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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Unpublished Op. No. 2025-UP-295 (S.C. Ct. App. filed August 13, 2025)
Appellate Case No. 2022-000346

Reid Fleming..... Petitioner,

v.

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

Of which LG Chem, Ltd. is the……. Respondent.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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IV. Whether the Court of Appeals correctly affirmed the circuit court's conclusion that it need not reach the fairness prong of the specific jurisdiction analysis because the power prong was not satisfied.

COUNTER-STATEMENT OF THE CASE

Petitioner Reid Fleming ("Petitioner" or "Fleming") asks this Court to review an unpublished decision by the Court of Appeals, agreeing with and affirming the circuit court's order dismissing Fleming's complaint asserting products liability claims against LG Chem based upon lack of personal jurisdiction.

I. PROCEDURAL HISTORY

Fleming filed his Complaint on April 12, 2021, naming as defendants the Planet Vape, LLC, SCECIGARETTE LLC, and LG Chem, Ltd. ("LG Chem"). Fleming alleged that he was injured when a battery he purchased from defendants The Planet Vape and SC E-Cigarette to power his e-cigarette device exploded in his pocket. (R. p. 22.)[1] Fleming alleged that LG Chem manufactured the battery. (R. p. 21.)

Fleming served his Complaint on LG Chem in South Korea through the Hague Service Convention on June 15, 2021. On July 15, 2021, LG Chem moved to dismiss the complaint for

[1] Rule 242(e) provides, "At the same time the petition is filed, the petitioner shall also file the Appendix with the Clerk of the Supreme Court." Because Fleming did not file or serve any appendix with his petition, LG Chem cites herein to the Record on Appeal in the Court of Appeals.

lack of personal jurisdiction. (R. pp. 30-32.) LG Chem's motion was supported by the Affidavit of Mr. Hwi Jae Lee, dated July 13, 2021, and filed July 15, 2021. (R. pp. 33-39.)

On January 7, 2022, pursuant to the circuit court's instructions, both parties filed their briefs. LG Chem filed its Memorandum of Law in Support of its Motion to Dismiss. (R. pp. 46-47.) Fleming filed his Response in Opposition to Defendant's Motion to Dismiss, attaching in support the affidavit of his counsel, dated January 7, 2022, and 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 circuit courts. (R. pp. 68-270.)

On January 11, 2022, LG Chem filed the Reply Affidavit of Hwi Jae Lee (R. pp. 271-276) and a Motion for Leave to File a Reply Brief. (R. pp. 387-416.) On January 11, 2022, Fleming filed the Declaration of Nickie Bonenfant and appendices. (R. pp. 277-386.)

The circuit 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. (R. pp. 537-578.) On January 26, 2022, the Court notified the parties by email that LG Chem's Motion to Dismiss was granted and directed LG Chem to submit a proposed order. (R. p. 494.) On February 2, 2022, LG Chem submitted its proposed order. (R. pp. 498-510.) Fleming raised one specific objection regarding the factual depiction of his allegations and generally objected to the overall analysis in the court's order. (R. pp. 512-526.) LG Chem then submitted an amended proposed order that clarified the allegations to which Fleming had objected. (R. pp. 528-534.) Fleming raised no further objections. On February 7, 2022, the circuit court entered its Order granting LG Chem's Motion to Dismiss. (R. pp. 3-13.)

On February 17, 2022, Fleming filed a 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. (R. pp. 417-434.) Fleming asked the Court to reconsider its February 7, 2022 Order, arguing that the Order was based on a misunderstanding and/or misapprehension of facts regarding LG Chem, Ltd.'s products and South Carolina contacts and that the Order effectively leaves Fleming with no forum for his claims against LG Chem. (R. p. 417.)

On February 22, 2022, LG Chem filed its Response in Opposition to Fleming's Motion to Reconsider, supported by exhibits, and arguing that the court correctly applied the law to the facts and that a motion to reconsider is not an appropriate time to raise matters that could have been – but were not – raised before the court ruled on the Motion to Dismiss. (R. pp. 435-536.) On February 23, 2022, the circuit court denied Fleming's Motion to Reconsider. (R. pp. 14-16.)

