hey, we don't design
14 these for individual use or oh, we don't want people
15 using these individually that's fine. That's something
16 we can talk about in the merits and that can be a defense
17 for the litigation and they can defend this kind of
18 passive warning strategy that they have where rather than
19 find out what their customers are doing with their cells
20 and why there are millions of these batteries that people
21 are using individually in the U.S.

22 And just so you know up until you know the last two
23 or three years before this you could probably buy an LG
24 individual battery on Amazon. You can probably still buy
25 them on Alibaba and some of these foreign e commerce

1 websites. But in any event we don't think the
2 jurisdictional focus is so narrow. And that's because
3 the 18650 is a form factor. What LG Chem makes and
4 claims to be a global leader, a Ford Motor Company so to
5 speak, is lithium ion batteries.

6 There are 18650 lithium ion batteries; there are
7 22650 lithium ion batteries. There are lithium polymer
8 batteries which are pouches which power LG Chem phones --
9 I'm sorry, LG electronic phones, LG tablets, power tools,
10 e bikes, vehicles. It would not surprise me Your Honor
11 that there is some device in your office right now that
12 is being powered by an LG Chem lithium ion battery.

13 That's what they make and that's what they sell
14 throughout the U.S. and across the world lithium ion
15 batteries. And I point that out because I think there is
16 a jurisdictional inquiry. That's the point. That's the
17 main question. And Ms. Hedley said she went through the
18 spreadsheets and found one reference to the 18650 lithium
19 ion cell shipment.

20 And that may be true but there are dozens of them in
21 these spreadsheets that we have submitted that say
22 lithium ion batteries or reference battery products
23 including I think -- and even more recently they're
24 shipping battery products to Volvo I believe or even to
25 Ford; not in South Carolina but through the port of

1 Charleston to Volvo in South Carolina. And I don't think
2 they would take the position with Your Honor today that
3 they don't sell products and intend to serve the market
4 in the state of South Carolina or use our ports to
5 further their business interests in South Carolina and
6 other states in the southeast.

7 And I think that is what matters. They're drawing
8 this distinction of 18650 that would be like the Sumatra
9 case and then drawing a distinction between light
10 cigarettes and ultra light cigarettes or Sumatra red
11 cigarettes.

12 And in that case the Supreme Court, and it's still
13 good law here says regardless of how the cigarettes
14 arrived in South Carolina the minimum contact was
15 established by the fact that Sumatra intended to serve a
16 market in the U.S. with its cigarette products.

17 That was the law in World-Wide Volkswagen and since
18 the recent decision in Ford that is still the law. Now
19 my friend drew this distinction between Bristol Myers and
20 the Ford cases to suggest that somehow you know we fall
21 outside of what is constitutionally permissible.

22 In Bristol Myers yes, the Court said look we've got
23 all of these California contacts. But you plaintiffs
24 that don't have any business in the California courts you
25 cannot bring your claims here because none of you bought

1 the product in California, none of you used the product
2 in California and none of you were injured by the product
3 in California. It was classes of out of state plaintiffs
4 that were trying to bring similar claims in California.

5 And that's fine so the Supreme Court looked at this
6 issue again in Ford just last year and they said Ford
7 you've got a ton of Montana and Minnesota contacts. You
8 sell vehicles everywhere in these states. And yes, this
9 particular vehicle that was involved in these two fatal
10 collisions was not sold there. They were sold in another
11 state and then brought into the state by the plaintiffs.

12 They said it doesn't matter. The injury happened in
13 your state. The plaintiffs lived in that state and the
14 suit-related conduct that was important for the
15 relatedness test was that those types of things happened
16 within that state.

17 And it said look, we think these states have an
18 interest in regulating products that are sold within
19 their borders or products that are used within their
20 borders. And it's not unfair to subject Ford Motor
21 Company jurisdiction there because they sell cars here.
22 Just because they didn't sell that one car here doesn't
23 matter.

24 And nothing about the Bristol case or the Ford case
25 is inconsistent with the exercise of jurisdiction here.

1 And that's because Mr. Fleming bought the battery here,
2 he was hurt by the battery here, and he lives here; he's
3 a South Carolina resident.

4 I think for the relatedness they have described it,
5 they being the Supreme Court describes it as requiring a
6 mere affiliation. Obviously, we have an affiliation with
7 the state of South Carolina because he bought it here, he
8 got hurt here, he lives here, he used it here.

9 He never took it outside of state lines. LG Chem
10 does business in South Carolina selling lithium ion
11 battery products. LG Chem and it's now whatever it is
12 called now knows that its batteries are ubiquitous in the
13 United States in every LG electronic phone, any LG device
14 that is powered by one of their batteries -- because LG
15 Chem is a part of the LG global family unit; they all
16 cross pollinate and utilize each other's products.

