APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 23-40094

James Ethridge,
Plaintiff - Appellant

v.

Samsung SDI Company, Limited,
Defendant - Appellee

Appeal from United States District Court
for the Southern District of Texas

ON PETITION FOR REHEARING AND
REHEARING EN BANC

Before KING, JONES, and OLDHAM,
Circuit Judges.

ANDREW S. OLDHAM, *Circuit Judge*:

IT IS ORDERED that the petition for panel rehearing is GRANTED. The court's prior panel opinion is WITHDRAWN, *see Ethridge v. Samsung SDI Co.*, 137 F.4th 309 (5th Cir. 2025), and the following opinion is SUBSTITUTED therefor.

This panel previously held a federal court sitting in Texas could exercise personal jurisdiction over Samsung SDI after a battery it manufactured injured James Ethridge in Texas. *See Ethridge*, 137 F.4th at 323. Since then, the Seventh Circuit has addressed the same question—but with the benefit of jurisdictional discovery. *See B.D. ex rel. Myers v. Samsung SDI Co.*, 143 F.4th 757 (7th Cir. 2025). After reconsideration in light of *Myers*, we affirm the district court's dismissal for lack of personal jurisdiction.

*

Myers is materially indistinguishable from our case: A resident plaintiff injured in the forum State brought suit against Samsung SDI for injuries arising from an exploding 18650 battery sold outside the forum State.[*] Critically, though, the litigation in that case

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[*]There is a veritable cottage industry of personal jurisdiction litigation in cases arising out of exploding batteries manufactured by foreign companies after use in e-cigarettes. Both federal, *see, e.g.*, *Myers,* 143 F.3d 757; *Sullivan v. LG Chem, Ltd.*, 79 F.4th 651 (6th Cir. 2023); *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496 (9th Cir. 2023); *Durham v. LG Chem, Ltd.*, Nos. 21-11817, 21-11821, 2022 WL 274498 (11th Cir. Jan. 31, 2022) (per curiam), and state courts, *see, e.g.*, *LG Chem Am., Inc. v. Morgan,* 670

provided a more fulsome explanation of Samsung's business model after a remand for jurisdictional discovery. *See B.D. ex rel. Myers v. Samsung SDI Co.*, 91 F.4th 856, 864 (7th Cir. 2024) (per curiam). In relevant part, the court described Samsung's "steps to ensure its customers use 18650 batteries only for approved purposes." *Myers*, 143 F.4th at 763. Those steps include, among other things, requiring customers to submit "purchase application[s]" that Samsung would deny if would-be customer disclosed "ties to the e-cigarette industry." *Ibid.* These are crucial facts because personal jurisdiction doctrine has long considered whether a defendant has "'structure[d] its primary conduct' to lessen or avoid exposure to a given State's courts." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.,* 592 U.S. 351, 360 (2021) (quoting *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297 (1980)). And the Seventh Circuit's decision turned on them: The court held that "[b]ecause Samsung SDI structured its activities to ensure only encased 18650 batteries reached consumers in Indiana, it was not on 'clear notice' that it would have to answer for injuries occasioned by consumers obtaining individual batteries." *Myers,* 143 F.4th at 771–72.

Before this panel, by contrast, Samsung

S.W.3d 341 (Tex. 2023); *Dilworth v. LG Chem, Ltd.*, 355 So. 3d 201 (Miss. 2022), have struggled to apply *Ford*'s relatedness test in this context. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351 (2021). As evidenced by that division and our own reconsideration in this case, the task is difficult and divides able and fair-minded jurists. *See also id.* at 374–75 (Alito, J., concurring) (identifying the "potentially boundless reach of 'relate to'" as a challenge for the "lower courts").

emphasized that it markets 18650s to corporate clients in Texas. *See* Red Br. at 7. But the company said *nothing* about its prior-authorization contracts and the specific steps it takes to deny all sales to anyone affiliated with e-cigarette manufacturers. The most Samsung told our panel was a single sentence buried in a lengthy footnote. That single sentence said (without elaboration) that Samsung "takes careful steps through its relationships with packers and manufacturers to only supply 18650 cells in sealed battery packs for approved products." *Id.* at 21 n.4. Even then, however, Samsung cited nothing in the record; did nothing to explain what it meant by "approved products"; and otherwise left us to guess what its "careful steps" included.

As another panel from the Seventh Circuit once memorably put it, "[j]udges are not like pigs, hunting for truffles buried in the record." *Albrechtsen v. Bd. of Regents of Univ. of Wis. Sys.*, 309 F.3d 433, 436 (7th Cir. 2002) (Easterbrook, J.) (quotation omitted); *see also United States v. del Carpio Frescas*, 932 F.3d 324, 331 (5th Cir. 2019) (per curiam) (same). Nevertheless, we have never been limited to the precise arguments raised by the lawyers before us. *See Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991) ("When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law.").

Therefore, with the aid of the *Myers* opinion, we went hunting through the record before us. And lo and behold, we found the truffle. In an uncited paragraph of a declaration, Samsung describes the "great lengths" it goes to prevent consumers like Ethridge from obtaining

its batteries. ROA.644. That includes a detailed "customer vetting process" in which prospective customers must apply to purchase 18650 batteries. ROA.645. Samsung then rejects any applications with connections to the e-cigarette industry. *Ibid.* Both its website and product packaging include warnings about the risk of serious injury or death resulting from consumer usage. *Ibid.* Thus, Samsung has structured its contracts and its forum contacts to prevent personal-injury suits like Ethridge's. *See Ford,* 592 U.S. at 360. It hardly seems economical to invest en banc or certiorari resources to address a circuit split where our panel majority opinion turned on counsel's failure to alert us to facts lying dormant in the record.

Nothing in this opinion should be construed as answering whether the precise measures Samsung took to sell its products only to the industrial market create a necessary baseline for specific personal jurisdiction cases like this one. It is enough to say that Samsung affirmatively limited its contacts to approved manufacturers in Texas, and Ethridge has not shown that his injuries are related to those contacts. *See Ethridge*, 137 F.4th at 334–35 (Jones, J., dissenting) ("In this case, there is no link between Samsung's sales of goods to manufacturers and the plaintiff's injuries, which arose from a direct-to-consumer purchase and involved distribution channels that Samsung did not participate in and never authorized . . . . *Ford* does not authorize States to exercise personal jurisdiction over out-of-state defendants because of the unilateral acts of plaintiffs or third parties.").

*

Of course, because the district court dismissed Ethridge's claims without prejudice, *see* ROA.1097, he

may bring his suit again and plead additional facts that could support jurisdiction. *See* FED. R. CIV. P. 41(b); *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505–06 (2001) ("The primary meaning of 'dismissal without prejudice,' we think, is dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim."). But on the record before us, we agree with the Seventh Circuit that Ethridge has not satisfied *Ford*'s standard for personal jurisdiction.

AFFIRMED.

PER CURIAM:

The petition for rehearing en banc is DENIED because, at the request of one of its members, the court was polled, and a majority did not vote in favor of rehearing (FED. R. APP. P. 40 and 5TH CIR. R. 40).

In the en banc poll, 5 judges voted in favor of rehearing (Jones, Smith, Richman, Ho, and Engelhardt), and 11 judges voted against rehearing (Elrod, Stewart, Southwick, Haynes, Graves, Higginson, Willett, Duncan, Wilson, Douglas, and Ramirez). *

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* Judge Oldham's participation is not reflected because the panel granted rehearing. *See* FED. R. APP. 40(a) ("Panel rehearing is the ordinary means of reconsidering a panel decision; rehearing en banc is not favored."); 5TH CIR. R. 40 I.O.P. ("*Panel has control*—Although each panel judge and every active judge receives a copy of the petition for rehearing en banc, the filing of a petition for rehearing en banc *does not take the case out of the control of the panel* deciding the case. A petition for rehearing en banc is treated as a petition for rehearing by the panel if no petition is filed. The panel may grant rehearing without action by the full court." (capitalization omitted; emphases added)).

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 23-40094

James Ethridge,
Plaintiff - Appellant

v.

Samsung SDI Company, Limited,
Defendant - Appellee

Appeal from United States District Court
for the Southern District of Texas

Before KING, JONES, and OLDHAM, *Circuit Judges*.

ANDREW S. OLDHAM, *Circuit Judge*:

James Ethridge brought a personal injury lawsuit against Samsung SDI Company, which manufactured a battery that exploded in his pocket. The district court dismissed his complaint for lack of personal jurisdiction because the Fourteenth Amendment's conceptions of fair play and substantial justice did not allow the State of Texas to exercise personal jurisdiction over Samsung. We reverse.

I

A

Samsung SDI ("Samsung") is a South Korean corporation with its principal place of business in South Korea. It manufactures and sells batteries. Samsung does not have a physical presence in the United States. Rather, it uses various subsidiaries and distribution companies to serve customers in the United States.

The product at issue in this case is a Samsung "18650" lithium-ion battery.[1] With respect to 18650 lithium-ion batteries, Samsung has two kinds of contacts with the forum State of Texas.

The first kind of contact is direct and clear. Since January 2019, Samsung has shipped 18650 batteries to Black & Decker's Texas manufacturing facility to be incorporated into sealed power tool battery packs. For a number of years (at all times relevant to this litigation), Samsung has also shipped 18650 batteries to HP and Dell to be used as samples or for laptop repairs in their Texas service centers.

The second kind of contact is less direct and less clear. Samsung sells 18650 batteries to "sophisticated and qualified" businesses, which typically use them in battery packs. ROA.641. Some of these battery packs end up in products that are sold to Texas consumers. Samsung contends, however, that it has no control over what happens to its 18650 batteries after it sells them to its business customers in Texas.

B

James Ethridge is a citizen of Texas. In October 2018, he bought a Samsung 18650 lithium-ion battery from a

[1] An "18650" battery is 18 mm wide and 65 mm tall.

Wyoming-based seller on Amazon. The battery was presumably shipped to Ethridge in Texas, although the record does not describe how the Wyoming seller obtained the battery or got it to Ethridge. Ethridge appears to have bought the battery for the purpose of powering an e-cigarette device. In November 2019, the Samsung 18650 battery exploded while it was in Ethridge's pocket in League City, Texas. Ethridge sustained "severe burns and other injuries." ROA.64.

In 2021, Ethridge brought a personal injury lawsuit in Texas state court. Ethridge initially sued four defendants: Samsung, Firehouse Vapors LLC (which sold Ethridge his e-cigarette), and two Amazon entities. In his first amended petition, Ethridge added Macromall LLC (the Wyoming battery seller) as a fifth defendant. After Ethridge dismissed his claims against Firehouse Vapors, the remaining defendants removed the lawsuit to federal court under 28 U.S.C. § 1332. Ethridge then dismissed Macromall, leaving Samsung and the two Amazon entities.

The remaining defendants pursued different paths to dismissal. The Amazon defendants moved for summary judgment, which the district court granted. And Samsung moved to dismiss for lack of personal jurisdiction. *See* FED. R. CIV. P. 12(b)(2). The district court granted Samsung's motion. *Ethridge v. Samsung SDI Co.*, 617 F. Supp. 3d 638, 653 (S.D. Tex. 2022).

Ethridge timely appealed. He voluntarily dismissed the appeal with respect to his claims against Amazon. Accordingly, we consider only whether the district court erred in granting Samsung's motion to dismiss for lack of personal jurisdiction.

II

We review *de novo* the district court's grant of a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction.

Sangha v. Navig8 ShipManagement Priv. Ltd., 882 F.3d 96, 101 (5th Cir. 2018). If the district court ruled "on personal jurisdiction without conducting an evidentiary hearing, the plaintiff bears the burden of establishing only a *prima facie* case of personal jurisdiction." *Ibid.* To determine if "the plaintiff has met this burden, the court can consider the assertions in the plaintiff's complaint, as well as the contents of the record at the time of the motion." *Frank v. PNK (Lake Charles) LLC*, 947 F.3d 331, 336 (5th Cir. 2020) (quotations omitted). All "jurisdictional allegations must be accepted as true," *Sangha*, 882 F.3d at 101, and we "resolve factual conflicts in favor of the plaintiffs," *Libersat v. Sundance Energy, Inc.*, 978 F.3d 315, 318 (5th Cir. 2020). But we need not credit conclusory allegations, even if uncontroverted. *See Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 868 (5th Cir. 2001).

In diversity cases like this one, a federal court "may exercise personal jurisdiction over a nonresident defendant if (1) the long-arm statute of the forum state confers personal jurisdiction over that defendant; and (2) exercise of such jurisdiction by the forum state is consistent with due process under the [Fourteenth Amendment to the] United States Constitution." *Ainsworth v. Moffett Eng'g, Ltd.*, 716 F.3d 174, 177 (5th Cir. 2013); *see also* FED. R. CIV. P. 4(k)(1)(A). Because the Texas long-arm statute "extends to the limits of the United States Constitution," *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 66 (Tex. 2016), we need consider only the federal constitutional issue.

