

IN THE CIRCUIT COURT OF  
PINELLAS COUNTY, STETLAND

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Sammy Adams,  
*Plaintiff,*

v.

No. A-11-CA-2536—CHR

Xtreme, S.A. and  
Sports.com Inc.,  
*Defendants.*

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ORIGINAL COMPLAINT

For his original complaint, Plaintiff Sammy Adams states the following:

**Introduction**

1. Adams brings this action against Defendants to recover for the severe and permanent injuries he suffered in a tragic accident on March 15, 2011, when the SkyNet safety harness he was wearing failed and caused him to plummet off the face of El Capitan in west Texas. Defendants are the manufacturer and sellers of this SkyNet harness.

**Parties and Jurisdiction**

2. Plaintiff is an individual citizen of Stetland residing in Pinellas County.
3. Defendant Xtreme, S.A. is a Swiss corporation with both its place of incorporation and principal place of business in Switzerland. It was the manufacturer and seller of the SkyNet that injured Plaintiff and poses a danger to countless other individuals around the world.

4. Defendant Sports.com is a corporation incorporated in Stetland and having its principal place of business in Austin, Texas. Sports.com was an authorized retailer of the SkyNet and sold the harness to Plaintiff causing Plaintiff's injuries.
5. This case seeks an amount of damages within this Court's jurisdictional limits, as set forth herein.
6. This Court has general jurisdiction over Defendant Sports.com because it is a citizen of this State. This Court has both general and specific jurisdiction over Defendant Xtreme because it is doing business in this State generally, it sold the SkyNet in question to Plaintiff (a citizen of this State), and the defective product continues to cause damages to Plaintiff within this State. Further, Stetland's long-arm statute has been interpreted to apply to the full reach of the due process clause of the United States Constitution.

### **Facts**

7. Plaintiff Adams has long been a lover of the outdoors. He has enjoyed spending vacations traveling to different locations, hiking in the wilderness, and climbing mountains. Earlier this year, Adams planned such a trip to Guadalupe Peak in west Texas for the month of March.
8. Plaintiff anticipated needing certain climbing and hiking equipment for this trip. In particular, he planned to rappel down the face of El Capitan (which is a part of Guadalupe Peak) and needed a new safety harness. The harness is a piece of equipment that wraps snugly around a climber and attaches to a rope to permit a climber to rappel off of a sheer rock face. Plaintiff was induced to purchase a SkyNet harness manufactured by Xtreme, S.A. after visiting Xtreme's website and reading

about the new features of this product. Specifically, Xtreme represented that the SkyNet was safer because of its easy-to-use Velcro fastener. On Xtreme's website, Plaintiff found a link to a different website of Sports.com—an authorized retailer of Xtreme's products. Similar representations and descriptions of the SkyNet were contained on Sports.com's website. Based upon these assurances, Plaintiff ordered a SkyNet harness from Sports.com via its website. Because Plaintiff was going to be in west Texas by the anticipated date of the SkyNet's arrival, Plaintiff requested on the website for the harness to be delivered to Plaintiff at his destination in Texas.

9. After ordering the product from his home in Stetland, Plaintiff later travelled to Texas for his expedition. Late during the evening of March 14, 2011, Plaintiff began his ascent of Guadalupe Peak making camp near the summit. During the early pre-dawn hours of March 15, 2011, Plaintiff finished his ascent to the summit of Guadalupe Peak so that he could witness a breathtaking sunrise. Plaintiff thereafter hiked to the edge of El Capitan, put on his SkyNet safety harness and made preparation to begin rappelling down the mountain. Midway down his initial ascent, the SkyNet harness unexpectedly and suddenly ripped open and Plaintiff plummeted nearly to his death.
10. Plaintiff was unconscious for several hours before awaking and realizing that he was stuck between a boulder and the face of the cliff. Plaintiff remained in that position for three days without being able to gain anyone's attention. Finally, facing the imminent prospect of death from dehydration and exposure, Plaintiff amputated his own left leg below the knee. Having freed himself from the boulder, Plaintiff

eventually made his way back to a trail and was rescued by other climbers later that day.

11. As a consequence of the SkyNet's defects, Plaintiff suffered and continues to suffer extreme pain and suffering, deformity, lost past and future income, and has incurred significant medical expenses with such costs and expenses likely to be incurred throughout the remainder of his life. Plaintiff brings this suit to recover all such damages from Defendants jointly and severally. These damages exceed \$5,000,000.00.