17 It is not a valid basis to deny jurisdiction just
18 because this one widget you know we don't know exactly
19 how it got there because they are putting all kinds of
20 widgets into our market and they enjoy the benefits of
21 that.

22 And although she is right that some of the case law
23 says you can't use one subsidiary's connection to a state
24 as the basis for jurisdiction using the parent. I do
25 think it is telling as to what type of business contacts

1 and their intent to utilize the South Carolina business
2 market is that their wholly owned subsidiary LG Chem
3 America, Incorporated has a certificate of authority to
4 do business in South Carolina.

5 What would be the purpose of that other than to
6 further the parent company's business? And so I think
7 it's just kind of a strange reason to suggest that the
8 constitutional inquiry is just limited to this one widget
9 or this one 18650 when in the reality LG Chem wants and
10 expects for South Carolinians to utilize their battery
11 products in various applications every single day.

12 You know this move towards automotive -- electric
13 automotive -- electric automobiles that's one of their
14 biggest markets right now. They're trying and they've
15 got LG Chem Michigan that they've set up now to make
16 batteries to put into Ford cars or put into other
17 electric vehicles.

18 And they're going to be all over the roads. I mean
19 it's just -- this is not like the Supreme Court discussed
20 in the oral argument in the Ford case you know a
21 woodworker in Maine who is going to get sucked up into
22 litigation in California because he sent a bird house
23 there over the Internet.

24 That's not this case. This is a multi-national
25 global manufacturer that knows that its lithium ion

1 products are being sent to and utilized in South
2 Carolina. And there is nothing unfair about subjecting
3 them to jurisdiction here just as the other South
4 Carolina Circuit Courts have found.

5 They have the ability to defend the case on the
6 merits about what the design intent for these individual
7 batteries were or this quote unquote black market
8 unauthorized use if in fact that is true. That is
9 something that we can just litigate on the merits.

10 But there is nothing undue or unfair about
11 subjecting them to jurisdiction here. And I think that's
12 it. I'd be happy to answer any questions Your Honor has.
13 I'm sorry for rambling on. It's an interesting issue.

14 THE COURT: All right. Ms. Hedley, do you want to
15 respond?

16 MS. HEDLEY: Yes. Thank you, Your Honor. There
17 are a couple of points that counsel raised that I want to
18 mention. But first, I'm just going to quote so I'm
19 looking down as I'm reading but from Ford. The Supreme
20 Court said:

21 Ford had advertised, sold, and serviced those two
22 car models in both states for many years. And then in
23 parenthesis contrast a case which we did not address in
24 which Ford marketed the models in only a different state
25 or region. And that's 141 S. Ct. at 1028.

1 So to the extent that counsel is arguing that hey,
2 lithium ion batteries it's all just one big thing; it
3 doesn't matter what kind. I think the Ford case makes
4 clear that it does. And I think counsel's argument is
5 also hey look, this is a big company. This is not a Mom
6 and Pop shop. This is not a small woodworker.

7 But that is exactly -- when Bristol Myers was
8 decided the California Supreme Court had adopted what the
9 Supreme Court described as a sliding scale approach to
10 jurisdiction. In other words the bigger the company and
11 the more business it did in the state the more attenuated
12 that connection could be.

13 And so if you had a big company that did a lot of
14 business California Supreme Court said just as counsel is
15 saying you know we don't have to look so hard at this.
16 But the United States Supreme Court said no, that is not
17 the law.

18 Case-linked jurisdiction means exactly what it says.
19 General jurisdiction is different but case-linked
20 jurisdiction it matters what the claim is. It matters
21 particularly what the specific claims at issue are in the
22 case.

23 We're not talking about electric vehicles. We're
24 not talking about electric buses; we're not talking about
25 scooters. We're not talking about a product that was

1 manufactured with a cell that LG Chem had sold. And
2 there are many different fact patterns that we could be
3 talking about if that were the case that we're not. It
4 would matter whether LG Chem you know the manufacturer
5 was in the state of South Carolina or was somewhere else
6 in the United States, or was somewhere else in the world.

7 But we're not talking about any of those things. I
8 think counsel is sort of deferring attention away from
9 these spreadsheets and is not wanting to say whether it
10 is accurate or it's not accurate about how many 18650
11 cells are on any of those voluminous charts which my eyes
12 are, I'll admit my eyes are a little old to read charts
13 but they are searchable.

14 And so you can zoom in and scan them down which I've
15 done and I've also searched them. And any of the
16 products that counsel is talking about that say anything
17 about being a lithium ion battery in South Carolina are
18 going to car manufacturers.