In *International Shoe Company v. Washington*, 326 U.S. 310 (1945), the Supreme Court held that Due Process requires a State's exercise of personal jurisdiction to accord with "traditional notions of fair play and

substantial justice." *Id.* at 316 (quotation omitted). In fleshing out this amorphous standard, the Supreme Court has since recognized two forms of personal jurisdiction: general and specific. *Bristol-Myers Squibb Co. v. Superior Ct.*, 582 U.S. 255, 262 (2017). Because Samsung is neither incorporated in Texas nor has its principal place of business there, there is no general jurisdiction over Samsung in Texas. *See Daimler AG v. Bauman*, 571 U.S. 117, 137–39 (2014).

Thus, we turn to specific personal jurisdiction. Specific personal jurisdiction "covers defendants less intimately connected with a State, but only as to a narrower class of claims." *Ford Motor Co v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021). To establish specific personal jurisdiction, three conditions must be met: (1) the defendant purposefully availed itself of the privilege of conducting activities in the forum State, (2) the plaintiff's claim arises out of or relates to those purposeful contacts with the forum, and (3) the exercise of personal jurisdiction must be fair and reasonable. *Ibid*; *see also Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 317–18 (5th Cir. 2021). These requirements ensure that when "a company exercises the privilege of conducting activities within a [S]tate—thus enjoying the benefits and protection of its laws—the State may hold the company to account for related misconduct." *Ford Motor Co.*, 592 U.S. at 360 (cleaned up).

The first and third conditions require little discussion here. First, to demonstrate purposeful availment, the plaintiff must show that the defendant "deliberately reached out beyond its home—by, for example, exploiting a market in the forum State or entering a contractual relationship centered there." *Id.* at 359 (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)) (cleaned up); *see also*

Hanson v. Denckla, 357 U.S. 235, 253 (1958). The defendant's actions must be voluntary and not "random, isolated, or fortuitous." *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984). Samsung has purposefully availed itself of the privilege of doing business in Texas through its multi-year 18650 contracts with Black & Decker, HP, and Dell. Through those contacts, Samsung has deliberately reached out beyond its home in South Korea to exploit a market and enter contractual relationships centered in Texas. *See Ford*, 592 U.S. at 359 (citation omitted). Those contacts constitute purposeful availment of the Texas forum.

The third condition is equally straightforward. Texas has an interest in maintaining a forum for its citizens who are injured within the State. Ethridge has an interest in litigating in his home State. And a large company like Samsung has the ability to litigate in the forum. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291–93 (1980); *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473–74 (1985). Thus, there is nothing unfair or unreasonable about Texas's exercise of personal jurisdiction.

III

The crux of the case is the Supreme Court's second condition for exercising specific personal jurisdiction: whether Ethridge's claims "arise out of or relate to the defendant's contacts with the forum" State. *Bristol-Myers*, 582 U.S. at 262 (quoting *Daimler*, 571 U.S. at 127) (quotation omitted). We first (A) explain the Supreme Court's recent relatedness holding in Ford. Then we (B) explain why *Ford* supports a finding that Ethridge's personal injury suit is related to Samsung's contacts with Texas.

A

In *Ford*, the Supreme Court reviewed appeals from state court cases in Montana and Minnesota. In the first case, Montana resident Markkaya Gullett died in an accident on a Montana highway while driving her 1996 Ford Explorer. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 395 Mont. 478, 482 (2019). Gullett's personal representative sued Ford in Montana state court. *See id.* at 483. Ford did not design, manufacture, or sell the relevant Explorer in Montana. Rather, Gullett's Explorer was designed in Michigan, built in Kentucky, and sold for the first time in Washington. *Id.* at 482. Only years later was the vehicle resold and registered in Montana—without any involvement by Ford. *Id.* at 482–83.

Ford did engage in substantial business in Montana, however. Ford advertised in Montana, had dozens of dealerships in Montana, and sold automobiles in Montana, including "specifically Ford Explorers—the kind of vehicle at issue" in the Gullett lawsuit. *Id.* at 488.

In the second case, Minnesota resident Adam Bandemer suffered severe injuries in an accident on a Minnesota road while riding in a friend's 1994 Ford Crown Victoria. *See Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 748 (Minn. 2019). Bandemer sued Ford in Minnesota state court. *See ibid.* Ford did not design, manufacture, or sell the relevant Crown Victoria in Minnesota. *Ibid.* Rather, the Crown Victoria in question was designed in Michigan, built in Ontario, and sold for the first time in North Dakota. *Id.* at 757–58 (Anderson, J., dissenting). Only years later did the fifth owner of the Crown Victoria (the father of Bandemer's friend) register it in Minnesota. *Id.* at 758 (Anderson, J., dissenting).

But again, Ford engaged in substantial business in Minnesota. Ford advertised in Minnesota, had dozens of dealerships in Minnesota, and sold automobiles in

Minnesota, including "more than 2,000 1994 Crown Victoria cars," like the one that injured Bandemer. *Id.* at 748.

Ford moved to dismiss the two lawsuits "on basically identical grounds." *Ford*, 592 U.S. at 356. Conceding purposeful availment, the company argued that the vehicles were not designed, manufactured, or sold in the relevant forum States. "Only later resales and relocations by consumers had brought the vehicles to Montana and Minnesota. That meant, in Ford's view, that the courts of those States could not decide the suits." *Id.* at 357.

The Supreme Court unanimously rejected Ford's relatedness argument and held the Fourteenth Amendment posed no obstacle to the state courts' exercise of specific personal jurisdiction. The majority opinion is subject to different, fair-minded interpretations. *Cf. id.* at 373 (Alito, J., concurring in the judgment); *id.* at 375–378 (Gorsuch, J., concurring in the judgment). But as best we can tell, the Court appeared to adopt the following rule for relatedness: Where the defendant sold a non-insignificant volume of product in the forum State, an in-state plaintiff's suit involving the in-state use of and in-state injury from the same product will satisfy the relatedness condition of specific personal jurisdiction. Call it the "same product plus in-state injury" test for relatedness.[2]

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[2] This test fits comfortably with our court's pre-*Ford* precedents. For example, we have long characterized Justice O'Connor's plurality in *Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102 (1987), as adopting a "stream-of-commerce-plus" test. *See, e.g.*, *Ruston Gas Turbines, Inc. v. Donaldson Co.*, 9 F.3d 415, 420 (5th Cir. 1993); *In re Chinese Manufactured Drywall Prods. Liab. Litig.*, 742 F.3d 576, 585 (5th Cir. 2014).

Three points support this reading of Ford.

First, the Court rejected Ford's exclusively causal view of relatedness. Parsing the "arise out of or relate to" phrase from previous decisions, the majority opinion distinguished claims that "arise out of" from claims that "relate to" the defendant's in-forum conduct. *Id.* at 362 (majority opinion). "The first half of that standard asks about causation; but the back half, after the 'or,' contemplates that some relationships will support jurisdiction without a causal showing."[3] *Ibid.*; *see also ibid.* ("None of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do."). In support of its reading of precedent, the Court looked to dicta in *World-Wide Volkswagen* (and readopted in *Daimler*) that would permit personal jurisdiction in a fact pattern similar to that in *Ford*. *See id.* at 363–64.

Next, the Court emphasized the close connection between Ford's in-state activities and the products that injured the plaintiffs. The Court thrice remarked that specific personal jurisdiction would attach when a company serves a market for a product in a State and that

[3] Both concurrences in *Ford* noted that the majority opinion parsed the relatedness phrase as if it was interpreting statutory text. *See Ford*, 141 S. Ct. at 373 (Alito, J., concurring in the judgment); *id.* at 376 (Gorsuch, J., concurring in the judgment). While we agree with our esteemed dissenting colleague's view that Supreme Court opinions are not statutes, *see also post* at 9 (JONES, J., dissenting), the majority's decision is binding on us. And we do not have the liberty to read it differently.

same product causes injury in the State.[4] *Id.* at 355, 363, 368. Beyond that, the Court repeatedly emphasized that Ford had advertised, sold, and serviced the two relevant car models in Montana and Minnesota for decades. *See id.* at 364–65; *see also id.* at 365 ("Ford urges Montanans and Minnesotans to buy its vehicles, *including (at all relevant times) Explorers and Crown Victorias*. Ford cars—*again including those two models*—are available for sale . . . ." (emphasis added)); *ibid.* ("Ford had systematically served a market in Montana and Minnesota *for the very vehicles that the plaintiffs allege malfunctioned and injured them* in those States." (emphasis added)); *id.* at 368–69 ("All that assistance to Ford's in-state business creates reciprocal obligations—*most relevant here, that the car models Ford so extensively markets in Montana and Minnesota* be safe for their citizens to use there." (emphasis added)); *cf. id.* at 365 ("Contrast a case, *which we do not address*, in which Ford marketed the models in only a different State or region." (emphasis added)).

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[4] Samsung argues that *Ford* did not announce a new standard of the kind discussed above. But three of the eight justices explicitly noted that Ford changed the doctrine. *See Ford*, 592 U.S. at 373 (Alito, J., concurring in the judgment) (discussing a "new gloss" on the case law); *id.* at 376 (Gorsuch, J., concurring in the judgment, joined by Thomas, J.) (noting the Court's "pivot[]"). The majority opinion was more implicit. But through its direct embrace of dicta from previous cases, *see id.* at 363–64 (majority opinion) (discussing dicta from *World-Wide Volkswagen*, *Asahi*, and *Daimler*), and its "new gloss" on the phrase "related to," the majority opinion modified the doctrine in ways that bind us today. *Id.* at 373 (Alito, J., concurring in the judgment).

Because it was fair for Montana and Minnesota to regulate the in-state sales of Explorers or Crown Victorias, it was permissible for those States to provide a forum for in-state injuries arising from out-of-state sales of the same models. *See id.* at 367–68; *see also id.* at 368 ("An automaker regularly marketing a vehicle in a State . . . has 'clear notice' that it will be subject to jurisdiction in the State's courts when the product malfunctions there (regardless where it was first sold.") (quoting *World-Wide Volkswagen*, 444 U.S. at 297)). And insofar as principles of "interstate federalism" affected the analysis, Montana and Minnesota had the greatest interest in litigation involving in-state parties, an in-state accident, and in-state injuries. *Id.* at 368 (quoting *World-Wide Volkswagen*, 444 U.S. at 293).

Finally, the Court laid down guardrails to ensure that relatedness does not mean that "anything goes." *Id.* at 362. It did so by underscoring the limitations that come from its 2017 decision in *Bristol-Myers*. *See id.* at 361–62. Beyond that, the Court seemed to emphasize this was not a case where Ford only made "isolated" or "sporadic" sales in Montana or Minnesota. *Id.* at 366 n.4; *see also Keeton*, 465 U.S. at 774. Rather, Ford sold a large volume of Explorers and Crown Victorias in the forum States. *See Ford*, 592 U.S. at 357.

B

It is a perilous project to interpret a Supreme Court decision that *the Justices themselves* interpret differently. *See*, *e.g.*, *supra* n.4. And as Justice Alito observed, the *Ford* majority opinion says there are "real limits" to the "related to" requirement—"[b]ut without any indication what those limits might be, I doubt that the lower courts will find that observation terribly helpful." *Ford*, 592 U.S. at 374 (Alito, J., concurring in the judgment). With

epistemic humility, our best effort to apply the *Ford* opinion requires rejecting Samsung's jurisdictional objection.

Samsung admits that it sells 18650 batteries directly to customers in Texas, including HP, Dell, and Black & Decker.[5] There is no reason to believe that those 18650 batteries are different in any way from the 18650 battery that exploded in Ethridge's pocket. And, while it is not clear how many batteries were sold to Samsung's corporate customers, the record does not suggest that the sales are "isolated" or "sporadic." *See Sangha*, 882 F.3d at 101 (plaintiff must only make a *prima facie* case).

Ford's discussion of *Bristol-Myers* reinforces our finding that jurisdiction is proper. In *Bristol-Meyers*, plaintiffs from across the country brought a class action lawsuit in California state court. *Bristol-Myers*, 582 U.S. at 258. The Supreme Court found the States' exercise of specific personal jurisdiction over Bristol-Myers as to the claims of non-resident plaintiffs violated the Constitution.