#### **Cause of Action**

12. Plaintiff incorporates by reference herein the foregoing allegations.
13. The SkyNet safety harness manufactured and sold by Defendants was defective in that it failed to remain securely attached to Plaintiff despite his following the directions provided by Defendants concerning its use. The SkyNet was defective in its design, manufacture and/or marketing. The prior non-Velcro design of the SkyNet using only conventional loops and buckles was far safer than the model Defendants sold to Plaintiff. The Velcro fastener incorporated on the SkyNet was not capable of securely holding an adult male of average weight.
14. The Defendants, as manufacturers and sellers of the SkyNet in the stream of commerce, are strictly liable under *Restatement (Second) of Torts* § 402A for the defects in the SkyNet that existed at the time of their respective sales of the product. Plaintiff sues to recover for his actual injuries for which the SkyNet was the producing cause.

**Prayer**

15. For the reasons stated above, Plaintiff Sammy Adams prays that this Court enter judgment on his behalf against Defendants jointly and severally for all of his actual damages, court costs, and any other relief to which he may be justly entitled.

Dated July 1, 2011

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Counsel for Plaintiff  
State Bar No. 123456789  
Trial Counsel

315 Central Avenue  
St. Petersburg, Stetland 33602  
(727) 710-4396  
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GoodLaw@yahoo.com

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF STETLAND  
PINELLAS DIVISION

---

Sammy Adams,  
*Plaintiff,*

v.

No. A-11-CA-2536—CHR

Xtreme, S.A. and  
Sports.com Inc.,  
*Defendants.*

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NOTICE OF REMOVAL

Defendant Xtreme, S.A. files this notice of removal. As grounds for removal, Xtreme states the following:

1. Xtreme is a defendant in a civil action pending in the Circuit Court of Pinellas County, Stetland entitled, "Sammy Adams v. Xtreme, S.A. and Sports.com." A true and correct copy of all process, pleadings and orders served upon Xtreme in the state court action is being filed with this notice as required by 28 U.S.C. § 1446(a).
2. This action commenced on July 1, 2011. Xtreme was served with the citation and complaint on July 15, 2011. This notice of removal is timely filed under 28 U.S.C. § 1446(b) within 30 days of receipt of the initial pleading setting forth a claim for relief.
3. The district courts of the United States have original jurisdiction over this action based upon complete diversity of citizenship between the parties, in that every defendant who has been properly joined is now, and was at the time the action was commenced diverse in citizenship from plaintiff. Plaintiff is and always has been

domiciled in the State of Stetland and is, therefore, a citizen of the State of Stetland. Xtreme is a corporation incorporated and having its principal place of business in Switzerland. Accordingly, this is a controversy between citizens of a State and citizens or subjects of a foreign state pursuant to 28 U.S.C. § 1332(a)(2). Further, Plaintiff's original complaint asserts a claim against Xtreme in an amount in excess of \$75,000, exclusive of interest and costs.

4. Although Plaintiff has purported to name Sports.com as an additional defendant in this matter, this joinder was improper and fraudulent and should be disregarded by this Court for all purposes. Under applicable Texas law, Sports.com is not subject to liability as a mere retailer of an allegedly defective good. *See* Tex. Civ. Prac. & Rem. Code § 82.003(a). Plaintiff has only alleged that Sports.com resold the product in question to the Plaintiff. Plaintiff's Original Complaint expressly states that it was Xtreme, S.A. that manufactured the allegedly defective product, and not Sports.com. As further support, Xtreme incorporates by reference herein the attached Affidavit of Julian Lukas.
5. Because this action is wholly between a citizen of the State of Stetland and a citizen or subject of a foreign state and because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, this Court has original jurisdiction over this cause pursuant to 28 U.S.C. § 1332(a)(2).
6. Xtreme, the removing party, will promptly give adverse parties written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d). Xtreme will promptly file a copy of this Notice of Removal with the Clerk of the Circuit Court of

Pinellas County, Stetland, where the action is currently pending, also pursuant to 28 U.S.C. § 1446(d).

7. This removal is made without waiver of Defendant Xtreme's Objection to Personal Jurisdiction and Motion to Dismiss Pursuant to Rule 12(b)(2) which is being filed concurrently with this Notice of Removal.

For these reasons, Xtreme, S.A. , the defendant in this action, pursuant to these statutes and in conformance with the requirements set forth in 28 U.S.C. § 1446, removes the case styled "Sammy Adams v. Xtreme, S.A. and Sports.com" from the Circuit Court of Pinellas County, Stetland, on this 22nd day of July, 2011.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Counsel for Defendant Xtreme, S.A.  
State Bar No. 0987654321  
Trial Counsel

806 Gulfport Avenue  
Gulfport, Stetland 33601  
(727) 710-4064  
FAX (727) 710-4111  
[NoGoodAttorneys@gmail.com](mailto:NoGoodAttorneys@gmail.com)

#### CERTIFICATE OF SERVICE

The undersigned personally served a copy of the foregoing Notice of Removal upon counsel for the Plaintiff on this 22nd day of July, 2011.

\_\_\_\_\_/s/\_\_\_\_\_  
Trial Counsel for Defendant Xtreme, S.A.



IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF STETLAND  
PINELLAS DIVISION

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Sammy Adams,  
*Plaintiff,*

v.

No. A-11-CA-2536—CHR

Xtreme, S.A. and  
Sports.com Inc.,  
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AFFIDAVIT OF JULIAN LUKAS

STATE OF STETLAND       §  
                                     §  
PINELLAS COUNTY       §

PERSONALLY APPEARED before the undersigned officer, duly authorized to administer oaths, Julian Lukas, who, after being duly sworn, deposed and testified as follows:

1. My name is Julian Lukas. I am over 21 years of age, am suffering under no legal disability, and am competent to give this Affidavit.
2. I am currently the Chief Operating Officer of Xtreme, S.A., a corporation incorporated and having its principal place of business in Berne, Switzerland.
3. Xtreme is the manufacturer and seller of certain equipment utilized in mountain climbing and surfing activities. In particular, Xtreme is the manufacturer of a “SkyNet” safety harness utilized by mountain climbers during rappelling activities. The SkyNet was redesigned in 2010 to replace the traditional loop and buckle clasps with a Velcro clasp to improve its ease of use by climbers and to promote increased

safety. Xtreme is the only manufacturer of the SkyNet. Xtreme markets its products exclusively via its own proprietary website. Xtreme's website does not permit users to enter into contracts for the purchase of any Xtreme equipment but instead merely provides information to anonymous users. Based upon geographic proximity and type of product desired, interested potential purchasers can merely access on the Xtreme website links to authorized independent retailer's own websites in order to purchase equipment.

4. Plaintiff has purported to name Sports.com as an additional defendant in this matter. Sports.com is merely an authorized retailer of Xtreme products. Xtreme sells its products to Sports.com which, in turn, sells them at retail to members of the public via its own independent website. With respect to the SkyNet harness, at no time has Sports.com been involved in the manufacture, design, formulation, construction, building, fabrication, production, compounding, processing or assembling of the product. These activities have always been undertaken exclusively by Xtreme, S.A.
5. Xtreme does not do business in the State of Stetland. Xtreme has no officers, agents for service of process, or employees in Stetland. Xtreme owns no property, real or personal, in Stetland. Xtreme sells no products directly to any consumers in Stetland. Indeed, to my knowledge and belief Stetland's SkyNet harness has never even been used by any consumer in Stetland—which has no mountains. Because Stetland has a relatively flat topography, at or near sea level, with only beaches as outside attractions, I would have had no reason to foresee the SkyNet being utilized by a Stetland citizen or causing injury to anyone in Stetland.

6. Attached as "Exhibit 1" is a true and correct copy of the SkyNet harness information taken from Xtreme's website. This is the same information as would have appeared on the website in February and March 2011 when Plaintiff alleges he purchased the product.

Further Affiant sayeth not.

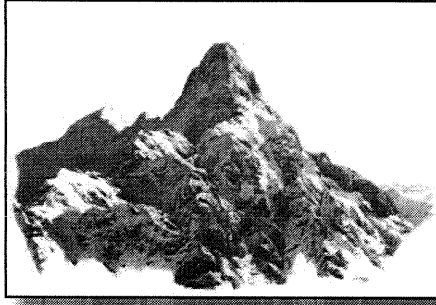
/s/ Julian Lukas

[Properly notarized and dated July 21, 2011]

## Exhibit 1

Store Locator/Gift Registry/Wish List/News about Xtreme Products/Surf/Turf

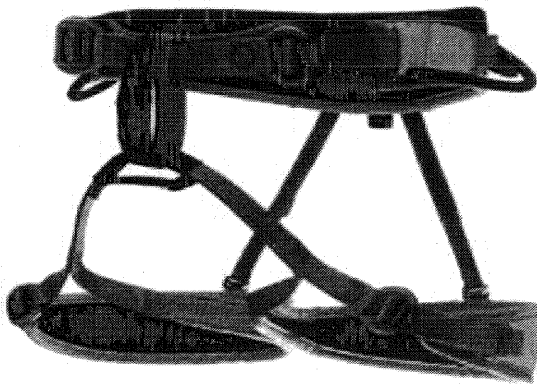
# Xtreme



Shop for Xtreme's Unique and Unparalleled line of "Surf & Turf" products!!

### Climbing Products

Shoes  
Helmets  
Ropes  
Cords  
Slacklines  
Webbing  
Carabiners  
Harnesses



## All-New SkyNet

The fully adjustable SkyNet climbing harness can be used for nearly any style of high-altitude climbing during any season.

