UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF FLORIDA
PINELLAS DIVISION

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| Sammy Adams,<br><br>*Plaintiff*,<br><br>v.<br><br>Xtreme, S.A., and Sports.com Inc.,<br><br>*Defendants*. | Civil Action No: A-11-CA-2536—CHR<br><br>**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION TO REMAND,**<br>&<br>**PLAINTIFF'S BRIEF IN OPPOSITION OF DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** |

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## STATEMENT OF JURISDICTION

I. Subject-matter jurisdiction is not proper in this case. Diversity jurisdiction rests when all plaintiffs are citizens of different states than all defendants. 28 U.S.C. § 1332; see also Strawbridge v. Curtis, 7 U.S. 267 (1806). As a result, a defendant may only remove a civil action brought in a State court when the district courts of the United States have original jurisdiction. 28 U.S.C. § 1441(a) (2006). Finally, if at any time the district court lacks subject-matter jurisdiction, the case shall be remanded. 28 U.S.C. § 1447(c). But, this Court improperly removed this case because the action originally could not have been filed in federal court. Id. Here, Sammy Adams ("Adams"), a Stetland resident brought this action in Stetland state court against Sports.com and Xtreme, S.A., ("Xtreme"). Sports.com and Adams are both citizens of Stetland. Adams has alleged a viable state-law claim against Sports.com; thus, each proper party in this case is not completely diverse from the others. Because the parties are not diverse, this Court inappropriately granted removal because subject-matter jurisdiction is improper.

II. Personal jurisdiction over Xtreme is proper under Federal Rules of Civil Procedure 4(k). This Court has personal jurisdiction over any defendant who is subject to personal jurisdiction in the State where the district court is located. Fed. R. Civ. P. 4(k)(1)(a).

## QUESTIONS PRESENTED

I. Did this Court improperly remove a products-liability action when a man crippled by a defective safety harness alleged a cognizable state-law claim against a local retailer whose joinder in the action destroyed the complete diversity of the parties to the lawsuit?

II. Is personal jurisdiction proper over a foreign manufacturer where the manufacturer purposefully directs Internet activities into the forum State and systematically contracts with a forum distributor?

## STATEMENT OF THE FACTS

Plaintiff Adams, a citizen of Stetland, brought this action on July 1, 2011 to recover for the severe and permanent injuries he suffered when Defendants' SkyNet safety harness ripped open and caused him to plummet off the face of the highest mountain in Texas. (Compl. ¶ 1 July 1, 2011.) Defendant Xtreme, a corporation incorporated and having its principle place of business in Switzerland, manufactures and markets the SkyNet harness. (Lukas Aff. ¶ 3 July 21, 2011). Xtreme's authorized Stetland distributor, Defendant Sports.com, a corporation incorporated in Stetland and having its principle place of business in Texas, marketed and sold the harness to Adams. (Compl. ¶ 4.)

Xtreme and Sports.com induced Adams to buy the SkyNet harness by representing on both of their websites that the new features of the product made it safer than other climbing harnesses. (Compl. ¶ 8.) Adams found Xtreme's website after he clicked on Xtreme's interactive pop-up advertisement. (Pl.'s Aff. ¶ 5 August 5, 2011.) Xtreme's website prompted Adams information, and when Adams responded, the website linked him to Sports.com so he could buy Xtreme's product. (Id.) Since both websites assured Adams the harness was "safe for [his] intended use," Adams bought the harness from Sports.com's website. (Id. at 6-7.) While climbing in Texas, the SkyNet harness failed, nearly costing Adams his life. (Id. at 9.)

Adams alleges Xtreme and Sports.com are strictly liable under the Restatement (Second) of Torts § 402A (1965). (Compl. ¶ 14.) After Xtreme removed the case to federal court, Adams filed a timely Motion to Remand on August 5, 2011, alleging this Court lacks subject-matter diversity due to the presence of Sports.com, a Stetland resident. (Order 1.) On August 12, 2011, this Court ordered that both parties inform the Court of the appropriate standards that should be used to rule on the pending challenges to subject-matter and personal jurisdiction. (Order 3.)