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[5] Samsung suggests that its Black & Decker shipments should not be counted because they began after Ethridge bought his battery but before the battery exploded in his pocket. *See* Red Br. 14 n.2. We disagree. One of the relevant contacts in *Ford* was a 2016 "Ford Experience Tour," which occurred *after* the car accident that prompted the Minnesota lawsuit. *See Bandemer*, 931 N.W.2d at 748; *Ford*, 141 S. Ct at 1023–24. That suggests the relevant contacts cannot be limited to those that predated the battery purchase. And in any event, the long-term agreements that Samsung has with HP and Dell entail sufficient shipments to trigger purposeful availment.

Ibid. And as the *Ford* majority explained, its ruling directly followed from that case:

> We found jurisdiction improper in *Bristol-Myers* because the forum State, and the defendant's activities there, lacked any connection to the plaintiffs' claims. See 582 U.S. at 265 ("What is needed—and what is missing here—is a connection between the forum and the specific claims at issue"). The plaintiffs, the Court explained, were not residents of California. They had not been prescribed Plavix in California. They had not ingested Plavix in California. And they had not sustained their injuries in California. See *ibid.* (emphasizing these points). In short, the plaintiffs were engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State. See *id.* at 266–67 (distinguishing the Plavix claims from the litigation in *Keeton* because they "involv[e] no in-state injury and no injury to residents of the forum State"). That is not at all true of the cases before us. Yes, Ford sold the specific products in other States, as Bristol-Myers Squibb had. But here, the plaintiffs are residents of the forum States. They used the allegedly defective products in the forum States. And they suffered injuries when those products malfunctioned in the forum States. In sum, each of the plaintiffs brought suit in the most natural State—based on an "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that t[ook] place" there. *Bristol-Myers*, 582 U.S. at 262, 264. So *Bristol-Myers* does not bar jurisdiction.

Ford, 592 U.S. at 369–370 (cleaned up). In short, the difference between *Ford* and *Bristol-Myers* was the connection between the plaintiff's claims and the forum

State. Relatedness was proper in *Ford* where the plaintiffs were residents of Montana and Minnesota, used the products in Montana and Minnesota, and suffered injuries in Montana and Minnesota. *See ibid.* Whereas in *Bristol-Myers*, none of those three factors connected the out-of-state plaintiffs to California.

That doctrinal line suggests Texas can exercise personal jurisdiction over Samsung. Ethridge is a Texas resident, he used his 18650 battery in Texas,[6] and he suffered an injury in Texas. Accordingly, Ethridge's suit complies with *Ford*'s same-model-plus-in-state-injury condition for relatedness.

IV

Finally, we turn to Samsung's "different market" counterargument. Samsung contends it sells 18650 batteries to Texas *companies* (like HP, Dell, and Black & Decker)—not Texas *consumers* (like Ethridge). Therefore, Samsung argues, Ethridge's injuries are not "related to" the company's relevant in-Texas contacts.

We reject this "different markets" understanding of the Fourteenth Amendment and *Ford*. We first (A) explain why Samsung's contention conflicts with longstanding Fourteenth Amendment doctrine. Then we (B) explain that Samsung's "different markets" test is unworkable. We then (C) explain why we find Samsung's out-of-circuit authorities unpersuasive. Finally, we (D)

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[6] In light of *Ford*, it should not matter that Ethridge bought his battery from a reseller and not directly from Samsung. The Explorer in the Montana suit in *Ford* was not sold directly to the plaintiff but was resold as a used car. *Ford*, 443 P.3d at 411.

respond to the dissent's discussion of recent Fifth Circuit precedent.

A

We cannot reconcile Samsung's "different market" theory with *Ford* or personal-jurisdiction doctrine more generally.

Begin with *Ford*. In that case, the car company contended it would be unfair to make it liable in Montana for Explorers that it did not design, manufacture, or sell in Montana. On its telling, the company effectively allocated a dollar amount for liability that it might face in Montana courts based on its in-state activities. Letting customers who bought Explorers in other States sue in Montana would disrupt Ford's corporate strategy. The *Ford* Court rejected this contention. It reasoned that even if the total liability for suits in Montana was higher than Ford might have planned (*e.g.*, because more people brought out-of-state Explorers into Montana than left the State with in-state Explorers), that burden could "hardly be said to be undue." *Ford*, 592 U.S. at 368 (quoting *Int'l Shoe*, 326 U.S. at 319).

Samsung's "different market" argument is also inconsistent with the Supreme Court's whole-forum focus. Over and over, the Court has referred, not to "part of the forum" or "an aspect of the forum," but to "*the* forum." *See Bristol-Myers*, 582 U.S. at 262 ("[T]here must be 'an affiliation between *the forum* and the underlying controversy . . . .'" (emphasis added) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011))); *see also J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion) ("[P]ersonal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis. The question is whether a defendant has followed a course of conduct directed *at the society or*

economy existing within the jurisdiction of a given sovereign . . . ." (emphasis added)). Samsung, by contrast, would divide the forum State into many smaller markets—not one, indivisible forum State. *Cf. LG Chem Am., Inc. v. Morgan*, 670 S.W.3d 341, 348 (Tex. 2023) (declining to endorse LG Chem's "proposed granulation of the forum—the State of Texas—into distinct market segments when evaluating personal jurisdiction"). We are aware of no basis for Samsung's contention in Supreme Court precedent.

B

Next, we worry that Samsung's "different market" interpretation of *Ford* would be unworkable. True, specific personal jurisdiction is already not the clearest legal doctrine. *See Ford*, 592 U.S. at 376–78, 382–84 (Gorsuch, J., concurring in the judgment); *see also* James P. George, *Running on Empty*: Ford v. Montana *and the Folly of Minimum Contacts*, 30 GEO. MASON L. REV. 1, 5 (2022) (describing specific personal jurisdiction as "an unworkable maze of a test whose precedents are a repetitive patchwork of contradictions"). But in applying this sometimes-fuzzy doctrine, far be it from us to make the doctrine fuzzy to the point of indeterminacy.

Samsung's "different market" argument would do just that. The company attempts to define one market as business purchases of the 18650 and another market as consumer purchases of the 18650. It is unclear whether that market definition would work in any area of law. *Cf. New Orleans Ass'n of Cemetery Tour Guides & Cos. v. New Orleans Archdiocesan Cemeteries*, 56 F.4th 1026, 1038 (5th Cir. 2023) (rejecting an antitrust product market that failed to account for reasonable substitutes). And we certainly cannot see how it would work for personal jurisdiction. Personal jurisdiction rules should be as clear

and administrable as possible at the outset of a case. Rule 12(b)(1) inquiries cannot turn on whether a defendant sells to government purchasers but not private ones; large businesses but not small ones; businesses in one industry but not another; purchasers in one link of the supply chain but not another; businesses in Austin but not Dallas; and so on.

Moreover, what are we to do with our precedents? This court repeatedly issues purposeful availment decisions that turn on the number of products entering a forum State. *See, e.g.*, *Ainsworth*, 716 F.3d at 178–79 (comparing the one New Jersey sale in *Nicastro* to the 203 Mississippi sales in the instant case). These rules determine purposeful availment in later cases. *See, e.g.*, *Zoch v. Magna Seating (Germany) GmbH*, 810 F. App'x 285, 291–93 (5th Cir. 2020) (discussing *Ainsworth*). The point of these decisions is to put everyone on notice that X sales into Mississippi constitutes purposeful availment of that forum, but Y sales does not. If Samsung were correct, however, we would have to re-slice the forum sales along a potentially infinite number of different markets. For example, if 203 forklift sales to the State of Mississippi was enough in *Ainsworth*, how many would be enough if we narrowed the relevant market to just the Mississippi state government forklift market? We would have to (a) figure out the size of the overall Mississippi forklift market, then (b) figure out the size of the Mississippi state government forklift market, and (c) calculate a percentage that the court then applies to old cases like *Ainsworth* which didn't conduct such slicing. And we would have to do all of this at the 12(b)(1) stage to determine the threshold question of personal jurisdiction. The complications introduced by such an approach counsel rejecting it.

C

Finally, Samsung relies heavily on a recent decision from the Ninth Circuit. *See Yamashita v. LG Chem, Ltd.*, 62 F.4th 496 (9th Cir. 2023). In that case, the plaintiff Yamashita was injured by an 18650 battery that he bought from a third party in Hawaii. *Id.* at 501. Yamashita sued the manufacturer of the battery, a South Korean company named LG Chem. *Ibid.* The district court granted LG Chem's motion to dismiss for lack of personal jurisdiction, and Yamashita appealed. *Id.* at 502. A Ninth Circuit panel affirmed the district court's grant of the motion to dismiss and denial of jurisdictional discovery. *Id.* at 508–09. In its analysis of the second issue, our sister circuit seemed to follow Samsung's reading of *Ford*:

> Yamashita seeks evidence that LGC and LGCA have forum contacts related to the use of lithium-ion batteries, and particularly 18650 batteries, in consumer products. Yamashita hypothesizes that these firms either are directly responsible for shipping such batteries into Hawaii . . . .
>
> Such contacts might satisfy the 'relates to' prong of the specific personal jurisdiction test if causing one's lithium-ion batteries to be incorporated into consumer products meant entering the consumer market for stand-alone lithium-ion batteries. But this is implausible. Whether the relevant market is that for lithium-ion batteries generally or that for 18650 batteries specifically, the relevant market is the consumer market. The logic of *Ford* did not turn on the mere fact that Ford had introduced some Explorers and Crown Victorias into Montana and Minnesota, but on the fact that it marketed these models to consumers, sold them to consumers, and serviced them for consumers. *Ford* gives little reason to think that the relatedness prong would have been satisfied if, for

> example, Ford had sold Crown Victorias only to police departments in Minnesota, had not marketed them to consumers, and had not serviced them at all. Such contacts would not typically cause, and could not be foreseen to cause, injuries resulting from consumer ownership of Crown Victorias, especially if most consumer-owned Crown Victorias were acquired out-of-state. Similarly, even if LGC or LGCA sells 18650 batteries to manufacturers for incorporation in consumer products sold in Hawaii, these sales would not be related to purchases of stand-alone batteries by Hawaii consumers.

Id. at 507–08.

The Ninth Circuit interpreted *Ford* to hold that "relatedness proxies for causation, ensuring jurisdiction over a class of cases for which causation seems particularly likely but is not always easy to prove. On this line of reasoning, a plaintiff's injury relates to a defendant's forum contacts if similar injuries will tend to be caused by those contacts." *Id.* at 505. This "causal proxy" view of relatedness then appeared in the block quotation above, where the panel asked whether the defendant's contacts would "typically cause" or could be "foreseen to *cause*" the in-state injury. *Id.* at 508 (emphasis added).

With all respect for our learned colleagues to the West (and our esteemed dissenting colleague who agrees with them, *see post*, at 6–8), we understand *Ford* differently. According to our best reading of *Ford*, the first part of the relatedness standard ("arise out of") is about causation, but the second half ("relate to") is not: "The first half of that standard asks about causation; but the back half, after the "or," contemplates that some relationships will support jurisdiction without a causal showing." *Ford*, 592

U.S. at 362. And the Court did not hold that relatedness was solely a proxy for causation, however loose. In fact, the Court explicitly noted that personal jurisdiction would still be permitted if a plaintiff had made an out-of-state purchasing decision without considering any of Ford's activities in her home State. *Id.* at 367 n.5. That hypothetical situation contains no evidence of causation but still permits the exercise of specific personal jurisdiction.

We are more persuaded by the Sixth Circuit's interpretation of *Ford* in *Sullivan v. LG Chem, Ltd.*, 79 F.4th 651 (6th Cir. 2023). LG Chem manufactured an 18650 battery that exploded in a Michigan resident's pocket in Michigan. *Id.* at 656–57. The resident then sued LG Chem in Michigan state court. *Id.* at 657. While LG Chem shipped 18650 batteries to various corporate clients in Michigan, it did not sell directly to consumers like Sullivan. *Id.* at 658–59. Thus, the company tried the same "different market" argument Samsung has raised before our court. *See id.* at 672.

The Sixth Circuit rejected the argument. The "different market" interpretation was "too narrow a framing, and one disguising the rejected causation analysis" from *Ford*. *Ibid.* LG Chem's choice of customer or intended product use might have been relevant to liability, but it was not relevant to personal jurisdiction. *Id.* at 672 n.8. The plaintiff was a Michigan resident who was injured in Michigan by LG Chem's product—"the same type of product that LG Chem shipped into Michigan around this time period." *Id.* at 673. Thus, relatedness was proper there. So too here.[7]

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[7] Both Samsung, in a post-argument 28(j) letter, and

D

Finally, our dissenting colleague says two Fifth Circuit cases are "irreconcilable" with today's decision. *Post*, at 13 (JONES, J., dissenting). With utmost respect for our esteemed colleague, we read these cases differently.