- Padded, bullhorn-shaped waistbelt is ergonomically designed
- Adjustable leg loops are designed for quick entry/exit
- New Velcro fastener for safe 'n secure high-altitude use

IN THE UNITED STATES DISTRICT COURT  
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Sammy Adams,  
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DEFENDANT XTREME, S.A.'S OBJECTION TO PERSONAL  
JURISDICTION AND RULE 12(B)(2) MOTION TO DISMISS

Defendant Xtreme, S.A. files this objection to personal jurisdiction and Federal Rule of Civil Procedure 12(b)(2) motion to dismiss and, as grounds, would show the following:

1. This action commenced on July 1, 2011 in Stetland state court. Xtreme was served with the citation and complaint on July 15, 2011. Concurrent with Xtreme's Notice of Removal to this Court filed on this date, Xtreme objects to this Court's exercise of personal jurisdiction over this foreign defendant and asks this Court to dismiss this lawsuit against it pursuant to Fed. R. Civ. P. 12(b)(2). The pendency of this action against Xtreme violates its due process rights guaranteed by the United States Constitution.
2. Plaintiff alleges in his lawsuit that he received personal injuries when he carelessly fell while rappelling from a mountain in west Texas. He blames his fall upon a product—the SkyNet—manufactured by Xtreme in Switzerland. Xtreme sold the product to the (improperly) joined defendant Sports.com in Texas. In turn,

Sports.com sold the product to the Plaintiff, delivering it to the Plaintiff in Texas. It was while using the product in Texas that Plaintiff was apparently hurt there.

3. Before a court, state or federal, may exercise personal jurisdiction over a non-resident defendant (in the absence of consent), the plaintiff has the burden to demonstrate that the defendant has sufficient “minimum contacts” with the forum state so that traditional notions of “fair play and substantial justice” would not be offended. *Int’l Shoe Co. v. Wash.*, 326 U.S. 310 (1945). Thus, sellers of products that end up in a forum state solely through the unilateral conduct of a consumer may not be subject to suit in such a remote forum. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).
4. These limiting principles apply with particular force in the context of a foreign manufacturer of goods. In such context, the random fact that the product causes injury in a particular state does not make the assertion of jurisdictional power over the alien fair, particularly when the plaintiff fails to prove that the alien was specifically targeting the market in that precise state’s forum. *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102 (1987). When the product does not even cause injury in the forum state, there can be no conceivable justification for a court’s assertion of territorial power over the foreign manufacturer. To hold otherwise would condone the absurd result of deeming every “seller of chattels [to] in effect appoint the chattel his agent for service of process.” *World-Wide Volkswagen*, 444 U.S. at 291. Finally, the mere fact that Xtreme markets the product worldwide through a passive website cannot justify jurisdiction. *See generally Pavlovich v. Super. Ct. of Santa Clara Cnty.*, 58 P.3d 2 (Cal. 2002).

5. According to Plaintiff's own complaint, there are no facts linking Defendant Xtreme to this forum much less satisfying the minimum due process requirements.
6. Xtreme hereby incorporates by reference the Affidavit of Mr. Julian Lukas, which is attached to Xtreme's Notice of Removal filed concurrently herewith.
7. Pursuant to Local Rule 3.01(j), Xtreme requests an evidentiary hearing and oral argument. Hearing is estimated to take approximately two to four hours.

For these reasons, Xtreme, S.A., the defendant in this action, objects to this Court's exercise of personal jurisdiction and prays that this Court grant this motion and dismiss this lawsuit.

Dated: 22nd day of July, 2011.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Counsel for Defendant Xtreme, S.A.  
State Bar No. 0987654321  
Trial Counsel

806 Gulfport Avenue  
Gulfport, Stetland 33601  
(727) 710-4064  
FAX (727) 710-4111  
[NoGoodAttorneys@gmail.com](mailto:NoGoodAttorneys@gmail.com)

CERTIFICATE OF SERVICE

The undersigned personally served a copy of the foregoing Notice of Removal upon counsel for the Plaintiff on this 22nd day of July, 2011.

\_\_\_\_\_/s/\_\_\_\_\_  
Trial Counsel for Defendant Xtreme, S.A.

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF STETLAND  
PINELLAS DIVISION

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Sammy Adams,  
*Plaintiff,*

v.

No. A-11-CA-2536—CHR

Xtreme, S.A. and  
Sports.com Inc.,  
*Defendants.*

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PLAINTIFF'S MOTION TO REMAND

Plaintiff Sammy Adams moves this Court to remand this action to the Circuit Court for Pinellas County, where it was originally filed, and for grounds would state as follows:

1. Plaintiff was nearly killed when the SkyNet harness he was using on a mountain climbing expedition experienced total failure and caused his fall into a ravine. This fall caused Plaintiff to lose his leg, has impacted Plaintiff's ability to work, and given rise to significant other medical expenses and costs. There is no other explanation for the accident other than a defect in the manufacture, design and/or marketing of the SkyNet. Plaintiff has sued Defendants on a strict liability theory.
2. Plaintiff filed suit in Stetland state court on July 1, 2011 against Defendants Xtreme, S.A. and Sports.com. Xtreme was the designer and manufacturer of the SkyNet. It asserts that it was alone involved in the design and manufacture of the SkyNet. Even if that is true, Sports.com was without question the direct seller of the defective product to Plaintiff. Plaintiff ordered the product from Sports.com using its website and Sports.com delivered the defective good to Plaintiff.



