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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Roger M. Young, Sr., Circuit Court Judge

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Appellate Case No. 2025-002086

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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.

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# BRIEF OF PETITIONER

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**RICHARDSON THOMAS, LLC**

Chris Moore (SCB: 77934)
383 W. Cheves Street
Florence, SC 29501
T: 843.307.9509
chris@richardsonthomas.com

Grace B. Sturman (SCB: 105714)
1513 Hampton Street
Columbia, SC 29201
T: 803.281.8150
grace@richardsonthomas.com

**SMITH & GRIFFITH LLP**

John Griffith (SCB: 6729)
1102 North Main Street
Anderson, South Carolina 29621

T: 864.222.2293
john@griffithlawyer.com

*Attorneys for Petitioner Reid Fleming*

Dated: March 4, 2026

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II. Whether the Court of Appeals' decision conflicts with *Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021), by requiring a causal link between LG's in-state conduct and the battery at issue?

III. Whether the Court of Appeals' misapplied this Court's decision in *State v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008), by failing to attribute minimum contacts to LG Chem where LG Chem does not dispute significant and regular lithium-ion battery business in South Carolina?

IV. Whether the Court of Appeals erred in failing to analyze the fairness prong of the due-process test?

## STATEMENT OF THE CASE

This is an appeal from an unpublished opinion of the Court of Appeals affirming the trial court's dismissal of a products liability action for lack of specific personal jurisdiction. The action arises from severe injuries sustained by Petitioner Reid Fleming when a lithium-ion battery manufactured by Respondent LG Chem, Ltd. ("LG") exploded in his pocket. Fleming purchased, used, and was injured by the battery in South Carolina. (R. p. 22 ¶ 31.)

On April 21, 2021, Fleming filed his complaint against LG, John Doe Distributors #1-3, and retail sellers The Planet Vape, LLC and SC E-Cigarette, LLC. (R. pp. 17–29.) Fleming asserted causes of action for strict liability, negligence, breach of express and implied warranties, and unfair trade practices. *Id.*

LG moved to dismiss for lack of personal jurisdiction on July 15, 2021. (R. pp. 30-39, 46-67.) Fleming filed his memorandum in opposition with exhibits on January 10, 2022. (R. pp. 70-386.) The circuit court held a hearing on January 18, 2022. (R. pp. 537-579.) A hearing on the motion was held on January 18, 2022. (R. p. 537.)

On February 7, 2022, the trial court granted LG's motion. (App. pp.693-703.) Fleming filed a motion to reconsider on February 17, 2022. (R. pp. 417-26). The trial court denied Fleming's motion to reconsider on February 23, 2022. (App. pp.704-706.) Fleming filed a notice of appeal from the trial court's orders on March 21, 2022. (R. p. 1.)

On April 19, 2022, Fleming filed a motion to certify this case to this Court because the trial court's decision was in conflict with five other circuit court orders. This Court denied the unopposed motion on May 17, 2022.

The parties submitted briefs and the Court of Appeals heard argument June 3, 2025. The Court of Appeals affirmed the circuit court in an unpublished, split decision filed August 13, 2025,

from which Judge Hewitt dissented. (App. pp.1-7, Court of Appeals Unpublished Opinion No. 2025-UP-295.) Fleming filed his petition for writ of certiorari in this Court October 10, 2025. (App. p.707.) This Court granted certiorari January 13, 2026.

## FACTS

LG's lithium-ion batteries are well-known and popular batteries that are extensively used by the vaping community to power vaping devices, or e-cigarettes. (R. p. 21 ¶ 23.) LG claims it does not intend for consumers to use its lithium-ion batteries with such devices; however, LG has known since at least 2016 that its batteries were widely used in vaping devices. (R. p. 21 ¶ 20.) LG's knowledge of this fact was also gained defending numerous, similar lawsuits both in South Carolina and across the country. *See, e.g., Sullivan v. LG Chem, Ltd.*, 79 F.4th 651, 670 (6th Cir. 2023); *LG Chem Am., Inc. v. Morgan*, 670 S.W.3d 341, 343–44 (Tex. 2023); *Dilworth v. LG Chem, Ltd.*, 355 So. 3d 201, 210–11 (Miss. 2022); *LG Chem, Ltd. v. Lemmerman*, 361 Ga. App. 163, 863 S.E.2d 514 (2021); *Williamson v. Pirates Cove Vapor Lounge, LLC, et. al*, 2019-CP-07-02270 (June 21, 2021), (R. pp. 256-65); *Holtzendorff v. Vapor Tek USA, LLC, and LG Chem Ltd.*, 2018-CP-0201518 (May 6, 2020), (R. pp. 266-67); *Roberts v. Planet Vape, LLC, et. al*, 2020-CP-10-00912 (Dec. 17, 2020), (R. pp. 268-70).

A centerpiece of Fleming's complaint allegations was that his claims relate to LG's forum activities including the manufacture and distribution of lithium-ion batteries through South Carolina ports and to South Carolina companies. (R. p. 19.) Fleming alleged that LG conducted these activities with the express knowledge that businesses were selling, and individuals using, LG's batteries to power vaping devices. *Id.* Fleming alleged that LG was distributing the batteries in South Carolina without adequate warnings despite its express knowledge of how individuals were using them. (R. pp. 23-24.)

