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May 04 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Appellate Case No. 2025-002086

Reid Fleming, ... Petitioner-Appellant,

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.

PETITIONER'S REPLY BRIEF

TABLE OF AUTHORITIES

Cases

INTRODUCTION

LG Chem admits it manufactured lithium-ion batteries, including batteries like the one at issue, admits it distributed those cells in the stream of commerce through and to South Carolina, and admits that at least "one shipment" of lithium-ion batteries reached South Carolina to be purchased and used by a car manufacturer in South Carolina prior to Petitioner's injury. Respondent's Brief at 6, 19. The import records in the appendix show more: LG Chem entities consigned repeated, direct shipments of "lithium-ion batteries," "lithium polymer batteries," "battery packs," and myriad other products into South Carolina ports over a multi-year period. These include substantial lithium-ion battery shipments to S.C. manufacturers: some to Volvo's Ridgeville plant beginning approximately one month before Petitioner's injury (App'x at 436, 468-69), and to BMW's Upstate facilities (App'x at 468). Most tellingly, LG Chem does not dispute it serves this market with its lithium-ion batteries. LG Chem just says it does not intend for the batteries to be sold as a standalone consumer product or for e-cigarettes, arguing that "unidentified third parties acting without LG Chem's authorization, diverted 18650 lithium-ion battery cell to a consumer vaping market, leading to Petitioner's ultimate purchase from a South Carolina vape store." Respondent's Brief at 11-12.

Petitioner specifically alleged as a standalone negligence claim that LG Chem knew this was happening and yet failed to maintain control over its distribution channels. (App'x 24-26). LG Chem's acknowledgment of this "diversion" is not a defense to jurisdiction when it admittedly serves a market for lithium-ion battery products in this state. Drawing all reasonable evidentiary inferences in plaintiff's favor here, even just one pre-injury lithium-ion battery shipment should suffice to support the exercise of personal jurisdiction.

The only question that remains is whether a foreign manufacturer can flood a state's market with its products, profit from that market, and then escape that state's courts when one of its

products injures a resident simply by claiming it did not intend the ultimate use of the product. The Court of Appeals accepted LG Chem's argument, effectively holding that a foreign manufacturer may place its product into the stream of commerce, allow it to reach South Carolina, and injure a South Carolina citizen, yet still avoid jurisdiction so long as it did not "authorize" the product's downstream use. That is not the law of *Ford*, *Sumatra*, or the Due Process Clause. Worse, it leaves Mr. Fleming, a South Carolina citizen, with no forum to address his injury save for South Korea. Finally, this restrictive view of jurisdiction is not, as LG Chem would have this Court believe, the consensus view of courts confronting this question.

I. This case presents a question that has divided courts nationwide and Respondent's "Overwhelming Authority" argument is misleading.

LG Chem characterizes the federal authority as an "overwhelming weight" favoring its position. Resp. Br. at 13–14, 30–31. That characterization is not a fair assessment of the existing precedents. The question whether a manufacturer that sells a product into a State may evade jurisdiction by claiming to have intended only certain customers or uses within that State has produced a deep, acknowledged, and worsening split among federal and state appellate courts. The dissent below recognized as much. Op. at 7 (Hewitt, J., dissenting) ("[T]his issue is dividing courts around the country").

A. The split is now 5–5 among appellate courts.

Five appellate courts have rejected the so-called "different-markets" theory that LG Chem urges here: the theory that a manufacturer's in-state contacts can be sliced into submarkets defined by intended customers or uses, with relatedness assessed only against the submarket the plaintiff occupied. Those cases are:

- *Sullivan v. LG Chem, Ltd.*, 79 F.4th 651, 672 (6th Cir. 2023) (rejecting LG Chem's submarket theory as a "disguise[d]" causation requirement that *Ford* had foreclosed);