3. The presence of Sports.com in this lawsuit destroys complete diversity. There is no question that both Plaintiff and Sports.com are citizens of Stetland—Plaintiff is a life-long domicile here and Sports.com was incorporated in Stetland. According to 28 U.S.C. § 1332(c)(1), therefore, Sports.com is deemed a citizen of this State. Because Plaintiff and Sports.com are citizens of this same State, diversity of citizenship is lacking. Further, because Sports.com is a citizen of the forum state, removal is precluded by operation of 28 U.S.C. § 1441(b). Finally, because Xtreme removed this case without the consent of its co-defendant, the removal was improper and remand must be ordered.
4. The sole argument Xtreme makes to support removal is to allege fraudulent joinder against Plaintiff. Defendant offers no evidence of this highly inflammatory accusation. To suggest that a one-legged man victimized by a defective product has committed “fraud” by suing his immediate supplier of the product is patently absurd and possibly sanctionable. Such suits have long been authorized by *Restatement (Second) of Torts* § 402A.
5. Further, while Plaintiff concedes the application of Texas law, it is clear that Plaintiff does possess a valid claim against Sports.com. Texas Chapter 82 expressly provides that a non-manufacturing retail seller of a defective good can be strictly liable in a product liability action in a number of applicable instances. See Tex. Civ. Prac. & Rem. Code § 82.003(a)(5)–(7). Further, as Plaintiff has not yet had the opportunity to engage in further discovery, it is possible that other enumerated exceptions exist. Because Plaintiff has certainly pled adequate allegations to demonstrate a possible

claim against Sports.com, its presence in this lawsuit may not be ignored. Its presence is fatal to this Court's power to hear this case. Remand is required.

6. Plaintiff hereby incorporates by reference the attached Affidavit of Sammy Adams.
7. Plaintiff requests an oral hearing on this motion per Local Rule 3.01(j).

For these reasons, Plaintiff prays that this Court grant this motion, remand this case to the court where it belongs, and consider the imposition of costs against Defendant Xtreme for its improvident and dilatory removal.

Dated: 5th day of August 2011.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Counsel for Plaintiff  
State Bar No. 123456789  
Trial Counsel

315 Central Avenue  
St. Petersburg, Stetland 33602  
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FAX (727) 710-9944  
GoodLaw@yahoo.com

CERTIFICATE OF SERVICE

The undersigned personally served a copy of the foregoing Motion to Remand upon counsel for the Plaintiff on this 5th day of August, 2011.

\_\_\_\_\_/s/\_\_\_\_\_  
Trial Counsel for Plaintiff

CERTIFICATE OF CONFERENCE

On this 5th day of August, 2011, I conferred with Trial Counsel for Defendant Xtreme, S.A. regarding the relief requested herein. No agreement could be reached and, therefore, it is submitted to this Court for a ruling.

\_\_\_\_\_/s/\_\_\_\_\_  
Trial Counsel for Plaintiff

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

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Sammy Adams,  
Plaintiff,

v.

No. A-11-CA-2536—CHR

Xtreme, S.A. and  
Sports.com Inc.,  
Defendants.

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AFFIDAVIT OF SAMMY ADAMS

STATE OF FLORIDA       §  
                                     §  
PINELLAS COUNTY       §

PERSONALLY APPEARED before the undersigned officer, duly authorized to administer oaths, Sammy Adams, who, after being duly sworn, deposed and testified as follows:

1. My name is Sammy Adams Lukas. I am over 21 years of age, am suffering under no legal disability, and am competent to give this Affidavit.
2. I am the plaintiff in this case. I have lived my entire life in Pinellas County, Stetland, which I consider to be my domicile.
3. I am 48 years old and an English teacher at St. Petersburg Community College in Stetland. During my breaks from the rigors of my job, my lifelong passion has been to be outdoors in nature. In particular, I have always enjoyed hiking and climbing mountains. I have quite a bit of experience with both activities.