Fleming is a South Carolina resident. (R. p. 17.) Fleming alleges he purchased LG's rechargeable lithium-ion batteries from retail stores The Planet Vape, LLC and SC E-Cigarette, LLC in Charleston, South Carolina for use in his vaping device. (R. p. 21 ¶ 20.) On May 24, 2018, one of the LG batteries exploded in his pants pocket, causing severe burns requiring hospitalization, and resulting in permanent physical and mental damage. (R. p. 22 ¶¶ 31–35.) Fleming alleges the batteries were a particular sized lithium-ion battery–size 18650–and were designed, manufactured, and distributed by LG. (R. p. 21 ¶ 22.) All of Fleming's contacts with the product—the purchase, use, and failure of the subject battery—occurred in South Carolina.

LG is a subsidiary of the LG Corporation or LG Group, a South Korean multinational conglomerate. (R. pp.75-76.) At the time of Fleming's injury, LG had a subsidiary, LG Chem America, Inc., which was authorized to do business in South Carolina. (R. pp. 97–99, 244.) Fleming alleged that LG transacts business in South Carolina, including shipping lithium-ion batteries through the Port of Charleston and to South Carolina businesses with the expectation that these products be sold in South Carolina. (R. pp. 18–19 ¶¶ 9-10, 184–242, 243, 292–386.)

In response to LG's motion challenging jurisdiction, Fleming supplied the circuit court with shipping records evidencing large shipments by LG of "lithium-ion" batteries to South Carolina entities. (R. pp. 184–242, 243, 292–386.) LG does not dispute that it serves a market for lithium-ion batteries here or that it shipped 18650 lithium-ion batteries here. Instead, LG is quite careful to say only that it did not place 18650 rechargeable lithium-ion batteries into South Carolina "for use as standalone, replaceable batteries." *See e.g.* (R. pp. 30-31, 37-38, 46-48, 53, 57, 60-63, 64, 396-98, 410-11, 415-16, 436-41, 443-44 446-47, 456-57). LG does not deny that it placed this type battery into the stream of commerce, that it regularly conducts business (selling

lithium ion batteries) in South Carolina, or even that it distributes this type of battery with the reasonable expectation that it will be used by individuals in South Carolina.

Importantly, Fleming also asserted a cause of action for negligence against LG that is premised upon the breach of LG's duty to take reasonable efforts to warn both its customers and potential individual users or the dangerous risks known to LG arising from the individual handling and use of its 18650 batteries. (R. pp. 19, 25-26.) Fleming alleges LG has breached a duty to both warn and monitor its supply chain in order to protect consumers from what it claims is a misuse of its lithium-ion battery products. (R. pp. 24-28 ¶¶ 49-61.)

LG did not deny that it does business in South Carolina or sells lithium-ion batteries in South Carolina. It did not deny minimum contacts with South Carolina or that it ever sold size 18650 lithium-ion batteries in South Carolina. (R. pp. 46-66.) Instead, LG argued that it did not design, manufacture, distribute, or sell a lithium-ion battery for a discrete use—"for use as standalone, replaceable batteries, in South Carolina." (R. p. 48.) LG argued it manufactured lithium-ion batteries for use as "industrial component parts that are designed to be incorporated into battery packs." (R. pp. 37, 47.) In other words, LG argued there is no specific jurisdiction because its product was misused as a product sold on its own rather than sold already incorporated into another product.

Fleming filed a memorandum and exhibits in opposition to LG's motion, (R. pp. 71-85), that included as exhibits data showing over 900 shipments of LG products into the port of Charleston, South Carolina. (R. pp. 184-243, 292-386.) LG imported 419 shipments of lithium-ion batteries through the port of Charleston, some destined for South Carolina businesses. (R. pp. 243, 292-386.)

Fleming submitted to the lower court, an opinion from the Western District of North Carolina showing that LG purposefully served the consumer electronics market with lithium-ion batteries. (R. pp. 159- 83) *Celgard, LLC v. LG Chem, Ltd.*, 3:14-cv-00043, 2015 WL 2412467 *1, 25 (W.D.N.C. May 21, 2015) (stating "Celgard supplied LGC . . . with uncoated base films to be used in the production of lithium-ion batteries ***for consumer-electronic*** ("CE") products" and quoting LG as saying an injunction would "strip[] Best Buy and Wal-Mart (with respect to ***consumer electronics*** products) . . . of their ability to provide products containing these batteries to consumers" (emphasis added)).

Fleming also provided the lower court with five orders from other South Carolina circuit courts denying LG's motions to dismiss for personal jurisdiction in five other similar lithium-ion battery explosion cases. (R. pp. 19-20 ¶ 11), *see also, Williamson v. Pirates Cove Vapor Lounge, LLC, et. al,* 2019-CP-07-02270 (June 21, 2021), (R. pp. 256-65); *Holtzendorff v. Vapor Tek USA, LLC, and LG Chem Ltd.,* 2018-CP-0201518 (May 6, 2020), (R. pp. 266-67); *Roberts v. Planet Vape, LLC, et. al,* 2020-CP-10-00912 (Dec. 17, 2020), (R. pp. 268-70).

On January 18, 2018, the lower court held a hearing on the motion. (R. p. 537.) LG argued mainly that Fleming must show LG itself imported and sold a size 18650 lithium-ion battery to a consumer retailer in South Carolina. LG explained that 18650 merely describes the size of the battery. It "just means the 18 is the 18 millimeters diameter, the 65 millimeters is the length, zero is cylindrical. So that's a size." (R. p. 549, lines 14-16.) The lower court asked LG:

> How would your client ever get sued in the United States under your theory that they don't sell the individual product to an individual but they only sell it to manufacturers who repackage it someplace and then sell it in all the other states?
>
> Basically, they are immune from suit if their product causes harm under your theory.