On March 21, 2022, Fleming filed his Notice of Appeal. (R. p. 1.) On April 19, 2022, Fleming filed a motion to certify the case to this Court. (Mot. to Certify) On May 17, 2022, this Court denied the motion. (5/17/22 Order.)

Fleming filed his Final Initial and Reply Briefs on January 25, 2023. LG Chem filed its Final Respondent's Brief on February 1, 2023. Fleming filed a supplemental citation letter on June 2, 2025. LG Chem filed a responding supplemental citation letter the same day.

The Court of Appeals conducted oral argument on June 3, 2025, and issued its decision affirming the circuit court's order of dismissal on August 13, 2025. On August 28, 2025, Fleming filed a petition for rehearing, which the Court of Appeals denied on September 10, 2025.

II. STATEMENT OF FACTS.

Petitioner Reid Fleming is a resident of Anderson County, South Carolina. (R. p. 17.) Fleming alleged that on or around May 24, 2018, he was injured when a lithium-ion battery he had purchased from Planet Vape and SC E-Cigarette for use with his e-cigarette device exploded in

his pocket. (R. 22.) Fleming further alleged that these retailers marketed or represented the batteries as being "LG" brand. (R. p 21.) Although not specifically identified in his Complaint, Fleming agreed in his brief on appeal that the type of battery he allegedly purchased and used as a standalone battery with his e-cigarette device was an 18650. (Fleming's Initial Br. at 14.)

A. LG Chem's motion to dismiss.

LG Chem is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. (R. p. 36.) Fleming did not dispute this fact and conceded that general jurisdiction was not at issue. (R. p. 17, 543.)

LG Chem's Motion to Dismiss was supported by admissible evidence, through the Affidavit of Hwi Jae Lee, showing that LG Chem did not serve a consumer market in South Carolina (or anywhere else) for standalone 18650 batteries. LG Chem never designed, manufactured, distributed, advertised, or sold its lithium-ion battery cells directly to consumers for use as standalone, replaceable batteries (with e-cigarette devices or for any other purpose) in South Carolina or anywhere else. (R. p. 37.) The lithium-ion cells that LG Chem manufactured were industrial component parts, not standalone, replaceable consumer batteries; and they were not designed to be handled by consumers. (R. p. 37.) LG Chem never conducted any business with the South Carolina vape store that allegedly sold the subject battery cell to a South Carolina consumer as a standalone battery; never authorized them or anyone else to advertise, distribute, or sell its lithium-ion cells to individual consumers for use as standalone, replaceable batteries; and never distributed, supplied, sold, or shipped any lithium-ion battery cells to anyone in South Carolina known to LG Chem to be engaged in the business of selling 18650 lithium-ion cells directly to individual consumers for use as standalone, replaceable batteries to power vaping

devices. (R. pp. 37-39.)[2]

B. Fleming's proffer of extrinsic evidence concerning unrelated business activities.

In opposition to LG Chem's Motion to Dismiss, Fleming introduced import data charts and the Declaration of Nickie Bonenfant, Chief Operating Officer of a company called ImportGenius, to show the Court that LG Chem had shipped "lithium ion battery products" to South Carolina. Fleming argued that the charts showed that LG Chem had shipped hundreds of products into the Port of Charleston, either directly or using a subsidiary company (LG Chem America, Inc.) as a consignee or distributor. (R. p. 76.) Fleming also stated that LG Chem was "registered to do business in South Carolina" (R. pp. 79, 244) and submitted the decisions of five other South Carolina trial courts that had denied similar motions to dismiss in other cases involving similar claims after relying on similar information and exhibits. (R. pp. 79-81 & 248-270).

Fleming argued that his exhibits showed "984 shipments through the Port of Charleston, with 818 of those shipments co-signed by LGCAI." (R. p. 76.) In so doing, Fleming created the misimpression that those 984 shipments were lithium-ion battery products, when in fact not a single one of the entries on the 59-page chart attached as Exhibit 3 to his Opposition reflected shipment of any type of lithium-ion battery product to anyone in South Carolina. Instead, the shipment descriptions on the chart 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. (R. pp. 393, 274, 405).