## SUMMARY OF THE ARGUMENT

This Court should grant Adams's motion to remand. Xtreme improperly removed this action on the grounds that Adams fraudulently joined Sports.com. Fraudulent joinder claims have always been settled by the reasonableness and plausibility of the plaintiff's claim against the local defendant, never solely by a 12(b)(6)[1] motion to dismiss analysis or alternately a summary judgment inquiry. We urge this Court to maintain this reasonable standard for fraudulent joinder claims to reflect the standard articulated by the Supreme Court that fraudulent joinder is a limited exception to the diversity of citizenship requirement. Here, Adams has maintained a reasonable cause of action on the face of the pleadings. But, even if this Court goes beyond the pleadings, Adams has brought this claim in

[1] Fed. R. Civ. P. 12(b)(6).

good faith and has joined Sports.com purely to preserve a means of recovery if personal jurisdiction is not upheld over Xtreme. Therefore, this Court must remand this action because Adams maintains a reasonable claim against Sports.com rendering subject-matter jurisdiction improper.

This Court should deny Defendant's motion to dismiss for lack of personal jurisdiction because Xtreme availed itself of the benefits of the forum state. Xtreme's Internet contacts were sufficiently interactive to uphold jurisdiction, but they were also purposefully directed at Stetland. In other words, Xtreme linked its interactive website with the website of a Stetland distributor, Sports.com, in order to reap the economic benefits of sales within the forum. Further, Xtreme purposefully directed activities into Stetland by maintaining a systematic contractual relationship with Sports.com. This relationship provides actual notice to Xtreme that it could be subject to specific jurisdiction in Stetland. Finally, requiring Xtreme to defend this products-liability suit, in the very forum in which its distributor resides, aligns with any meaning of "fair play and substantial justice."

## ARGUMENT

Three factors determine which motion to adjudicate first: (1) the complexity of the subject-matter jurisdiction raised by the case, (2) federalism concerns, and (3) the resulting judicial economy of hearing a motion to dismiss for lack of personal jurisdiction before a motion to remand for lack of subject-matter jurisdiction. See Alpine View Co. Ltd. v. Atlas Copco AB, 205 F.3d 208, 213-14 (5th Cir. 2000). Ultimately, if a subject-matter jurisdiction question is easily resolved, then a district court will ordinarily conclude that federalism concerns tip the scales in favor of initially ruling on a motion to remand. See Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 586 (1999).

Here, Adams's motion to remand for lack of subject-matter jurisdiction should be heard first because Xtreme's fraudulent joinder claim is not complex. The merits of Xtreme's fraudulent joinder claim are more easily resolved then the pending personal jurisdiction question. For personal jurisdiction purposes, both parties will be required to conduct extensive jurisdictional discovery given the lack of controlling precedent as applied to Internet contacts. These discovery costs offset any possible efficiency of dismissing a potentially wrongful party at the earliest possible time in the proceedings. Finally, waiting to adjudicate subject-matter jurisdiction question would violate our principles of federalism because this Court would ignore Stetland's interest in providing redress for Adams, a Stetland

resident, when a local distributor sells a defective product within the State. Therefore, this Court must first turn to Adams's pending motion to remand for lack of subject-matter jurisdiction.

## I. THIS COURT'S ASSERTION OF SUBJECT-MATTER JURISDICTION IS IMPROPER BECAUSE THE PARTIES ARE NOT DIVERSE.

Fraudulent joinder is a very limited common law exception that allows courts to ignore the complete diversity requirement of subject-matter jurisdiction. Fraudulent joinder occurs in two instances: when the plaintiff is unable to establish a claim against the local defendant in state court, or when there has been outright fraud in alleging jurisdictional facts. See, e.g., Smallwood v. Ill. Cent. R.R. Co., 385 F.3d 568 (5th Cir. 2004). A removing defendant must prove fraudulent joinder by clear and convincing evidence. See, e.g., Whitaker v. Am. Telecasting, Inc., 261 F.3d 196, 207 (2d Cir. 2001). Any disputed questions of fact and unresolved questions of controlling state law must be decided in the plaintiff's favor, Travis v. Irby, 326 F.3d 644, 649 (5th Cir. 2003), and there is a heavy presumption against fraudulent joinder. Hamilton Materials, Inc. v. Dow Chem. Corp., 494 F.3d 1203, 1206 (9th Cir. 2007).