The dissenting opinion first points to "core principles of fairness to non-resident defendants," *ibid.*, as discussed in *Johnson v. TheHuffingtonPost.com*, 21 F. at 320. Those principles include "fair warning that [defendants'] activities could furnish jurisdiction in the forum" and the defendant's ability to "limit or avoid his exposure to the courts of a particular state." *Ibid.* (citing *Ford*, 592 U.S. at 360). But *Ford*, and our decision today, accounts for this. By "conducting so much business in" Texas, Samsung "enjoys the benefits and protection of [its] laws—the enforcement of contracts, the defense of property, the resulting formation of effective markets." *Ford*, 592 U.S. at 367 (quoting *Int'l Shoe*, 326 U.S. at 319). That activity provides "clear notice that [Samsung] will be subject to jurisdiction in [Texas courts]" when the very same product it sells in Texas "malfunctions there." *Id.* at 368 (citing *World-Wide Volkswagen*, 444 U.S. at 297).

Johnson is also factually inapposite. That case concerned an allegedly libelous story published about a Texas resident by an out-of-state defendant. 21 F.4th at

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the dissent raise another out-of-circuit authority: *B.D. ex rel. Myer v. Samsung SDI Co., Ltd.*, 91 F.4th 856 (7th Cir. 2024) (per curiam). *See also post* at 8 (JONES, J., dissenting). That case is neither relevant to nor persuasive on the issue of relatedness. The panel made no finding about relatedness and remanded for further jurisdictional discovery on both relatedness and purposeful availment. 91 F.4th at 862–64.

316–17. Applying Supreme Court precedent, the panel asked "whether the forum [S]tate was the focal point of the alleged libel and of the harm suffered." *Id.* at 318 (quoting *Calder v. Jones*, 465 U.S. 783, 789 (1984)). It was neither: The story at issue did not mention Texas, concerned events outside of the State, and involved no Texan sources. *Id.* at 319. The Huffington Post had not purposefully availed itself of Texas, and the plaintiff failed to establish that injury occurred in Texas. So the "in-state injury" part of *Ford*'s test was lacking.

Pace v. Cirrus Design Corporation, 93 F. 4th 879 (5th Cir. 2024), is similarly distinguishable. In that case, a Mississippi resident sought to establish personal jurisdiction in Mississippi over foreign defendants for injuries suffered in Texas. *Id.* at 887–88. But here, as in Ford, the relevant injuries occurred within the forum State. *See Ford*, 592 U.S. at 356. That detail, though "not a silver bullet for obtaining specific personal jurisdiction," *post* at 10, makes a difference.[8] *Ford*, 592 U.S. at 369–70.

* * *

In closing, one broader point bears emphasis. No one debates that Texas's long-arm statute enables the State's

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[8] *Cappello v. Rest. Depot, LLC* is inapposite for the same reason. 89 F.4th 238 (1st Cir. 2023); *see also post* at 12 (JONES, J., dissenting). In *Cappello*, the plaintiff did not use the relevant product in the forum State. *Id.* at 246. Moreover, *Cappello's* attempt to distinguish the automobile products in *Ford* as especially "mobile" or "durable," *see ibid.*, conflicts with the Supreme Court's rejection of a similar kind of automobile exceptionalism in *World-Wide Volkswagen*, *see* 444 U.S. at 295–99.

courts to exercise personal jurisdiction over Samsung. *See* TEX. CIV. PRAC. & REM. CODE §§ 17.041–17.045. Under Rule 4 of the Federal Rules of Civil Procedure, federal courts mirror the scope of that exercise of personal jurisdiction. *See* FED. R. CIV. P. 4(K)(1)(A). The only remaining obstacle is the Due Process Clause of the Fourteenth Amendment. So Samsung must show that such an exercise of personal jurisdiction is unconstitutional.

The nature of that constitutional objection should give us pause. How should we analyze the contention that personal jurisdiction offends "fair play and substantial justice"? The doctrine does not come from constitutional text or original law. *See Ford*, 592 U.S. at 384 (Gorsuch, J., concurring in the judgment); *cf.* Stephen E. Sachs, Pennoyer *Was Right*, 95 TEX. L. REV. 1249 (2017); Lawrence B. Solum & Max Crema, *Originalism and Personal Jurisdiction: Several Questions and a Few Answers*, 73 ALA. L. REV. 483 (2022). It instead turns on the substantive component of the Due Process Clause, as interpreted by binding Supreme Court precedent. So the only way to resolve cases like this one is to ask whether the defendant carried its burden to show that Supreme Court precedent gives it the right to object to personal jurisdiction in the forum State. *See Ford*, 592 U.S. at 384 (Gorsuch, J., concurring in the judgment). While we acknowledge that reasonable jurists can interpret that precedent differently, we think Samsung failed to carry its burden.

We REVERSE the district court's grant of Samsung's motion to dismiss for lack of personal jurisdiction and REMAND for further proceedings.

EDITH H. JONES, *Circuit Judge*, dissenting:

Taking the wrong side on an issue that has divided state and federal courts,[1] the majority regrettably departs from first principles of specific personal jurisdiction by overreading *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.*, 592 U.S. 351, 141 S. Ct. 1017 (2021). In so doing, the majority splits with the unanimous Ninth Circuit opinion in *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496 (9th Cir. 2023), fails to reconcile our own recent precedents in *Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314 (5th Cir. 2021), and *Pace v. Cirrus Design Corp. (Pace I)*, 93 F.4th 879 (5th Cir. 2024), and therefore destabilizes this area of law.

The unilateral choices of an individual-consumer plaintiff have not been determinative of specific jurisdiction in modern history. Instead, an unbroken string of Supreme Court cases, with a recent, narrow exception in *Ford*, focus on the purposeful actions of the defendant in a forum state. Here, the defendant's forum-state activities are wholly unrelated to the plaintiff's purchase and use of the relevant product. Therefore, because Ethridge purchased the battery for his vape pen through a channel that Samsung never authorized, the

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[1] *Compare Yamashita v. LG Chem, Ltd.*, 62 F.4th 496 (9th Cir. 2023), *and State ex rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899 (Mo. 2020*), and Davis v. LG Chem, Ltd.*, 849 F. App'x 855 (11th Cir. 2021), *and Durham v. LG Chem, Ltd.*, Nos. 21-11814, 21-11817, 21-11821, 21-11826, 21-11828, 2022 WL 274498 (11th Cir. Jan. 31, 2022), *with Sullivan v. LG Chem, Ltd.*, 79 F.4th 651 (6th Cir. 2023), *and LG Chem Am., Inc. v. Morgan*, 670 S.W.3d 341 (Tex. 2023), *and Dilworth v. LG Chem, Ltd.*, 355 So. 3d 201 (Miss. 2022).

fact of his injury should not make Texas a valid forum consistent with Due Process. I respectfully dissent and would affirm the district court's dismissal of Ethridge's claims.

I.

A.

The lodestar principle of modern personal jurisdiction is that "[d]ue process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." *Walden v. Fiore*, 571 U.S. 277, 284, 134 S. Ct. 1115, 1122 (2014). A focus on the liberty and due process interests of the nonresident defendant necessarily means focusing on the nonresident's actions. If a defendant is "not present within the territory of the forum," then due process demands that the defendant "have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S. Ct. 339, 343 (1940)).

Specific jurisdiction arising from such contacts is grounded in the idea of reciprocity between a defendant and a State. "Where a defendant knowingly benefits from the availability of a particular state's market for its products, it is only fitting that the defendant be amenable to suit in that state." *Luv N' care, Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 470 (5th Cir. 2006). But by the same token, "[f]or specific jurisdiction, a plaintiff must link the defendant's suit-related conduct to the forum. Mere market exploitation will not suffice." *Johnson*, 21 F.4th at 324; see also *Pace I*, 93 F.4th at 900 ("We agree with [the Defendant] that [the Plaintiff] failed to connect the Texas [airplane] crash either to the 'business Cirrus *might* do in

Mississippi' or to the business it did with the Mississippi residents who sold the aircraft to a non-party two years prior to the crash.") (emphasis in original). As the Court explained simply in *Ford*: "When (but only when) a company 'exercises the privilege of conducting activities within a state'—thus 'enjoy[ing] the benefits and protection of [its] laws'—the State may hold the company to account for related misconduct." *Ford*, 592 U.S. at 360, 141 S. Ct. at 1025 (quoting *Int'l Shoe*, 326 U.S. at 319, 66 S. Ct. at 160) (alterations in original).

B.

Relatedness requires much more than Ethridge can show in this case: a "strong relationship among the defendant, the forum, and the litigation." *Ford*, 592 U.S. at 365, 141 S. Ct. at 1028 (quotation marks and citation omitted). This requirement ensures that there are "real limits" to a state's exercise of specific personal jurisdiction over non-resident defendants. *Id.* at 362, 141 S. Ct. at 1026. In this case, there is no link between Samsung's sales of goods to manufacturers and the plaintiff's injuries, which arose from a direct-to-consumer purchase and involved distribution channels that Samsung did not participate in and never authorized. Holding that Samsung is amenable to personal jurisdiction in spite of these facts is an unfortunate error that could prove catastrophic for out-of-state business defendants, large and small, throughout the country. On one hand, a relationship clearly exists between Samsung and Texas via Samsung's sales of lithium-ion battery cells as component parts to industrial suppliers in Texas. On the other hand, Ethridge and Texas are related because his injuries occurred here. But those two relationships are completely independent of each other.

Ford cannot transform two pumpkin seeds into a stagecoach for Ethridge's claims because there is nothing to link Samsung's sales of component parts to industrial entities in Texas and the plaintiff's consumer purchase of a single lithium-ion battery from a Wyoming-based third-party seller. *Ford* does not authorize States to exercise personal jurisdiction over out-of-state defendants because of the unilateral acts of plaintiffs or third parties. *See also Pace I*, 93 F.4th at 901 ("In our case, [the Plaintiff] is a resident of the relevant state, and the needed link is between the state and the specific claims against the nonresident defendants. Without this link, specific jurisdiction will be lacking, regardless of even regularly occurring sales or activities within the forum."). Indeed, Samsung followed *Ford's* express guidance to "'structure [its] primary conduct' to *lessen* . . . exposure" to courts in Texas by avoiding sale to the individual-consumer market. *Ford*, 592 U.S. at 360, 141 S. Ct. at 1025 (quoting *World-Wide Volkswagen*, 444 U.S. at 297, 100 S. Ct. at 567) (alterations in original) (emphasis added).

From Samsung's perspective, Ethridge's claims are as remote from its Texas activities as Bristol-Myers Squibb's activities in California were from the non-California plaintiffs in *Bristol-Myers Squibb Co. v. Superior Ct. of Calif.*, 582 U.S. 255, 137 S. Ct. 1773 (2017). The only thing that distinguishes the cases is that Ethridge is a citizen of Texas and was injured here. But Samsung had no notice of either of these facts, nor any ability to account for them when it established business relationships in Texas and created the contacts that Ethridge now seeks to exploit jurisdictionally.

II.

This case asks us to mediate what *Ford* allows and what *Bristol-Myers, id., Walden*, 571 U.S. at 277, 134 S.

Ct. at 1115, and *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 131 S. Ct. 2780 (2011), forbid.

A.

To begin, I would "look beyond *Ford*'s holding to its reasoning," as the Ninth Circuit did. *Yamashita*, 62 F.4th at 505. The majority only constructs their reading of *Ford* to establish a "same product plus in-State injury test," *ante* at 8, by discounting key aspects of the Court's opinion in *Ford*. The Supreme Court explained that Ford's "forum contacts may well have played a causal role in the introduction to the forum state of the particular vehicle causing the injury" because "the owner may have seen 'ads for the [model] in local media,' or 'take[n] into account a raft of Ford's in-state activities designed to make driving a Ford convenient there.'" *Id.* (quoting *Ford*, 592 U.S. at 367, 141 S. Ct. at 1029) (alterations in original). In other words, while specific personal jurisdiction did not turn on whether the plaintiffs purchased their products within the forum states, it was relevant that the plaintiffs *could* have purchased the products there—or *could have been influenced to purchase the products there*—due to defendant's efforts to sell the same products to the same target consumers in the forum state. *See Ford*, 592 U.S. at 365, 141 S. Ct. at 1028 ("Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region."). Most importantly, in *Ford*, the plaintiffs had an actual opportunity to purchase, service, or resell their vehicles in the forum state *through channels authorized by Ford*.

No such opportunity was available to Ethridge. He could not obtain Samsung's lithium-ion battery cells from Samsung's authorized distribution channels in Texas as a direct-to-consumer product for use in an e-cigarette.