- *LG Chem America, Inc. v. Morgan*, 670 S.W.3d 341, 348–49 (Tex. 2023) (unanimous Texas Supreme Court decision rejecting the "proposed granulation of the forum" into "distinct market segments");
- *Dilworth v. LG Chem, Ltd.*, 355 So. 3d 201, 207–08 (Miss. 2022) (unanimous Mississippi Supreme Court decision holding that misuse-by-third-parties "may be a valid merits defense, [but] is not an argument that defeats . . . personal jurisdiction");
- *Peters v. Samsung SDI Co.*, 2025 WL 2902144, at *8 & n.11 (Minn. Ct. App. Oct. 13, 2025), *review denied* (Dec. 31, 2025) (rejecting the different-markets theory as "inconsistent with United States Supreme Court precedent"); and
- *LG Chem, Ltd. v. Lemmerman*, 863 S.E.2d 514, 523–24 (Ga. Ct. App. 2021) (rejecting the theory; "[w]hether there was an unforeseeable misuse of the product . . . goes to the substantive merits," not jurisdiction).

On the other side, five appellate courts have accepted the different-markets theory: the Fifth, Seventh, and Ninth Circuits, and the Nevada Supreme Court and California Court of Appeal. *See B.D. ex rel. Myers v. Samsung SDI Co.*, 143 F.4th 757 (7th Cir. 2025); *Ethridge v. Samsung SDI Co.*, 163 F.4th 136 (5th Cir. 2025); *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496 (9th Cir. 2023); *Franceschi v. LG Chem, Ltd.*, 580 P.3d 1279 (Nev. 2025); *LG Chem, Ltd. v. Superior Ct.*, 295 Cal. Rptr. 3d 661 (Cal. Ct. App. 2022).

That is a 5–5 split among appellate courts on the very question presented in this case. It is not, as LG Chem suggests, an outlier-versus-consensus situation. And the split is not stable: the Fifth Circuit panel that decided *Ethridge v. Samsung SDI Co., Ltd.*, 163 F.4th 136 (5th Cir. 2025) originally *rejected* the different-markets theory before reversing itself on rehearing in light of the Seventh Circuit's *Myers* decision, and the *en banc* vote on rehearing was 11–5—meaning five

active Fifth Circuit judges thought the panel's revised decision warranted full-court review. *Ethridge*, 163 F.4th at 137.

This split is now squarely before the United States Supreme Court. On March 16, 2026, the petitioner in *Ethridge* filed a petition for writ of certiorari presenting the very question at issue here. Significantly, the respondent in *Ethridge*, Samsung SDI, does not oppose certiorari. Samsung has affirmatively requested that the Supreme Court grant review and consolidate *Ethridge* with its petition for writ of certiorari in *Peters v. Samsung SDI Co.*, No. A25-0195, 2025 WL 2902144 (Minn. Ct. App. Oct. 13, 2025), *review denied* (Dec. 31, 2025). When both parties to a federal case agree the Supreme Court should grant certiorari, the prospect of review is meaningfully heightened. The petitions are scheduled to be conferenced May 14, 2026, and a decision on the petition is imminent.

The *Ethridge* and *Peters* evidentiary records are materially indistinguishable from this one. Both involve Korean manufacturers of lithium-ion batteries. Both involve forum residents injured in the forum by a battery purchased for use in an e-cigarette. Both manufacturers defend on the ground that they sold their batteries only to industrial customers and not for consumer standalone use. The constitutional question presented is identical.

Three considerations counsel against this Court adopting LG Chem's position now. *First*, LG Chem's characterization of the authority as overwhelmingly favorable to its position is, at best, outdated. The post-*Ford* caselaw is sharply divided, with persuasive opinions from the Sixth Circuit and the Texas, Mississippi, Minnesota, and Georgia appellate courts cutting strongly against LG Chem. *Second*, the United States Supreme Court is likely to grant review and resolve the question in the very near term. *Third*, in any event, this Court need not wait. The reasoning of *Sullivan*, *Morgan*, *Dilworth*, *Peters*, and *Lemmerman* is more faithful to *Ford*, to this Court's

decision in *Sumatra*, and to the Due Process Clause's focus on the forum State as a whole.