[2] Long after LG Chem was dismissed from the suit, Fleming amended his complaint to allege that Direct Vapor, LLC (in Florida)and Wick n' Coil Distribution, LLC (in North Carolina) distributed 18650 lithium-ion battery cells to SCECIG and Planet Vapor during the time period that Fleming purchased the subject batteries at issue in the suit. Although this was not part of the record, LG Chem's counsel addressed this amended pleading at oral argument, in response to a question from the Court. Fleming's amendment further confirmed that it was unauthorized third parties, not LG Chem or its subsidiary, that brought the subject 18650 cells to South Carolina.

Fleming also argued that his exhibits showed that "13 shipments of LG Chem lithium ion batteries went through the Port of Charleston and shipped out to businesses operating in South Carolina." (R. p. 76.) In fact, the chart appeared to show a single shipment to a South Carolina entity (a car manufacturer) prior to the date of the alleged incident in this case (May 24, 2018). The chart also appears to show 8 other shipments to the same car manufacturer in 2019 (after the alleged incident at issue) and 3 shipments on the same post-incident date (December 21, 2018) to a power company in Raleigh, North Carolina. Nothing in Fleming's Exhibit 4 supports the inference that the 13 shipments (12 of which occurred after the alleged incident in this case) were 18650 lithium-ion battery cells shipped to vape stores. (R. pp. 393, 274, 405.)

Fleming offered no evidence to support his argument that "a lithium-ion battery is a lithium-ion battery." Nor did he offer any evidence to support his analogy offered at the hearing that the distinction between different types of lithium-ion battery products "would be like . . . drawing a distinction between light cigarettes and ultra light cigarettes." (R. p. 568.) To the contrary, the admissible evidence (and information that is readily publicly available) supports that "lithium-ion battery products" encompasses multiple different types of products. For example, lithium-ion battery cells the size and shape of a purse or briefcase can be joined together in battery systems the size of an office desk to power electric vehicles, such as cars and buses. (R. p 53.)

The type of battery cell allegedly at issue in this case (and in every other decision Fleming submitted and asked the circuit court, Court of Appeals, and this Court to consider) is an 18650 lithium-ion cell, which measures 65 mm in length and 18 cm in diameter and is cylindrical in shape and comes in many different models. (R. pp 53, 549.) [3]

[3] At the time of the relevant events, LG Chem manufactured 18650 lithium-ion battery cells. LG Chem spun off its battery division on December 1, 2020 to a newly formed wholly-owned subsidiary called LG Energy Solution, Ltd. LG Energy Solution, Ltd. now manufactures 18650 lithium-ion cells. (R. p. 35.)

And regardless of the size or type of lithium-ion battery cell at issue (indisputably the 18650 here), LG Chem never supplied any lithium-ion battery cells (of any size or type) to consumers for use as standalone, replaceable batteries. (R. p. 37.) Any consumer in South Carolina – or anywhere else in the United States – who purchased an LG 18650 lithium-ion battery cell as a standalone battery (whether for an e-cigarette device or for any other purpose) had access to the cell through a distribution chain that LG Chem did not authorize. (R. p. 37.)

C. Fleming's untimely proffer of new facts with his Motion to Reconsider.

After the circuit court granted LG Chem's Motion to Dismiss, Fleming moved to reconsider for two reasons: (1) Fleming argued 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) Fleming argued the result was unfair because he was left "with no forum" and "no recourse" for his claims. (R. p. 417.) In support of the first point, Fleming introduced portions of a transcript of the personal deposition of an LG Chem employee taken in September 2018 in a lawsuit in Georgia, responding to questions about the use by Phillip Morris of 18650 cells in the charging unit of its IQQS vaping device. Fleming argued that LG Chem's counsel had misrepresented facts to the court concerning LG Chem's business activities. (R. pp. 419-421.)

Non-confidential portions of the deposition excerpts Fleming submitted (that he did not quote or otherwise bring to the circuit court's attention) explained that the IQOS device was 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, was not designed or manufactured to be powered by 18650 lithium-ion cells sold directly to consumers as standalone, replaceable batteries. (R. p. 439.) 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.[4]

At the hearing on the Motion to Dismiss, LG Chem's counsel had explained to the circuit 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. (R. pp. 554-555, 547 (describing the different LG Chem products in general and their purposes); R. p. 560 (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"); R. p. 562 (same).