Instead, Samsung structured its business to avoid selling, marketing, or advertising the battery cells at issue to individual Texas consumers for any purpose. Samsung's sole act in "avail[ing] itself of the privilege of conducting activities within" Texas consists of distributing its batteries (a) to Stanley Black & Decker to be incorporated into sealed power-tool battery packs, and (b) to HP and Dell for use in laptop repairs by service centers. *See Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958). In auto terms, this would be somewhat like subjecting Ford to specific personal jurisdiction for a tort claim involving Ford Explorers when it only sold and marketed F-150s to delivery companies in the relevant forum state. At the appropriate level of generality, these are not the same products or markets, and such contacts with the forum state should be irrelevant for establishing relatedness. *Ford* does not "resolve[] the relatedness issue in this case." *See ante* at 12.

The Ninth Circuit properly concluded that under *Ford*, "relatedness proxies for causation" such that "a plaintiff's injury relates to a defendant's forum contacts if similar injuries will tend to be caused by those contacts." *Yamashita*, 62 F.4th at 505. As the Ninth Circuit emphasized, *Ford did* include a foreseeability analysis, and the Court repeatedly noted the importance of Ford's "'extensively market[ing]' the car models at issue in the forum states" for establishing personal jurisdiction. *Id.* (quoting *Ford*, 592 U.S. at 368, 141 S. Ct. at 1030) (alterations in original). "On this line of reasoning, a plaintiff's injury relates to a defendant's forum contacts if the defendant should have foreseen the risk that its contacts might cause injuries like that of the plaintiff." *Id.* at 506. Absent foreseeability, defendants would not be properly on notice about the kinds of contacts that would subject them to specific personal jurisdiction. Abandoning

this element entirely would make *Ford* irreconcilable with the Court's prior precedents, which it declined to repudiate in *Ford*, as well as with the "traditional conception[s] of fair play and substantial justice" that have been the hallmark of personal jurisprudence since *International Shoe*, 326 U.S. at 320, 66 S. Ct. at 160.

Contra the majority, at least considering what market within a potential forum state a defendant avails itself of is not some novel "understanding of the Fourteenth Amendment." *See ante* at 13. Rather, the Court endorses a fact-sensitive evaluation of defendants' actions: *how* a defendant avails himself of a forum affects on what grounds the defendant may "be[] haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297, 100 S. Ct. at 567. If that did not matter, then the *Ford* Court never would have recognized that a "defendant can thus 'structure [its] primary conduct' to *lessen* . . . exposure to a given State's courts," not just to "avoid" exposure entirely. See 592 U.S. at 360, 141 S. Ct. at 1025 (quoting *World-Wide Volkswagen*, 444 U.S. at 297, 100 S. Ct. at 567).

Moreover, the Ninth Circuit correctly noted that reading *Ford* to "suggest that relatedness requires a close connection between contacts and injury" satisfies the need for limiting principles, lest the *Ford* test be read to collapse the core distinction between general and specific personal jurisdiction. *Yamashita*, 62 F.4th at 506*; see also Bernhardt v. Islamic Republic of Iran*, 47 F.4th 856, 866 (D.C. Cir. 2022). While I do not suggest that the majority's opinion means that literally "anything goes," the majority's opinion lacks a clear limiting principle. With no clear limit, this opinion undermines the due process rights of out-of-state defendants, and large and small businesses alike.

The Ninth Circuit's analogy and analysis, which the majority quotes, but then unceremoniously swats away, is spot-on:

> Whether the relevant market is that for lithium-ion batteries generally or that for 18650 batteries specifically, *the relevant market is the consumer market*. The logic of *Ford* did not turn on the mere fact that Ford had introduced some Explorers and Crown Victorias into Montana and Minnesota, but on the fact that it marketed these models to consumers, sold them to consumers, and serviced them for consumers. *Ford* gives little reason to think that the relatedness prong would have been satisfied if, for example, Ford had sold Crown Victorias only to police departments in Minnesota, had not marketed them to consumers, and had not serviced them at all. *Such contacts would not typically cause, and could not be foreseen to cause, injuries resulting from consumer ownership of Crown Victorias, especially if most consumer-owned Crown Victorias were acquired out-of-state*. Similarly, even if LGC or LGCA sells 18650 batteries to manufacturers for incorporation in consumer products sold in Hawaii, these sales would not be related to purchases of stand-alone batteries by Hawaii consumers.

Yamashita, 62 F.4th at 507–08 (emphases added). The relevant market in this case, just as in *Yamashita*, is the consumer market, and Samsung's contacts with the industrial market likewise have *nothing* to do with the types of injuries sustained by Ethridge in this case.

Yamashita correctly understood *Ford*'s underlying logic: relatedness is a proxy for causation, and specific personal jurisdiction turns on whether the defendant's contacts "typically cause" or could be "foreseen to cause" the plaintiff's injury in the forum state. *See id.* at 505, 508.

Indeed, the Seventh Circuit has rejected a similar theory of relatedness, holding that Samsung's sales of "some batteries—but not 18650 batteries—directly to Indiana utility companies for use in power grids" was insufficient to satisfy relatedness because the plaintiff's claim in that case "does not arise out of or relate to those batteries." *B.D. by & through Myer v. Samsung SDI Co., Ltd.*, 91 F.4th 856, 862 (7th Cir. 2024). According to the Seventh Circuit, jurisdiction under the plaintiff's theory turned on Samsung's "knowledge and expectations," which could not be ascertained based on the record. *Id.* Thus, the panel remanded for jurisdictional discovery on purposeful availment and relatedness, noting that "[j]urisdictional discovery could yield facts as to whether Samsung SDI's contacts with Indiana are related to the injury." *Id.* at 863.[2]

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[2] On remand, the district court in *B.D.* examined whether Samsung knew that *individual* 18650 batteries could reach consumers in Indiana. The district court recognized that the plaintiffs' claims "do[] not arise out of Samsung's sale of 18650 batteries as component part[s] of other products, like laptop computer[s] or power tools." No. 2:22-cv-00107-MPB-MKK, 2024 WL 3897040, at *5 (S.D. Ind. July 17, 2024) (quotation marks and citation omitted) (second and third alterations in original). Framed in this way, the district court in *B.D.* concluded that:

> Not only did Samsung not know that 18650 batteries were being sold for use in e-cigarettes in Indiana, it actively tried to control their distribution to prevent such unauthorized uses. The fact that Samsung's efforts were ultimately unsuccessful because of the

Disagreeing with the Ninth Circuit, the majority puzzlingly assert that "the first part of the relatedness standard ('arise out of') is about causation, but the second half ('relate to') is not." *Ante* at 17. The majority compound uncertainty by observing that *Ford* "explicitly noted that personal jurisdiction would still be permitted if a plaintiff had made an out-of-State purchasing decision without considering any of Ford's activities in her home State." *Ante* at 17 (citing *Ford*, 592 U.S. at 367 n.5, 141 S. Ct. at 1029 n.5). No out-of-state purchasing decision is implicated in this case, and a sole focus on the *plaintiff's* decision-making process, and total ignorance of the defendants', is not consistent with traditional conceptions of fair play and substantial justice, or with multiple Supreme Court precedents.

The majority's vague answer to the Ninth Circuit's reasoning falls into the jurisprudential donut hole identified by Justice Alito in his *Ford* concurrence. First, the majority parses *Ford*'s language "as though we were dealing with the language of a statute." *Ford*, 592 U.S. at 373, 141 S. Ct. at 1033 (Alito, J., concurring in the judgment) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341, 99 S. Ct. 2326, 2332 (1979)). Second, the majority's argument that "relate to" can mean something completely divorced from causation raises the possibility of circumventing the Court's other personal jurisdiction precedents. *Id.* at 373–75, 141 S. Ct. at 1033–34 (Alito, J.,

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> unauthorized activities of third-parties does not establish that Samsung purposefully availed itself of the privileges of doing business in Indiana.

Id. Thus, following jurisdictional discovery, the district court dismissed B.D.'s lawsuit for lack of personal jurisdiction. *Id.* at *6.

concurring in the judgment). That creates a difficult situation here. In *Ford*, Justice Alito practically observed that nobody could "seriously argue that requiring Ford to litigate these cases in Minnesota and Montana would be fundamentally unfair." *Id.* at 372, 141 S. Ct. at 1032 (Alito, J., concurring in the judgment). But the distribution of and customers for Samsung's batteries is nothing like the distribution of or customers for Fords. Samsung's (a foreign corporation's) argument that it would be fundamentally unfair to force it to litigate in Texas ought to be taken seriously.

B.

Critically, the reasoning in *Bristol-Myers*, *Walden*, and *J. McIntyre* is based uniformly on conceptions of notice to the defendant. The limits on a forum's ability to exercise personal jurisdiction principally protect non-resident defendants, leading the Supreme Court to "consistently reject[] attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Walden*, 571 U.S. at 284, 134 S. Ct. at 1122. And to repeat, the link between Samsung's sales into Texas and Ethridge's claims is non-existent. Moreover, an in-state injury is not a silver bullet for obtaining specific personal jurisdiction. "[A]n injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State." *Id.* at 290, 134 S. Ct. at 1125. Where there is no connection between the plaintiff's injury and the defendant's contacts to the state, "where a plaintiff lives or works" is *wholly irrelevant* to jurisdiction over the nonresident defendant. *Id.*

The near-unanimous opinion in *Bristol-Myers* applied these principles and rejected the California Supreme Court's "sliding scale approach," in which "the strength of

the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims." *Bristol-Myers*, 582 U.S. at 264, 137 S. Ct. at 1781. That approach, *Bristol-Myers* reasoned, risked blurring the fundamental line between general and specific jurisdiction. To do otherwise would risk adopting the approach preferred by Justice Sotomayor's solo dissent: if you're big enough, you can be sued just about anywhere. *See id.* at 269, 137 S. Ct. at 1784 (Sotomayor, J., dissenting) ("[T]here is nothing unfair about subjecting a massive corporation to suit in a State for a nationwide course of conduct that injures both forum residents and nonresidents alike.").

As *Bristol Myers* observed, "[w]hat is needed—and what is missing here—is a connection between the forum and the specific claims at issue." *Id.* at 265, 137 S. Ct. at 1781. In *Bristol-Myers*, sales to third parties and research on matters unrelated to the plaintiffs' claims was properly deemed insufficient and irrelevant. *Id.* The Court in *Bristol-Myers* emphasized that "[e]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales." *Id.* at 264, 137 S. Ct. at 1773 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 930 n.6, 131 S. Ct. 2846, 2857 n.6 (2011)). "Erasing the line between specific and general jurisdiction as [Ethridge] proposes would vitiate the sovereign interests of the states where defendants like [Samsung] are 'at home.' General jurisdiction for every state where [Samsung's lithium-ion batteries can be purchased through online third-party sellers] destroys its meaning for [Samsung's] home states, to whom that awesome power is properly reserved." *Johnson*, 21 F.4th at 324.

The substance of a defendant's actual contacts with a forum was also at issue in *J. McIntyre*, where the plurality held that an intention to serve the U.S. market is not the same as an intention to serve the New Jersey market. 564 U.S. at 885–87, 131 S. Ct. at 2790–91. So too here. An intention to sell to the industrial market has nothing to do with an intention to sell directly to consumers, as manufacturers choose distribution channels based on both the geographic locations and types of customers those distribution channels serve. To assume that one type of distinction is paramount for the purposes of personal jurisdiction while another is wholly irrelevant is to ignore the decisions that companies large and small make every day. After all, "[t]he question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment *concerning that conduct*." *See J. McIntyre*, 564 U.S. at 884, 131 S. Ct. at 2789 (plurality opinion) (emphasis added). Ultimately, "there is little reason to believe" that Samsung's contacts with sophisticated manufacturers and industrial users of its battery cells "have anything to do" with Texas residents' online, out-of-state acquisitions of Samsung's lithium-ion battery cells for use in e-cigarettes. *Yamashita*, 62 F.4th at 507.

Unlike the majority, I would not reject Samsung's reliance on different markets as an "unworkable" theory leading to a parade of horribles. *Ante* at 13–14. Instead, the First Circuit's recent opinion shows that a proper market segmentation analysis can and should be done in cases like this. *Cappello v. Rest. Depot, LLC*, 89 F.4th 238, 246 (1st Cir. 2023). In *Capello*, the First Circuit held that the plaintiff failed to show that Restaurant Depot's offer of memberships to businesses in New Hampshire "had

anything to do" with the injuries he sustained as a "retail customer (a type of customer Restaurant Depot does not and cannot serve) purchasing a salad at a restaurant in" another state. *Id.* The same principle applies here: the district court correctly concluded that Ethridge failed to show that Samsung's contacts with Black & Decker, HP, or Dell had anything to do with the injuries he sustained in Texas.