(R. p. 551.) LG answered that because "nothing that LG Chem is doing to supply to be part of this distribution chain," it should not expect to be sued by an individual consumer that got the product from a third party. (R. pp. 552-53.)

Fleming argued that he alleges LG's failure to "actually take command of their distribution chain" constitutes negligence. (R. p. 565.) Fleming argued the consumer use of the battery purchased from a third party is a merits defense of product misuse and not a valid basis to deny specific jurisdiction. (R. p. 566.) Fleming pointed to LG's numerous shipments of lithium-ion batteries into South Carolina and said LG's distinction of only the size 18650 battery "would be like . . . drawing a distinction between light cigarettes and ultra light cigarettes." (R. p. 568.) The point is that Fleming bought and was injured by LG's battery in South Carolina, and LG intended to serve a South Carolina market with lithium-ion batteries such that it should have expected to be subject to suit here for a claim related to a lithium-ion battery. (R. p. 568-70.)

On February 7, 2022, the trial court entered an order granting LG's motion to dismiss. (R. pp. 3-13.) The trial court found that Fleming failed to prove that LG imported the specific size 18650 lithium-ion battery into South Carolina for a consumer market. (R. pp. 7-8.) It also held that a stream of commerce theory does not support specific jurisdiction in this case. It found this case factually distinguishable from *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008), based on its findings that LG did not distribute the specific size 18650 lithium-ion batteries to South Carolina consumers as a standalone product or to a distributor to supply them to South Carolina consumers as a standalone product. (R. pp. 9-10.)

Finally, the lower court held that, because it found Fleming did not satisfy the power prong, it did not need to address the fairness prong of the jurisdictional analysis. (R. p. 11.) However, the

lower court proceeded to state that it is unfair to find specific jurisdiction in this case because LG's South Carolina contacts are not related to Fleming's claims. (R. p. 11.)

Fleming filed a motion to reconsider principally to challenge the lower court's determination that his proof did not establish LG distributed a specific size lithium-ion batteries into South Carolina, pointing to record evidence that LG made over fifty shipments of lithium-ion batteries into South Carolina and those records do not establish whether the shipments are a size 18650 because they simply say "LITHIUM ION BATTERY." (R. p. 418.) Fleming argued that, regardless of the size, lithium-ion batteries are all similar in design and function, and that the records show LG was conducting significant lithium-ion battery business in South Carolina.

On February 23, 2022, the lower court denied the motion to reconsider without a hearing. (R. pp. 14-16.) That order contains only a standard of review section, which is largely federal law on Rule 59(e), and does not include analysis.

Fleming timely appealed to the Court of Appeals who heard argument June 3, 2025, and filed its unpublished opinion affirming the trial court August 13, 2025.

In the unpublished opinion, the Court of Appeals found Fleming "did not plead any jurisdictional facts specific to the particular product at issue here—a 18650 lithium-ion cell that was re-sold as a standalone consumer battery," and that he "did not plead any facts showing a connection between his claims and any action of [LG] directed to South Carolina." (App. pp. 2-3). It further concluded that, even considering the parties' affidavits and Fleming's "voluminous exhibits," "[n]one of the facts" supported jurisdiction, including an asserted lack of evidence "reflecting shipment of 18650 lithium-ion cells to anyone in South Carolina, let alone anyone engaged in the consumer vaping industry." (App. pp.2–3.) The majority accepted, in LG's favor,

its argument that the shipments of other lithium-ion batteries were "unrelated business" and found Fleming could not establish minimum contacts. (App. pp.5–6.)

Judge Hewitt's dissent concluded the complaint "sufficiently alleges facts that support specific personal jurisdiction." (App. p.7.) Importantly, the dissent notes that LG "has not denied that it placed this battery in the stream of commerce, that it regularly does business in South Carolina, or even that it distributes this type of battery with the reasonable expectation that the batteries will be used in this way in South Carolina." *Id.* Fleming thereafter petitioned for rehearing, and that petition was denied by order entered on September 10, 2025. (App. p.8.) This Court granted certiorari January 13, 2026.

## STANDARD OF REVIEW

"The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Cribb v. Spatholt*, 382 S.C. 490, 496, 676 S.E.2d 714, 717 (Ct. App. 2009). "The circuit court's decision should be affirmed unless unsupported by the evidence or influenced by an error of law." *Id.* at 496, 676 S.E.2d at 717.

## ARGUMENT

The conclusion of LG's argument is that the only forum in which Fleming (or any South Carolina citizen) can seek redress for his permanent burn injuries is in South Korea. LG says this is true despite conceding it conducts substantial business in South Carolina which admittedly includes the sale of lithium-ion batteries. Despite LG's willful and purposeful availment of the South Carolina business market, LG contends our courts cannot exercise jurisdiction over it for claims involving its product when that product was not sold for the specific use for which LG knows it is being both sold and put by countless consumers.