Also in support of his Motion to Reconsider, Fleming provided the circuit court with native excel files for the Appendices to the Declaration of Nickie Bonenfant that had previously been filed in "PDF" format. (R. pp. 417-434.) In his Motion to Reconsider, Fleming stated that he could not tell from the excel spreadsheets which type of lithium-ion battery was involved in the shipments to the car manufacturers in South Carolina (R. p. 418), 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. (R. pp. 274, 574.) Fleming then asked the court to reconsider its decision, or in the alternative, to allow Fleming 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

[4] As an aside, publicly available information showed 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. (R. p. 439.)

use with vaping devices for Phillip Morris." (R. p. 426.)

Promptly after LG Chem submitted its Memorandum in Opposition to the Motion to Reconsider, the circuit court denied the motion on the basis that "a motion for reconsideration is not a vehicle to re-litigate previously raised issues" or "to raise argument or present evidence that could have been presented prior to the entry of judgment." (R. p. 15.)

III. THE COURT OF APPEALS' DECISION.

After briefing and oral argument, the Court of Appeals issued its decision on August 13, 2025. Judge Thomas wrote the opinion of the Court. Judge Curtis concurred. Judge Hewitt dissented.

In its decision, the Court of Appeals agreed with the circuit court's reasoning and interpretation of the record in all respects. First, the Court of Appeals agreed with the circuit court's conclusion that Fleming had failed to establish a prima facie case of personal jurisdiction, either through his pleadings or through evidence submitted by the parties – including Fleming's proffered affidavit and voluminous exhibits. (COA Op. at p. 1-2). Specifically, the Court of Appeals agreed that Fleming pled no facts, and offered no evidence, to support his conclusory assertion that his claims were related to forum-specific conduct by LG Chem. (COA Op. at p. 2).

Second, the Court of Appeals agreed with the circuit court's distinction of the facts of this case from the U.S. Supreme Court's decision in *Ford Motor Company v. Montana Eighth Judicial District Court*. By contrast to *Ford*, where Ford admittedly engaged in extensive, consumer-directed activities for the very type of vehicles at issue in that case (Ford Explorers and Crown Victorias), here, the uncontroverted evidence showed that it was third parties, acting without LG Chem's authorization, that supplied consumers with the type of battery cells at issue and that LG Chem's activities of shipping unrelated products to South Carolina did not satisfy due process. (COA Op. at p. 2-3).

Third, the Court of Appeals agreed with the circuit court's distinction of the facts of this case from this Court's 2008 decision in *State v. NV Sumatra Tobacco Trading Co.* and determination that the stream of commerce analogy did not support the exercise of specific jurisdiction here. Unlike *Sumatra*, where the foreign defendant cigarette manufacturer admittedly sold nearly seven million cigarettes to South Carolina consumers through its intended distribution chain, here, LG Chem's uncontroverted evidence showed that LG Chem never manufactured, distributed, advertised, or sold 18650 lithium-ion battery cells as standalone batteries for use by consumers, and never authorized anyone else to do so either. (COA Op. at p. 4-5).

Finally, the Court of Appeals agreed with the circuit court's conclusion that, because Fleming failed to establish that the power prong of the specific jurisdiction analysis was satisfied, there was no need to consider the fairness prong. (COA Op.at p. 5).

ARGUMENT

The Court of Appeals properly affirmed the circuit court's dismissal of LG Chem for lack of personal jurisdiction, and Fleming presents no grounds warranting certiorari. *See* Rule 242(b), SCACR.

The essence of Fleming's appeal was the question whether his vague and conclusory allegations were sufficient to establish personal jurisdiction over a non-resident defendant manufacturer. Fleming asked the circuit court to go beyond the pleadings and consider evidence he himself offered, then challenged that decision on appeal when the evidence undermined his arguments. The outcome in this case turned on a fact-specific analysis of Fleming's allegations and the evidence submitted to the circuit court, and none of the criteria for certiorari review is satisfied here.