4. With spring break coming up earlier this year, I made plans to visit west Texas to climb Guadalupe Peak—the highest summit in that state. I have already climbed to the highest point of many of the other lower 48 states, and I found the prospect of a climb in such a remote, desolate area to be invigorating. I was intrigued by the prospect of climbing to the summit, making my way over to the edge of El Capitan (an impressive, sheer rock face) and rappelling to the bottom. I like to climb by myself and planned this trip alone.
5. While I have rappelled before and already owned a climbing harness, it was fairly old. One does not want to skimp on such an important piece of safety equipment. I saw a pop-up ad on a mountain climbing website for “Xtreme” and clicked it to go to Defendant Xtreme’s website. At the time, I had no idea it was a company based in Switzerland. The contents of the website were in English. While on this website, I looked around until I saw information about the “SkyNet” harness that used Velcro as part of its fastening mechanism. This seemed like it could help speed up the process of securing the harness, which can be important. When I clicked on the store locator button, the site asked me where I planned to climb and I typed “Texas” in the blank space and hit enter. This took me to the website for Xtreme’s agent, Sports.com.
6. I ordered one SkyNet safety harness from Sports.com by filling in my billing and shipping addresses and providing credit card information. I used, of course, my home address for billing but used as a shipping address the address of the house I would be renting in nearby Pine Springs, Texas. I purchased the SkyNet on March 1,

2011, for \$139. I expected to be in Pine Springs within about a week, in time to take delivery of the product.

7. A few days after my arrival in Texas, the SkyNet I ordered from Sports.com and Xtreme arrived at the house in Pine Springs, Texas. There was a small insert in the box that contained similar information to what I saw on the Defendants' websites concerning the product. I distinctly recall seeing on the websites references to this product being "safe" for my intended usage.
  8. Attached as "Exhibit 1" is a true and correct copy of the e-mail confirmation of the sale of the SkyNet.
  9. While using the SkyNet as instructed during my climb on March 15th, I experienced a total failure of the product. The harness ripped open and I fell almost to my death. I have suffered greatly and continue to do so and expect this to continue for the duration of my natural life.
  10. At no time did Defendant Xtreme ever advise me that it was a Swiss corporation not subject to suit in the United States. At no time did Defendant Sports.com ever advise me that the product might fail because it could not hold a normal-sized adult male.
  11. I instructed my counsel to file suit against Sports.com not for any improper reason but because I feel as a seller of the product it should stand behind it.
- Further Affiant sayeth not.

/s/ Sammy Adams

[Properly notarized and dated August 5, 2011]

## *Exhibit 1*

# **YOUR ORDER HAS BEEN RECEIVED!!**

Sports.com

Sent: March, 1, 2011

To: Adams, Sammy

Dear Sammy Adams:

Thank you for ordering from Sports.com. The details of your order are below:\*

For "USPS Priority Mail" shipped items, processing times may vary per product. Generally allow 7 to 10 business days for your order to arrive to you. We are unable to guarantee any delivery times, regardless of the destination and delivery method.

It is our mission to provide you with the latest, greatest in safe climbing gear while maintaining a smaller holistic approach toward retail. As an authorized agent for Xtreme products, we are proud of the products we sell and promise to stand behind them at all times. If you are ever in any way dissatisfied with your purchase, please return the product to us for a full refund.

### Billing and Shipping Information:

#### Billed to:

Sammy Adams

981 Gulf Blvd.

Gulfport, Stetland 33707

#### Shipped to:

Sammy Adams

12 Notrees Street

Pine Springs, TX 79847

Order No. 189459

Order Date: 03/01/11

Product Name: SkyNet Safety Harness by Xtreme, S.A.

Qty: 1

Unit Price: \$127.00

Sales Tax: \$12.00

Total Amount: \$139.00

\*By accepting this product, purchaser agrees that in the event of any litigation arising out of this sale, that Texas law will govern any and all claims. Further, purchaser acknowledges that Sports.com does not manufacture the goods sold and that under Texas law seller is not liable for any defects. Your sole recourse against Sports.com is a full refund of your purchase.

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

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Sammy Adams,  
*Plaintiff,*

v.

No. A-11-CA-2356—CHR

Xtreme, S.A. and  
Sports.com Inc.,  
*Defendants.*

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ORDER

This is a personal injury lawsuit arising out of Plaintiff Samuel Adams's unfortunate fall while mountain climbing in west Texas. Plaintiff alleges that his injury was caused by a defect in the "SkyNet" harness manufactured by Defendant Xtreme S.A. (Xtreme) and sold by Defendant Sports.com Incorporated (Sports.com). There are two motions pending at this time: (a) Plaintiff's Motion to Remand by which Plaintiff complains that this Court lacks diversity subject matter jurisdiction due to the presence in this suit of Defendant Sports.com (a Stetland citizen); and (b) Defendant Xtreme's Objection and Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction.

I. BACKGROUND

Based upon the pleadings, affidavits, motions, and statements made by counsel during conference, the following facts appear to be clear. Defendant Xtreme is a Swiss corporation that has been in the business of manufacturing and marketing equipment used in the outdoor extreme sports of mountain climbing and surfing. Xtreme is divided into two divisions—it is so called "Surf & Turf" lines of business demarcation—one focused upon mountain sports and the other ocean sports. While Xtreme's mountain division has



long been an industry leader (in terms of volume of sales and reputation), its newer surfing line of products has recently shown a tremendous increase in its sales. This case deals with an alleged defect in some of Xtreme's mountain climbing gear; specifically, Plaintiff contends the SkyNet harness manufactured by Xtreme caused Plaintiff to suffer severe and permanent disabling injuries, including loss of limb while on a climb in west Texas.