Fraudulent joinder's common law origins have always applied a reasonableness approach to determine whether a plaintiff has maintained a cause of action on the pleadings or through evidence introduced beyond the pleadings.

Looking at the circumstances of the facts pled and the reasonableness of the cause of action grants federal courts discretion to control the reach of their limited jurisdiction. However, since the Supreme Court opined elevated pleading standards of Twombly[2] and Iqbal,[3] some circuits have incorrectly used these opinions to analyze fraudulent joinder claims instead of using them for their intended purpose—to analzyze a plaintiff has stated a claim on the face of the complaint. See, e.g., Askew v. DC Medical, LLC, No. 1:11–cv–1245–WSD (N.D. Ga. May 12, 2011).

Generally, courts determine the merits of a fraudulent joinder claim in one of two ways. Some courts only analyze the face of the complaint to determine whether a plaintiff has stated a claim. See Whitaker, 261 F.3d at 207. Other courts conduct a summary inquiry and consider summary judgment-type evidence viewing all unchallenged factual allegations in the light most favorable to the plaintiff. Travis, 326 F.3d at 648-49. However, "proper joinder for jurisdictional purposes is a lower bar than would be required for a claim to survive a motion to dismiss or a motion for summary judgment." Slater v. Hoffman-La Roche Inc., 771 F. Supp. 2d 524, 527 (E.D. Pa. 2011). Today, this Court should confine its analysis solely to the face of the complaint to conclude that Adams has stated a claim against Sports.com, and thus removal was not proper.

[2] Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007).
[3] Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009).

### A. Looking only at the pleadings, Adams has pled a valid claim against Sports.com and Xtreme cannot prove the heavy burden of fraudulent joinder.

This court should conduct a pleadings-only analysis to refrain from adjudicating the merits of the claim before subject-matter jurisdiction has been established. See Boyer v. Snap-on Tools Corp., 913 F.2d 108, 112 (3d Cir. 1990). As the Supreme Court explained in Iqbal, determining the plausibility of a claim is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." 129 S.Ct. at 1950. By considering whether the plaintiff intended to pursue the defendant, whether state law recognizes the cause of action, and whether the state court petition has alleged sufficient facts, federal courts apply a common-sense reasonableness approach to adjudicate fraudulent joinder claims. See, e.g., Escuadra v. Geovera Specialty Ins. Co., 739 F. Supp. 2d 967, 976 (E.D. Tex. 2010). These three factors are not dispositive to this inquiry; however, they are guidance for this Court in applying the reasonableness standard.

#### 1. Adams intended to pursue Sports.com on a recognized theory of recovery.

To determine whether a plaintiff actively intended to pursue the joined local defendant, this Court should consider three factors: (1) whether the defendant is only minimally mentioned, (2) whether any actionable facts or causes of action are specifically alleged against the defendant, and (3) whether the defendant was ever served. See Griggs v. State Farm Lloyds, 181 F.3d 694, 699 (5th Cir. 1999).

Here, Adams specifically pled Sports.com as a defendant in this action. (Compl. ¶ 4.) In addition, Adams has pled that Sports.com made similar safety assurances as Xtreme, which induced Adams to purchase the supposed safer harness for a hiking expedition. (Compl. ¶ 8.) Sports.com's marketing and distribution capabilities are the *sin qua non* for this entire cause of action. But for Sports.com, Adams would have never purchased the SkyNet safety harness; thus, Adams had every intention of pursuing the local retailer for retailing a defective safety harness. Further, the record is silent, and thus we presume that service was proper on Sports.com. Given the totality of these factors, Xtreme cannot carry its burden in proving that Sports.com is a minimal party.

**2. Adams stated a cognizable cause of action on the face of the complaint.**

If a plaintiff cannot recover from an in-state defendant because the asserted claim is not valid under state law, the defendant is fraudulently joined. See, e.g., Gray v. Beverly Enters.-Miss., Inc., 390 F.3d 400, 405 (5th Cir. 2004). The Gray court explained that if state law does not recognize the pleaded cause of action, there is no reasonable possibility of recovery and remand should be denied. Id.