C.

The majority opinion is also irreconcilable with our own precedent. The majority ignores our post-*Ford* opinion in *Johnson,* which laid out core principles of fairness to non-resident defendants:

> Fairness to defendants has at least two elements. *First*, defendants must have fair warning that their activities could furnish jurisdiction in the forum. That's the idea behind purposeful availment. Where a defendant lacks suit-related ties with the forum or did not forge those ties himself, he cannot reasonably expect a suit there. *Second*, a defendant must have some chance to limit or avoid his exposure to the courts of a particular state. *That's why a state cannot use a defendant's forum contacts—even purposeful ones—to invent jurisdiction over claims that do not relate to or arise from those contacts.*

21 F.4th at 320 (quotation marks and citations omitted) (third emphasis added). In *Johnson*, the court continued: "Just as jurisdiction is proper when a defendant intentionally creates *suit-related contacts* with the forum, jurisdiction is absent where a defendant does not reach, or has ceased to reach, into the forum state *in that way*." *Id.*

at 322 (emphases added). "That principle," we noted, "does not require defendants to wall themselves off from the world." *Id.* But isn't that exactly what the majority effectively asks of Samsung and other companies in the age of e-commerce, given that more than 60% of Amazon's sales come from third-party sellers?[3]

The majority similarly fails to grapple with our even more recent decision in *Pace I*, where a Mississippi pilot was injured in an airplane crash in Texas, allegedly because of various malfunctioning parts. 93 F.4th at 887–88. The pilot filed suit in Mississippi against various out-of-state corporate defendants, "argu[ing] the corporate defendants' conduct . . . mirror[ed] that in *Ford*." *Id.* at 887–88, 900. But we found *Bristol-Meyers Squibb* to be a closer analogue for want of relatedness. *Id.* at 901–02. Although there was some factual dispute as to the exact contours of the defendants' Mississippi contacts, the court in *Pace I* and in a subsequent appeal of the same case found alleged marketing insufficient even though they indisputably did "serve the forum." *Id.* at 900–02; *Pace v. Cirrus Design Corp. (Pace II)*, No. 23-60465, 2024 WL 2817567, at *5 (5th Cir. June 3, 2024) ("[W]e can safely reject Pace's generalizations [about the defendants' marketing in the forum] for the same reasons stated in our decision in *Pace I*—namely, that he fails to link any representation, advertisement, or other communication made to the forum with his claims."). And *Pace I* even rejected jurisdiction over a defendant who previously serviced *the exact same airplane*—not merely another of

[3] See Mickey Toogood, *Amazon selling stats*, AMAZON (May 10, 2024), https://sell.amazon.com/blog/amazon-stats#Amazon%20Seller%20Sale.s.

the same model—for other Mississippi residents because that contact was unrelated to the plaintiff's claims. *Id.* at 901–02. Following our circuit's own guidance, the relatedness requirement to exercise specific personal jurisdiction demands more than a defendant merely serving other customers in the forum in a completely unrelated way, *i.e.*, by selling only to select, industrial purchasers and not to individual consumers.

III.

The majority's approach would allow consumers to force manufacturers to entertain a products liability lawsuit for *any* product in *any* forum, so long as the manufacturer engages in *some* activity in that forum. And that would be the case even if, as here, the manufacturer intentionally avoids selling the subject product to consumers in that forum. According to the majority, an unauthorized out-of-state third-party seller's shipping the desired product to the forum is enough to confer jurisdiction. How can Samsung's decision to structure its business to strenuously avoid direct-to- consumer sales be irrelevant for the purposes of due process? Yet that decision by Samsung must be critically important in the specific personal jurisdiction analysis. Otherwise, the principles of reciprocity and mutuality are compromised, along with the predictability and notice that the judicial system owes to businesses large and small.

Here, the only link between Ethridge's injuries and Samsung runs through a third-party seller. Although a defendant who "enjoy[s] the benefits" of a market may be held to account "for *related* misconduct" in that market, exercising jurisdiction over a defendant based on "benefits" an unauthorized third-party seller reaped is incoherent and unfair. *Ford*, 592 U.S. at 360, 141 S. Ct. at 1025 (emphasis added). Jurisdiction cannot be premised

on the fact that a defendant's "products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states" because this would "rest jurisdiction . . . upon no more than the occurrence of a product-based accident in the forum State." *Ainsworth v. Moffett Eng'g, Ltd.*, 716 F.3d 174, 178–79 (5th Cir. 2013) (quoting *J. McIntyre*, 564 U.S. at 891, 131 S. Ct. at 2793 (Breyer, J., concurring in judgment)) (emphasis in original).

For all of these reasons, I respectfully dissent.

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

No. 3:21-cv-306

James Ethridge, *PLAINTIFF*,

v.

Samsung SDI Co., Ltd., *ET AL.*, *DEFENDANTS*.

MEMORANDUM OPINION AND ORDER

JEFFREY VINCENT BROWN, *UNITED STATES DISTRICT JUDGE*:

Before the court is the defendant Samsung SDI Co., Ltd.'s (Samsung) amended motion to dismiss under Rule 12(b)(2). Dkt. 29. The court grants the motion.

I. BACKGROUND

The plaintiff, James Ethridge, alleges his e-cigarette device's lithium-ion battery "exploded and caught fire" in his pants pocket, causing him "severe burns and other injuries." Dkt. 1-2 ¶¶ 36–38. Ethridge purchased the device on Amazon from Firehouse Vapors, LLC. *Id.* ¶ 39. He alleges Samsung manufactured the battery. *Id.* ¶ 40.

Ethridge sued Samsung; Firehouse Vapors; and Amazon.com, Inc., and Amazon.com Services, Inc. (together, "Amazon") in state court. Dkt. 1-2. After Ethridge voluntarily dismissed Firehouse Vapors—a Texas LLC—the parties became completely diverse and

Samsung consented to Amazon's removal to this court. Dkt. 1. Ethridge raises five causes of action: (1) negligent products liability; (2) strict products liability; (3) breach of express warranty; (4) breach of implied warranty; and (5) gross negligence. Dkt. 1-2 ¶¶ 44–94.

II. LEGAL STANDARD

Samsung moves to dismiss Ethridge's claims against it for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). Dkt. 29. The plaintiff bears the burden of establishing jurisdiction by *prima facie* evidence. *Frank v. PNK* (*Lake Charles*) *L.L.C.*, 947 F.3d 331, 336 (5th Cir. 2020). The court considers the assertions in the plaintiff's complaint and the record at the time of the motion. *Id.* The court "must accept as true the uncontroverted allegations in the complaint and resolve in favor of the plaintiff any factual conflicts." *Stripling v. Jordan Prod. Co., LLC*, 234 F.3d 863, 869 (5th Cir. 2000). The court is not obligated to credit conclusory allegations, even if uncontroverted. *Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 868 (5th Cir. 2001).

A federal court sitting in diversity may exercise personal jurisdiction over a nonresident defendant if (1) the long-arm statute of the forum state confers personal jurisdiction over that defendant and (2) the exercise of jurisdiction by the forum state is consistent with due process under the United States Constitution. *Frank*, 947 F.3d at 336. The Texas long-arm statute confers jurisdiction to the limits of due process. *Id.* Due process permits the exercise of personal jurisdiction over a nonresident defendant when that defendant has "such 'contacts' with the forum State that 'the maintenance of the suit' is 'reasonable, in the context of our federal system of government,' and 'does not offend traditional notions of

fair play and substantial justice.'" *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316–17 (1945)). "In giving content to that formulation, the Court has long focused on the nature and extent of 'the defendant's relationship to the forum State.'" *Id.* (quoting *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1779 (2017)).

"The Supreme Court has recognized two kinds of personal jurisdiction: general jurisdiction and specific jurisdiction." *Alexander v. Anheuser-Busch, L.L.C.*, No. 19-30993, 2021 WL 3439131, at *2 (5th Cir. Aug. 5, 2021). "General jurisdiction arises when the defendant has 'continuous and systematic' contacts with the forum and 'allows for jurisdiction over all claims against the defendant, no matter their connection to the forum.'" *Id.* (quoting *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 778 (5th Cir. 2018)). "[F]or a state to have the power to hear [general] claims against a defendant, the defendant's ties with the state must be so pervasive that he is 'essentially at home' there." *Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 323 (5th Cir. 2021) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

Specific jurisdiction "covers defendants less intimately connected with a State, but only as to a narrower class of claims." *Ford Motor Co.*, 141 S. Ct. at 1024. "To be subject to specific jurisdiction, the defendant must have acted to 'purposefully avail[ ] itself of the privilege of conducting activities within the forum State' and 'there must be an affiliation between the forum and the underlying controversy.'" *Alexander*, 2021 WL 3439131, at *2 (quoting *Ford Motor Co.*, 141 S. Ct. at 1024–25) (internal quotation marks and citation omitted). "The non-

resident's purposeful availment must be such that the defendant should reasonably anticipate being haled into court in the forum state." *Ruston Gas Turbines, Inc. v. Donaldson Co.*, 9 F.3d 415, 419 (5th Cir. 1993) (quotation omitted).

The court applies the Fifth Circuit's three-prong test in determining whether the exercise of specific jurisdiction comports with the demands of due process:

> (1) [whether] the defendant has formed minimum contacts with the forum state by purposely directing its activities toward the forum state or purposefully availing itself of the privileges of the state; (2) whether the cause of action arises out of or results from the defendant's forum-related contacts; and (3) whether the exercise of personal jurisdiction is fair and reasonable.

Alexander, 2021 WL 3439131, at *2 (citing *Carmona v. Leo Ship Mgmt., Inc.*, 924 F.3d 190, 193 (5th Cir. 2019)).

III. ANALYSIS

Samsung claims that the court's exercise of personal jurisdiction over it would violate due process because it does not have minimum contacts with the State of Texas and the assertion of such jurisdiction would offend traditional notions of fair play and substantial justice. Dkt. 29 at 1.

Samsung argues that the battery that injured Ethridge—a Samsung 18650 lithium-ion battery—is not "designed, manufactured, or marketed for individual use by individual persons." *Id.* at 3. "Instead, the 18650 battery is designed and marketed to be used in specific applications by sophisticated entities through two distribution channels:"

(1) the bulk sale of 18650 battery cells by Samsung to companies only in Asia that assemble the 18650 battery cells into battery packs for subsequent sale and distribution (the Packer Distribution Channel); and

(2) the direct bulk sale of 18650 battery cells by Samsung to certain "transacting companies" engaged in either the manufacture of authorized products or the supply chain leading to the manufacture of authorized products (the Transacting Distribution Channel).

Id.

Samsung contends that these distribution channels were not intended to serve the retail market for single lithium-ion batteries used by individual consumers or for single lithium-ion batteries in e-cigarettes. Dkt. 33 at 4–5. It adds that it has never sold any 18650 batteries for standalone use to a resident of Texas, shipped any 18650 batteries to a Texas address outside of its controlled distribution channels, or sold any 18650 batteries to any Amazon entity. Dkt. 29 at 3. Samsung also insists it "has never sold any product of any type to any retail store in Texas." Dkt. 29 at 22.

Ethridge concedes Samsung is not "at home" in Texas for the purposes of general jurisdiction, but maintains its contacts with the State subject it to specific jurisdiction. Dkt. 31 at 2. Ethridge argues that Samsung targets the Texas market by shipping the exact same type of lithium-ion batteries directly into the State. *Id.* He adds that Texas law does not support Samsung's argument that it can avoid personal jurisdiction because it does not intend for the batteries to be used by individual consumers and allegedly has no relationship with the defendants who acted as downstream sellers, it avoids personal jurisdiction. *Id.*

The court turns to the three-prong test for personal jurisdiction. *See Carmona*, 924 F.3d at 193.

A. Purposeful Availment

"The contacts needed for [specific] jurisdiction often go by the name 'purposeful availment.'" *Ford Motor Co.*, 141 S. Ct. at 1024. "The defendant . . . must take 'some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.'" *Id.* at 1024–25 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). "The contacts must be the defendant's own choice and not 'random, isolated, or fortuitous.'" *Id.* (quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984)). Such contacts "must show that the defendant deliberately 'reached out beyond' its home—by, for example, 'exploi[ting] a market' in the forum State or entering a contractual relationship centered there." *Id.* (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

The "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws." *Int'l Shoe*, 326 U.S. at 319. For example, where a defendant corporation has deliberately engaged in doing business in the forum, it has "clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the state." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

"The Due-Process Clause . . . gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Id.* Accordingly, a nonresident may purposefully avoid personal jurisdiction in a particular forum by structuring its activities so as to derive benefit from neither the forum's laws nor its residents. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985)); see also *Luv N' care, Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 470 (5th Cir. 2006) ("[A] defendant may permissibly alter its behavior in certain ways to avoid being subject to suit."). Even so, a "truly interstate business may not shield itself from suit by a careful, but formalistic structuring of its business dealings." *Vencedor Mfg. Co., Inc. v. Gougler Indus., Inc.*, 557 F.2d 886, 891 (1st Cir. 1977).