Xtreme's harness was designed to make fastening the device at extreme altitudes easier. The problem sought to be addressed by the SkyNet was the decreased focus and physical dexterity experienced by many climbers at high altitude due to lower oxygen levels. If a climber attempted to put on a harness at high altitudes, there was concern that the harness might not be latched appropriately and expose the climber to extreme risk of injury. Rather than using a traditional loop and buckle only to secure a harness, Xtreme designed the SkyNet with Velcro fasteners. Plaintiff was using one of these Velcro-fastened harnesses when he had his accident.

Based upon the pleadings and submissions thus far, it appears that Plaintiff became aware of Xtreme's product while viewing its corporate website on which Xtreme markets all of its "Surf & Turf" products. By inputting certain information about one's climbing needs and geographic locale on this website, users are steered toward certain products and authorized online retailers. Thus, Plaintiff Adams was provided a link to Defendant Sports.com's website where Adams ordered the Velcro harness for delivery. Though Plaintiff has been a life-long resident of Stetland (this is his billing address and where he lives and works), he had Sports.com deliver the product to the address where he was planning his extended vacation in west Texas. Plaintiff planned to use the harness as part of his climb of Guadalupe Peak—the tallest summit in Texas at nearly 9,000 feet above sea level.

Plaintiff travelled to Texas and a few days later the harness arrived in the mail. The following week, Plaintiff made his assault on Guadalupe Peak's summit successfully. Near the summit is a sheer face on the mountain referred to as "El Capitan." Upon reaching this sheer cliff, he employed the harness in order to rappel down the steep sides of the mountain. While doing so, he alleges that the Velcro fasteners became undone due to the apparent pressure of his weight and caused him to plummet over 100 feet into a deep ravine. Plaintiff fell with his leg trapped between a sheer rock face and a boulder where he languished for three days praying for rescue. None was forthcoming and so Plaintiff was forced to amputate his leg from below the knee with a pocketknife. After doing so, he was able to drag himself to a spot on a trail where he was found by other climbers and rescued.

Plaintiff alleges a product defect associated with the new Velcro design stated as either a defect in design, manufacture, or marketing. Xtreme controverts this allegation.

## II. PENDING MOTIONS

Plaintiff Adams filed his lawsuit against Defendants Xtreme and Sports.com on July 1, 2011 in state court in Pinellas County, Stetland where he lives. After Plaintiff properly effectuated service, Defendant Xtreme promptly filed a Notice of Removal on July 22<sup>nd</sup>. In this Notice, Xtreme invoked the doctrine of fraudulent joinder arguing that under Texas law Plaintiff has no possible claim against Sports.com for being a retailer of an allegedly defective product. Xtreme contends that the citizenship of Sports.com in Stetland should be disregarded both for purposes of determining whether complete diversity exists and to render moot the prohibition in 28 U.S.C. § 1441(b) against removing a case pending in the same state as one of the defendants. On the same day as its removal, Defendant Xtreme also filed its "Objection to Personal Jurisdiction and Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2)." Defendant Xtreme incorporates in both its Notice of Removal and its

objection and motion an affidavit from a corporate officer, Mr. Julian Lukas, in support of its contentions as to subject matter and personal jurisdiction.

On August 5th, Plaintiff filed his Motion to Remand contending that his joinder of Sports.com was entirely appropriate under the circumstances he pled in his original complaint and under the substantive law of Texas, which both parties have now stipulated (for purposes of the pending motions only) governs this proceeding. Similar to Xtreme, Plaintiff has filed his own Affidavit supporting his contentions on these disputed matters.

Desiring to proceed in an orderly and informed fashion, this Court held a brief conference with counsel for Plaintiff and Xtreme (counsel for Sports.com indicated that it was taking no formal position on either pending motion and did not desire to be heard) on this date to inquire into the proper method to dispose of these two pending motions and to determine the timing for any discovery needed to resolve these matters. After conferring with both parties, this Court hereby orders discovery and briefing, and sets a hearing as set forth below.

### III. DISCOVERY AND HEARING

As near as the Court can deduce from the conference, Plaintiff and Defendant take different positions concerning to what extent this Court should appropriately consider extrinsic evidence relating to the merits of Plaintiff's challenged claim against Sports.com as part of its jurisdictional inquiry raised by Plaintiff's Motion to Remand. Although Plaintiff's motion was not entirely clear on this point, Plaintiff seems to assert that either the issue is to be determined exclusively by the adequacy of the allegations of Plaintiff's complaint or that a narrow inquiry into Plaintiff's good faith basis for joining Sports.com should be the extent of any further inquiry. In other words, Plaintiff argues that if his claim against the local defendant could survive attack under Rule 12(b)(6) and there is no

compelling evidence of bad faith, then no fraudulent joinder has occurred and this Court must remand the case to state court. Plaintiff insists that he has adequately pled a product liability claim against Sports.com and that this party's presence destroys diversity.