Adams has pled that both Sports.com and Xtreme are strictly liable for the design, production, and/or marketing of the Skynet safety harness. (Compl. ¶ 14.) While section 82.003 of the Texas Civil Practice and Remedies Code has limited the reach of 402A, the Restatement is still a recognized theory of liability for

pleading purposes according to Texas state law. See, e.g., Romo v. Ford Motor Co., Civil Action No. B–10–66, 2011 WL 2836315, at *3 (S.D. Tex. June 24, 2011) (sustaining a cause of action against a distributor when the plaintiff pled, in part, that the distributor should be liable for a failure to warn). Because 402A has not been expressly overruled by section 82.003,[4] Adams has maintained a cognizable cause of action according to Texas state law.

### 3. Adams stated enough facts to impute liability to Sports.com.

The Ninth Circuit correctly interpreted the necessary factual fit necessary stating that, "any doubts concerning the sufficiency of a cause of action due to … technically defective pleadings must be resolved in favor of remand." Aaron v. Merck & Co., Inc., No. CV 05-4073-JFW (MANx), 2005 WL 5792361, at *5 (C.D. Cal. July 26, 2005); see also Katz v. Costa Armatori, S.p.A., 718 F. Supp. 1508, 1515 n.8 (S.D. Fla. 1989) ("If a defect in the cause of action is merely technical such that an amendment normally would be allowed, then … the cause of action is sufficiently stated for [fraudulent joinder] purposes.").

This Court should reject any argument to incorporate the elevated pleading standards of Twombly and Iqbal to a fraudulent joinder claim. "It is awkward, if not perverse, when considering an improper joinder argument, to measure the adequacy of a *state* petition by federal pleading standards." Escuadra, 739 F. Supp.

[4] Tex. Civ. Prac. & Rem. Code § 82.003 (Vernon).

2d at 976. For example, removal decisions are not reviewable. Yet, by applying Twombly and Iqbal strictly to a fraudulent joinder analysis, we would expand federal courts limited jurisdiction. In effect, defendants would now have an easier time of removing complex civil actions to federal courts—a consequence that flouts the time-honored policy of our dual-court system.

Xtreme can only raise a possible doubt about the sufficiency of liability pled against Sports.com. Possible doubt about recovery has never been enough to sustain a fraudulent joinder claim. In fact, courts interpreting Twombly and Iqbal in a pure 12(b)(6) motion to dismiss analysis have continued to give plaintiffs the benefit of the doubt so long as actionable conduct is alleged. Ultimately, Adams relied on a general assurance of safety by a non-manufacturing retailer. This general assurance is actionable under Texas courts' interpretation of Restatement § 402A. See Romo, at *3. Therefore, Adams has maintained a cause of action on the face of his complaint and this action should be remanded for a proceeding on the merits.

### B. If this Court looks beyond the pleadings, Adams has brought this action in good faith after relying on Sports.com's assurances before purchasing a defective product.

In looking beyond the pleadings, this Court should only assess the plaintiff's good-faith basis for joining the non-diverse defendant. See, e.g., Katz, 718 F. Supp. at 1515. By only evaluating the plaintiff's good-faith basis when going

beyond the pleadings, this Court can avoid analyzing fraudulent joinder through the lens of a summary judgment standard—a standard appropriate only when the court has already established subject-matter jurisdiction. Davis v. Prentiss Properties Ltd., Inc., 66 F. Supp. 2d. 1112, 1116 (C.D. Cal. 1999). This good-faith basis standard mirrors a Rule 11 analysis where courts look at the entire record to see if a party is maintaining a frivolous action. See, e.g., Katz, 718 F.Supp. at 1515. The Rule 11 analysis mirrors fraudulent joinder's common law because the plaintiff's claims do not have to be meritorious to withstand Rule 11 scrutiny. Id. at 1516. Accordingly, this Court should review a plaintiff's good-faith basis for joinder instead of reviewing the state court record unlimitedly.

Here, Adams specifically stated in his affidavit that he instructed his counsel to join Sports.com because he believes a seller should stand behind its product. (Pl.'s Aff. ¶ 11.) Additionally, the confirmation receipt that Sports.com sent to Adams specifically stated that "as an authorized agent for Xtreme products, we are proud of the products we sell and promise to stand behind them at all times." (Pl.'s Ex. 1.) In relying upon Sports.com's misrepresentations, Adams has demonstrated that he had a good-faith basis for joining Sports.com.