First, Fleming pled no facts and offered no evidence to meet his burden of proving that his claims were related to forum-specific conduct of LG Chem, and the Court of Appeals correctly affirmed the circuit court's conclusion that Fleming failed to establish a prima facie case of personal jurisdiction over LG Chem. Second, the Court of Appeals correctly applied the relatedness standard articulated in *Ford Motor Co. v. Montana Eighth Judicial District Court* when affirming the circuit court's conclusion that Fleming's claims did not arise out of or relate to any forum-specific conduct of LG Chem, and there is no conflict. Third, the Court of Appeals correctly affirmed the circuit court's finding that the facts of this case are readily distinguishable from *State v. NV Sumatra Tobacco Trading, Co.*, and there is no conflict. Finally, because Fleming failed to satisfy the power prong of the specific jurisdiction analysis, the Court of Appeals correctly found that it need not reach the fairness prong.

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S CONCLUSION THAT FLEMING FAILED TO ESTABLISH A PRIMA FACIE CASE OF PERSONAL JURISDICTION.

The Court of Appeals correctly affirmed the circuit court's conclusion that Fleming did not establish a prima facie showing of personal jurisdiction because he pled no jurisdictional facts and offered no evidence to support his conclusory assertion that his claims were "related" to forum-specific conduct of LG Chem. (COA Op. at 3.)

A. The Court of Appeals correctly found that Fleming's allegations and evidence were not sufficient to meet his burden of proof.

Fleming cites to the dissent's interpretation of the pleadings to support his argument that his allegations, alone, were sufficient to support his burden of proof. (Pet. at 6-7.)

However, as the circuit court correctly found, and the Court of Appeals properly affirmed, Fleming's Complaint made no mention of 18650 lithium-ion batteries, even though he later acknowledged that this is the type of product allegedly at issue in this suit. His Complaint also did

not plead any facts to support his conclusory assertion that his claims were "related" to forum-specific conduct by the defendant. And, although he asked the circuit court to go beyond the pleadings and consider evidence to decide LG Chem's motion to dismiss, Fleming offered no evidence to (1) contradict LG Chem's evidence that it never designed, manufactured, distributed, advertised, or sold 18650 lithium-ion battery cells for sale to consumers as standalone, replaceable batteries in South Carolina, or anywhere else or (2) show that LG Chem was distributing 18650 lithium-ion cells to consumers in the state (either directly or through a subsidiary).

The circuit court correctly found, and the Court of Appeals correctly agreed, that Fleming did not make any specific allegations that would show either contacts of LG Chem with South Carolina related to the particular product at issue in this case or how those contacts might possibly relate to Fleming's claims in this case. (R. p. 6; COA Op. at p. 1).

And once Fleming asked the circuit court to consider extrinsic evidence, and that evidence further supported LG Chem's defense, it would have been error for the circuit court to decide that vague and conclusory allegations in Fleming's complaint were enough to meet his burden of proof, particularly when, as the circuit court found, and the Court of Appeals agreed, the evidence submitted by the parties, including LG Chem's affidavits and Fleming's affidavit and voluminous exhibits, did not reflect shipment of 18650 lithium-ion cells to anyone in South Carolina, let alone anyone engaged in the consumer vaping industry. (R. p. 7-8; COA Op. at p. 1-2).

B. Fleming's reliance on a handful of out-of-state decisions cited in the dissent does not support review.

Referencing the dissent, Fleming contends that other courts exercising jurisdiction "on similar facts" are "comfortable" doing so "because the manufacturers are taking advantage of the state's business markets." (Pet. at 8). That analysis is flawed for two reasons.

First, it runs directly contrary to established precedents to conclude that a manufacturer is subject to specific jurisdiction simply because it does business in the state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 n.6 (2011) (recognizing that "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales"); *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 264, 137 S.Ct. 1773, 1781 (2021) ("When there is no such connection, specific jurisdiction is lacking regardless of the extent of the defendant's unconnected activities in the State."); *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 365, 141 S. Ct. 1017, 1028 (2021) (relatedness does not mean "anything goes"; the claims at issue must be related to the defendant's own business activities in the state for the particular product at issue).

Second, Fleming's argument depends on a mischaracterization of the facts here and misplaced reliance on the out-of-state cases cited in the dissent. In those cases, the courts concluded that LG Chem did not rebut those plaintiffs' allegations that LG Chem extensively shipped 18650 lithium-ion cells[5] into the forum state and that this was sufficient to satisfy constitutional due process at the *prima facie* stage. Although LG Chem disagrees with the analysis in those cases, it is an important distinction here because Fleming did *not* allege that LG Chem was shipping extensive quantities of 18650 cells to South Carolina and because Fleming's own evidence undermined any attempt to argue that he had.