Defendant Xtreme suggests, on the other hand, that Plaintiff must present this Court with adequate evidence supporting the merits of its right to sue Sports.com for products liability as a retailer and not a manufacturer in order to justify the joinder of the local defendant and defeat this Court's jurisdiction. As Xtreme has stated, § 82.003(a) of the Texas Civil Practice & Remedies Code generally provides that a non-manufacturing seller of a product is "not liable for harm caused to the claimant by the product." Plaintiff, however, believes that one or more of the statutory exceptions to this immunity for retailers applies in the circumstances of this case, pointing to subsections (5) and (6) of § 82.003 and, in the alternative, also suggesting that subpart (7)(B) might have potential application here in light of Xtreme's Rule 12(b)(2) motion.

This Court notes the absence of any controlling precedent within this Thirteenth Circuit as to the precise inquiry and procedure appropriate for resolving claims of fraudulent joinder. Courts in other circuits have gone various ways. Beyond this foundational inquiry as to the appropriate procedure and the depth of inquiry, the parties take differing positions on the adequacy of Plaintiff's pleading of a cause of action against Sports.com for the product defect, particularly in light of the U.S. Supreme Court's recent line of cases in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*.

In addition to this subject matter jurisdiction quandary, the parties have significant disagreement concerning both the law of personal jurisdiction and its application to this internet-based commercial transaction, which gave rise to the Plaintiff's claim. Indeed, as Justice Breyer observed earlier this summer concerning the general rules for finding

minimum contacts sufficient to warrant the exercise of personal jurisdiction over a non-resident foreign defendant: “What do those standards mean when a company targets the world by selling products from its Web site?” *J. McIntyre Mach., Ltd. v. Nicasto*, 131 S. Ct. 2780, 2793 (2011) (Breyer, J., concurring). Further, though the parties have provided basic information to the Court already concerning the factual circumstances surrounding Xtreme’s objection to personal jurisdiction, both parties indicated a desire to engage in formal discovery (mostly depositions) prior to any evidentiary hearing on that motion.

For these reasons, this Court hereby ORDERS the following:

1. The parties will submit to the Court, no later than 12:00 noon EST, September 9, 2011, briefs on the matters addressed in this Minute Order, which are the issues of subject matter jurisdiction (fraudulent joinder) and personal jurisdiction. Briefs should be based upon the current state of the pleadings and the affidavits and other stipulations presently before this Court. Among the matters addressed, the parties are directed to give this Court guidance as to the appropriate standards that should govern this Court’s resolution of each motion and whether this Court should rule on one or the other first. The briefs are to be submitted as Word documents.
2. Both parties shall be permitted to engage in formal discovery directed to these two preliminary issues of jurisdiction, which discovery shall be no later than September 9, 2011.
3. Plaintiff’s Motion to Remand and Defendant’s Motion to Dismiss shall be heard on Friday, October 14, 2011.

SIGNED and ENTERED on this 12th day of August 2011.

\_\_\_\_/S/\_\_\_\_\_  
PRESIDING JUDGE

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF STETLAND  
PINELLAS DIVISION

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Sammy Adams,  
*Plaintiff,*

v.

No. A-11-CA-2356—CHR

Xtreme, S.A. and  
Sports.com Inc.,  
*Defendants.*

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Joint Stipulations

For purposes solely of the pending Motion to Remand and Objection to Personal Jurisdiction and Motion to Dismiss Pursuant to Rule 12(b)(2), Plaintiff Sammy Adams and Defendant Xtreme, S.A. stipulate to the following as undisputed facts and conclusions of law:

1. Plaintiff has been and is domiciled in the State of Stetland at all relevant times.
2. Defendant Sports.com was incorporated in the State of Stetland and has its principal place of business in the State of Texas.
3. Defendant Xtreme, S.A. was incorporated in Switzerland where it has maintained its principal place of business at all relevant times.
4. Texas substantive law controls the claims of Plaintiff in this matter against both defendants.
5. There are no applicable, controlling governmental regulations or statutes concerning the design of the SkyNet harness.

6. Stetland's long-arm statute extends to the full breadth of the due process clause.

SIGNED this 12th day of August 2011.

\_\_\_\_/S/\_\_\_\_\_  
Trial Counsel for Plaintiff

\_\_\_\_/S/\_\_\_\_\_  
Trial Counsel for Defendant Xtreme, S.A.