"In the context of products-liability cases, like the case presently before [the court], an analysis involving a stream-of-commerce metaphor is often employed to assess whether the non-resident defendant has minimum contacts with the forum." *Zoch v. Magna Seating (Germany) GmbH*, 810 F. App'x. 285, 289 (5th Cir. 2020) (unpublished). "[C]ourts use the metaphor to allow for jurisdiction where 'the product has traveled through an extensive chain of distribution before reaching the ultimate consumer.'" *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 926 (2011)). The stream-of-commerce doctrine "recognizes that a defendant may purposefully avail itself of the protection of a state's laws—and thereby will subject itself to personal jurisdiction—'by sending its goods rather than its agents' into the forum." *In re Depuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d

753, 778 (5th Cir. 2018) (quoting *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011)).

"The Fifth Circuit has found this doctrine and thus minimum contacts satisfied so long as the court determines 'that the defendant delivered the product into the stream of commerce with the expectation that it would be purchased by or used by consumers in the forum state.'" *Zoch*, 810 F. App'x. at 290 (quoting *Ainsworth v. Moffett Eng'g, Ltd.*, 716 F.3d 174, 177 (5th Cir. 2013)). "Mere foreseeability or awareness [is] a constitutionally sufficient basis for personal jurisdiction if the defendant's product made its way into the forum state while still in the stream of commerce." *Luv N' care, Ltd.*, 438 F.3d at 470 (citing *Asahi Metal Indus. Co. v. Super. Ct.*, 480 U.S. 102, 111 (1987)). But "[t]he defendant's contacts [with the forum state] must be more than 'random, fortuitous, or attenuated, or [the result] of the unilateral activity of another party or third person.'" *ITL Int'l, Inc. v. Constenla, S.A.*, 669 F.3d 493, 498 (5th Cir. 2012).

> [The Fifth Circuit] adopted this position in an effort faithfully to interpret *World-Wide Volkswagen*, 444 U.S. at 298, which holds that a state does not offend due process by exercising jurisdiction over an entity that "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State."

Id. "Where a defendant knowingly benefits from the availability of a particular state's market for its products, it is only fitting that the defendant be amenable to suit in that state." *Luv N' care, Ltd.*, 438 F.3d at 470.

This "mere foreseeability," or stream-of-commerce, test follows Justice Brennan's concurrence in *Asahi*, 480 U.S. at 116, as the circuit has "declined to follow the suggestion of the plurality in *Asahi*, 480 U.S. at 112, that

some additional action on the part of the defendant, beyond foreseeability, is necessary to 'convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.'"[1] *Luv N' care, Ltd.*, 438 F.3d at 470 (quoting *Asahi*, 480 U.S. at 112).

Applying these standards, the court addresses Samsung's alleged contacts with Texas.

1. Lithium-Ion Battery Shipments to Texas

Ethridge has appended to his response brief what he says is ten years' worth of import data showing "shipments made by Samsung to Texas entities and/or through Texas ports." Dkt. 31 at 4. He purports to have "identified 225 shipments that entered through the [P]ort of Houston, of which 83 had product descriptions containing rack frames and wiring harnesses, which are used in energy[-]storage systems; eight of those shipments had product descriptions including [the term] 'lithium-ion battery.'" *Id.*

Samsung objects to Ethridge's data as inadmissible. Dkt. 33 at 5, 14–15. And even if it were admissible, Samsung argues, the mere fact that a customer unilaterally makes arrangements to ship a product to Texas, or that some entity obtains Samsung products elsewhere before unilaterally deciding to use them in Texas, is no proof of Samsung's intent to serve a Texas market. *Id.* at 5. Unilateral decisions by unaffiliated third parties, Samsung contends, are irrelevant to the purposeful-availment inquiry. *Id.*

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[1] This competing interpretation is known as the stream-of-commerce-plus test.

The court agrees. The data may show Samsung products being shipped to Texas by unauthorized third parties,[2] but not necessarily that Samsung placed goods in the stream of commerce with the knowledge that the product will ultimately reach the forum state. *Asahi*, 480 U.S. at 120; *Luv N' care, Ltd.*, 438 F. 3d at 470. Indeed, Samsung's purposeful structuring of its distribution channels cautions against the suggestion that it had knowledge of its lithium-ion batteries being sold in the Texas market to end-users. Without more, mere knowledge that its products are being used in Texas is not enough to impute to Samsung purposeful availment of the forum. *Id.*

2. Contacts with Texas Businesses

Ethridge next argues that Samsung's past and present relationships with Texas businesses show its purposeful availment of the Texas market. Dkt. 31 at 4–7. In support, Ethridge points to evidence of Samsung's relationships with the following Texas businesses: eSDI, LLC; Aggreko North America; Xtreme Power; and various vape shops. *Id.* In considering Ethridge's argument, the court will also address Samsung's admitted contacts in Texas with Stanley Black & Decker, Hewlett Packard, and Dell. Dkt. 29 at 2.

a. eSDI, LLC

Ethridge alleges both that eSDI consigned 39 shipments from Samsung that included the words "lithium[-]ion battery" and that eSDI is a Samsung franchisee that "promotes and sells a wide range of ingraining lithium-ion batteries made by [Samsung],

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[2] Samsung's intentional contacts with Texas are discussed in the next section. *See infra* III.A.2.

including custom[-]made batteries." Dkt. 31 at 5. Ethridge's evidence for the latter assertion are statements taken from a patent-infringement lawsuit filed in the Western District of Texas against eSDI, Samsung, Samsung America, and Samsung Electronics. Dkt. 31 at 5. The patents at issue involved electrolytes and lithium-ion batteries used in laptops, cellphones, and other devices, with at least one of the patents involving an 18650 battery. *Id.*

Samsung replies that eSDI was in the supply chain leading to the manufacture of Samsung-authorized products—specifically, the Transacting Distribution Channel where Samsung makes direct bulk sales of battery cells to sophisticated companies found in Asia, Europe, and North America. Dkt. 33 at 6–7. "Every Transacting Company is a sophisticated company involved in either the manufacture of authorized products or the supply chain leading to the manufacture of authorized products." Dkt. 29-1 at 5. Battery cells sold in this way are ultimately incorporated into battery packs having battery-management systems. *Id.*

Moreover, Samsung notes eSDI is wholly separate and independent from Samsung and that it closed in 2017, two years before Ethridge's injury in 2019. Dkt. 33 at 6. Samsung states that after the sale of the battery cells to a Transacting Company, Samsung does not have the right or ability to control the later use or sale of the battery cells or assembled battery packs. Dkt. 29-1 at 5. As for the patent suit, Samsung argues the allegations are hearsay and not proof of anything, and that the cited portions do not even refer to Texas, let alone accuse Samsung of selling anything in Texas. Dkt. 33 at 7.

Even accepting as true the uncontroverted allegations in the complaint and resolving in the plaintiff's favor any

factual conflicts, Ethridge has still not shown that Samsung's relationship with eSDI amounts to purposeful availment of the Texas market. There is no evidence that Samsung "deliver[ed] its products into the stream of commerce with the expectation that they w[ould] be purchased by consumers in the forum State." *World-Wide Volkswagen*, 444 U.S. at 298.3.[3]

b. Vape Shops

Next, Ethridge points to exhibits proving the presence of Samsung batteries in vape shops across the state, evincing Samsung's purposeful availment of the Texas market. Dkt. 31 at 6–7. Ethridge names vape shops in Austin, Humble, Spring, and McKinney that advertise on their websites Samsung 25R cells (a type of 18650 battery) for use in e-cigarettes. *Id.*; Dkts. 12-11 to 12-14. Ethridge also argues that if "[he] can identify these entities via simple [G]oogle search, so can Samsung." Dkt. 31 at 6.

Samsung counters that the exhibits are inadmissible and irrelevant, but nevertheless are evidence only of what the retailers decided to sell and not of anything Samsung did, intended, or looked to do. Dkt. 33 at 18.

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[3] "The Supreme Court has stressed that, because due process limits states' judicial authority in order to protect the liberty of non-resident defendants, significant contacts are those that 'the defendant *himself* creates with the forum State.'" *Zoch*, 810 F. App'x. at 289 (quoting *Walden*, 571 U.S. at 284). "Thus, while 'a defendant's contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties,' the 'defendant-focused "minimum contacts" inquiry' cannot be satisfied by merely demonstrating contacts between the plaintiff or a third party and the forum state." *Id.*

The court agrees. Like the lithium-ion battery shipments, Ethridge has alleged activity by unaffiliated third parties but has not pleaded any conduct that would plausibly show Samsung purposefully availed itself of the Texas market.[4] The Fifth Circuit has consistently held that "mere foreseeability or awareness" is a constitutionally sufficient basis for personal jurisdiction, but the defendant's product must make its way into the forum state while still in the stream of commerce. *Luv N' care, Ltd.*, 438 F.3d at 470. The "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros Nacionales*, 466 U.S. at 417; *see also Richter v. LG Chem, Ltd.*, No. 18-CV-50360, 2020 WL 5878017, at *5 (N.D. Ill. Oct. 2, 2020) (applying the stream-of-commerce test but holding that "[w]here . . . a product reaches a forum state through unplanned and unauthorized backchannels, the defendant cannot be said to have purposefully directed its activities at the forum state").

c. Xtreme Power/Aggreko North America

Next, Ethridge argues that Samsung's relationships with Xtreme Power and Aggreko North America show purposeful availment. Dkt. 31 at 5–6. Specifically, Ethridge alleges Samsung partnered with Xtreme Power in 2013 to install a battery energy storage system at Reese Technology Center in Lubbock and that Samsung also

[4] Ethridge makes the same argument with regard to the sale at Texas bike shops of 18650 batteries for electric bikes, but likewise does not show Samsung purposefully availed of the Texas market. Dkt. 31 at 7.

partnered with Aggreko (formerly Younicos, Inc.) and Duke Energy in 2015 to repower the Notrees Battery Storage Facility in west Texas. *Id.*; Dkts. 12-9; 12-10.

Samsung concedes its conduct with Xtreme and Aggreko plausibly show its purposeful availment of Texas, but argues that Ethridge's injuries do not arise out of or relate to those activities. Dkt. 33 at 8–9. Because Samsung concedes that purposeful availment is met, the court will consider, *infra* III.B.1., whether the injury "aris[es] out of or [is] related to" Samsung's activity in the forum State. *Helicopteros*, 466 U.S. at 414 n. 8.

d. Stanley Black & Decker, Hewlett Packard, Dell

After filing its motion to dismiss, Samsung determined it has contacts with Stanley Black & Decker in Texas that it had not previously disclosed. Dkt. 29 at 2. Samsung then notified the court and amended its motion to admit a relationship with Stanley Black & Decker. *Id.* Since January 2019, Samsung has shipped 18650 lithium-ion battery cells through a Transacting Distribution Channel to Stanley Black & Decker's Mission, Texas, power-tools manufacturing facility. Dkt. 29-1 at 5. These shipments, however, occurred after Ethridge purchased his battery from Amazon in 2018. *Id.* at 6. Stanley Black & Decker directly incorporates these battery cells as components in their power-tool battery packs. Samsung maintains it has not marketed, manufactured, or sold these 18650 battery cells to consumers as standalone batteries. *Id.*

Similarly, Samsung admits to long-term agreements with HP and Dell. On infrequent occasions, Samsung has shipped battery packs with 18650 lithium-ion battery cells to HP and Dell to be used as samples or in laptop repairs in their Texas service centers. *Id.* Like the Stanley Black & Decker shipments, these battery packs are not

marketed, manufactured, or sold to Texas consumers as standalone batteries. *Id.*

Because Samsung has plausibly availed itself of the Texas market, the court next considers whether Ethridge's injures arise out of or relate to these activities.

B. Relatedness

"The plaintiff's claims . . . 'must arise out of or relate to the defendant's contacts' with the forum," otherwise the exercise of specific jurisdiction is prohibited. *Ford Motor Co.*, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780). The Supreme Court in *Bristol-Myers Squibb* clarified that the "arise out of or relate to" standard requires there be "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." 137 S. Ct. at 1780 (citing *Goodyear Tires*, 564 U.S. at 919). "Specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.* "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* at 1781.