That is a classic misuse defense, not a jurisdictional inquiry. Specific personal jurisdiction does not require "proof of causation – i.e., proof that the plaintiff's claim came about because of the defendant's in-state conduct." *Ford Motor Co. v. Montana Eighth Judicial District Court,* 592 U.S. 351, 362 (2021). LG's "different market" argument "is too narrow a framing, and one disguising the rejected causation analysis" from *Ford*. *Sullivan v. LG Chem, Ltd.,* 79 F.4th 651, 672 (6th Cir. 2023).

Both the trial court and the Court of Appeals erred in accepting LG's unfounded argument that specific jurisdiction in a product liability action exists only where the specific product model size is sold in the forum state by the manufacturer **and** used in the exact manner intended by the manufacturer. There is no federal or state precedent that supports such a narrow interpretation of specific personal jurisdiction.

Both the lower court and Court of Appeals disregarded Fleming's negligence claim against LG stemming from the alleged breach of its duty to warn its customers and consumers of the dangers associated with the individual use of its lithium ion batteries. Fleming used the battery for the purpose for which it was sold to him and for which LG allegedly knew retailers were selling and consumers were using its lithium-ion batteries.

South Carolina "traditionally" used "a two-step analysis to determine whether specific jurisdiction is proper by 1) determining if the long arm statute applies and 2) determining whether the nonresident's contacts in South Carolina are sufficient to satisfy due process requirements." *Cribb v. Spatholt*, 382 S.C. 490, 498-99, 676 S.E.2d 714, 718-19 (Ct. App. 2009). "However, a more recent trend compresses the analysis into a due process assessment only." *Id.* at 499, 676 S.E.2d at 719. Therefore, the statutory and constitutional requirements are met in South Carolina when the exercise of jurisdiction is consistent with due process.

The due process standard "requires a defendant possess minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice." *Id.* at 499, 676 S.E.2d at 719. To determine whether this standard is satisfied, "[t]he court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the power to adjudicate the action and (2) find the exercise of jurisdiction is reasonable or fair." *Id.* (internal quotation marks omitted). These are referred to as the power and fairness prongs.

Under the power prong, the "minimum contacts analysis requires a court to find that the defendant directed its activities to residents of South Carolina and that the cause of action arises out of or relates to those activities." *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 432, 665 S.E.2d 660, 665 (Ct. App. 2008). The defendant must "purposefully avail[] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Id.* at 432, 665 S.E.2d at 665. This "'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts." *Id.*

Under the fairness prong, the court considers "the following factors: (1) the duration of the defendant's activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties; and (4) the State's interest in exercising jurisdiction." *Cribb*, 382 S.C. at 500, 676 S.E.2d at 719. Because Fleming satisfied both prongs of the due process analysis, this Court should reverse.

## I. The Court of Appeals Erred in Holding Fleming Failed to Establish a Prima Facie Showing of Specific Jurisdiction Over LG.

As observed by Judge Hewitt:

> The complaint alleges that LG Chem's pervasive activities in the lithium-ion battery industry are such that it should reasonably anticipate being sued in this sort of case in South Carolina. As I read the filings, LG Chem has not denied that it placed this battery in the stream of commerce, that it regularly does business in South Carolina, or even that it distributes this type of battery with the reasonable expectation that the batteries will be used in this way in South Carolina.

(App. p. 7) (Hewitt, J., dissenting). That observation captures the prima facie inquiry. At the pleading stage, the question is not whether Fleming has proven jurisdiction; but whether, taking his allegations as true and resolving factual disputes in his favor, he has shown sufficient minimum contacts and relatedness such that it would not be unfair to LG to defend the suit here. Instead, the Court of Appeals imposed a product-use specific pleading requirement. It held Fleming failed to establish a prima facie case because he did not plead jurisdictional facts "specific to the particular product at issue here—a 18650 lithium-ion cell that was re-sold as a standalone consumer battery." (App. p.5.) In doing so, the court focused on whether LG sold the battery "as a standalone, replaceable battery" for consumer use. (App. p.5.) But this moves and narrows the jurisdictional goalposts by requiring Fleming to prove that LG's contacts specifically caused his injury.

As this Court has explained, "'[t]he concept of jurisdiction … does not refer to the validity of the claim on which an action against a person is based.'" *Cribb v. Spatholt*, 382 S.C. 490, 497, 676 S.E.2d 714, 718 (Ct. App. 2009). Due process does not require that a manufacturer specifically intend the precise downstream consumer use that ultimately causes injury. It requires only that the defendant place the product into the stream of commerce with the expectation it will be reach that forum and be used there.

At the pretrial stage, a plaintiff need only make a prima facie showing of personal jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476 (2007). And "[o]n a motion to dismiss for lack of personal jurisdiction, factual disputes arising

by affidavit will be resolved in favor of the non-moving party." *M.B. Kahn Constr. Co. v. Three Rivers Bank & Tr. Co.*, 354 S.C. 412, 415, 581 S.E.2d 481, 482 (2003). Although the Court of Appeals acknowledged that rule (App. pp. 2-3), it did not apply it. When Fleming's allegations and evidence are taken as true and inferences resolved in his favor, they establish a prima facie case.

### A. The Court of Appeals Agreed with the lower court that Fleming's Pleadings were Insufficient without Construing the Allegations and Inferences in Fleming's Favor.