Furthermore, Adams logically had no choice but to join Sports.com. If this Court dismissed Xtreme for lack of personal jurisdiction, Sports.com would fall expressly within one of the expressed exceptions within section 82.003. Because

Adams has maintained this action in good-faith, removal was improper, and the motion to remand must be granted.

## II. STETLAND'S ASSERTION OF JURISDICTION OVER XTREME IS PROPER.

A State can lawfully exercise personal jurisdiction over any defendant that has *minimum contacts* with it such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Int'l Shoe Co. v. Wash., 326 U.S. 310, 316 (1946) (emphasis added). Further, specific jurisdiction over a foreign defendant is lawful when the defendant's forum-related contacts meet the Int'l Shoe standard, and the controversy relates to those contacts.[5] Id. at 319. Since Int'l Shoe, the Supreme Court has articulated that a foreign defendant must have purposefully directed activities at the State, or "purposefully availed" itself of the benefits of conducting business within the State, for specific jurisdiction to lie. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-75 (1985).

### A. Xtreme purposefully availed itself of Stetland by directing business activities toward Stetland residents.

A foreign defendant purposefully avails itself of a State when it "follow[s] a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign." McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780, 2789 (2011). Since a defendant's conduct and the economic realities of the

[5] Adams concedes that Defendant's contacts with Stetland do not rise to the level needed to maintain an action completely unrelated to those contacts.

market will differ across cases, personal jurisdiction requires a forum-by-forum analysis. Id. at 2789-90. This inquiry must focus on whether the defendant *directed* business activities toward residents of a forum by *targeting* that forum. Id. at 2788.

**1. Xtreme purposely directs Internet activities into this forum by linking its interactive website with Sports.com to sell its products in this forum.**

The emergence of online advertising and e-commerce has required courts to adopt standards for when a defendant's internet activities within a forum State will justify specific jurisdiction. Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446 (3d Cir. 2003). Logically, most courts simply view a foreign defendant's internet activities within the forum as an additional mode of purposeful availment, fashioned in an electronic context.

The standard set forth in Zippo Mfg. Co. v. Zippo Dot Com, Inc.[6] has broadly become the seminal authority for jurisdiction inquiries involving websites and e-commerce. Toys "R" Us, 318 F.3d at 452. Zippo adopted a sliding-scale test that evaluates a defendant's virtual contact with a forum based on the interactivity of its website. 952 F. Supp. at 1128. The Zippo court held a foreign defendant was subject to jurisdiction when it (1) entered into contracts with forum residents via its interactive website and (2) contracted with local Internet providers (distributors) to sell its services. Id. The majority of Circuits have now adopted the

[6] Zippo Manufacturing Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997).

Zippo standard to determine when a foreign defendant's website activities within the forum will justify jurisdiction. See e.g., Mink v. AAAA Dev. LLC, 190 F.3d 333, 336 (5th Cir. 1999); Lakin v. Prudential Sec., Inc., 348 F.3d 704, 711-12 (8th Cir. 2003); Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414,419 (9th Cir. 1997); Soma Med. Int'l v. Standard Chartered Bank, 196 F.3d 1292, 1296 (10th Cir. 1999).

We urge this court to adopt the Zippo standard. Under Zippo, jurisdiction is proper when a defendant is "clearly doing business" with forum residents through its website and the plaintiff's claim relates to the use of that website. 952 F. Supp at 1124; see e.g. Euromarket Designs, Inc. v. Crate & Barrel Ltd., 96 F.Supp.2d 824 (D.C. Ill. 2000) (finding jurisdiction would lie solely because defendant was transacting business with forum customers via its website). At the other end of the scale are static websites where a defendant simply posts information, making it accessible to users in foreign jurisdictions. Id.; accord Pavlovich v. Super. Ct., 58 P.3d 2 (Cal. 2002) (finding jurisdiction improper where the defendant's website merely posted static information and had no interactive features). Along the middle are websites that interact with residents through the exchange of information with the host computer. Here, "the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs…." Id.