II. The Court of Appeals improperly resolved disputed facts in LG Chem's favor.

LG Chem repeatedly claims "undisputed facts" foreclose personal jurisdiction in this case because LG Chem has business activities in South Carolina unrelated to Petitioner's claims. *See e.g.* Respondent's Brief at 11-13. Ultimately, this argument is premised on contested facts and inferences which the Court of Appeals failed to resolve in the Petitioner's favor. LG Chem's admission that at least one shipment of lithium-ion batteries entered South Carolina prior to the injury is sufficient to support personal jurisdiction. This remains true despite its affiant's assertion that the batteries were not 18650 size, as LG Chem does not dispute that the shipment contained lithium-ion batteries.

Mr. Lee's reply affidavit states that the pre-incident shipment of "lithium-ion battery" to Volvo in Ridgeville was not an 18650, but it does not identify the type of cell that *was* included in that shipment. (App'x 385, ¶ 10). The affidavit does not address the post-incident shipments at all—including the multi-year series of "battery pack," "lithium-ion battery," and "lithium polymer battery" shipments from LG Chem to Volvo Ridgeville, and the later "lithium-ion battery" shipments from LG Chem to BMW. Mr. Lee's broader denials are carefully framed: he attests that LG Chem did not authorize *consumer-standalone* 18650 sales for vaping or other purposes. (App'x 147–148, ¶¶ 16–21). He specifically does not attest that no lithium ion batteries reached South Carolina through LG Chem's customers. The record thus leaves significant evidentiary space that, at the prima facie stage, must be resolved in Petitioner's favor. By resolving the evidentiary inferences against Petitioner, the Court of Appeals committed error.

The full record is even stronger. LG Chem's own pattern of conduct shows a multi-year history of directly serving the South Carolina market with its products, even registering its wholly

owned subsidiary to do business here. That is a quintessential "veritable truckload" of forum-related contacts, *Ford*, 592 U.S. at 371—not the absence of contact LG Chem describes.

III. *Sumatra* confirms that LG Chem's conduct, not its preferred authorization scheme, controls the jurisdictional analysis.

Respondent LG Chem relies on *Sumatra* for the proposition that jurisdiction turns on a defendant's conduct. Respondent's Brief at 31 (citing *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008)). That is correct, and that principle defeats Respondent's position. LG Chem admits it manufactured and shipped lithium-ion batteries into distribution channels serving South Carolina. That conduct satisfies *Sumatra*. Having placed its product into the stream of commerce serving this forum, LG Chem "should reasonably anticipate being haled into court" here. *Sumatra*, 379 S.C. at 89, 666 S.E.2d at 222.

Neither *Cockrell* (as cited by LG Chem) nor *Sumatra* conditions jurisdiction on how a defendant prefers its product to be used, nor does it allow a defendant to escape jurisdiction because its product reached the forum through intermediaries, third parties, or was used in a manner that LG Chem did not authorize. *Id.*; *Cockrell v. Hillerich & Bradsby Co*., 363 S.C. 485, 611 S.E.2d 505, (S.C. 2005). Further *Cockrell* is entirely distinguishable from the claims to the parties. In this case, the focus is on what this foreign manufacturer, LG Chem did, not what it later claims it intended. LG Chem placed the same product that injured Petitioner into the stream of commerce with the intent to serve the South Carolina market, and it did. LG Chem has minimum contacts with South Carolina that relate to the claims asserted by Petitioner such that LG Chem has purposefully availed itself of conducting business in South Carolina "should reasonably anticipate being haled into court" here. *Sumatra*, 379 S.C. at 89, 666 S.E.2d at 222.

IV. The Court of Appeals misapplied *Ford* by Imposing an Improperly Narrow, Product-Specific Requirement.

The Court of Appeals imposed an improperly narrow, product-specific requirement that is inconsistent with *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351 (2021). It required proof that LG Chem specifically directed the exact product, for the exact use, into South Carolina. But *Ford* rejected that very theory. The proper inquiry is whether LG Chem served a market in South Carolina for the product that caused the injury—not whether it authorized the precise downstream use. By requiring proof of "standalone consumer battery" distribution, the Court of Appeals adopted a heightened standard that due process does not require.