The Court of Appeals adopted the lower court's conclusion that Fleming's complaint failed to establish jurisdiction "even if the allegations of the complaint are true." (App. p. 2.). The panel stated:

> We agree that Appellant did not establish a prima facie case of personal jurisdiction because even if the allegations of the complaint are true, it is not sufficient. The court found Appellant 'did not plead any jurisdictional facts specific to the particular product at issue here—a 18650 lithium[-]ion cell that was re-sold as a standalone consumer battery. [Appellant] also did not plead any facts showing a connection between his claims and any action of [LG] directed to South Carolina.' Based solely on the pleadings, the court found the motion to dismiss should be granted.

(App. p.2.) But Fleming's complaint alleges that LG "transacts business in South Carolina including the shipment of battery products" into South Carolina ports and to South Carolina businesses. (R. pp. 18-19.) It alleges that LG caused "tortious injury or death in South Carolina" by acts outside of the state when it regularly does business in the state, and "produces, manufactures, and distributes batteries with the reasonable expectation that those batteries will be used in South Carolina and they are used in South Carolina." (R. p. 18.) It further alleges that LG knew consumers used its batteries in vaping devices and did nothing to stop sales for that purpose (R. p. 19 ¶¶ 10.d., 28); and that Fleming purchased the battery in South Carolina and was injured in South Carolina (R. p. 21 ¶ 20; R. p. 22 ¶ 31.) Those allegations, when taken as true, satisfy

minimum contacts under specific jurisdiction analysis. *See State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 90, 666 S.E.2d 218, 222–23 (2008).

The Court of Appeals further stated Fleming failed to plead facts supporting his "conclusory assertion that his claims were 'related' to the forum specific conduct by LG." (App. p.3.) That misstates the pleadings and misapplies the law. Relatedness requires "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1025 (2021) (internal quotation and alteration marks omitted). Specific jurisdiction attaches "when a company [] serves a market for a product in the forum State and the product malfunctions there." *Id*. at 1027. Fleming alleged precisely that: LG served the South Carolina market for lithium-ion batteries; its batteries entered South Carolina through commerce and ports; and one malfunctioned and injured a South Carolina resident here. (R. pp. 18-19, 21-22.) Because the claims are connected to LG's purposeful exploitation of the South Carolina market for lithium-ion batteries, the allegations satisfy relatedness.

### B. The Court of Appeals erred by Failing to Take the Allegations in a Light Most Favorable to Plaintiff.

The Court of Appeals accepted as true LG's factual assertion regarding the type and size of the substantial lithium-ion battery sales reflected in the import data of shipments of LG products through the Port of Charleston and to South Carolina businesses. (R. pp. 243-386; App. pp. 2-3.) This unfairly shifted the burden to Fleming at a pleading stage to disprove that those shipments included a specific size lithium-ion battery – a fact that should be immaterial where LG is actively availing itself of the South Carolina market for its lithium-ion batteries.

"When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). "[A] plaintiff is not required to assert he will be meritorious on personal jurisdiction; rather, he must demonstrate enough facts to support a prima facie showing." *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 152, 723 S.E.2d 835, 840 (Ct. App. 2012).

LG did not dispute that it manufactures 18650 lithium-ion cells. (R. p. 549.) The Import Data reflects repeated shipments of LG's lithium-ion batteries through the Port of Charleston. (R. pp. 243, 292–386.) The records identify shipments as "LITHIUM ION BATTERY," without limiting them to electric vehicle batteries or distinguishing between industrial and consumer configurations as the Court of Appeals did. At the prima facie stage, any ambiguity in those records must be resolved in Fleming's favor. *M.B. Kahn*, 354 S.C. at 415, 581 S.E.2d at 482. However, the Court of Appeals treated LG's characterization—that these shipments were "unrelated" to the battery at issue—as established fact. That conclusion draws inferences in LG's favor contrary to the governing standard. *See id.* The evidence shows that LG shipped lithium-ion batteries into South Carolina commerce. Fleming purchased an LG 18650 lithium-ion battery in South Carolina. That is not "unrelated business."

As this Court held in *State v. NV Sumatra Tobacco Trading Co.*, minimum contacts may be established "[r]egardless of how the [product] arrived in South Carolina." 379 S.C. 81, 90, 666 S.E.2d 218, 223 (2008). The focus is on whether the manufacturer purposefully served the forum market. LG did.[1] The Court of Appeals improperly adopted LG's argument that jurisdiction turns

[1] LG cannot plausibly claim it could not reasonably anticipate being haled into court here. As noted by Judge Hewitt, there have been a number of courts faced with this same issue. *See, e.g., Sullivan v. LG Chem, Ltd.*, 79 F.4th 651, 670 (6th Cir. 2023); *LG Chem Am., Inc. v. Morgan*,

on whether LG served a "consumer standalone market" for this battery configuration. There is no such requirement in due process jurisprudence. The analysis concerns the defendant's contacts with the forum, not how a third party ultimately marketed or sold the product. Overall, the allegations and the evidence shows that LG sells and ships lithium-ion batteries to South Carolina; LG knew that people are both selling and using its lithium-ion batteries with vaping devices; LG failed to take action to warn potential users against this use; Fleming purchased an LG18650 lithium-ion battery in South Carolina without any such warning; and he was badly hurt. "Regardless of how the [product] arrived in South Carolina, minimum contacts" can still be established by a defendant's "actions indicat[ing] that it purposely availed itself of conducting business." *NV Sumatra,* 379 S.C. at 90, 666 S.E.2d at 223 (finding specific jurisdiction where foreign manufacturer alleged it sold only to an independent reseller and did not actually ship or sell the product in the United States).