Importantly, courts have continued to consider the defendant's non-internet-based forum activities to supplement the Zippo interactivity analysis. See Euromarket, 96 F.Supp.2d 824 (finding jurisdiction was proper because foreign defendant had purposefully directed both traditional and online activities into the forum); Toys "R" Us, 318 F.3d at 451 (finding defendant's internet activities insufficient to uphold jurisdiction but allowing plaintiff jurisdictional discovery with regard to traditional business activities). Accordingly, the defendant's non-internet-based forum activities should be considered as part of the overall purposeful availment inquiry.[7] Id. at 453.

Under Zippo, Xtreme's pop-up advertising and website interface exceed the required threshold of interactivity. The facts show that Xtreme actively links its website with Sports.com to facilitate sales through the Stetland-based distributor. (Pl. Compl. ¶ 8.) Like the foreign defendant in Zippo, Xtreme is actively facilitating business within the forum through its Internet contacts. Except, rather than completing online sales with forum customers, Xtreme's website purposefully directs them to a resident distributor to complete the sale. Boiled down to its essence, Xtreme purposefully directs online Stetland consumers to a Stetland-based distributor in order to sell Xtreme products and, hopefully, shed liability.

[7] Xtreme's non-internet-based Stetland activities are discussed infra B below.

Additionally, Mr. Adams was targeted by a pop-up advertisement which actively connected him to Xtreme's website to begin the sales process. (Adams Aff. ¶ 5.) After being lead to Xtreme's website, Mr. Adams was prompted to enter data and exchange information with Xtreme's server so he could be directed to the proper distributor. (Id.) Here, unlike the static informational website in Pavlovich, Xtreme links pop-up advertising to its interactive website. Then, similar to Zippo, Xtreme reaps the economic benefits of sales funneled through a forum distributor. As a direct result of Xtreme's online activities, Mr. Adams continues to suffer extreme pain, deformity, lost income (past and future) and has incurred significant medical expenses, all in Stetland. These damages will continue to be incurred in Stetland throughout the remainder of his natural life. (Pl. Compl. ¶ 11.)

Xtreme purposefully directs Stetland residents to an online Stetland-based distributor in order to sell Xtreme products. This Court should not allow Xtreme to use their website as a shield from liability for defective products. Accountability has long been the driving force behind the development of safer standards for products made in America. If courts were to allow foreign manufacturers to freely distribute unsafe products online with no fear of repercussion, they could wipe out decades of civilized industrial progress and throw fundamental doctrines of tort law into hopeless disarray.

**2. Xtreme purposely directs business activities into this forum by systematically contracting with Sports.com to sell its products in this forum.**

Traditionally, when a foreign company intentionally reaches across sovereign borders to conduct business in another State, personal jurisdiction in that State is proper. Burger King, 471 U.S. at 473. Indeed, the Constitutional touchstone of the Int'l Shoe test is "whether the defendant purposefully established" contacts within the forum State. Id. at 475 (citing Int'l Shoe, 326 U.S. at 319). Defendants who "reach out beyond their State and create continuing relationships and obligations with citizens of another" are rightfully subject to sanctions in the foreign State for the consequences of their actions. 471 U.S. at 474 (quoting Travelers Health Assn. v. Virginia, 339 U.S. 643, 647 (1950)). To be sure, if a defendant believes the risk of being subject to jurisdiction is too great, it can sever its connections and cease doing business within that State.

Logically, the purposeful availment requirement is closely tied to the idea of notice, which was stressed by the Court in World-Wide Volkswagen Corp. v. Woodson.[8] When a defendant makes a conscious choice to conduct business with the residents of a forum State, "it has clear notice that it is subject to suit there." Id.; see also Burger King, 471 U.S. at 472. In Burger King, a suit brought against a Burger King franchisee, the Court found the defendant had purposefully availed

[8] World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

himself of Florida, although he had no physical ties with the State. 471 U.S. at 478-79. The Court found it sufficient that the defendant, a sophisticated businessman, had established a substantial continuing relationship with a Florida corporation and had received fair notice through his course of dealings that he could be subject to suit there. Id. at 487.