19 And again, they're not going to Target and Best Buy
20 and Walmart for people to go pluck them off the shelves.
21 They're going to car manufacturers to put in cars. But
22 again it wouldn't matter. They can't be confused;
23 they're not the same product. And the Supreme Court in
24 recent years in Bristol Myers, in Goodyear, in Ford has
25 made very clear that case-linked jurisdiction has to be

1 exactly that; case-linked. And coming in and saying that
2 this is a big defendant, they sell a lot of products,
3 they do a lot of business and therefore you should hold
4 them subject to jurisdiction. Respectfully, that's just
5 not the law.

6 I do think it is telling that counsel brings up this
7 subsidiary again because again referring to these other
8 cases I'll just mention in some of these other cases,
9 these orders, these trial court orders, LGCAI the
10 subsidiary entity which is headquartered in Georgia was
11 sued as a defendant. That's not the case here.

12 But in some of those other courts LGCAI was sued as
13 a defendant. And those courts said you know what you've
14 done enough. There is personal jurisdiction over LG Chem
15 and LG Chem America; let's go ahead. But there was
16 evidence put in those cases which we submitted to the
17 Court with our reply where LG Chem America said we never
18 ever, never ever had any revenue from supplying lithium
19 ion batteries into South Carolina.

20 And so on those import charts if Your Honor looks at
21 them, and there are a lot of statements made in the
22 briefs that was in the import charts. But I'll tell you
23 what's not in the import charts. There is not an import
24 which is showing lithium ion batteries coming into South
25 Carolina that LG Chem America is supplying. That's not

1 there because that's not what they were doing. They were
2 distributing petrochemical products, methacrylate, and
3 latex and silicic or acrylic acid and products like that.

4 So again we do think the specific product matters
5 and the specific type of claims matters and that's the
6 Supreme Court case law. I'm not going to go into talking
7 about the merits because I think that specific
8 jurisdiction and due process in general is the point of
9 it is not to talk about the merits; who's right, who's
10 wrong, what are the merits of the claims.

11 There is no place for that in a jurisdictional
12 analysis. It doesn't matter how big the company is.
13 What matters is whether the claims arise out of or relate
14 to contacts the defendant formed with the forum state.
15 Here they do not.

16 And to the extent counsel suggested that since the
17 Supreme Court's decision in Ford other courts in other
18 jurisdictions had rejected this argument. Respectfully I
19 would like to correct the record on that.

20 And just in neighboring Georgia the District Court
21 there granted similar motions to dismiss seven cases.
22 Those were out-of-state plaintiffs. But also, but also
23 those out-of-state plaintiffs asked that Federal Court to
24 transfer the cases to the states where they bought the
25 battery, used the battery, and claimed injury. And the

1 federal judge denied that and said no, you haven't shown
2 that there is jurisdiction in that state where you want
3 to go and so I'm not going to transfer it there. So that
4 is relevant.

5 And so that's seven cases by this District Court as
6 well as several appellate decisions in Texas and in
7 California, just a few weeks ago in California that we
8 referenced to the Court. That was decided on I believe
9 December 16th. And the cases that I'm talking about were
10 decided after Ford.

11 So in addition to the many, many courts that have
12 applied the same standard arises out of or relates to.
13 And that was the standard that was applied by the Supreme
14 Court of Missouri, by the Court of Appeals in Washington
15 state, by Courts of Appeal in Texas and California.

16 And what has happened here in South Carolina in
17 these trial courts those decisions are what they are.
18 Two of them didn't provide any reasoning. For example,
19 the Holtzendorff case, it was just a Form 4 order that
20 said denied.

21 And so there is no reasoning there. And if the
22 Court were actually to read those decisions I think Your
23 Honor would find a lot of different reasons supporting
24 those decisions, which furthers my point that the reason
25 that there is not a consistent analysis is because again

1 respectfully the law says that due process is not
2 satisfied here.

3 And so again we respectfully request that the Court
4 grant the motion and dismiss LG Chem for lack of personal
5 jurisdiction. Thank you, Your Honor.

6 THE COURT: All right. Well, it's interesting and
7 worthy of some review. I've got a lot of evidence to go
8 through so I'll take it under advisement and let y'all
9 know what I decide, okay.

10 MS. HEDLEY: Thank you, Your Honor.

11 MR. MOORE: Thank you, Judge.

12 THE COURT: All right.

13 *****END OF TRANSCRIPT OF RECORD*****
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is, to the best of my ability, a complete
Transcript of Record of the proceedings had, using WebEx
videoconferencing, and evidence introduced in the trial
of the captioned case, relative to appeal, in the Court
of Common Pleas for Charleston County, South Carolina on
the 18th day of January, 2022.

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

January 28, 2022

Joyce C. Rueger, CVR-M
Court Reporter

RECEIVED

Jan 13 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2022-000346

Reid Fleming,.....Appellant,

v.

LG Chem, Ltd.,.....Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, and complies with Supreme Court Order 2014-04-15-02.

January 13, 2023

s/Kathleen C. Barnes

Kathleen Chewning Barnes, SC Bar No. 78854

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