Ford established the following rule: "When a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit." *Ford*, 592 U.S. at 355. *Ford's* rule captures all three parts of the minimum contacts test: When a company "serves a market for a product in a State," it has purposefully availed itself of the privilege of conducting activities there. *Id*. When "that product causes injury in the State to one of its residents," *id*., "there is a strong relationship among the defendant, the forum, and the litigation—the essential foundation of specific jurisdiction." *Id*. at 353. And when the defendant does "substantial business in the State," the exercise of jurisdiction is "reasonable" because it "treats [the defendant] fairly." *Id*. at 355, 367-68. The Court in *Ford* made clear that this rule is satisfied even if the specific product that injured the plaintiff had been originally sold by the defendant "outside the forum State[], with [a third party] later selling [it] to the State['s] resident[]." *Id*. at 366.

The Court of Appeals' analysis cannot be reconciled with that framework. By requiring proof that LG Chem marketed or sold the precise product for the precise end use at issue, it effectively imposed a "perfect match" requirement that *Ford* expressly rejected. The relevant inquiry is not whether LG Chem authorized the battery's ultimate use, but whether LG Chem

served a market in South Carolina for the type of product that caused the injury. The record establishes that it did. LG Chem manufactures lithium-ion batteries, targets the United States market, ships battery products through the Port of Charleston to South Carolina businesses, and distributes those products through its U.S. subsidiary responsible for marketing and sales through national channels. (App'x 74–76).

LG Chem has long known that its batteries are sold to and used by consumers, including in vaping devices. *Id*. Mr. Fleming purchased an LG battery in South Carolina, used it in South Carolina, and was injured in South Carolina. Those facts establish "a strong relationship among the defendant, the forum, and the litigation—the essential foundation of specific jurisdiction." *Ford*, 592 U.S. at 353. Due Process requires no more.

The relevant inquiry is not whether LG Chem preferred its batteries to be used in a particular way. It is whether LG Chem served the market for those batteries in South Carolina and whether those batteries caused injury here. Both are true. The Court of Appeals' contrary conclusion reflects a misapplication of *Ford* and must be reversed.

V. The Court of Appeals Erred in Declining to Meaningfully Address the Fairness Prong.

The Court of Appeals declined to address the fairness prong, concluding that because LG Chem lacked minimum contacts, it "need not reach" whether the exercise of jurisdiction is fair. Op. at 6. This was error. Once LG Chem's admitted contacts are properly considered, its shipment of lithium-ion battery cells into South Carolina and its placement of those products into distribution channels serving this State, the fairness inquiry becomes necessary, straightforward, and it strongly favors jurisdiction.

South Carolina has a compelling interest in providing a forum for its residents injured within its borders. Petitioner Fleming purchased the battery in South Carolina, used it in South

Carolina, and was injured in South Carolina. That interest is at its apex here.

The burden on LG Chem is minimal. LG Chem is a global manufacturer that conducts substantial business throughout the United States, including shipping products into South Carolina and distributing them through its U.S. subsidiary. (App'x 26). Having chosen to serve this market, LG Chem cannot credibly claim that defending a lawsuit here is unfair.

By contrast, the rule adopted below would leave South Carolina residents without a meaningful forum whenever a foreign manufacturer disclaims "authorization" of downstream uses of its product. That result would undermine, not promote, the "traditional notions of fair play and substantial justice" that due process is meant to protect. Because the Court of Appeals' refusal to engage in the fairness analysis flowed from its erroneous minimum-contacts ruling, that error independently warrants reversal.

CONCLUSION

For these reasons and those other reasons appearing in the record and in the briefing, Petitioner Reid Fleming respectfully requests that this Court reverse the decision below and hold that South Carolina courts may exercise jurisdiction over LG Chem, or, in the alternative, stay or defer consideration of this matter pending the United States Supreme Court's determination of whether to grant certiorari on this same jurisdictional question in *Ethridge v. Samsung SDI Co.*, 163 F.4th 136 (5th Cir. 2025), the resolution of which is likely to provide controlling guidance on this issue.

Respectfully submitted,

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May 4, 2026