Under a traditional Int'l Shoe analysis, Xtreme has purposefully directed business activities into Stetland. Xtreme systematically contracts to sell its products to Sports.com, a resident Stetland distributor. (Lukas Aff. ¶ 4.) Indeed, Xtreme's CEO admits that "Xtreme sells its products to Sports.com which, in turn, sells them at retail to members of the public via its own website." (Id.) Like the defendant in Burger King, Xtreme has purposefully established a systematic contractual relationship with a corporate resident of the State asserting jurisdiction. Thus, Xtreme is on notice that it has availed itself of Stetland for defective product claims – especially when the very product in question was sold through its resident distributor. Continually and systematically selling products through a resident distributor is alone sufficient evidence that Xtreme has purposefully availed itself of specific jurisdiction in Stetland.

The facts also show that, while Stetland has no mountains, it does have coastal beaches as outside tourist attractions. (Id. at ¶ 5.) Reasonable minds could infer that Xtreme's line of surfing products, evidenced in the record, are also

advertised and sold within Stetland. If confirmed, this only supports the overwhelming evidence that Xtreme purposefully targets and sells products to Stetland residents. However, further discovery is necessary to determine the exact amount of Xtreme products that are sold into Stetland.

Evidence of Xtreme's systematic contractual relationship with Sports.com is alone sufficient to uphold specific jurisdiction of Mr. Adam's claim. The facts prove that Xtreme knowingly sells and distributes products through a Stetland corporation. (Id. at ¶ 4.) Therefore, it was entirely foreseeable that this products-liability claim would be brought in Stetland, the very forum where the distributor resides. Through its relationship with Sports.com, Xtreme put itself on actual notice that it would be subject to specific jurisdiction in Stetland.

### B. Personal jurisdiction in Stetland is consistent with "traditional notions of fair play and substantial justice."

When a foreign defendant has purposefully availed itself of a forum State, other factors may be considered to determine whether jurisdiction aligns with "traditional notions of fair play and substantial justice." Int'l Shoe, 326 U.S. at 320. Here, the Court may evaluate: the plaintiff's interest in obtaining convenient and effective relief; the forum State's interest in adjudicating the dispute; the potential burden on the defendant of litigating in a distant forum; the judicial system's interest in efficiency; and the "shared interest of the several States in

furthering fundamental substantive social policies." World-Wide Volkswagen, 444 U.S. at 292.

While upholding jurisdiction in Burger King, the Court found that Florida had a "legitimate interest in holding [the defendant] answerable to a claim related to" the very contacts he established with the State. 471 U.S. at 482-83; see also McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957) (noting States frequently have a "manifest interest in providing effective means of redress for its residents). Additionally, the Court stated that to the "extent that it is inconvenient for a [defendant] who has minimum contacts with a forum to litigate there, such considerations most frequently can be accomplished through a change in venue." 471 U.S. at 483-84. Furthermore, the Court reasoned that when the shared interest of the "several States" may be at odds, any potential conflict can usually be addressed through choice-of-law decisions rather than through outright preclusion of jurisdiction in one forum. Id. at 484 n.26.

In this case, requiring Xtreme to defend against its own purposeful actions in Stetland accords with any interpretation "fair play and substantial justice." However, the burden on Mr. Adams to bring suit in a distant forum, if one even exists, would be tremendous. Mr. Adams has devastating injuries which require an enormous amount of continuing medical care in Stetland. (Pl.'s Compl. ¶ 11.) Moreover, Stetland has a manifest interest here in litigating claims for defective

products that are sold across its borders. The damages from this injury alone, caused by a single defective product, will likely top five million dollars. (Id.)

Additionally, any burden on the defendant here is mitigated by the fact that it would be traveling from Switzerland to defend against suit anywhere in the United States. As any modern corporation would, it surely has accounted for the possibility of lawsuits arising from products it purposefully sells into the States. Finally, any potential conflict between the "several States" is mitigated in this case by the substantive choice-of-law clause governing this action.

Here, jurisdiction in Stetland is both fair and just. Asking a foreign manufacturer to defend a products-liability suit – in the very forum in which its distributor resides – aligns with any interpretation of "fair play and substantial justice.

## CONCLUSION

For the foregoing reasons, the Court should remand the case for lack of subject-matter jurisdiction. In the alternative, the Court should deny Defendant's motion to dismiss for lack of personal jurisdiction.

Respectfully submitted,

/s/_____
Team # 1128