How LG specifically intended a specific size of a general category of product to be used is immaterial to the due process analysis. There is no precedent requiring consideration of a manufacturer's intended use of a product in our state's specific jurisdiction analysis. The analysis is the defendant's contacts with the forum state—not how the plaintiff or any third party uses the product in the state. LG does not dispute that it placed lithium-ion batteries into the stream of commerce and that its lithium-ion batteries regularly enter South Carolina. LG intended for its lithium-ion batteries to reach South Carolina consumers—whether inside or outside of a consumer

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670 S.W.3d 341, 343–44 (Tex. 2023); *Dilworth v. LG Chem, Ltd.*, 355 So. 3d 201, 210–11 (Miss. 2022); *LG Chem, Ltd. v. Lemmerman,* 361 Ga. App. 163, 863 S.E.2d 514 (2021); *see also Peters v. Samsung SDI Co.*, No. A25-0195, 2025 WL 2902144, at *1 (Minn. Ct. App. Oct. 13, 2025), review denied (Dec. 31, 2025). While some courts have come to a different conclusion, those exercising jurisdiction on similar facts to those herein are comfortable in doing so because the manufacturers are taking advantage of the state's business markets. That is sufficient for the companies to anticipate suit in the forum state for a consumer's unintended use of the products.

product. Why or how Fleming specifically obtained the battery is not relevant. As the United States Supreme Court stated, "jurisdiction in cases like these" should not "ride on the exact reasons for an individual plaintiff's purchase." *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1029 (2021).

## II. The Court of Appeals' Decision Conflicts with *Ford Motor Co. v. Montana Eighth Judicial District Court* by Requiring a Causal Link Between LG's In-State Conduct and the Specific Battery at Issue.

In *Ford Motor Co. v. Montana Eighth Judicial District Court*, the United States Supreme Court squarely rejected a "causation-only approach" to specific jurisdiction. 592 U.S. 351, 361–62 (2021). The Court held that "[n]one of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do." *Id*. at 362. Instead, due process requires that the plaintiff's claims "arise out of or relate to" the defendant's forum contacts, and the phrase "relate to" contemplates a broader affiliation among "the defendant, the forum, and the litigation." *Id*. at 360-62.

Ford argued that jurisdiction existed only if its conduct in the forum state had given rise to the plaintiffs' claims meaning Ford must have designed, manufactured, or sold in the forum the specific vehicle involved in the accident. *Id*. at 356. The Supreme Court rejected that position. Although the specific vehicles at issue were not originally sold in the forum states, jurisdiction was proper because Ford had "systematically served a market" in those states for the very vehicles alleged to have malfunctioned. *Id*. at 365. That "systematically serv[ing] a market" created the required relationship among the defendant, the forum, and the litigation. *Id*.

The Court of Appeals here adopted the causation-focused approach Ford rejected. It required Fleming to show that LG directed specific size lithium-ion batteries into South Carolina for the discrete purpose of selling the individual batteries to consumers as standalone batteries for

vaping devices. (App. pp.4–6.) The majority focused almost exclusively on what it described as a lack of evidence that LG "served a consumer standalone market" for 18650 batteries in South Carolina, while accepting whole cloth LG's argument that its in-state lithium-ion battery activities were "unrelated business." (App. p.4.) That framing imposes a strict causal nexus requirement: that for jurisdiction to be proper, LG's in-state conduct must have caused this particular battery to enter South Carolina for this particular use. But *Ford* expressly rejected the argument that a plaintiff must prove his claim "came about because of the defendant's in-state conduct." *Ford*, 592 U.S. at 362. The constitutional inquiry is not whether LG endorsed the downstream consumer configuration. It is whether LG systematically served a market in South Carolina for the product at issue and that that conduct is sufficiently related to the claimed injury.

The record reflects that LG manufactures lithium-ion batteries, including the 18650 size. (R. p. 549.) LG ships lithium-ion batteries through South Carolina ports. (R. pp. 243, 292–386.) LG transacts substantial lithium-ion battery business in South Carolina. (R. pp. 18–19.) LG does not deny distributing 18650 lithium-ion batteries into South Carolina commerce, it is careful to only deny distributing them for standalone consumer use. (R. pp. 37–38.) Fleming purchased an LG lithium-ion battery in South Carolina and was injured in South Carolina. (R. p. 21 ¶ 20; R. p. 22 ¶ 31.)

Under *Ford*, those facts establish the necessary relationship among LG, South Carolina, and this litigation. When "a corporation has continuously and deliberately exploited [a State's] market, it must reasonably anticipate being haled into [that State's] courts to defend actions based on products causing injury there." *Ford*, 592 U.S. at 364 (internal quotation omitted). The Court of Appeals' reliance on the role of "third-parties" in supplying Fleming with the battery (Slip op. at 4) does not change that analysis. The same was true in *Ford* because the vehicles at issue were

brought into the forums by third parties. *Id.* at 366. That did not defeat jurisdiction because Ford had systematically served the forum markets for the relevant vehicles.

Likewise here, LG's forum contacts do not become constitutionally irrelevant merely because intermediaries participated in the distribution chain. As this Court recognized in *NV Sumatra*, minimum contacts may exist "[r]egardless of how the [product] arrived in South Carolina" so long as the defendant's conduct made it reasonably foreseeable it could be haled into court here. 379 S.C. at 90, 666 S.E.2d at 223..

The Court of Appeals framed the issue far too narrowly: limiting the inquiry to whether LG served a standalone consumer market rather than asking whether LG's deliberate and substantial lithium-ion battery activities in South Carolina are sufficiently related to a claim that one of its lithium-ion batteries malfunctioned and injured a South Carolina resident here. By reinstating a causation-only requirement and demanding proof of product-specific, use-specific forum targeting, the Court of Appeals imposed a test that *Ford* has rejected. That conflict with controlling federal precedent warrants reversal and remand.

## III. The Decision Below Conflicts with *State v. NV Sumatra Tobacco Trading Co*., 379 S.C. 81, 666 S.E.2d 218 (2008).

The Court of Appeals held the stream-of-commerce theory of personal jurisdiction does not support jurisdiction over LG and agreed with the trial court that *State v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008), was factually distinguishable. (App. 5-6.) The Court of Appeals concluded that LG "did not design, manufacture, distribute, advertise, or sell the 18650 batteries as standalone, replaceable batteries for consumer use" and because the import evidence "only shows unrelated business activities," concluding that "any intermediary action that

allowed for the 18650 batteries to end up in South Carolina … was not on behalf of or authorized by LG." (*Id*.) However, this reasoning cannot be squared with this Court's decision in *Sumatra*.

### A. *Sumatra* does not make downstream authorization the touchstone of jurisdiction.

It was error for the Court of Appeals to conclude that LG's authorization of the product's downstream use decides whether there is specific jurisdiction. (App. pp.5-6.) That is not the rule of *Sumatra*.

In *Sumatra*, this Court upheld jurisdiction over a foreign cigarette manufacturer that manufactured a product, placed it into the stream of commerce, and knew it was being sold in South Carolina. 379 S.C. 81, 666 S.E.2d 218. There, the foreign cigarette manufacturer argued it sold its products abroad to an "independent reseller" and did not itself distribute cigarettes into the United States. *Id.* at 86, 666 S.E.2d at 220. In other words, the foreign manufacturer denied responsibility for the final steps in the distribution chain.

This Court nevertheless affirmed specific jurisdiction over the foreign manufacturer, holding that minimum contacts existed "as a whole and, via the stream of commerce theory" because Sumatra manufactured its product for the U.S. market, it was distributed to the U.S. and in South Carolina, and its brand was sold in South Carolina. *Id*. at 90, 666 S.E.2d at 222-23.

The constitutional inquiry turned on whether the defendant's own conduct and connection with South Carolina were such that it should reasonably anticipate being haled into court here. *Id*. at 89-90, 666 S.E.2d at 222. Nothing in *Sumatra* suggests jurisdiction should depend on whether the manufacturer authorized the final retail transaction or approved the ultimate consumer use; yet that is precisely the requirement imposed on Fleming. By concluding that jurisdiction fails unless LG "designed, marketed, or authorized the 18650 battery for standalone consumer resale," the

Court of Appeals is imposing a new jurisdictional requirement inconsistent with *Sumatra* and this Court's prior personal jurisdiction precedents.

### B. The Record Satisfies *Sumatra*'s Stream-of-Commerce Standard.

Under *Sumatra*, minimum contacts exist when a manufacturer produces goods for the U.S. market and its own conduct demonstrates that those goods are sold in South Carolina in sufficient quantity that it should reasonably anticipate suit here. 379 S.C. at 89-90, 666 S.E.2d at 222-23. Fleming has satisfied that standard. LG manufactures lithium-ion batteries, including 18650 models, for the U.S. market. (R. p. 549.) It distributes lithium-ion batteries through its distribution chain into U.S. commerce and repeatedly shipped "LITHIUM ION BATTERY" products to South Carolina businesses through the Port of Charleston. (R. pp. 184-243, 292-386; *see* R. p. 243.) LG does not deny that its lithium-ion batteries entered South Carolina commerce, nor does it deny knowledge that its batteries were being used in this manner prior to Fleming's injury. (R. p. 19.)

LG denies serving a standalone consumer battery market and reasoned that any resale into South Carolina was the "unilateral" action of third parties. (App. pp.5-6.) But *Sumatra* expressly held minimum contacts existed "[r]egardless of how the [product] arrived in South Carolina." 379 S.C. at 90, 666 S.E.2d at 223. The constitutional focus is on the defendant's exploitation of the forum's marketplace, some affiliation or relatedness between that conduct and the injury, and whether under the circumstances it is fair to the defendant to defend suit in the forum. *See id.* Where, as here, a manufacturer intentionally targets the South Carolina market with its lithium-ion batteries, conducts business here, and reaps the benefit of those contacts it should not be allowed to avoid jurisdiction for claims related to the product simply because some other entity ultimately got it and sold it to Fleming. This is particularly true here where a key allegation of

Fleming's negligence cause of action is that LG is failing to take action to warn him (and others in the forums LG is targeting) against using its lithium-ion batteries in vaping devices.

By requiring proof that LG authorized standalone consumer sales of the 18650 batteries, the panel transformed an intended-use defense into a jurisdictional barrier and narrowed the stream-of-commerce doctrine beyond what *Sumatra* permits. Whether downstream sellers or consumers used the batteries outside LG's specific design intent may bear on liability; it does not defeat jurisdiction where LG's own conduct with respect to lithium ion batteries purposefully targeted South Carolina.

Properly applied, *Sumatra* compels the conclusion that LG should reasonably anticipate being haled into court here. The decision below conflicts with controlling precedent and should be reversed.

## IV. The Court of Appeals Erred in Failing to Analyze the Fairness Prong of the Due Process Test.

For the reasons discussed *infra*, Fleming satisfies the "power" prong of the specific-jurisdiction analysis. The Court of Appeals nevertheless declined to meaningfully analyze the "fairness" prong after concluding the power prong was not met. (App. p.6.) That was error. Even if minimum contacts were debatable—which they are not—the fairness factors strongly favor jurisdiction here. Under the fairness prong the following factors must be considered: "(1) the duration of the defendant's activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties; and (4) the State's interest in exercising jurisdiction." *Cribb v. Spatholt*, 382 S.C. 490, 500, 676 S.E.2d 714, 719 (Ct. App. 2009). Each factor supports the exercise of jurisdiction over LG.

### A. Duration of LG's Activity in South Carolina.

LG does not dispute that its products enter South Carolina commerce and that it engages in substantial battery-related activity connected to South Carolina. *See, e.g.,* (R. pp. 184-243, 292-386; *see* R. p. 243) (records identifying repeated shipments of "LITHIUM ION BATTERY" through the Port of Charleston). In addition, LG's wholly owned U.S. subsidiary, LG Chem America, is authorized to transact business in South Carolina. (R. p. 244.) These facts establish sustained and deliberate forum-related activity, not a single fortuitous contact. LG also has litigated and defended similar claims in South Carolina. (R. p. 20; *see also* R. pp. 248-70.)

**B. Character and Circumstances of LG's Acts.**

LG's forum-related conduct is not random or attenuated. The record reflects repeated shipments of lithium-ion battery products through South Carolina ports and into South Carolina commerce. (R. pp. 184–243, 292–386.) Fleming's claims arise from an LG lithium-ion battery purchased and used in South Carolina that injured a South Carolina resident in South Carolina. (R. p. 21 ¶ 20; R. p. 22 ¶ 31.) These circumstances place the dispute squarely within South Carolina's regulatory and adjudicative interests.

**C. Inconvenience to the Parties.**

Forcing Fleming to litigate abroad would effectively deny him meaningful relief. Due process does not require a South Carolina citizen to go overseas to pursue a foreign manufacturer for injuries sustained here by one of their products. Judge Hewitt recognized in his dissent that "South Carolina has a strong interest in adjudicating the claim of a South Carolina plaintiff who purchased a product in South Carolina and was injured in South Carolina." (App. p.7.) It would not be constitutionally unfair or practically burdensome to require LG to defend this action in South Carolina, especially when it is already doing so in other cases. (R. p. 20; *see also* R. pp. 248-70.) Further, LG is a global manufacturer that conducts substantial U.S. business and ships

products into and through South Carolina. (R. p. 244; R. pp. 184-243, 292-386.). By contrast, forcing Fleming to litigate abroad would be profoundly inconvenient and would effectively deny meaningful relief for injuries that occurred entirely within South Carolina.

**D. South Carolina's Interest in Exercising Jurisdiction.**

South Carolina has a substantial interest in providing a forum for its citizens injured here by products sold and used here, and in regulating defective products that enter its markets. Fleming is a South Carolina resident injured in South Carolina by a product purchased in South Carolina. (R. p. 21 ¶ 20; R. p. 22 ¶ 31.) As Judge Hewitt recognized, "South Carolina has a strong interest in adjudicating the claim of a South Carolina plaintiff who purchased a product in South Carolina and was injured in South Carolina." (App. p.7.) That is a core federalism principle underlying specific jurisdiction and further confirms that exercising jurisdiction here comports with "fair play and substantial justice."

Exercising jurisdiction in South Carolina promotes efficient resolution of a dispute centered in South Carolina—where the plaintiff resides, where the product was purchased and used, and where the injury occurred. It also advances the fundamental due-process principle that a manufacturer that deliberately exploits a forum's market should reasonably anticipate being haled into court there when its product causes injury in that forum. Accordingly, even apart from the clear satisfaction of the power prong, the fairness prong is easily met. The decision below should be reversed.

## CONCLUSION

LG manufactures lithium-ion batteries for the U.S. market. LG deliberately ships lithium-ion batteries into and through South Carolina commerce. A South Carolina resident purchased an LG battery in South Carolina, used it in South Carolina, and was injured in South Carolina when

it malfunctioned. Under *Ford*, *Sumatra*, and this Court's precedent, those facts establish specific personal jurisdiction. The Court of Appeals imposed a product-specific, intended-use targeting requirement that neither due process nor this Court's jurisprudence demands. Because that rule conflicts with controlling precedent and fundamental constitutional principles, the decision below should be reversed. Fleming respectfully requests that this Court reverse the judgment of the Court of Appeals and remand this case so his claims may proceed in South Carolina's courts.

Most respectfully,

**RICHARDSON THOMAS, LLC**

By: *s/Chris Moore*
Chris Moore (SCB: 77934)
383 W. Cheves Street
Florence, SC 29501
T: 843.307.9509
chris@richardsonthomas.com

Grace B. Sturman (SCB: 105714)
1513 Hampton Street
Columbia, SC 29201
T: 803.281.8150
grace@richardsonthomas.com

**SMITH & GRIFFITH LLP**

John Griffith (SCB: 6729)
1102 North Main Street
Anderson, South Carolina 29621
T: 864.222.2293
john@griffithlawyer.com

*Attorneys for Petitioner Reid Fleming*