In addition, Fleming does not address the many cases that have found personal jurisdiction lacking over LG Chem in cases involving claims of injury from use of an 18650 lithium-ion battery cell as a standalone battery with a vaping device, *regardless* of whether LG Chem shipped 18650 cells to industrial customers (never consumers) in the forum state. *See, e.g., Quiniones v. LG*

[5] Those cases specifically relied on allegations of business activities for 18650 lithium-ion battery cells, not "lithium-ion battery products" generally.

Chem, Ltd., No. 23-15941, 2024 WL 4678053 (9th Cir. Nov. 5, 2024) (unpublished) (affirming dismissal of LG Chem for lack of personal jurisdiction in California where LG Chem sold 18650 cells to battery packer and equipment manufacturer); *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496 (9th Cir. 2023) (concluding that, even if LG Chem had sold 18650 batteries to manufacturers for incorporation in consumer products sold in Hawaii, "these sales would not be related to purchases of stand-alone batteries by Hawaii consumers"); *LG Chem, Ltd. v. Superior Ct. of San Diego Cnty.* (*Lawhon*), 80 Cal. App. 5th 348, 295 Cal. Rptr. 3d 661 (2022); *Kadow v. LG Chem, Ltd*., No. B309854, 2021 WL 5935657 (Cal. Ct. App. Dec. 16, 2021), *review denied* (Mar. 30, 2022); *see also State ex rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899 (Mo. 2020); *Eriksen v. ECX, LLC, et al.*, No. 79473-I, 2020 WL 6395534 (Wash. Ct. App. Nov. 2, 2020) (unpublished).[6]

II. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S APPLICATION OF *FORD*'S RELATED-NESS STANDARD, AND THERE IS NO CONFLICT.

Fleming argues that the Court of Appeals applied the "causation-only" approach rejected in *Ford* and failed to consider what Petitioner describes as "substantial in-state contacts involving lithium-ion battery sales and shipments." (Pet. 8-11.)

In *Ford*, the U.S. Supreme Court reiterated that, to satisfy due process for specific jurisdiction, the plaintiff's claim "must arise out of or relate to the defendant's contacts with the forum." 592 U.S. at 359, 141 S. Ct. at 1025. The *Ford* court further reiterated that the specific jurisdiction analysis must focus on the extent and nature of the defendant's own conduct directed

[6] *See also Richter v. LG Chem, Ltd*., No. 18-CV-50360, 2022 WL 5240583 (N.D. Ill. Sept. 27, 2022); *Straight v. LG Chem, Ltd*., No. 2:20-CV-6551, 2022 WL 16836722 (S.D. Ohio Nov. 9, 2022); *Grizzard v. LG Chem Ltd*., No. 2:21CV469, 2022 WL 17076706, at *7 (E.D. Va. Nov. 18, 2022); *Matter of Am. River Transp. Co., LLC* (*ARTCO*), No. CV 18-2186, 2022 WL 17325899, at *7 (E.D. La. Nov. 29, 2022); *Huntington v. Smoke City for Less LLC*, No. 4:22-CV-05014-MKD, 2023 WL 2996729, at *8 (E.D. Wash. Apr. 18, 2023); *Heit v. LG Chem, Ltd.*, No. 21-CV-00771-HFS, 2023 WL 1928289 (W.D. Mo. Feb. 10, 2023)); *Mehl v. LG Chem Ltd.*, No. 6:21-CV-01149-AA, 2022 WL 3595089 (D. Or. Aug. 23, 2022), *amended on reconsideration*, No. 6:21-CV-01149-AA, 2023 WL 6200288 (D. Or. Sept. 22, 2023), *appeal docketed*, No. 23-3943 (9th Cir. Dec. 5, 2023); *Bullock v. Otto Imports, LLC*, No. 4:19-CV-149-BJB, 2022 WL 949914 (W.D. Ky. Mar. 29, 2022).

to the forum state and the degree to which that conduct is related or connected to the plaintiff's claims. *Id.* at 1027–28. Finally, the *Ford* court made clear that its decision did not mean "anything goes." Instead:

> In the sphere of specific jurisdiction, the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum.

Ford, 592 U.S. at 362, 141 S. Ct. at 1026.

In *Ford*, the Supreme Court found personal jurisdiction existed over Ford Motor Company in the forum states at issue based on its extensive in-state consumer-directed activities for the specific products at issue. Ford conceded both that it purposefully availed itself of the privilege of doing business in the forum states *and* that it served a consumer market in the forum states for the very vehicles at issue. The facts of this case are not like *Ford*.

The Court of Appeals properly considered and applied the *Ford* standard when affirming the circuit court's decision, based upon uncontroverted evidence in the record, that LG Chem's in-state activities were not sufficiently related to Fleming's claims to satisfy due process. Fleming's insistence that LG Chem did not deny doing "substantial battery related business" misstates the record. In fact, Fleming did not plead any jurisdictional facts specific to the particular product at issue in this suit – a 18650 lithium-ion battery cell that was re-sold as a consumer battery, as the circuit court correctly found. (R. p. 6). Further, the evidence that Fleming himself offered and asked the circuit court to consider undermines his argument that LG Chem was conducting substantial battery business in the state related to his claims. (R. pp. 545-46, 574; 440; 274).

As the circuit court correctly found, at best, Fleming's evidence, if admissible, would show only that LG Chem directed unrelated business activities 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. (R. p.

__ - circuit court at 6) None of Fleming's exhibits reflect shipments of 18650 lithium-ion cells to anyone in South Carolina, let alone anyone engaged in the consumer vaping industry. (*Id*.)

In *Ford*, the Supreme Court found the exercise of personal jurisdiction over Ford satisfied due process when a consumer plaintiff asserted product liability claims based on use of a Ford vehicle that had arrived in the forum state (where the accident occurred) as the result of consumer relocations and resales, and was not designed, manufactured, or sold in the forum by Ford.

Although Ford did not bring the specific vehicles to the forum states, Ford itself admittedly engaged in extensive and wide-ranging activities in the forum state in furtherance of its undisputed intention to serve a consumer market for the very same type of vehicles at issue. It was Ford, not unauthorized third parties, that supplied consumers in Minnesota and Montana with Ford vehicles (and specifically Explorers and Crown Victorias – the vehicles at issue in the underlying cases). *Ford*, 592 U.S. at 365, 141 S. Ct. at 1028. It was Ford, not unauthorized third parties, that advertised those vehicles to in-state consumers on TV and billboards and by "every means imaginable." *Id.* And it was Ford that licensed dealers to sell, maintain, and repair Ford cars in Minnesota and Montana. *Id.* Thus, Ford had "a veritable truckload" of relevant, suit-related contacts with Minnesota and Montana. *Id*. at 371, 141 S. Ct. at 1031.

The U.S. Supreme Court found that Ford's widespread activities directed to the consumer auto market in the forum states (such as billboards, TV and radio spots, print ads, direct mail, and local dealer repair services and sale of replacement parts) established the necessary connection between the consumers' claims and Ford's state-directed activities involving those same kinds of motor vehicles. *Id.* at 365, 141 S. Ct. at 1028. In reaching that conclusion, the *Ford* court was careful to note that Ford's admitted, extensive in-state consumer-directed business activities involved the specific cars at issue – Ford Explorers and Crown Victorias.

No such facts are present here. There were no retailers licensed by LG Chem to supply LG lithium-ion battery cells directly to consumers. There were no dealers authorized by LG Chem to repair or replace lithium-ion battery cells for consumers. There were no TV or billboards or other advertisements whereby LG Chem "urged" consumers to purchase lithium-ion battery cells as standalone, replaceable batteries for any purpose. And Fleming himself did not allege otherwise; in fact, Fleming alleged that LG Chem *failed to prevent* others from providing consumers in South Carolina with lithium-ion battery cells for use as standalone, replaceable batteries.

Under these precedents, it *does* matter how products of the type at issue arrive in the state. In *Ford*, there was specific jurisdiction despite Ford not having brought the particular car at issue into the state. But Ford conceded that it extensively served consumer markets in the forum states for the exact same types of cars at issue – Ford Explorers and Crown Victorias. Even though the specific cars at issue did not arrive in the forum for purchase by consumers through Ford's actions, it was undisputed that numerous other cars (of the same type) did. Thus, the U.S. Supreme Court rejected Ford's causation-only argument.

But here, by contrast, it is true *not only* that the particular 18650 lithium-ion cell at issue in this case (if LG Chem even manufactured it, which was never established) arrived in South Carolina through the unilateral actions of third parties *but also* that *any* 18650 lithium ion cell that arrived in any vape store or other retailer in South Carolina for sale to a consumer as a standalone battery can only have done so through the unilateral actions of third parties, and not resulting from or related to any conduct LG Chem directed here.

The Court of Appeals correctly found that any connections that exist between South Carolina and this lawsuit were formed entirely by Fleming and other third parties—not by LG Chem—and that the related-ness standard articulated in *Ford* was not satisfied.

III. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S CONCLUSION THAT THE FACTS OF THIS CASE DISTINGUISH IT FROM *SUMATRA*, AND THERE IS NO CONFLICT.

Fleming argued to the Court of Appeals that, under *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008), allegations that a defendant manufactured a product outside the state and expected that it would be distributed or misused by others in South Carolina are sufficient to support the exercise of jurisdiction "regardless of how [the battery cells] arrived in South Carolina." (Appellant's Initial Br. at 22.)

That interpretation does not follow from *Sumatra*, where, describing the stream of commerce theory, this Court recognized that "[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." 379 S.C. at 89, 666 S.E.2d at 222 (emphasis added) (citing *Southern Plastics Co*. (citing *World-Wide Volkswagen Corp. v Woodson*, 444 U.S. 286, 297 (1980).)

This Court concluded 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 almost seven million cigarettes sold to consumers in South Carolina in one year as the direct result of the cigarette manufacturer's intended chain of distribution. *Id.* at 87–92, 666 S.E.2d at 221–24. 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.

As the Court of Appeals correctly recognized, "[t]hat evidence is not present here." (COA Op. at p. 5). By contrast to the facts of *Sumatra*, here, LG Chem denies that it distributed any 18650 battery cells to anyone for sale as a standalone product to consumers in South Carolina—

or anywhere else. And despite Fleming's argument that LG Chem's subsidiary distributed batteries here, Fleming did not make any such allegations in the Complaint and did not offer any evidence to support the statement – which is simply untrue.[7] Neither Fleming's allegations nor his own evidence could support a finding, like that in *Sumatra*, that the out-of-state manufacturer distributed its product (here, standalone 18650 lithium-ion cells) to consumers in the state through its intended chain of distribution.

In *Sumatra*, this Court expressly recognized that "[t]he question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case," 379 S.C. at 88, 666 S.E.2d at 221 (emphasis added). The Court of Appeals correctly agreed with the circuit court that the facts of this case are highly distinguishable from *Sumatra* and therefore require a different result.

IV. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S CONCLUSION THAT IT WAS NOT NECESSARY TO REACH THE FAIRNESS PRONG BECAUSE THE POWER PRONG WAS NOT MET.

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). The Court of Appeals agreed with the circuit court's conclusion that it was not necessary to reach the fairness prong because Fleming failed to satisfy the power prong. (COA Op. at p. 6).

[7] Fleming argued that the circuit court should follow the decisions of five other circuit courts that had denied similar motions to dismiss. LG Chem showed that those decisions were contrary to law and were not supported by the evidence introduced in those cases. For example, the record in two of the cases, *Williamson v. Pirates Cove Vapor Lounge, LLC, et al*., 2019-CP-07-02270 and *Roberts v. Planet Vape, et al.*, 2020-CP-10-00912, included admissible affidavit evidence, which those circuit courts failed to consider, showing that LG Chem's subsidiary, LGCAI, never sold 18650 battery cells (or any type of lithium ion batteries) **to anyone in South Carolina** (let alone consumer retail vape stores). (R. pp. 395, 408-416.) And yet, Fleming relied on those cases to argue that LGCAI had distributed LG Chem's 18650 lithium-ion batteries into South Carolina, which was not accurate, as the record in this case plainly showed. (R. p. 274) (showing that LGCAI was only involved in shipment of petrochemical products).

CONCLUSION

For the reasons stated above, this Court should deny the petition for writ of certiorari.

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