The Supreme Court most recently spoke on specific jurisdiction in *Ford Motor Co.*, which involved two consolidated products-liability cases stemming from car accidents in Montana and Minnesota. 141 S. Ct. at 1022–23. Ford moved to dismiss for lack of personal jurisdiction. Though Ford conceded it purposefully availed itself of each forum State by conducting substantial business including "advertising, selling, and servicing the model of vehicle[s]" involved in the suit, it argued the court had specific jurisdiction only "if the company had designed, manufactured, or—most likely—sold in the [respective

forum] State the particular vehicle involved in the accident." *Id.* at 1023. In Ford's eyes, "the needed link must be causal in nature: Jurisdiction attaches 'only if the defendant's forum conduct gave rise to the plaintiff 's claims.'" *Id.* at 1026.

In rejecting this argument, the Court held that "Ford's causation-only approach finds no support in [the] Court's requirement of a 'connection' between a plaintiff's suit and a defendant's activities." *Id.* The Court noted that the relatedness inquiry does not require "a strict causal relationship between the defendant's in-state activity and the litigation." *Id.* Rather, the Court emphasized that in the language of the most common formulation of the rule—"arise out of or relate to the defendant's contacts with the forum"—only "the first half of that standard asks about causation." *Id.* "The back half, after the 'or,' contemplates that some relations will support jurisdiction without a causal showing." *Id.*

But, the Court added, "[t]hat does not mean anything goes." *Id.* "[T]he phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to the forum." *Id.* The question, the Court explained, was whether the defendant "serves a market for a product in the forum State and the product malfunctions there." *Id.* at 1027. In serving the market for a product, Ford had targeted Montanans and Minnesotans through billboards, TV and radio spots, print ads, and direct mail enticing them to buy its product; made available for sale, whether new or used, in both states the same model vehicles involved in the accidents at 120 combined dealerships; serviced new and used Ford vehicles through that same network of dealerships; and supplied replacement parts to dealerships and independent auto shops. *Id.* at 1028.

Ford "systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege[d] malfunctioned and injured them in those States." *Id.* Indeed, Ford's activities in targeting the forum States "ma[de] it easier to own a Ford, [thereby] encouraging Montanans and Minnesotans to become lifelong Ford drivers." *Id.* Borrowing a metaphor from a Texas state-court case, *Michelin N.A., Inc. v. De Santiago*, 584 S.W.3d 114 (Tex. App.—El Paso 2018, pet dism'd), Ford employed a "shotgun shell approach to marketing and deliberately aim[ed] a batch of product at multiple states," "expected and wanted the [cars] to hit [the] target," and was successful in hitting its targeted states. *Id.* at 134. Having systematically targeted those states, Ford was not let off the hook "simply because there was an unexpected ricochet along the way." *Id.*

For the Court, the "'relationship among the defendant, the forum[s], and the litigation'—[was] close enough to support specific jurisdiction," where the plaintiffs "allege that they suffered in-state injury because of defective products that Ford extensively promoted, sold, and serviced in Montana and Minnesota," even if the plaintiffs' cars made subject of the litigation were not purchased in the forum state. *Ford Motor Co.*, 141 S. Ct. at 1032 (quoting *Walden*, 571 U.S. at 284).

1. Applying *Ford Motor Co.*

Ethridge argues there is a "substantial connection between" the defendant's contacts and the "operative facts of the litigation." Dkt. 31 at 21. Samsung argues Ethridge's claims resulting from the purchase of a lithium-ion battery from a third-party retailer do not arise from or relate to Samsung's economic activities in partnering with Xtreme or Aggreko in Texas, nor from

Samsung's contacts with Stanley Black & Decker, HP, or Dell. Dkt. 33 at 8–9.

Ethridge relies on *Ford Motor Co.* and a recent Supreme Court of Texas case, *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1 (Tex. 2021). Dkt. 31 at 21. But the rejection of a strict causation-only approach that those cases stand for does not justify the application of specific jurisdiction where the claims bear only a fleeting relation to the defendant's contacts with the forum State.[5]

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[5] Texas adheres to the stream-of-commerce-plus test, as detailed in Justice O'Connor's plurality opinion in *Asahi*, which requires "additional conduct" evincing "an intent or purpose to serve the market in the forum State." *Luciano*, 625 S.W.3d at 10, 13. "Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014). Texas's long-arm statue allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution. *Frank*, 947 F.3d at 336. The court "therefore inquire[s] whether [the exercise of personal jurisdiction] comports with the limits imposed by federal due process." *Daimler*, 571 U.S. at 125; *see also Johnston v. Multidata Sys. Int'l Corp.*, 523 F.3d 602, 609 (5th Cir. 2008) ("Because the Texas long-arm statute extends to the limits of federal due process, the two-step inquiry collapses into one federal due process analysis."). Because federal courts have no obligation to follow state courts' rulings on *federal* law, the parties' citations to state-court cases are merely persuasive.

Ethridge also leans on *Michelin*, 584 S.W.3d at 134, for the proposition that sale on the secondary market outside the manufacturer's direct control—and that does not adhere to the manufacturer's business priorities—will not defeat specific jurisdiction. Dkt. 31 at 8–9. A closer look at *Michelin*, however, reveals the "new" vs. "used" distinction was immaterial: "mechanical application of a first sale chokepoint in assessing both stream of commerce and nexus . . . runs contrary to the fact-intensive nature of personal jurisdiction jurisprudence." 584 S.W.3d at 137. *Michelin* is a personal-injury case arising from an alleged tire failure. *Id.* at 119. Central to the *Michelin* court's finding of specific jurisdiction was the defendant's original targeting of the forum State using the so-called shotgun shell approach, which resulted in the sale of the tire in Texas using its customary distribution channels. *Id.* at 137.

Those customary distribution channels included, in the El Paso area alone, 46 authorized dealers in brick-and-mortar stores. *Id.* at 120. The tire's later sale, again in Texas, to another Texas resident "arose from and relate[d] to the tire's initial sale in the state." *Id.* at 137. So the tire that injured the plaintiff first arrived in Texas as a result of Michelin's targeting the Texas market, though by the time it reached the plaintiff it had changed hands "several times." *Id.* But though the evidence shows that Samsung has purposefully availed itself of the Texas market, Ethridge has not shown—as the plaintiff in *Michelin* showed—that the product that allegedly injured him actually arrived in Texas as a result of the manufacturer's purposeful availment of the Texas market. *Michelin* does Ethridge no good.

Ethridge next relies on L*G Chem America, Inc. v. Morgan*, No. 01-19-00665-CV, 2020 WL 7349483 (Tex.

App.—Houston [1st Dist.] Dec. 15, 2020, no pet.). In *Morgan*, the court analyzed the question of whether two foreign corporations were susceptible to specific jurisdiction stemming from injuries to the plaintiff by an e-cigarette battery manufactured by LG Chem, Ltd. (LGC), a South Korean Company, and marketed, distributed, and sold by LGC America, a Delaware corporation with its principal place of business in Atlanta, Georgia. *Id.* at *1. LGC argued that it sold its batteries only to "sophisticated manufacturers" and denied that it sold batteries for use in e-cigarettes by individual consumers. *Id.* at *6. LGC contended that "without evidence that it directed the specific battery that allegedly injured [the plaintiff] into Texas, it [was] not subject to jurisdiction in Texas." *Id.* Based on this logic, LGC argued "even if it purposefully directed other, similar batteries into the Texas market, it [was] not subject to jurisdiction in Texas courts for [the plaintiff's] claims." *Id.*

In finding jurisdiction existed over LGC, the court based its decision in part on the plaintiff's "undisputed jurisdictional allegations and evidence show[ing] that LGC designs and manufactures batteries of the type that injured [the plaintiff] for the Texas market, and that it markets, sells, and distributes large quantities of such batteries to customers in Texas." *Id.* at *7. While LGC denied it designs, manufactures, distributes, advertises, or sells the type of battery that allegedly injured the plaintiff *directly* to individual consumers or authorizes any third party to do so, the court found pertinent that LGC did not deny that it "designed, manufactured, distributed, marketed, or sold [indirectly] the type of battery that allegedly injured [the plaintiff] to Texas customers for at least some applications." *Id.*

The court also explained that while jurisdiction does not generally "exist over a nonresident that merely places a product into the stream of commerce with awareness that the product could end up in a forum state," LGC displayed additional conduct "indicating an intent or purpose to serve the market in the forum state" by "design[ing] and manufact[uring] its lithium-ion 18650 batteries for the Texas market, advertis[ing] them in Texas, and market[ing] them in Texas through a distributor that sold in Texas." *Morgan*, 2020 WL 7349483, at *7. Equally relevant to the court's analysis was LGC's use of LGC America, its wholly owned subsidiary, as its distributor to sell batteries in Texas. *Id.* at *8.

After finding that LGC purposefully availed itself of the privilege of conducting activities in Texas, the court found that the plaintiff's claims "ar[ose] from or relat[ed] to LGC's conduct in designing and marketing its batteries for the Texas market, and marketing, selling, and distributing them to customers [there]." *Id.* at *11. The court found unpersuasive LGC's argument that it only sold batteries to "sophisticated manufacturers," because LGC did not define the term, explain why an e-cigarette manufacturer was not a "sophisticated manufacturer," or deny that "sophisticated manufacturers" using LGC's batteries in their products would in turn sell their products using LGC's batteries to individual consumers. *Id.*

Samsung responds that Ethridge, unlike the plaintiff in *Morgan*, has not shown that Samsung designed and manufactured its lithium-ion 18650 batteries for the Texas market, advertised them in Texas, or marketed and sold them in Texas through a wholly owned distributor. Dkt. 33 at 6 n.1. Samsung adds that Ethridge's evidence of Samsung shipments into Texas is not only inadmissible

and unpersuasive, but also paltry compared to the *Morgan* plaintiff's 2,200 pages of spreadsheets showing many shipments by LGC into the forum State to various Texas companies. *Id.*

Samsung also marshals its own case law, the most relevant being *Richter v. LG Chem, Ltd.*, No. 18-CV-50360, 2020 WL 5878017 (N.D. Ill. Oct. 2, 2020). In *Richter*, the court found it could not exercise personal jurisdiction over LGC because (1) the presence of the battery in Illinois was not the result of purposeful availment by the manufacturer, but rather acts by third parties, and (2) the alleged injury did not arise out of or relate to any economic activity by the manufacturer in the forum state. *Id.* at *4–6. LGC's contacts with the forum State consisted of sales to two Illinois companies engaged in manufacturing, with the plaintiff supplying no evidence that those companies sold to Illinois consumers or linking those battery shipments to the wholesaler or vape shop that sold the allegedly faulty battery. *Id.* at *2. The court also found pertinent that the plaintiff offered no evidence linking LGC to the middleman-distributor the wholesaler bought its LGC batteries from. *Id.*

This case, like *Richter*, is not a "close" call. *Id.* at *4. Ethridge has failed to show his claims arise from or relate to Samsung's purposefully limited economic activity in Texas. Like *Richter*, there is evidence that Samsung shipped batteries to companies in Texas engaged in the manufacturing or repair of other products, but no evidence that the presence of the offending battery in Texas was the result of purposeful availment by Samsung as opposed to an unauthorized act by third parties. Without more, there is no "substantial connection," *Asahi*, 480 U.S. at 112, between the nonresident defendant's

contacts and the "operative facts of the [litigation]." *Rush v. Savchuk*, 444 U.S. 320, 329 (1980).

C. Fair Play and Substantial Justice

Because the court finds Ethridge has not established that Samsung's contacts with Texas satisfy the requirements of specific jurisdiction, exercising personal jurisdiction over Samsung in this case would run afoul of "traditional notions of fair play and substantial justice." *Int'l Shoe*, 326 U.S. at 316. "[T]he Due Process Clause 'does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations.'" *World-Wide Volkswagen*, 444 U.S. at 294 (quoting *Int'l Shoe*, 326 U.S. at 319).

> Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

Id. (quoting *Hanson v. Denckla*, 357 U.S. at 251, 254).

That is the case here. While Samsung has contacts with the forum State—indeed, it has purposefully availed itself of the privilege of conducting certain, limited activities within Texas—it would offend fair play and substantial justice to hold them to account *in personam* for an injury wholly unrelated to those certain, limited activities.

* * *

For the reasons above, the court grants the defendant's motion. Dkt. 29. Because the court believes granting the plaintiff's request for jurisdictional discovery would be futile, it is denied. *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 434 (5th Cir. 2014). Ethridge's claims against Samsung are dismissed without prejudice.

Signed on Galveston Island this 26th day of July, 2022.

JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE