No. _____

In the Supreme Court of the United States

SAMSUNG ELECTRONICS AMERICA, INC.,

Petitioner,

v.

JORDAN BREWER,

Respondents.

On Petition for Writ of Certiorari to the Court of Appeals of Georgia

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The decision below ignores the central teaching of *Mallory* v. *Norfolk Southern Ry. Co.*, 600 U.S. 122 (2023). That decision upheld Pennsylvania's exercise of general jurisdiction over a foreign corporation because Pennsylvania's business-registration statute gave express notice that registration to do business constituted consent to general jurisdiction. That is uncommon. Like 36 other States, Georgia's business-registration statute contains no comparable provision. Instead, Georgia and at least two other States infer consent to general jurisdiction based on judicial interpretations of statutes that concededly lack the notice that was central to *Mallory*.

The question presented is whether the Due Process Clause of the Fourteenth Amendment permits a State to assert general jurisdiction without providing notice that registration constitutes consent to general jurisdiction, particularly where, as here, the judicial decisions supplying that notice were issued only after the corporation first registered to do business.

PARTIES TO THE PROCEEDING

Samsung Electronics America, Inc. is the Petitioner and Appellant below.

Jordan Brewer is the Respondent and Appellee below.

CORPORATE DISCLOSURE STATEMENT

Samsung Electronics America, Inc. is a wholly owned subsidiary of Samsung Electronics Co., Ltd., a publicly held corporation organized under the laws of the Republic of Korea. Samsung Electronics Co., Ltd. has no parent corporation, and no publicly held corporation owns 10% or more of its stock. No other publicly held corporation owns 10% or more of Samsung Electronics America, Inc.'s stock. Samsung Electronics Co. is traded on the Korea Stock Exchange (ticker 005930) and the London Stock Exchange (ticker SMSN).

STATEMENT OF RELATED PROCEEDINGS

State Court of Chatham County, State of Georgia:

> *Brewer* v. *Samsung Electronics America, Inc.*, No. STCV20-01141 (motion to set aside granted January 7, 2022; certification for interlocutory appeal issued August 11, 2022; motion to set aside granted again July 22, 2024; certification for interlocutory appeal issued August 26, 2024)

Court of Appeals for the State of Georgia:

> *Brewer* v. *Samsung Electronics America, Inc.*, Nos. A23A0452, A23A0453 (reversing trial

court's first order setting aside default judgment on June 30, 2023)

Brewer v. *Samsung Electronics America, Inc.*, Nos. A25A02772, A25A0292 (reversing trial court's second order setting aside default judgment on June 23, 2025)

Supreme Court of Georgia:

Samsung Electronics America, Inc. v. *Brewer*, No. S26C0033 (denying petition for writ of certiorari on March 31, 2026)

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The opinion of the Court of Appeals of Georgia (App. 2a–13a) is reported at 376 Ga. App. 396 (2025). The Supreme Court of Georgia denied Petitioner's petition for writ of certiorari in an unpublished order dated March 31, 2026 (App. 1a). The opinions of the State Court of Chatham County, Georgia granting Petitioner's motion to set aside but rejecting its personal jurisdiction arguments are unreported (App. 14a–44a, 62a–71a).

JURISDICTION

The Court of Appeals of Georgia issued its opinion on June 23, 2025, and denied reconsideration on July 17, 2025. The Supreme Court of Georgia denied Petitioner's petition for writ of certiorari on March 31, 2026. This Court has jurisdiction under 28 U.S.C. § 1257. See *Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 485 (1975); *Shaffer* v. *Heitner*, 433 U.S. 186, 195 n.12 (1977). 28 U.S.C. § 2403(b) may apply to this case, and this petition has been served on the Attorney General of Georgia.

PERTINENT STATUTORY AND CONSTITUTIONAL PROVISIONS

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of

> citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1, cl. 2. Georgia's registration statute, Ga. Code Ann. §§ 14-2-1501, 14-2-1505, 14-2-1507, and long-arm statute, Ga. Code Ann. §§ 9-10-90, 9-10-91 are in the appendix (App. 94a–101a).

INTRODUCTION

Samsung Electronics America, Inc. (SEA) should not be a party to this lawsuit. Not only does everyone know that it had nothing to do with the product that injured Respondent Jordan Brewer, but SEA is also not amenable to suit in Georgia. It is not incorporated there, and its contacts with Georgia are not so "continuous and systematic as to render it essentially at home" in Georgia. *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 919 (2011). Georgia statutes do not state that registration to do business is consent to general jurisdiction, unlike the Pennsylvania statute upheld in *Mallory*. Instead, SEA remains in this suit solely because a pair of Georgia Supreme Court decisions—issued years after SEA applied to do business in Georgia—held that registration alone is consent to general jurisdiction in Georgia state courts. The latest of those decisions noted that Georgia's approach is in "tension" with this Court's due process precedent. *Cooper Tire & Rubber Co.* v. *McCall*, 863 S.E.2d 81, 92 (Ga. 2021). Yet Georgia courts persist in exercising general personal jurisdiction without statutory notice that registration has that effect.

That reasoning breaks with this Court's recent holding in *Mallory*, which upheld Pennsylvania's registration-as-consent policy because state law was "explicit" about that consequence. Although *Mallory* noted Georgia's precedent divining consent from far-from-explicit statutory provisions, it did not address whether that approach is constitutional. 600 U.S. at

127, 135. As it stands, at least two States require express statutory notice, while three have held the opposite.

For would-be defendants, the continued assertion of general jurisdiction without express statutory notice is no small matter. It displaces the bedrock due process guarantee that a party have forewarning of the legal effect of its actions. See, *e.g.*, *Fed. Commc'ns Cmm'n* v. *Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). In place of fair notice, Georgia and the two other States that presume consent from registration under generic statutes offer surprise to defendants, forum-shopping opportunities to plaintiffs, and disrespect to the States whose courts should be deciding cases against their residents.

This Court should review the decision below to address the question left open in *Mallory*. The Pennsylvania statute in that case is an anomaly. The large majority of States have statutes like Georgia's that do not expressly inform business registrants that registration will subject them to general personal jurisdiction. As a matter of due process, those statutes provide insufficient notice to subject foreign corporations to general jurisdiction. The Court should grant review to confirm *Mallory*'s limited scope.

STATEMENT OF THE CASE

I. Georgia's consent-by-registration regime.

Like every other State, Georgia requires out-of-state corporations to register with the State to do business there. But Georgia is among only a handful of States that treat this requirement as consent to general jurisdiction, exposing foreign corporations to suit in Georgia for events that transpired anywhere in the world. And Georgia also is one of only three States that impose that rule without notifying businesses of the jurisdictional consequence of registration in the registration statute itself.

Georgia came to occupy its position through a 1992 decision that predates this Court's clarification of corporate residence in *Daimler AG* v. *Bauman*, 571 U.S. 117 (2014). *Allstate Ins. Co.* v. *Klein*, 422 S.E.2d 863 (Ga. 1992). When asked to reconsider that rule after *Daimler*, the Georgia Supreme Court refused, cementing the split that led to *Mallory*. *Cooper Tire*, 863 S.E.2d at 83. In *Cooper Tire*, the Georgia court explained that an anomaly in the State's long-arm statute resulted in out-of-state corporations being subject to either general jurisdiction or no jurisdiction at all. *Id.* at 91–92. Upholding consent-by-registration was thus necessary to avoid the "perverse consequence" of exempting out-of-state corporations from suit. *Ibid.* But the court conceded that its holding stood in "tension" with this Court's "recent . . . precedent," and invited the Georgia General

Assembly to "tailor this State's jurisdictional scheme within constitutional limits." *Id*. at 92.

Despite this invitation, Georgia's business-registration statute remains unchanged. See Ga. Code §§ 14-2-1501(a), 14-2-1507. As this case shows, Georgia subjects foreign corporations to general jurisdiction even if they registered before *Klein* in 1992. In other words, Georgia subjects foreign corporations to all-purpose jurisdiction despite providing no notice—statutory or otherwise—of that consequence at the time they registered.

II. This Court's *Mallory* decision.

This Court granted certiorari in *Mallory* to resolve a conflict between the Pennsylvania Supreme Court and the Georgia Supreme Court concerning whether "the Due Process Clause of the Fourteenth Amendment prohibits a State from requiring an out-of-state corporation to consent to personal jurisdiction to do business there." 600 U.S. at 127. The Pennsylvania Supreme Court had held that Pennsylvania's consent-by-registration regime violated the Due Process Clause, while the Georgia Supreme Court had held that Georgia's regime did not. *Ibid*.

While the consequences of registration are the same in both States, the consent-by-registration regimes are different. In Pennsylvania, the registration statute explicitly states that registration constitutes consent to general jurisdiction; in Georgia, the statute is silent as to registration's jurisdictional consequences: "a judicial precedent, not a long-arm statute, maintained that registration justified general jurisdiction . . . . [a]pplying the consent theory, the Georgia Supreme Court held that corporations that choose to do business in the State are on notice of the jurisdictional consequences of its case law." *Id*. at 172 (Barrett, J., dissenting) (citing *Cooper Tire*).

The *Mallory* Court held that Pennsylvania's consent-by-registration regime passed constitutional muster. As the Court reasoned, the Pennsylvania statute supplied the constitutionally requisite notice because it was "explicit that 'qualification as a foreign corporation' shall permit state courts to 'exercise general personal jurisdiction' over a registered foreign corporation." *Id*. at 134. That "explicit" statutory notice "suffice[d] to establish consent to suit" under the rule from *Pennsylvania Fire Ins. Co. of Philadelphia* v. *Gold Issue Mining & Milling Co.*, 243 U.S. 93, 97 (1917). *Id*. at 134–135; see also *id*. at 148 (Jackson, J., concurring) ("[W]hen Norfolk Southern made that decision [to register], the jurisdictional consequences of registration were clear."); 600 U.S. at 153 (Alito, J., concurring) ("The company . . . had clear notice that Pennsylvania considered its registration as consent to general jurisdiction.").

This Court declined to assess the constitutionality of Georgia's regime, where the jurisdictional consequences of registration arise from judicial decisions as opposed to explicit statutory language. *Id*. at 135 ("To decide this case, we need not speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit.").

III. Factual background.

1. The parties.

Jordan Brewer, a Georgia resident, claims he was injured when a battery in his e-cigarette exploded in his pocket. He bought the e-cigarette as part of a "starter kit" from a store in Savannah. That kit came with two Type 18650 lithium-ion batteries, which Brewer alleged caused his injuries. App. 74a, 79a–81a. Those batteries bore the wrapping and logo of a company called Hohm Tech., Inc. App. 79a.

Brewer filed suit in the State Court of Chatham County, Georgia naming several defendants, including Southeast Vapes & E-Cigs (the vape store that sold him the e-cigarette), Hohm Tech. (the manufacturer named on the batteries), and SEA. App. 72a. Brewer alleged that the batteries at issue were manufactured by SEA and "rewrapped" and sold as Hohm Tech batteries. App. 88a–89a.

SEA is a corporation formed under the laws of New York with its principal place of business in New Jersey. App. 104a–105a. It applied as a foreign corporation to do business in Georgia in 1985. App. 103a. As with many corporations its size, SEA is registered to do business in all fifty States. Brewer has not alleged, nor could he allege, that SEA's contacts with Georgia are sufficient for general personal jurisdiction, other than based on its application to do business in Georgia.

While SEA markets, sells, and distributes a variety of consumer electronics in the United States, it has nothing to do with Type 18650 lithium-ion batteries. App. 17a. Instead, a separate entity named Samsung SDI Co., Ltd. ("SDI") uses Type 18650 batteries. *Ibid.*

2. Brewer sues the wrong party.

SEA was served with the summons and complaint on July 20, 2020. App. 46a. Upon receipt, SEA determined that it had been incorrectly named in the lawsuit. App. 17a.

This had happened before. On at least 17 other occasions, SEA had been incorrectly named in lieu of SDI in lawsuits purportedly involving Type 18650 lithium-ion batteries. *Ibid.* In those instances, rather than burden the courts with motion practice, SEA developed a protocol through which it would contact plaintiff's counsel, provide a declaration verifying that SEA was the wrong entity, and obtain a dismissal on that basis. *Ibid.*

SEA followed that protocol here. Two days after receiving the Complaint, a paralegal from SEA called Brewer's counsel to explain that he had named the wrong Samsung entity in the Complaint. Receiving no response, SEA contacted Brewer's counsel twice more in subsequent weeks. Finally, on September 16, 2020, SEA spoke with Brewer's counsel and explained that SEA did not make the batteries in question. Brewer's counsel said he would confer with his client. App. 19a. Brewer's counsel neglected to inform SEA that just a few days prior, he had moved to dismiss the other defendants and for default judgment against SEA. *Ibid.*

3. Brewer capitalizes on his error.

On September 16, 2020—the same day that SEA spoke with Plaintiff's counsel—the trial court entered an order of liability default. App. 20a. SEA did not receive that order. *Ibid.*

On October 9, 2020, the court held a damages hearing. Despite being informed that SEA was an improper party and having spoken to SEA's paralegal just days before, Brewer's counsel did not provide SEA with notice of the hearing. Nor did the court.[1] As a result, SEA did not attend. And because Brewer's counsel (strategically) declined to have the hearing transcribed, SEA has limited knowledge of what happened. App. 20a–21a.

At the damages hearing, Brewer introduced evidence of medical expenses totaling $144,972.88, as well as photographs, records, and testimony concerning his injuries. App. 67a. Three days later, the trial court ordered SEA to pay Brewer damages totaling $10,860,972—over ***70 times*** his medical expenses. App. 4a–5a.

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[1] Under Georgia law, SEA purportedly waived its right to notice of the damages hearing by defaulting. See O.C.G.A. § 9-11-5(a) ("[T]he failure of a party to file pleadings in an action shall be deemed to be a waiver by him or her of all notices, including notices of time and place of trial and entry of judgment, and all service in the action.").

SEA received the default judgment order one week later and immediately contacted Brewer's counsel. Brewer declined to open the default and pursue the actual manufacturer of the batteries at issue. And so began a five-year effort to set aside a single default judgment entered by a court lacking personal jurisdiction over SEA.

IV. Proceedings below.

In the proceedings below, SEA's motion to set aside the default judgment was twice granted by the trial court. Both times, the Georgia Court of Appeals reversed. In each instance, SEA argued that it was not subject to personal jurisdiction in Georgia. Both times, the Court of Appeals ignored SEA's argument.

1. The trial court sets aside the default.

SEA first moved to set aside the default judgment on December 4, 2020, after unsuccessfully attempting settlement negotiations with the same lawyer who effected the heist. SEA argued, among other things, that it was not subject to personal jurisdiction in Georgia and that the scant evidentiary record could not support the outsized damages award. App. 62a, 68a–69a.[2]

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[2] While that motion was pending, Brewer and his mother filed two lawsuits against SDI and the other defendants originally named and later dismissed from the case as a contingency plan in the event they failed to preserve the default judgment against SEA. See *Brewer* v. *Samsung SDI Co., Ltd., et al.*, No. 4:21-cv-00355 (S.D. Ga.); *Monroe* v. *Samsung SDI Co., Ltd., et al.*, No. 4:21-cv-00357 (S.D. Ga.). Both cases are administratively closed pending resolution of this case.

While SEA's motion was pending, the Georgia Supreme Court decided *Cooper Tire*, which reaffirmed that foreign corporations registered to do business in Georgia are subject to general jurisdiction even though "Georgia's Business Corporation Code does not expressly notify out-of-state corporations that obtaining authorization to transact business in this State and maintaining a registered office or registered agent in this State subjects them to general jurisdiction in our courts." *Cooper Tire*, 863 S.E.2d at 90.

In light of the recent *Cooper Tire* decision, the trial court rejected SEA's jurisdictional argument, but it "agree[d] with [SEA] that reconsideration of the damages award is a sufficiently meritorious reason to set aside the judgment here and analyze whether the amount of general and special damages awarded to Mr. Brewer was appropriate." App. 67a–68a. Without a transcript, the court reasoned that there were "many unknowns," and based on the record evidence concluded there was insufficient evidence to support a damages award that exceeded Brewer's medical expenses more than seventy times over. App. 66a–68a.

2. The Court of Appeals reverses.

Brewer appealed, and SEA argued as an independent basis for affirmance that it is not subject to personal jurisdiction in Georgia. See Br. of Appellant, No. A23A0452, at 32–34.

The Court of Appeals reversed, holding that the trial court abused its discretion by failing to apply a "presumption of regularity" to the outsized damages award. App. 54a, 59a–60a. The Court of Appeals did not address SEA's personal jurisdiction argument. *See generally* App. 45a–61a.

3. The trial court again sets aside the default judgment again and is again reversed.

On remand from the Court of Appeals, the trial court again set aside the default judgment, this time due to improper venue. App. 39a. Brewer appealed, and SEA again argued as an independent basis for affirmance that it was not subject to personal jurisdiction in Georgia. SEA argued:

> The sole purported basis for personal jurisdiction in this case is the fact that Samsung is registered to do business in Georgia. See*, e.g.*, *Cooper Tire & Rubber Co.* v. *McCall*, 312 Ga. 422, 422 (2021). While Samsung acknowledges current Georgia precedents hold such registration to constitute consent to general jurisdiction, Samsung contends they are incompatible with the United States Constitution because, inter alia, decisional law does not provide sufficient notice to constitute consent to general jurisdiction.

Br. of Appellant, No. A25A0292, at 36.

The Georgia Court of Appeals reversed. App. 2a. It held that the trial court's ruling on venue was based on a "clearly erroneous factual finding." App. 10a. It assessed certain of SEA's independent arguments for affirmance, noting that SEA made "compelling arguments on the merits of its [improper party] defense," but declined to affirm on that basis because SEA did not "timely present this defense." App. 11a. The Court of Appeals did not address SEA's argument that it was not subject to personal jurisdiction in Georgia. See generally App. 2a–13a.

The Supreme Court of Georgia denied SEA's petition for writ of certiorari in an unpublished and unreasoned order dated March 31, 2026. App. 1a.

REASONS FOR GRANTING THE PETITION

This case presents an important question expressly left open by *Mallory*: whether and when the Fourteenth Amendment's Due Process Clause permits a State to subject a foreign corporation to general jurisdiction because of its business registration, absent express statutory language apprising anyone of those jurisdictional consequences.

This Court's decision in *Mallory* was narrow, declining to "speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit." 600 U.S. at 135. While *Mallory* resolves the consent-by-registration question for those few States that make "explicit" the jurisdictional consequences of registration, *id*. at 134, it leaves unanswered whether due process permits corporations to be haled into foreign courts in the majority of States where the business-registration statute is silent as to jurisdiction. For hundreds of thousands of corporations registered to do business in those States, whether decisional law can supply constitutionally sufficient notice is recurring and important, particularly when the decision issues ***after*** registration.

Absent guidance from this Court, more than 30 other States with statutes like Georgia's could judicially and retroactively transform a foreign corporation's registration to do business into "consent" to general jurisdiction. Twenty-three of those States have business-registration statutes that feature one of the two provisions at issue in *Mallory*—but not the one providing express notice. Yet post-*Mallory* decisions are construing that provision as adequate under the Due Process Clause. Those decisions reflect confusion over *Mallory*'s notice rule, offend due process, undermine interstate federalism, and invite forum-shopping.

I. The decision below highlights a multi-State split and creates an untenable precedent for 36 States with statutes like Georgia's.

This Court took up *Mallory* to resolve a conflict between the Pennsylvania Supreme Court and the Georgia Supreme Court concerning whether "the Due Process Clause of the Fourteenth Amendment prohibits a State from requiring an out-of-state corporation to consent to personal jurisdiction to do business there." 600 U.S. at 127. But the *Mallory* decision resolves that question only for those States that explicitly address the jurisdictional consequences of registration in their business-registration statutes. That group includes three States (including Pennsylvania) that expressly condition registration to do business on a foreign corporations' consent to general jurisdiction and ten States (plus the District of Columbia) with statutes explicitly stating that registration to do business does not confer general jurisdiction.

The remaining 37 States (including Georgia) with registration statutes that are silent on general jurisdiction are far from uniform in the interpretation of their business-registration statutes. In those States, foreign corporations must continuously scour decisional law to determine whether they are (or may later be) subject to general jurisdiction because of their registration to do business there. And the decisional law across these jurisdictions reflects disagreement on the requirements of due process after *Mallory*.

1. Three States have an express consent-by-registration regime. Pennsylvania and Kansas are the clearest examples. See 42 Pa. Cons. Stat. § 5301(a)(2)(i) ("qualification as a foreign corporation" "shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction"); Kan. Stat. Ann. § 17-7931(g) & ann. 1 ("A foreign covered entity that registers with the Kansas secretary of state to do business in the state expressly consents to be subject to general personal jurisdiction in Kansas."); see also *Am. Food & Vending Corp.* v. *Goodyear Tire & Rubber Co.*, 2025 WL 2770651, at *4 (D. Kan. Sept. 29, 2025) (subjecting foreign corporation to general jurisdiction based on Kansas business-registration statute).

Minnesota's statute does not use the term "general jurisdiction," but has been consistently construed both pre- and post-*Mallory* to have the same effect. The statute states that foreign corporations who wish to do business must procure a certificate of authority and "irrevocably consent[] to the service of process." Minn. Stat. § 303.06(4); see *Lynn* v. *BNSF Ry. Co.*, 2025 WL 1860488, at *2 (Minn. Ct. App. July 7, 2025) (citing *Rykoff-Sexton, Inc.* v. *Am. Appraisal Assocs., Inc.*, 469 N.W.2d 88, 89–90 (Minn. 1991)) (construing Minn. Stat. § 303.06(4) to confer general jurisdiction for registered foreign corporations).[3]

2. At the opposite pole, ten States and the District of Columbia have adopted the Model Registered Agents Act ("MRAA"), which the Uniform Law Commission issued in 2006. The MRAA states that "[t]he designation or maintenance . . . of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity[.]" See Model Registered Agents Act § 15 (Unif. L. Comm'n 2006). *Mallory* leaves undisturbed the registration regimes of those ten States because a plain reading of the statutes eliminates consent by registration. See Ark. Code Ann. § 4-20-115; Haw. Rev. Stat. § 425R-12; Idaho Code § 30-21-414; Ind. Code § 23-

[3] Illinois also adopted an explicit consent-by-registration regime, but only for actions concerning certain toxic substances. 735 Ill. Comp. Stat. 5/2-209(b)(5)

0.5-4-12; Me. Rev. Stat. tit. 5, § 115; Miss. Code Ann. § 79-35-15; Mont. Code Ann. § 35-7-115; Nev. Rev. Stat. § 77.440; N.D. Cent. Code § 10-01.1-15; Utah Code Ann. § 16 17-401; *see also* D.C. Code § 29-104.14.

3. Corporations registered to do business in the remaining 37 States that lack the "explicit" language cited in *Mallory*—including Georgia—require guidance about whether and when they can constitutionally be haled into foreign courts. The decisional law in those States is all over the map.

And that variance is not a function of idiosyncratic state laws. Twenty-three States have adopted the following Model Business Corporation Act (MBCA) provision:

> A foreign corporation with a valid certificate of authority has the same but no greater rights and the same but no greater privileges as, and except as otherwise provided by this Act is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

Pennsylvania is among those States, though its law also includes the express notice provision that persuaded Justices Jackson and Alito in *Mallory*. 600 U.S. at 148 (Jackson, J., concurring); *id.* at 153 (Alito, J., concurring). Whether the MBCA language is sufficient ***without*** Pennsylvania's express notice provision has divided the lower courts.

a. In at least Georgia, North Carolina, and Connecticut, the business-registration statute is silent as to jurisdiction but has been construed by courts to confer general jurisdiction on registered foreign corporations.

In Georgia, the statute concededly says nothing about the jurisdictional consequences of registration. *See Cooper Tire*, 863 S.E.2d at 90 ("Georgia's Business Corporation Code does not expressly notify out-of-state corporations that obtaining authorization to transact business in this State and maintaining a registered office or registered agent in this State subjects them to general jurisdiction in our courts."). Instead, those consequences are set out in decisional law. *Ibid*. (citing *Klein*).

Likewise, in North Carolina, the intermediate appellate court interpreted its MBCA registration statute earlier this year as establishing consent by registration even though "North Carolina law, unlike Pennsylvania law, does not explicitly state that foreign corporations consent to personal jurisdiction as part of registering to do business in the state." *DII, LLC v. Sky Aircraft Maint., LLC*, 925 S.E.2d 28, 36 (N.C. Ct. App. 2025), *stayed*, 924 S.E.2d 34 (N.C. 2026) (mem.). The court reasoned that the MBCA verbiage provides sufficient notice by stating that a registered corporation has "the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character." N.C.G.S. § 55-15-

05(b). *Ibid*. "Guided by *Mallory*," the court held that "a foreign corporation that obtains a certificate of authority consents to general personal jurisdiction in North Carolina." *Ibid*.

So too in Connecticut, the intermediate appellate court has interpreted its MBCA registration statute as establishing consent by registration despite the absence of the "explicit" statutory language cited in *Mallory*. See *Talenti* v. *Morgan & Bro. Manhattan Storage Co.*, 968 A.2d 933, 940 (Conn. App. Ct. 2009); *Wallenta* v. *Avis Rent A Car Sys., Inc.*, 522 A.2d 820, 824 (Conn. App. Ct. 1987).

In the U.S. Virgin Islands, the broker-dealer registration statute does not (like Pennsylvania's statute) "expressly . . . provide[] that all registrants consent to general jurisdiction." *Erbey Holding Corp.* v. *BlackRock Fin. Mgmt., Inc.*, 2025 VI 25, ¶ 23, 2025 WL 3688048 (V.I. Dec. 18, 2025) (citation omitted). Yet the Supreme Court of the Virgin Islands held that registration amounted to consent to general jurisdiction. *Ibid*. (citing *Mallory*, 600 U.S. at 137 n.5)

b. By contrast, several States with statutes that lack express jurisdictional language have held, post-*Mallory*, that foreign corporations are not subject to general jurisdiction.

For instance, while the Missouri business-registration statute contains the same MBCA "duties, restrictions, penalties, and liabilities" verbiage present in Pennsylvania's statutes, the Missouri Court of Appeals declined to revert to a consent-by-registration regime despite *Mallory*. See *State ex rel.*

DKM Enters., LLC v. *Lett*, 675 S.W.3d 687, 694 (Mo. Ct. App. 2023).

The business-registration statute in Colorado features the MBCA language, Colo. Rev. Stat. §§ 7-90-801(1), 7-90-805(2), but the U.S. District Court for Colorado declined to apply "consent by registration" because, unlike Pennsylvania's statutes, Colorado's do not feature any language making consent-by-registration explicit. *Lumen Techs. Serv. Grp., LLC* v. *CEC Grp., LLC*, 691 F. Supp. 3d 1282, 1291–1297 (D. Colo. 2023) ("Because these statutes do not expressly inform foreign corporations of any personal jurisdiction consequences of registering to do business or designating an agent in the state, these laws cannot serve as a basis to find PJF's implied consent to Colorado courts' personal jurisdiction.").

Although Connecticut interprets its MBCA provision to create jurisdiction, the Second Circuit (applying Connecticut law) stopped applying those precedents based on due process concerns engendered by *Daimler* and *Goodyear*. See *Brown* v. *Lockheed Martin Corp.*, 814 F.3d 619, 635 (2d Cir. 2016) (reasoning that the "Connecticut registration statute" lacks "express language alerting the potential registrant that by complying with the statute and appointing an agent it would be agreeing to submit to the general jurisdiction of the state courts."). Whether the Second Circuit will revert to following Connecticut courts' view after *Mallory* is an open question.

The upshot is that, in the vast majority of States that lack explicit statutory language regarding the jurisdictional consequences of registration, foreign corporations must conduct a multi-State legal survey to determine whether their registration to do business might subject them to general jurisdiction there. In those States with no clear answer, corporations must simply guess whether a court may later transform their registration into tacit "consent" to be sued there for events that transpire anywhere.

4. This split has significant constitutional and practical consequences.

a. In jurisdictions like Georgia, North Carolina, and Connecticut, foreign corporations can be subjected to general jurisdiction based on their registration to do business despite receiving no statutory warning of that consequence. See *Cooper Tire*, 863 S.E. 2d at 90; *Talenti*, 968 A.2d at 940. This result undermines the central rationale of *Mallory*, which sustained Pennsylvania's registration regime because the Commonwealth expressly conditioned registration on consent to general jurisdiction. Nothing in *Mallory* suggests that a State may obtain such "consent" through judicial construction of a registration statute that never discloses that consequence—particularly where, as here, that construction occurs ***after*** the corporation first registers. Compare App. 102a (SEA applied for a certificate of authority to do business in Georgia in 1985), with *Klein*, 422 S.E.2d 863 (announcing consent-by-registration in 1992).

To the contrary, *Mallory*'s waiver-based reasoning presupposes notice of the right being surrendered. See *Mallory*, 600 U.S. at 134–135 (reasoning that registration to do business in Pennsylvania "suffice[d] to establish consent to suit" given "explicit" statutory warning of jurisdictional consequences); *id.* at 148 (Jackson, J., concurring) ("[W]hen Norfolk Southern made that decision, the jurisdictional consequences of registration were clear."); 600 U.S. at 153 (Alito, J., concurring) ("The company . . . had clear notice that Pennsylvania considered its registration as consent to general jurisdiction."); see also *Ins. Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703–705 (1982) (holding that waiver of personal jurisdiction requires a "legal submission to the jurisdiction of the court"). Post-hoc judicial expansions of a business-registration statute can hardly be said to provide fair notice. *Cf. Bouie* v. *City of Columbia*, 378 U.S. 347, 352 (1964) ("There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language.").

b. The rule in Georgia and elsewhere is unworkable on a practical level. The only way for foreign corporations to learn the jurisdictional consequence of registration in Georgia, Connecticut, or the 35 other States lacking explicit statutory language is to scour the decisional law of each State before applying to do business. Because a State may change its interpretation over time, corporations would presumably be required to conduct these multi-State surveys again and again. And no amount of homework could protect a company from being the unlucky defendant whose case ushers in a new consent rule for the first time.

This is a significant burden even for large corporations like SEA, and an untenable one for thousands of small- and medium-sized businesses that have no such resources. See *Mallory*, 600 U.S. at 161–162 (Alito, J., concurring) ("Aside from the operational burdens it places on out-of-state companies, Pennsylvania's scheme injects intolerable unpredictability into doing business across state borders. Large companies may be able to manage the patchwork of liability regimes, damages caps, and local rules in each State, but the impact on small companies, which constitute the majority of all U.S. corporations, could be devastating.").

* * *

Notice is a bedrock feature of due process. Pennsylvania's statute survived constitutional scrutiny because it provided explicit notice; Georgia's common-law approach falls at the opposite end of a very messy continuum that has grown messier with decisions since *Mallory*. But neither *Mallory* nor *Pennsylvania Fire* transform a constitutional requirement for notice into an authorization for surprise.

II. The Georgia approach is profoundly wrong on due process.

Inferring consent to jurisdiction from statutes that say no such thing flies in the face of due process. *Mallory* found consent based on an explicit statutory statement. Every business that registered to do business in Pennsylvania after the adoption of that statute had notice of the effect that its registration would have. This case is different twice over. Not only is there no statute that notifies businesses that registering in Georgia will expose them to general jurisdiction in that State, but SEA registered ***before*** the Georgia Supreme Court's earliest decision inferring consent from a general statute. This Court should grant the petition to confirm that due process continues to require notice of the legal consequences that flow from a seemingly innocuous action.

Under this Court's due process precedents, post-hoc notice is not notice at all. Instead, due process demands that a party have notice of the legal consequences of its conduct at the time it acts. See *Fox Television Stations, Inc.*, 567 U.S. at 253 ("A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required."). The rationale is obvious: parties must "know what is required of them so they may act accordingly." *Ibid.* As a result, judicially created consequences that are unknown until after the decision has been made lack the "fair warning" that due process requires. "There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language." *Bouie*, 378 U.S. at 352; see also *id*. at 353 (holding that failure of notice "could not be cured retrospectively by a ruling of either the trial or the appellate court"); *Rogers* v. *Tennessee*, 532 U.S. 451, 456 (2001) ("[L]imitations on *ex post facto* judicial decisionmaking are inherent in the notion of due process.").

In light of those principles, SEA should never have been subjected to jurisdiction in the proceedings below. SEA registered to do business in Georgia in 1985. App. 102a. At that time, no Georgia statute informed registrants that registration would subject them to general jurisdiction, and no Georgia decision had yet announced that rule. The Georgia Supreme Court did not proclaim its consent-by-registration theory until *Klein* in 1992. Under the decision below, however, SEA is deemed to have "consented" in 1985 to a jurisdictional consequence that Georgia law had not yet attached to registration. That is not notice; it is retroactivity. A legal consequence as significant as surrendering the protection of *Daimler* should not depend on a corporation's ability to predict future judicial decisions.

The decision below permits a State to obtain "consent" first and provide notice later. That result cannot be reconciled with the Due Process Clause's requirement of fair warning. Because SEA registered before any Georgia statute or judicial decision attached general-jurisdiction consequences to mundane business registration, the proceedings below rested on a constitutionally invalid theory of consent. Because that approach is so profoundly wrong and contrary to both *Mallory* and decades of due process precedent, this Court should grant the petition.

III. Left unchecked, the decision below has troubling policy implications.

This Court's review is also necessary because so long as Georgia and other jurisdictions continue to assert general jurisdiction over corporate registrants without providing statutory notice, the opportunities for "unacceptably grasping" assertions of personal jurisdiction will abound. *Daimler*, 571 U.S. at 138. So too will opportunities for forum-shopping.

A. Consent-by-registration undermines interstate federalism.

Due process constraints on States' exercise of personal jurisdiction operate not only to ensure defendants are treated fairly, but to "protect[] 'interstate federalism.'" *Ford Motor Co.* v. *Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 360 (2021) (quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 293 (1980). This term "refers to the relationship between the states within our federal system, their status as coequal sovereigns, and the limits on state power that derive from that status." A. Benjamin Spencer, *Jurisdiction to Adjudicate: A Revised Analysis*, 73 U. Chi. L. Rev. 616, 624, 637 (2006). The fifty States are "'coequal sovereigns,' and the 'sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States,'" *Bristol-Myers Squibb Co.* v. *Super. Ct. of Cal.*, 582 U.S. 255, 263 (2017) (quoting *Woodson*, 444 U.S. at 293).

Those concerns support granting the Petition and reversing the decision below. The consent-by-registration regimes in Georgia and elsewhere erode interstate federalism by usurping cases that should be heard in States with greater interests. Under Georgia's rule, Georgia courts may adjudicate disputes arising anywhere, involving nonresident plaintiffs and concerning out-of-State conduct, merely because a corporation complied with Georgia's registration requirements. The practical effect is to allow one State to project its judicial power far beyond its legitimate sphere of regulatory interest, displacing the authority of sister States with stronger sovereign interests in the controversy. See *Bristol-Myers Squibb Co.*, 582 U.S. at 263. By converting routine corporate registration into consent to suit on any claim, Georgia's regime undermines the territorial limits that this Court has long recognized as essential to preserving the balance of authority among co-equal sovereigns. See *Woodson*, 444 U.S. at 293–294; *Daimler*, 571 U.S. at 139.

B. Consent-by-registration promotes forum-shopping.

In a similar vein, the consent-by-registration regime in Georgia creates significant opportunities for forum-shopping, permitting any corporation registered to do business in Georgia—essentially, any large corporation, *see generally* Georgia Corporations

Division, Business Search, https://ecorp.sos.ga.gov/BusinessSearch (last visited June. 17, 2026)—to be sued in Georgia on any claim arising anywhere, anytime the plaintiff concludes, for any reason, that Georgia would provide a more advantageous forum than those allowed by this Court's recent decisions. If this case's Kafkaesque default judgment and ensuing no-notice, no-transcript damages hearing is any indication, strategic plaintiffs will find Georgia very appealing, indeed.

This Court has decried forum-shopping for the better part of a century. See *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64 (1938). And while the *Goodyear* line of cases reduced forum-shopping and increased predictability by limiting jurisdiction to those forums where a corporation could reasonably be considered "at home," Georgia's expansive consent-by-registration regime—like those of Pennsylvania, Kansas, Minnesota, and Connecticut—has precisely the opposite effect. See*, e.g.*, *Mallory*, 600 U.S. at 154 (Alito, J., concurring) (observing that plaintiff selected Philadelphia as the venue for suit because it is "reputed to be especially favorable to tort plaintiffs").

Removing limits on where a defendant may be sued necessarily opens the doors to forum-shopping. And, as here, no defendant is sufficiently fluent in the peculiarities of fifty States' laws to avoid disastrous outcomes like a $10.9 million award against what everyone recognizes is the wrong company.

Due process exists to prevent surprises, and limiting jurisdiction to the one or two States where a defendant can be considered "at home" is among the features that prevents travesties of justice like this one.

CONCLUSION

The Court should grant the petition and confirm that its decision in *Mallory* does not erode the notice requirement of due process.

Respectfully submitted.

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June 29, 2026

APPENDIX

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APPENDIX A — ORDER OF THE SUPREME COURT OF THE STATE OF GEORGIA, FILED MARCH 31, 2026

SUPREME COURT OF THE STATE OF GEORGIA

Case No. S26C0033

SAMSUNG ELECTRONICS AMERICA, INC.

v.

JORDAN BREWER

Filed March 31, 2026

ORDER

Court of Appeals Case No. A25A0272 & A25A0292

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur, except Peterson, C. J., and Land, J., disqualified, and Warren, P. J., not participating.

/s/______________________
Clerk

APPENDIX B — OPINION OF THE COURT OF APPEALS OF THE STATE OF GEORGIA, FILED JUNE 23, 2025

COURT OF APPEALS OF GEORGIA

A25A0272, A25A0292

BREWER

v.

SAMSUNG ELECTRONICS AMERICA, INC.; AND VICE VERSA.

June 23, 2025
Reconsideration Denied July 17, 2025

OPINION

Davis, Judge.

In this second appearance of this product liability case before this Court,[1] Jordan Brewer seeks review of the trial court's order setting aside a $10 million default judgment against Samsung Electronics America, Inc., due to improper venue. For its part, Samsung cross-appeals from the denial of its motion to open default. In Case No. A25A0272, we reverse the trial court's order setting aside the final judgment because venue was proper in Chatham County. In Case No. A25A0292, we affirm the denial of

1. See *Samsung Electronics America, Inc. v. Brewer*, 368 Ga. App. 608, 890 S.E.2d 498 (2023).

Samsung's motion to open default because it was filed after the final judgment.

> During the term in which a judgment is entered, a trial court has plenary control over it and has the discretion to set aside the judgment for irregularity, or because it was improvidently or inadvertently entered and for the purpose of promoting justice. A trial court's discretion in setting aside a judgment will not be disturbed unless manifestly abused. However, a trial court's discretion to set aside a judgment during the term it was entered is not without limits, and should be exercised for some meritorious reason. In this regard, a trial court is granted the discretion to determine what is a meritorious reason for setting aside one of its judgments, and an appellate court may reverse that discretion only if it is manifestly abused.

(Citations and punctuation omitted.) *Pope v. Pope*, 277 Ga. 333, 334, 588 S.E.2d 736 (2003).

In July 2020, Brewer filed the underlying action in Chatham County Superior Court against Samsung and two other defendants after Brewer was injured by an e-cigarette device. According to the complaint, Brewer purchased the device at a store in Chatham County in January 2019. At the time of purchase, store employees installed batteries and showed Brewer how to use the device, but they did not give Brewer any instructions or warnings about the device or batteries. Six months later, Brewer was injured at his home when a battery in his e-cigarette exploded in his pocket. Brewer alleged that the defendants, including Samsung, had negligently designed, manufactured, distributed, and sold the battery used in the e-cigarette, and they had failed to warn Brewer of the risks and harms associated with the battery, causing him serious injury. Brewer was a resident of Effingham County when he filed the complaint, but he alleged that the explosion had occurred while living in Pooler, Georgia. Brewer asserted that venue was proper in Chatham County because a substantial portion of the events giving rise to his action occurred there and because one of the defendants resided in Chatham County. As our prior opinion detailed,

> Samsung failed to file an answer or responsive pleading to the lawsuit within 30 days of the date of service, i.e., August 19, 2020, which placed it in default by operation of law. Samsung still had not filed an answer or responsive pleading within 45 days of the date of service, i.e., September 3, 2020, which meant it could no longer open the default as a matter of right. See OCGA § 9-11-55 (a). On September 10, 2020, Brewer filed a motion for default judgment against Samsung and to drop the remaining defendants from the lawsuit. On September 16, 2020, the trial court issued an order declaring Samsung in default on the issue of liability and scheduled a damages hearing for October 9, 2020. According to the court, Samsung's registered agent was served with

a copy of the default judgment, and the Clerk had followed the usual practice of issuing a notice of the damages hearing to Samsung. Following the damages hearing, on October 12, 2020, judgment was entered in favor of Brewer and against Samsung in the amount of $10,860,972 as "general and special damages, past and future."

. . .

On December 4, 2020, during the same term of court, Samsung filed a motion to set aside the default judgment, or in the alternative, motion for new trial. Relying on the trial court's authority to set aside its judgment within the same term of court in which it was entered, Samsung argued that there were "meritorious grounds" to set aside the default judgment, including that it was the wrong party; the court lacked personal jurisdiction over Samsung because the sole resident defendant had been dismissed from the case; the judgment resulted from fraud and/or mistake; Samsung had not received notice of the damages hearing; OCGA § 9-11-5 (a), which addresses waiver of notice for failure of a party to file pleadings, was unconstitutional; and the damages awarded on the default judgment were grossly excessive and violated the Eighth and Fourteenth Amendments.

By the time of the pending motion to set aside the judgment, the initial trial court judge who entered the default judgment had assumed senior judge status, and a new trial court judge had been assigned to the case. Following a hearing on the motion, on January 7, 2022, the newly assigned judge granted Samsung's motion to set aside the judgment awarding "damages in excess of $10 million," concluding that the significant award of damages should be reconsidered due to the limited evidence in the record, the discrepancy between the special damages and the overall award, and the judgment's failure to break down the types of damages awarded.

. . .

Subsequent to the grant of Samsung's motion to set aside the default judgment, on January 24, 2022, Samsung filed a motion to open the default pursuant to OCGA § 9-11-55 (b). Following a hearing, the trial court denied the motion, concluding that Samsung had met and satisfied the preconditions for opening the default by making a showing under oath, offering to plead instanter, announcing ready to proceed to trial, presenting a meritorious defense under oath (that it was not the party responsible for the manufacture or distribution of the battery), and paying the court costs to the clerk of court. The court further concluded, however, that Samsung had failed to establish that this was a proper

> case to open default judgment, specifically rejecting the company's argument that "it is not a proper party to [the] lawsuit and that manifest injustice would result if it were not permitted to open the default and present this argument." Characterizing Samsung's action in pursuing its company protocol in response to similar lawsuits as "a failed legal strategy" that was "willful and deliberate and done with indifference to the correct legal process or else was gross negligence," the trial court chronicled Samsung's response from the time it was served on July 22, 2020, until December 4, 2020, when "Samsung finally filed its motion to set aside the judgment." The trial court recounted that Samsung had failed at every step to follow its own procedure in this case. It did not follow up with Brewer's attorney, did not timely send the promised documentation to support its assertion that it was not the responsible party until after the judgment was entered, and did not obtain a voluntary dismissal. The trial court summarized that "in a case where a party's legal department is fully aware of the existence of [a] lawsuit and wil[l]fully and continually ignores the associated legal responsibilities that accompany being sued for extended periods of time, there is no proper case to open default."

(Citations, punctuation and footnotes omitted.) *Samsung Electronics America, Inc. v. Brewer*, 368 Ga. App. 608, 609-612, 890 S.E.2d 498 (2023).

On appeal, we vacated the trial court's order granting Samsung's motion to set aside, concluding that the trial court improperly shifted the burden of proof from Samsung to Brewer by construing the incomplete record and the lack of a transcript of the damages hearing against Brewer rather than Samsung. *Brewer*, 368 Ga. App. at 616 (1), 890 S.E.2d 498. On remand, the trial court reconsidered all the grounds that Samsung had previously raised, not just the excessiveness of the monetary award. After applying the proper burden of proof, the trial court rejected Samsung's challenge to the amount of the damages award. As it had before, the court also rejected all the other grounds raised by Samsung, except for one: the trial court now agreed with Samsung that venue was not proper in Chatham County. The court found that, while Samsung, a nonresident defendant, had admitted all the allegations of the complaint, those admissions were not dispositive because residency venue vanished once the Chatham County defendant was dismissed, and Brewer's allegations did not support a finding that the action otherwise originated in Chatham County. Instead, the court found that the action originated in Effingham County where Brewer was injured. Based on these findings, the court again set aside the judgment, this time for improper venue, and indicated that the case would be transferred to a proper venue for further proceedings. We granted Brewer's application for interlocutory appeal.

Case No. A25A0272

1. In this case, Brewer challenges the trial court's order setting aside the judgment due to improper venue

on numerous grounds. Because the trial court erred by concluding that venue was improper in Chatham County, we reverse the trial court's order setting aside the final judgment.

(a) Under Georgia law, venue is proper "[i]n actions for damages because of torts, wrong, or injury done, in the county where the cause of action originated." OCGA § 14-2-510 (b) (4). A product liability cause of action for personal injury accrues at the time of injury. See *Browning v. Maytag Corp.*, 261 Ga. 20, 21, 401 S.E.2d 725 (1991) (product liability claim based on a defective clothes dryer that caught fire accrued at the time of the injury). Thus, venue would be proper if the injury, i.e., the explosion, happened within Chatham County. In his complaint, Brewer alleged that the explosion happened at his residence on 330 Katama Way in Pooler, Georgia, and we may take judicial notice of the generally known and indisputable fact that this address and Pooler, Georgia, are located within Chatham County.[2] Because Samsung is in default, this allegation stands as admitted. *Brewer*, 368 Ga. App. at 609 n.5, 890 S.E.2d 498 ("By virtue of its default, Samsung admitted to the claims alleged in the complaint. A defendant in a default is in the position of having admitted each and every material allegation of Brewer's petition except as to the amount of damages

2. See OCGA § 24-2-201 (b) (2) ("A judicially noticed fact shall be a fact which is not subject to reasonable dispute in that it is . . . [c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); (c) ("A court may take judicial notice, whether or not requested by a party."); (f) ("Judicial notice may be taken at any stage of the proceeding.").

alleged.") (citation and punctuation omitted). Thus, Brewer's injury occurred in Chatham County, and venue was therefore proper there.

The trial court concluded that venue was improper because the vaping device "exploded at [Brewer's] home in Effingham County[,]" but this is a clearly erroneous factual finding. While Brewer alleged in his complaint that he was a resident of Effingham County at the time he filed his complaint, the complaint alleged that the explosion happened at 330 Katama Way in Pooler, Georgia, which is in Chatham County. We therefore reverse the trial court's order setting aside the final judgment based on improper venue.[3]

(b) Samsung nevertheless argues that we may affirm the trial court's order setting aside the final judgment under our "right for any reason" rule,[4] citing three of its arguments that the trial court rejected below. Specifically, it argues that the trial court abused its discretion by declining to set aside the judgment because (a) Samsung was an improper party; (b) Samsung did not receive notice

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3. Given our conclusion that venue was proper in Chatham County, we do not reach Brewer's other arguments concerning venue or the denial of his motion for reconsideration.

4. "Under the right-for-any-reason rule, we will affirm a judgment if it is correct for any reason, even if that reason is different than the reason upon which the trial court relied . . . so long as the movant raised the issue in the trial court and the nonmovant had a fair opportunity to respond." (Citation omitted.) *Perry v. Emory Healthcare Svcs. Mgmt., LLC*, 374 Ga. App. 41, 47, 911 S.E.2d 229 (2025).

of the damages hearing; and (c) the amount of damages was excessive. None of these arguments are meritorious.

First, as for Samsung's argument that it was an improper party, the trial court rejected this argument as a basis for setting aside the judgment because Samsung did not offer a meritorious reason why it could not timely present this defense. "[W]henever a motion is made to vacate a judgment, even during the term at which the same was rendered, the movant must allege and prove some reason good in law why he had failed to make his defense at the time required." *Brewer*, 368 Ga. App. at 614 (1), 890 S.E.2d 498 (citation and punctuation omitted). While Samsung makes compelling arguments on the merits of its defense, it again failed on appeal to offer a meritorious reason why it could not timely present this defense. Thus, we will not disturb the trial court's ruling on this issue.

As for Samsung's argument that it failed to receive notice of the damages hearing, our law is clear that "the failure of a party to file pleadings in an action shall be deemed to be a waiver by him or her of all notices, including notices of time and place of trial and entry of judgment[.]" OCGA § 9-11-5 (a). Thus, because Samsung failed to file any responsive pleadings, it was not entitled to receive notice of the final damages hearing. *Conseco Fin. Servicing Corp. v. Hill*, 252 Ga. App. 774, 779 (3), 556 S.E.2d 468 (2001) (party in default who failed to file a pleading was not entitled to notice of the final damages hearing). While we have held that a trial court does not abuse its discretion by setting aside a default judgment based on lack of notice, see, e.g., *Pope*, 277 Ga. at 334, 588

S.E.2d 736, a trial court is not required to do so, and we cannot say that the trial court abused its discretion by failing to set aside the judgment based on lack of notice.

Finally, as for the argument that the damages were excessive, Samsung mainly points to the documentary evidence in the record for its argument that the amount of damages is unsupported. But we note, as the trial court did, that no transcript of the damages hearing appears in the record. Without a transcript, it is impossible for us to determine what evidence in the form of testimony or otherwise was actually presented at the hearing regarding Brewer's damages in addition to whatever documentary evidence the parties tendered. "[I]n the absence of a transcript, we must assume the trial court's findings were supported by the evidence and the trial court's actions during the trial were appropriate. Further, a presumption of regularity of all proceedings in a court of competent jurisdiction exists." (Citation and punctuation omitted.) *Roth v. Crafton*, 363 Ga. App. 254, 256 (2), 870 S.E.2d 804 (2022). We cannot say that the trial court abused its discretion by failing to set aside the judgment on this basis.

Accordingly, we decline Samsung's suggestion to affirm the trial court's order under our "right for any reason" rule.

Case No. A25A0292

2. In its cross-appeal, Samsung challenges the trial court's denial of its post-judgment motion to open default.

However, as we noted in the prior appeal in this case, *Brewer*, 368 Ga. App. at 616-617 (3), 890 S.E.2d 498, the default statute states that

> *[a]t any time before final judgment*, the court, in its discretion, upon payment of costs, may allow the default to be opened for providential cause . . . or for excusable neglect or where the judge, from all the facts, shall determine that a proper case has been made for the default to be opened, on terms to be fixed by the court.

(Emphasis supplied.) OCGA § 9-11-55 (b). Because we have reversed the trial court's order setting aside the final judgment, there is now a valid final judgment that was entered before Samsung moved to open default, and so default cannot now be opened under this statute. *Granite Loan Solutions, LLC v. King*, 334 Ga. App. 305, 310 (3) (c), 779 S.E.2d 86 (2015). We are therefore required to affirm the trial court's order denying Samsung's motion to open default.

Accordingly, for the reasons stated above, we reverse the trial court's order setting aside the judgment in Case No. A25A0272, and we affirm the trial court's order denying Samsung's motion to open default in Case No. A25A0292.

Judgment affirmed in Case No. A25A0292. Judgment reversed in Case No. A25A0272.

Rickman, P. J., and Gobeil, J., concur.

APPENDIX C — ORDER OF THE STATE COURT OF CHATHAM COUNTY, STATE OF GEORGIA, FILED JULY 22, 2024

IN THE STATE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

CIVIL ACTION NO. STCV20-01141CO

JORDAN BREWER,

Plaintiff,

vs.

SAMSUNG ELECTRONICS AMERICA, INC.,
A NEW YORK CORPORATION,

Defendant.

Filed July 22, 2024

ORDER RE: DEFENDANT'S MOTION TO SET ASIDE JUDGMENT

At the direction of the Court of Appeals as set forth in *Samsung Electronics America, Inc. v. Brewer,* 368 Ga. App. 608 (2023), cert denied, this trial court **HEREBY VACATES** its January 7, 2022 order granting Defendant Samsung Electronics America, Inc.'s motion to set aside the judgment entered against it. In further consideration of the aforementioned directions, and in consideration of the pre-remittitur briefing filed into Civil Action No. STCV20-02285, and having now reconsidered these arguments regarding whether to set aside the judgment, this Court now **HOLDS** that the judgment is void and, to that extent, it **GRANTS** Samsung's motion.

Factual & Procedural Background

The following facts were either deemed admitted and/or proved at trial.

This case arises out of injuries incurred by seventeen-year-old Jordan Brewer when a vaping device held in his pants pocket exploded. Mr. Brewer, an Effingham County resident, purchased the device and batteries in January 2019 at a retailer located in Chatham County. After purchase, the store employees inserted the batteries in the device and showed Mr. Brewer how to use it. No instructions or warnings with respect to the maintenance, use or storage of the batteries were provided by the employees or otherwise included with the device or batteries.

In July 2019, Mr. Brewer placed the vaping device in his pants pocket as he was leaving his home. The device exploded, causing burn injuries on various parts of Mr. Brewer's body, including significant burns on one leg that required two surgical procedures, general anesthesia and the use of cadaver tissue grafts. Mr. Brewer suffered extreme pain at times, both from the injury itself and from the attempts to repair his burned leg. The repair required Mr. Brewer to travel for treatment and entailed numerous follow up visits. Mr. Brewer's physical activities were limited for a time and he has permanent scarring.

On July 15, 2020, Mr. Brewer filed the instant tort case naming several defendants, including Samsung, based on its design, manufacture, distribution and other activities involving the allegedly defective battery used in the vaping device. Mr. Brewer sought to recover special damages for his past and future medical care; general damages for pain and suffering, including physical and emotional suffering, economic damages and disfigurement; and punitive damages.

The record and the briefing further reflect that service was perfected on Samsung and the following events occurred as follows.

According to the complaint, Samsung is a New York company with its principal place of business in New Jersey. However, Samsung has a registered agent for business in Georgia.

On July 20, 2020, Samsung's registered agent in Gwinnett County was served with a copy of the summons, complaint and requests for written discovery including requests for admissions (with proof of service filed within five days on July 24, 2020). The summons stated, "You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney...an answer to the Complain which is herewith served upon you, **within 30 days after service of this summons upon you,** exclusive of the day of service. If you fail to do so, **judgment by default will be taken against** you for the relief demanded in the complaint." Emphases added. In addition, the requests for admission, interrogatories and requests for production that were contemporaneously served on Samsung expressly stated that responses were due within 45 days.

On the same day Samsung's registered agent was served, the documents were transmitted to and received by Samsung's legal department.[1] The following day, Samsung reviewed the complaint and determined that it was not the proper party to this action because it was not involved in the marketing, manufacturing or distribution of the battery in question. Samsung's position was that another related entity (purportedly, Samsung SDI Co., Ltd.) was the party engaged in this conduct, so that entity should have been named in the lawsuit instead. In fact, despite its stated lack of involvement with these batteries, Samsung had been named as a party in at least seventeen other lawsuits alleging negligent conduct with respect to these batteries. Samsung had even developed the following protocol for handling these battery-related lawsuits: first, contact the attorney bringing the claim; second, provide the attorney with a declaration verifying that Samsung was not the correct entity and also provide the information on the correct entity; and third, obtain a dismissal. By using this protocol, Samsung was able to avoid obtaining outside litigation counsel and thus avoid filing any pleadings or motions in these battery-related lawsuits. In this instance, Samsung initiated its protocol, but ultimately did not comply with its own procedures.

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1. Samsung admits that it timely received the complaint. There is no assertion that Samsung was not also provided with all the documents list on the service sheet, including the summons, complaint and discovery.

On July 22, 2020, Samsung's legal department unsuccessfully attempted to call to Mr. Brewer's counsel to address the pending lawsuit.

On August 10, 2020, Samsung's legal department once again unsuccessfully attempted to call Mr. Brewer's counsel to address the pending lawsuit.

On August 19, 2020, 30 days had passed since the date of service and Samsung had not yet filed any responsive pleadings. Samsung went into **default** by operation of law.

On September 3, 2020, 45 days had passed since the date of service, but Samsung had not opened the default as a **matter of right.** O.C.G.A. §§ 9-11-4(h), 9-11-12(a), 9-11-55.

Based on its failure to timely respond after being served with the complaint, Samsung admitted all the well-pled factual allegations in the pleadings. Samsung also failed to respond to requests for admissions, so Samsung admitted those factual and legal issues as well. O.C.G.A. §§ 9-11-8, 9-11-36. In relevant part, Samsung admitted both that it is subject to personal jurisdiction in this Court and also that venue is proper in Chatham County.[2] Samsung further admitted that it engaged in

2. Paragraph 16 of complaint alleges venue is proper because a substantial part of the events giving rise to the claims occurred in Chatham County and because SEV Berwick is a resident. Request for Admission No. 44 simply asks Samsung to admit venue is proper in Chatham County, without stating a basis for this legal conclusion. Samsung admitted this legal conclusion by failing to respond to discovery.

the design and manufacturing of the batteries used in Mr. Brewer's vaping device, and that it failed to warn Mr. Brewer of the associated risks. Samsung also admitted that its batteries caused the explosion and Mr. Brewer's injuries. Samsung's admissions were broad enough for it to have admitted liability, leaving only the issue of damages to be determined.

On September 10, 2020, Mr. Brewer moved the Court to drop the remaining Defendants except for Samsung. Mr. Brewer also moved the Court to enter a default judgment against Samsung. On this same date, Samsung's legal department again unsuccessfully attempted to call to Mr. Brewer's counsel to address the pending lawsuit.[3]

On **September 16, 2020,** 57 days after Samsung was served, Michael Sharples, a paralegal and senior litigation specialist with Samsung's legal department, finally communicated with Mr. Brewer's counsel, William Hunter. During a telephone discussion, Mr. Sharples advised Mr. Hunter that Samsung was not the entity responsible for marketing and distributing the batteries at issue. Mr. Sharples offered to provide Mr. Hunter with a declaration to this effect to verify Samsung's position that it was not the proper party to this lawsuit. Mr. Sharples understood that Mr. Hunter would review the declaration and consider dismissing Samsung. Based on this discussion and his past experience using Samsung's protocol, Mr. Sharples believed that Samsung would be dismissed and no further action was necessary. However, Mr. Sharples admits that

3. The order of events on this date is unknown.

the declaration was not immediately provided to Mr. Hunter and it is undisputed that no dismissal was received thereafter.[4]

Also on **September 16, 2020,** the Court entered an interlocutory order granting Mr. Brewer's request for the entry of default judgment against Samsung.[5] However, since the damages were unliquidated, the matter still needed to be set for a final hearing. No prove hearing date was stated in the order. Although Samsung is specifically listed as a recipient to receive a copy of the order, and although it is the Court's standard practice is to mail orders to unrepresented recipients at the address of service even when they are in default, Samsung denies receiving it.

On October 9, 2020, the matter was called before the Court to address the issue of damages. Samsung denies receiving notice of this hearing and did not appear to contest damages.

Prior to the hearing date, Defendants Samsung, SEV Berwick Store, LLC and Hohm Tech, Inc. all remained parties to the case. However, SEV Berwick and Hohm Tech were dismissed on the hearing date and prior to the entry of judgment. The order dismissing SEV Berwick reflects that dismissal occurred after the damages hearing commenced and after the presentation of certain evidence.

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4. The contents of all the oral discussions amongst counsel, including this one, is disputed.

5. The order of events on this date is unknown.

The order dismissing Hohm Tech does not include this information, so it is unclear whether this Defendant was dismissed prior to or during the trial. In any case, by the time the Court rendered its judgment, Samsung was the only remaining Defendant.[6] O.C.G.A. §§ 9-11-15, 9-11-21.

On **October 12, 2020,** the Court entered a judgment (using an order prepared by Mr. Brewer's counsel) stating that it had considered live testimony regarding present and future damages, reviewed the photographs and medical records and considered the life expectancy of Mr. Brewer in order to reach its determination. Based on this evidence, the Court awarded Mr. Brewer a judgment against Samsung in the amount of **$10,860,972,** including past and future general and special damages. The judgment did not mention the claim for punitive damages or the complaint's factual assertions that the former Defendants were joint tortfeasors. See O.C.G.A. § 51-12-33; *Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC,* 312 Ga. 350 (2021), superseded by statute for cases filed after May 13, 2022.

On October 19, 2020, Samsung received a copy of the judgment.

On October 21, 22, 23 and 26, 2020, Gary Tulp, Samsung's litigation counsel, attempted to communicate

6. At the time of the trial, Defendant SEV Berwick Store, LLC was not in default. Defendant Hohm Tech, Inc. was in default (the time to answer was extended by stipulation until the day before the hearing), but it could still open the default against it as a matter of law.

with Mr. Hunter and Mr. Hunter's co-counsel, George Major, regarding this lawsuit and Samsung's position that it was not the proper party. A phone conference was scheduled.

On October 27, 2020, the phone conference took place. Samsung reiterated its position that it was not the proper party. At some point Samsung also provided the aforementioned declaration to substantiate this assertion.

On November 4, 2020 and November 9, 2020, the parties again attempted to communicate. Samsung contends that Mr. Hunter advised that he was considering Samsung's position and might agree to reopen the default and dismiss Samsung.

However, on November 20, 2020, the parties again conversed and Mr. Hunter confirmed that he would not be willing to reopen the case and dismiss Samsung.

On December 4, 2020, which is approximately 3 months after Samsung went into default, 53 days after the entry of the judgment and **46 days** after Samsung received the judgment entered against it, Samsung filed a **motion to set aside the judgment** within the same term of court. The motion was not accompanied by a transcript. Importantly, the undersigned was not the judge that heard the evidence and signed the judgment, and that judge has since assumed senior judge status. The undersigned has no personal knowledge of what occurred at the hearing. Furthermore, the damages trial apparently was not recorded by a court reporter and therefore cannot be transcribed for this Court's consideration. The Court is unaware of any further requests in this regard. See also O.C.G.A. § 5-6-41(g). The Court is also unaware of any irregularities in those proceedings.

On September 27, 2021, this Court heard and considered the arguments raised by the parties with respect to Samsung's motion.

On January 7, 2022, the Court granted Samsung's motion to set aside the judgment. In relevant part, the Court found that the record evidence was limited, particularly given the absence of a hearing transcript, and did not appear to support a damages award in excess of $10,000,000. Based on the lack of evidence, the Court set aside the judgment to reconsider the issue of damages. The Court also entered an order denying Samsung's motion to set aside the default and further addressing its motion to withdraw its deemed admissions. These orders were appealed.

On June 30, 2023, the Court of Appeals vacated the Court's order setting aside the judgment with directions (as discussed in more detail, *infra*). After the remittitur was entered in the docket, Samsung provided additional briefing for purposes of aiding the Court in its analysis of the issues on remand. When Mr. Brewer objected to the Court's consideration of this additional briefing, Samsung argued that it was not making new arguments, just restating original ones to be decided by this Court based on the instructions provided by the Court of Appeals. In light of the instructions that were handed down by the Court of Appeals, this Court finds that it is improper to consider any new arguments post-remittitur by either party and declines to do so. *State v. Jackson,* 295 Ga. 825 (2014); *Doxey v. Crissey,* 359 Ga. App. 695 (2021). The Court is authorized to consider and reconsider all arguments raised in the original briefing asking the Court to set aside the judgment, and now proceeds with this analysis.

Motion to Set Aside Judgment Entered in the Same Term of Court

Samsung's motion to set aside the judgment in this case was filed in the same term of court as the entry of the final default judgment. Given the timing of the filing, this Court is not required to rely on O.C.G.A. § 9-11-60(d) in order to determine whether it is appropriate to set aside the judgment,[7] but is further authorized to exercise its discretion to address this issue as follows:

> Under Georgia law, a trial court's power to set aside its own judgments during the same term of court is extensive.
>
> A court has plenary control of its judgments, orders, and decrees during the term at which they are rendered, and may amend,

7. The Court reiterates that although Samsung abandoned its O.C.G.A. § 9-11-60(d) arguments, the Court did and does appreciate that these arguments were nonetheless included for consideration as arguments why the Court should exercise its discretion within the same term of court to open the default. Both the vacated order and now this order take this into account.

> correct, modify, or supplement them, for cause appearing, or may, to promote justice, revise, supersede, revoke, or vacate them, as may, in its discretion seem necessary. While the discretion to set aside a judgment is not without limits and should be exercised "for some meritorious reason," it is within the trial court's discretion to determine what amounts to "a meritorious reason" for that purpose.

Utilicom Supply Assocs., LLC v. Terra Tech, Inc., 360 Ga. App. 509, 509 (2021) (cites omitted); see *Pope v. Pope,* 277 Ga. 333, 334 (2003) ("[d]uring the term in which a judgment is entered, a trial court has plenary control over it and has the discretion to set aside the judgment 'for irregularity, or because it was improvidently or inadvertently entered' and 'for the purpose of promoting justice'"). Further to this point:

> "[w]henever a motion is made to vacate a judgment, even during the term at which the same was rendered, the movant must allege and prove some reason good in law why he had failed to make his defense at the time required." The impetus is on "[t]he party moving to set aside [to] present facts so that the court can determine for itself whether, if the verdict and judgment were set aside, the result might be different on the next trial."

Samsung Electronics America, Inc. v. Brewer, 368 Ga. App. 608, 614-15 (2023). Therefore, while "Georgia law also gives the trial court the discretion to determine what constitutes a 'meritorious reason' in this context," *Utilicom Supply Assocs.*, 360 Ga. App. at 512, "[a] trial court abuses its discretion when it issues a ruling that is unsupported by any record evidence or misstates or misapplies the law." *Colclough v. Dep't of Human Servs.*, 367 Ga. App. 567, 570 (2023).

In its prior ruling, this Court found that the record evidence did not fully substantiate the amount of judgment and exercised its discretion to set aside the default judgment in order to reconsider the issue of damages. In reaching this result, this Court misapplied the law by improperly shifting the burden to the non-movant to establish the existence of a meritorious reason. As such, the Court of Appeals vacated this ruling and provided the following instructions:

> Because the trial court improperly shifted the burden of proof from Samsung to Brewer by construing the incomplete record against Brewer rather than Samsung, we vacate the order granting Samsung's motion to set aside the default judgment and remand the case to the trial court for it to reconsider Samsung's motion under the proper legal standard and clarify whether Samsung met its burden of proof to show cause for the trial court to find a meritorious basis to set aside the default judgment.

Brewer, 368 Ga. App. at 616. Based on these instructions, and in consideration of the law providing that "[t]he promotion of justice is a meritorious reason which will support the trial court's exercise of its inherent power to set aside a judgment," *P.H.L. Dev. Corp. v. Smith,* 174 Ga. App. 328 (1985), the Court now considers whether there is a meritorious reason that would authorize it to exercise its discretion to set aside the judgment and, if there is, whether it should do so.

In its pre-remittitur briefing, Samsung argues that the Court should set aside the judgment for the following meritorious reasons:

> (1) SEA is the wrong party because it has no involvement with the 18650 lithium-ion battery cells at issue; (2) under the vanishing venue doctrine, dismissal of the sole resident defendant deprived the Court of personal jurisdiction over SEA prior to the entry of default judgment; (3) the Court lacks general and specific personal jurisdiction over SEA; (4) the Default Judgment was procured through fraud and/or mistake; (5) SEA did not receive notice of the damages hearing; (6) O.C.G.A. § 9-11-5(a) violates the Due Process Clause of the United States and Georgia Constitutions; and (7) the $10,860,972.00 Default Judgment is grossly excessive and violative of the Eighth and Fourteenth Amendments of the United States Constitution. Alternatively, this Court should grant a new trial.

The Court now addresses each of these arguments in turn.

Samsung Is the Wrong Party

Samsung's primary argument is that the judgment should be set aside because the evidence overwhelmingly and conclusively shows that Samsung was not the responsible party and because Samsung was actively trying to get Mr. Brewer to dismiss the claims against it prior to and after the entry of judgment. In support of its briefing, Samsung introduced evidence in furtherance of this argument, including affidavits stating that Samsung had no role whatsoever with respect to the batteries at issue. Notably, discovery has not taken place, so the evidence is essentially unchallenged at this juncture. Samsung's argument also disregards its deemed admissions -- based on its failure to respond to the pleadings and requests for admission -- that it is the responsible party. Finally, Samsung fails to adequately explain why its primary defense was not timely presented to the Court, despite its legal department handling the lawsuit and having notice and opportunity to do so.

In order to find that this is a meritorious reason to set aside the judgment, the Court would have to look past the conduct set forth above that occurred prior to the default, including Samsung's repeated failure to comply with both its own internal procedures and the legal process clearly stated on the summons and complaint provided to Samsung's legal department, and then still give Samsung a second bite at the apple. While Samsung might have a strong defense to this lawsuit, its legal department affirmatively and inexcusably elected not to timely assert this defense and present the matter to the Court on its merits. Despite reconsideration of the record evidence, the Court finds that no meritorious reason has been stated to explain why Samsung did not previously and timely present this defense to the Court or why the Court should set aside the judgment to now allow Samsung to do so. See *Utilicom Supply Assocs., LLC v. Terra Tech, Inc.,* 360 Ga. App. 509 (2021); *Brunswick Gas & Fuel Co. v. Parrish,* 179 Ga. App. 495 (1986); *Troy v. Atlanta,* 158 Ga. App. 496 (1981).[8] Even if this Court accepted Samsung's version of events and the discussions with opposing counsel as stated, nothing warranted Samsung's omissions. There is no meritorious reason in the record that supports Samsung's legal department conduct and its continued disregard for the legal process.

Other than the amount of the judgment that was entered in this case, there is nothing extraordinary or compelling about this case. The Court disagrees that Samsung's vehement, repeated assertion of its defense means that Georgia's fundamental principles of fairness and justice will not be served if its motion is not granted. Samsung's primary defense is not a meritorious reason to set aside the judgment. Therefore, in consideration of the record, the Court is unpersuaded and declines to exercise its discretion to set aside the judgment against Samsung on this basis.

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8. The Court is authorized within the same term of court to consider defenses that are not timely asserted and to exercise its discretion accordingly.

Venue

Next, the Court considers whether to set aside the judgment based on lack of venue. Once again, Samsung failed to respond to either the complaint or the requests for admission and allowed a judgment to be entered against it. In general, the failure to timely and fully respond to a complaint can result in the waiver of certain affirmative defenses set forth in O.C.G.A. § 9-11-12(b), including the defenses of venue and personal jurisdiction. *Exum v. Melton,* 244 Ga. App. 775, 776 (2000) ("[p]ersonal jurisdiction and venue are defenses for the defendant to raise, and may be waived"). In addition, the failure to timely and fully respond to a complaint and requests for admission might result in deemed admissions that these same defenses do not apply. However, the facts in this case can be distinguished and these general rules do not apply in this instance.

The following allegations in the complaint are relevant to this venue argument. Per the pleadings, Samsung is a New York corporation with its principal place of business in New Jersey and a registered agent for service in Lawrenceville, Georgia (which the parties have argued is in Gwinnett County). Former Defendant Hohm Tech is a California corporation with no registered agent in Georgia, and former Defendant SEV Berwick is a Georgia LLC and a Chatham County resident. The vaping device was purchased and assembled with batteries in Chatham County at the resident-Defendant's store. At the same time, the store employees explained to Mr. Brewer how to use the device. Mr. Brewer is an Effingham County resident and the device exploded at his home six months after purchase. Finally, the complaint alleges, "[v]enue is proper in this Court because a substantial part of the events giving rise to the claims asserted herein occurred with the confmes of Chatham County, Georgia, and Defendant SEV Berwick is a resident of this venue."[9]

Samsung and the former Defendants are alleged to be joint tortfeasors whose conduct contributed to Mr. Brewer's injuries. As joint tortfeasors, it is undisputed that venue as to Samsung was proper in Chatham County while a Chatham County resident was party to the case. Ga. Const. Art. VI, § II, Para. IV ("[s]uits against joint obligors, joint tort-feasors, joint promisors, copartners, or joint trespassers residing in different counties maybe tried in either county"), Para. VI ("[a]ll other civil cases... shall be tried in the county where the defendant resides). However, the other two Defendants, including the only Chatham County resident, were both dismissed prior to the entry of judgment and not found liable in this case. The judgment in this case is only against Samsung, which is not a resident of Chatham County.

Samsung's first filing, which was made after the entry of the default judgment, immediately contested venue. Samsung contends that venue was improper at the time of judgment pursuant to O.C.G.A. § 9-10-31(d), so the Court lacked personal jurisdiction over Samsung and thus its judgment is void. Mr. Brewer alternatively

9. The requests for admission are not particularly helpful in this part of the analysis.

argues that Samsung's venue defense is waived based on its failure to immediately and orally assert this defense pursuant to USCR 19.1. Alternatively, Mr. Brewer argues that the complaint and Samsung's admissions establish an alternative basis for venue against Samsung in Chatham County. This argument primarily relies on the allegations in the complaint that a substantial portion of the events giving rise to the claims against Samsung took place in Chatham County.

In its analysis, the Court first considers whether venue as to Samsung was proper at the time of judgment. Georgia Const. Art. VI, § II, Para. VI, states that "venue as to corporations, foreign and domestic, shall be as provided by law." The Court thus looks to O.C.G.A. § 14-2-510(b),[10] which states as follows:

> (b) Each domestic corporation and each foreign corporation authorized to transact business in this state shall be deemed to reside and to be subject to venue as follows:
>
>> (1) In civil proceedings generally, in the county of this state where the corporation maintains its registered office; or if the corporation fails to maintain a registered office, it shall be deemed to reside in the county where its last named registered office

10. Samsung is not a "non-resident" pursuant to O.C.G.A. § 9-10-90, so O.C.G.A. § 9-10-93 is inapplicable here.

> or principal office, as shown by the records of the Secretary of State, was maintained;
>
> ***
>
> (4) In actions for damages because of torts, wrong, or injury done, in the county where the cause of action originated. If venue is based solely on this paragraph, the defendant shall have the right to remove the action to the county in Georgia where the defendant maintains its principal place of business. A notice of removal shall be filed within 45 days of service of the summons.
>
> ***

See O.C.G.A. § 14-2-501; *Coastal Transp., Inc. v. Tillery,* 270 Ga. App. 135, 138 (2004) ("[t]he registered agent, whether a corporation or an individual, must be located at the registered office of the corporation"). Based on this statutory language, it is undisputed that venue for Mr. Brewer's claims would be proper pursuant to subsection (b)(1) in Gwinnett County where Samsung maintains its registered agent and registered office. The remaining question is whether the complaint states a sufficient basis for venue to also be proper under subsection (b)(4) because the "torts, wrong, or injury done" took place in Chatham County, "where the cause of action originated."

Once again, Mr. Brewer argues that the cause of action originated in Chatham County because the complaint establishes that Samsung's batteries were purchased in Chatham County; the purchased device was assembled with these batteries in Chatham County; and because there was a failure to warn when the when the employees demonstrated how the batteries and device worked, also while in Chatham County. By failing to respond to the requests for admission that accompanied the complaint, Samsung also admitted that venue in Chatham County was proper. On the other hand, the complaint also shows that Mr. Brewer had the vaping device in his possession for six months after purchase and before it ultimately exploded at his home in Effmgham County.

Georgia law provides, "[v]enue may not be had over a manufacturer simply because a retailer, which is a separate legal entity, sells its product in the county in which suit is brought." *Barnes v. Destiny Indus.,* 185 Ga. App. 630, 631 (1988). Other than the fact that the batteries were sold, installed and explained by a separate entity that resided in Chatham County, there are no allegations that this incident has any other connections to Chatham County. Furthermore, although the initial installation and failure to warn occurred in Chatham County, the improper storage based on the lack of warnings was not confined to Chatham County and most significantly the explosion happened months later in Effingham County. The Court has reviewed the briefing and researched the issue, but finds no authorities that further support a finding that the "torts, wrong or injury" took place in Chatham County "where the cause of action originated" as argued. Succinctly stated, the complaint alleges that Samsung's batteries were defective were subject to explode despite proper use, so there was a need to warn regarding use, inspection and maintenance. Thus, the allegations that the vaping device was purchased, opened and assembled with Samsung's batteries approximately six months prior to the explosion fail to establish that venue was proper in Chatham County pursuant to O.C.G.A. § 14-2-510(b). Instead, it appears that venue is proper under this statute in Effmgham County, which is where Mr. Brewer allegedly resided, stored the device and batteries, maintained the device and batteries, failed to inspect the batteries, operated the device in its normal use on the day in question and where the explosion occurred six months after purchase.

To the extent that Mr. Brewer might argue that Samsung is deemed to have admitted venue, the Court further rejects this argument. While Samsung failed to respond to the venue paragraph in the complaint, this did not result in Samsung admitting a legal conclusion such as the venue. To the extent Samsung failed to respond to the request for admission that venue was proper, the Court agrees that Samsung did admit that venue was appropriate. However, venue was appropriate based on the allegations in the complaint and at the time the admission was made. The Court declines to find that Samsung is deemed to have admitted venue once the additional parties, including the Chatham County Defendant, were dismissed.

Although venue as to Samsung was improper in Chatham County after the resident Defendant was dismissed, the next issue is whether this affirmative defense was nonetheless waived by Samsung based on its failure to raise the issue more immediately. O.C.G.A. §§ 9-11-12(b)(2), (3), 9-10-31(d); USCR 19.1. Once again, this is a case where venue was proper until October 9, 2020, at which point the resident Defendant/joint tortfeasor was dismissed; it was only after that dismissal occurred that venue became improper. Judgment was entered on October 12, 2020 against Samsung only and it was received by Samsung on October 19, 2020. After receiving the judgment, Samsung's legal department engaged in additional communications with Mr. Brewer's counsel and they directly addressed the matter. The parties were not able to reach a resolution. On December 4, 2020, which is 46 days after Samsung received the judgment and 14 days after discussions concluded, Samsung filed its motion to set aside the judgment and first raised its venue defense.

Based on these specific facts, the Court concludes that the defense of venue and personal jurisdiction were not waived.

> It has long been the law of this state that where suit is brought against two defendants as joint tortfeasors one of whom resides in the county, the court has no jurisdiction of the non-resident defendant unless the resident co-defendant is liable in the action.... [E]ven though a non-resident defendant is in default, a non-resident defendant will not be subject to a final judgment until it is shown that the resident defendant is also liable.... Hence, ***the default of the non-***

> ***resident defendant, which would otherwise have constituted a waiver of various defenses, did not estop the non-resident defendant from asserting the fact of non-residency in the event of judgment in favor of or dismissal of the resident defendant....*** The trial court erred in denying defendant's motion to vacate and set aside the judgment and in determining that it retained jurisdiction over the non-resident defendant after the only resident defendant was dismissed.

Russell v. Hall, 165 Ga. App. 547, 548-49 (1983) (emphasis added and citing *Evans v. Montgomery Elevator Co.,* 159 Ga. App. 834 (1981)); see *Burch v. Dines,* 267 Ga. App. 459, 461 (2004) ("[i]n their motions for relief from the default judgment, and in their initial responsive pleading, the Burches pled to the merits of this case without raising any defense of improper venue or insufficient service of process [so] the trial court was authorized to find that these defenses were waived"); *Crawford v. Randle,* 191 Ga. App. 112, 115 (1989) ("[w]hile it is true that actions of the non-resident defendant or counsel can waive the defense of personal jurisdiction [with few exceptions] the cases so holding have all involved situations where, after the resident defendant had been released from the case, the non-resident defendant sought a ruling from the court on the merits of the case, thereby submitting to the jurisdiction of the court"); see also *Endover Palisades, LLC v. Stuart,* 324 Ga. App. 90, 94 (2013). Based on the foregoing law, the Court fmds that Samsung did not waive the defense of venue under these circumstances.

In consideration of the complaint and the requests for admission, the Court reiterates that Samsung could not have admitted improper venue until the resident Defendant was dismissed. In other words, Samsung's conduct prior to the dismissal of the Chatham County resident does not act as a waiver of its venue defense. Therefore, the Court primarily considers Samsung's conduct after the dismissal of the resident-Defendant for purposes of its waiver analysis. In this case, Samsung waited approximately 46 days after it received the judgment before filing anything into the record. In the interim, Samsung continued to try to resolve the matter directly with Mr. Brewer, and made at least 8 attempts to do this. These discussions included Samsung providing the declaration that it previously promised and thus attempting to reinitiate its protocols. Ultimately, the parties were unable to resolve the issue and Samsung filed its motion to set aside the judgment 2 weeks later. At that time, Samsung asserted improper or vanishing venue as a basis for setting aside the judgment.

The Court has considered the record and the merits of this argument both under O.C.G.A. § 9-11-60 and pursuant to its discretionary authority to set aside a judgment entered in the same term of court as the request for such relief. Based on Samsung's immediate assertion of the venue defense in its first filing, which was also (but just barely) made within a reasonable time frame given the continuing discussions between Samsung's legal department and Mr. Brewer's counsel, the Court is persuaded to find that Samsung did not waive its venue defense. The Court is particularly persuaded by the fact that there were numerous communications between the parties prior to Samsung filing its motion to set aside the judgment based in part on the venue issue and that Samsung finally transmitted its declaration to Mr. Brewer in accordance with its protocols. In addition, Samsung raised the venue defense in its first filing, which is also a critical factor.

Based on the record in full, and given the Court's inherent authority to rule and promote justice, the Court concludes both under O.C.G.A. § 9-11-60 and in its exercise of its discretionary authority that Samsung has stated a proper and meritorious basis under Georgia law for this Court to find that the venue defense was not waived and was instead properly asserted. "A trial court without venue lacks authority to issue an order or judgment, and any such order or judgment is void." *Coastal Transp., Inc. v. Tillery,* 270 Ga. App. 135, 140 (2004). However, "when venue is improper, the proper remedy is transfer, not dismissal. That comes straight from the Georgia Constitution, which provides that '[a]ny court shall transfer to the appropriate court in the state any civil case in which it determines that jurisdiction or venue lies elsewhere.'" *Richards v. Opteum Mortg.,* 364 Ga. App. 269, 275 (2022). Given the Court's determination that the Court lacked venue when it entered the default judgment against Samsung, the judgment is void and should be set aside. The Court anticipates transferring this action to the proper venue for further consideration.

Personal Jurisdiction

While the Court finds Samsung's venue argument to be persuasive, the Court will nonetheless complete its analysis and address Samsung's remaining arguments in furtherance of setting aside the judgment against it. Other than the lack of venue, the Court rejects the argument that the absence of general or specific jurisdiction is a meritorious reason to open the default against Samsung. This determination largely rests on the relatively recent Supreme Court of Georgia decision adverse to Samsung's position in *Cooper Tire & Rubber Co. v. McCall,* 312 Ga. 422 (2021). In this case, the Court takes judicial notice of the Secretary of State's records, which reflect that Samsung Electronics America, Inc. has a registered agent for service in this state. Based on these records, Samsung's admissions (based on both the complaint and the requests for admission), and the applicable Georgia law, this Court has general jurisdiction over Samsung and is authorized to consider Mr. Brewer's claims against it. *Mallory v. Norfolk Southern Ry.,* 143 S. Ct. 2028, 216 L. Ed. 2d 815 (2023); *Cooper Tire.,* 312 Ga. 422; *Allstate Ins. Co. v. Klein,* 262 Ga. 599 (1992); see O.C.G.A. § 14-2-1505. Samsung's argument regarding personal jurisdiction in this respect fails to establish a meritorious reason or provide any legal basis for this Court to set aside the judgment against it. The Court rejects any argument that it should exercise its discretion to set aside the judgment on this basis.

Fraud

The Court is not persuaded that Samsung's fraud or mistake argument is a meritorious reason to set aside the judgment against it. Based on the Court's review of the affidavits provided by the parties, the Court finds no assurances were made by Mr. Brewer's counsel that would support this argument or otherwise convince the Court that setting aside the judgment is proper in this case. There was no fraud and the grave mistake of failing to file a timely responsive pleading falls on the shoulders of Samsung's legal department.[11]

Notice of Hearing

The Court agrees with Mr. Brewer that Samsung's default resulted in a waiver of its right to notice, including notice of the earlier trial on damages. O.C.G.A. § 9-11-5(a), (b). This is not a case where Samsung's agent failed to provide the summons and complaint to Samsung, or even a case where Samsung lost or misplaced the filing and thus lost track of the case. This is instead a case where Samsung was properly served, but intentionally decided not to file a timely response. Stated differently, this is a case where Samsung's acts waived its right to further notice of hearing, and it is not a case where Samsung was entitled to notice and did not receive it. Given this distinction, Samsung's legal and fairness argument fails, as does Samsung's due process argument on this basis as well. See *Oduok v. Fulton DeKalb Hosp. Auth.,* 340 Ga. App. 205 (2017); *Conseco Fin. Servicing Corp. v. Hill,* 252 Ga. App. 774 (2001); *Porter v. Tissenbaum,* 247 Ga. App. 816 (2001); *Jim Walter Homes v. Roberts,* 196 Ga. App. 618 (1990). Given the well established law and the facts in the record, the Court is not persuaded that this is a

11. To the extent this argument is made pursuant to O.C.G.A. § 9-11-60, it fails to sufficiently acknowledge and explain Samsung's own negligence.

meritorious reason to set aside the judgment and declines t exercise its discretion to do so.

Amount of the Judgment

Finally, Samsung argues that the judgment in excess of $10,000,000 is grossly excessive and violates the Eighth and Fourteenth Amendments of the U.S. Constitution. This Court has already stated its concerns about the amount of this judgment. As this Court has previously stated, without a transcript, there are many unknowns. The original judge might have heard emotional testimony from Mr. Brewer and his mother regarding the impact this explosion had on a seventeen-year-old who was about to leave for college, including and not limited to the excruciating emotional and physical toll endured by Mr. Brewer and how it might impact his future. There also might have been testimony provided regarding additional special and general damages incurred that could have been introduced by lay witnesses such as Mr. Brewer and his mother. Taken together, this evidence might have been sufficient to support the large award of damages. *Ga. Trails & Rentals, Inc. v. Rogers,* 359 Ga. App. 207 (2021); *S. D. E., Inc. v. Finley,* 340 Ga. App. 684 (2017); *Granite Loan Solutions, LLC v. King,* 334 Ga. App. 305 (2015); *Cavin v. Powell,* 276 Ga. App. 60 (2005). Furthermore, Samsung has not established in its prior briefing that there were any irregularities in the proceedings that took place. Since the burden is on Samsung to establish that the damages were not warranted, the Court cannot hold the absence of a transcript against Mr. Brewer and it cannot (and does not) find that the judgment in that amount was improvidently entered.

The evidence before the Court includes the factual assertions in the pleadings; Samsung's admissions based on those pleadings as well as the admissions based on the unanswered requests to admit; the witness list indicating that only Mr. Brewer and his mother testified at trial; the life expectancy of Mr. Brewer; and the documents that were entered into evidence at trial, including photographs, medical records and a summary of medical expenses incurred in the amount of $144,972. See O.C.G.A. § 19-7-2. Punitive damages were not awarded, only general and special damages. While the general damages were large, the absence of a transcript essentially dooms Samsung's argument that the damages were excessive. See *Cavin*, 276 Ga. App. at 61 ("the general rule on appeal of an award of damages is that a [factfinder's] award cannot be successfully attacked so as to warrant a new trial unless it is so flagrantly excessive or inadequate, in light of the evidence, as to create a clear implication of bias, prejudice, or gross mistake on the part of the [factfmder]"). In the exercise of its discretion, "this Court will not disturb a damages award unless it is so flagrant as to shock the conscience. Importantly, such a determination can only be made through a review of the trial transcript." Id. While the judgment in this case is large, the Court cannot say that it shocks the conscience. The Court thus declines to exercise its discretion to set aside the judgment on this basis. For the same reasons, the Court further rejects the argument that the damages award is so grossly excessive that it violates the Eighth Amendment or the Due Process Clause of the Fourteenth Amendment. See *Craig v. Holsey,* 264 Ga. App. 344 (2003) (addressing this issue with respect to punitive damages).

Conclusion

This order is limited based on the instructions provided by the Court of Appeals and as stated herein. Upon thorough review of the briefing provided prior to the appeal, the Court has reconsidered the arguments and, in its exercise of discretion, finds that Samsung has established that it did not waive its venue defense and that it is properly asserted in this case. The Court therefore **HOLDS** that the October 12, 2020 judgment entered against Samsung is **VOID** for lack of jurisdiction and **GRANTS** Samsung's motion to set it aside on this basis. In light of this finding, the Court invites each party to submit a single, concise brief on the issue of transfer and to provide a proposed order. **The parties have 21 days from the date of this order to file their briefing on this singular issue.** No responses or reply briefs are permitted without leave of court.

SO ORDERED, this 22nd day of July, 2024.

/s/ Elizabeth E. Coolidge
Judge Elizabeth E. Coolidge
State Court of Chatham County

APPENDIX D — OPINION OF THE COURT OF APPEALS OF THE STATE OF GEORGIA, FILED FEBRUARY 6, 2024

COURT OF APPEALS OF GEORGIA

A23A0452, A23A0453

SAMSUNG ELECTRONICS AMERICA, INC.

v.

BREWER; AND VICE VERSA.

June 30, 2023
Certiorari Denied February 6, 2024

OPINION

Barnes, Presiding Judge.

These companion appeals arise from the grant of a default judgment against Samsung Electronics America, Inc., in a products liability action filed by Jordan Brewer after he was injured when the battery in his e-cigarette exploded in his pocket. In Case No. A23A0452, Samsung challenges the trial court's denial of its motion to open default judgment.[1] In his cross-appeal, Case No. A23A0453, Brewer asserts that the trial court erred in

1. Samsung filed an application for interlocutory review of the trial court's orders denying its motion to open default, motion to withdraw admissions, and motion to stay, which this Court granted.

granting Samsung's motion to set aside the judgment. Upon review, we vacate the trial court's judgment in granting Samsung's motion to set aside the judgment in Case No. A23A0453, and dismiss as premature the judgment denying Samsung's motion to open default judgment in Case No. A23A0452.

The record reflects that on July 15, 2020, Brewer filed the subject lawsuit against Samsung and other defendants.[2] Brewer alleged that he was injured when the battery to an e-cigarette or "vape" pen caught fire or exploded in his pocket, and that Samsung was involved in designing, manufacturing, distributing, and selling the battery. Brewer asserted negligence and products liability causes of action against Samsung based on its alleged negligent design and manufacturing of the battery and negligent failure to warn of the risks and harms associated with the battery. Brewer's damages claims included a claim for punitive damages.

On July 20, 2020, Samsung was served with a copy of the complaint, summons, and discovery requests, including requests for admission. The summons stated:

> You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney . . . an answer to the Complaint which is herewith served upon you,

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2. The complaint named as defendants, Samsung, SEV Berwick Store LLC d/b/a Southeast Vapes and E-Cigs, Hohm Tech, Inc., John Does, and ABC, Inc.

> within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

The discovery requests indicated that responses thereto were due within 45 days. Samsung's legal department received a copy of the complaint on the day it was served.

Samsung failed to file an answer or responsive pleading to the lawsuit within 30 days of the date of service, i.e., August 19, 2020, which placed it in default by operation of law. See OCGA §§ 9-11-12 (a) ("A defendant shall serve his answer within 30 days after the service of the summons and complaint upon him, unless otherwise provided by statute. . . ."); 9-11-55 (a).[3] Samsung still

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3. If in any case an answer has not been filed within the time required by this chapter, the case shall automatically become in default unless the time for filing the answer has been extended as provided by law. The default may be opened as a matter of right by the filing of such defenses within 15 days of the day of default, upon the payment of costs. If the case is still in default after the expiration of the period of 15 days, the plaintiff at any time thereafter shall be entitled to verdict and judgment by default, in open court or in chambers, as if every item and paragraph of the complaint or other original pleading were supported by proper evidence[.]

OCGA § 9-11-55 (a).

had not filed an answer or responsive pleading within 45 days of the date of service, i.e., September 3, 2020, which meant it could no longer open the default as a matter of right. See OCGA § 9-11-55 (a). On September 10, 2020, Brewer filed a motion for default judgment against Samsung and to drop the remaining defendants from the lawsuit.[4] On September 16, 2020, the trial court issued an order declaring Samsung in default on the issue of liability and scheduled a damages hearing for October 9, 2020.[5] According to the court, Samsung's registered agent was served with a copy of the default judgment, and the Clerk had followed the usual practice of issuing a notice of the damages hearing to Samsung. Following the damages hearing, on October 12, 2020, judgment was entered in favor of Brewer and against Samsung in the amount of $10,860,972 as "general and special damages, past and future." The trial court's order reflected that in determining the amount of damages

> the Court on October 9, 2020 listened and heard the testimony of live witnesses regarding past and future damages and reviewed copious amounts of evidence presented including photographs of the injuries at issue and

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4. The trial court subsequently issued orders dismissing without prejudice Brewer's claims against the other defendants.

5. "By virtue of its default, [Samsung] admitted [to the claims] alleged in the complaint. [A] defendant in a default is in the position of having admitted each and every material allegation of [Brewer's] petition except as to the amount of damages alleged." (Citations and punctuation omitted.) *Granite Loan Solutions, LLC v. King*, 334 Ga. App. 305, 311 (4), 779 S.E.2d 86 (2015).

> medical records and bills associated with [Brewer's] injuries; [and found] after hearing the testimony and reviewing the evidence that [Brewer's] injuries and condition are permanent in nature and that [Brewer] has a remaining life expectancy of approximately fifty-five (55) years according to the statutory annuity and mortality table[.]

On December 4, 2020, during the same term of court,[6] Samsung filed a motion to set aside the default judgment, or in the alternative, motion for new trial.[7] Relying on the trial court's authority to set aside its judgment within the same term of court in which it was entered, Samsung argued that there were "meritorious grounds" to set aside the default judgment, including that it was the wrong party; the court lacked personal jurisdiction over Samsung because the sole resident defendant had been dismissed from the case; the judgment resulted from fraud and/or mistake; Samsung had not received notice of the damages hearing; OCGA § 9-11-5 (a), which addresses waiver of notice for failure of a party to file pleadings, was unconstitutional; and the damages awarded on the default judgment were grossly excessive and violated the Eighth and Fourteenth Amendments.

By the time of the pending motion to set aside the judgment, the initial trial court judge who entered the

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6. See OCGA § 15-6-3 (17) (Chatham County terms of court commence the first Monday in March, June, September, and December).

7. This was Samsung's first pleading filed in response to the complaint.

default judgment had assumed senior judge status, and a new trial court judge had been assigned to the case. Following a hearing on the motion, on January 7, 2022, the newly assigned judge granted Samsung's motion to set aside the judgment awarding "damages in excess of $10 million," concluding that the significant award of damages should be reconsidered due to the limited evidence in the record, the discrepancy between the special damages and the overall award, and the judgment's failure to break down the types of damages awarded. The trial court further acknowledged that Samsung had abandoned any arguments related to OCGA § 9-11-60 and had instead argued that the trial court should exercise its plenary power to set aside a judgment entered within the same term of court.[8] The trial court emphasized that "this is not a holding in favor of Samsung's argument that the damages award is so grossly excessive that it violates the Eighth Amendment or the Due Process Clause of the Fourteenth Amendment."

Subsequent to the grant of Samsung's motion to set aside the default judgment, on January 24, 2022, Samsung filed a motion to open the default pursuant to OCGA § 9-11-55 (b).[9] Following a hearing, the trial court denied the

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8. Samsung consequently argued at the hearing on the motion to set aside default that any attendant burdens of proof under OCGA §§ 9-11-60 (d) and 9-11-55 (b) would not apply in the context of the trial court's exercise of its plenary powers to set aside judgments in the same term.

9. At any time before final judgment, the court, in its discretion, upon payment of costs, may allow the default to be opened for providential cause preventing

motion, concluding that Samsung had met and satisfied the preconditions for opening the default by making a showing under oath, offering to plead instanter, announcing ready to proceed to trial, presenting a meritorious defense under oath (that it was not the party responsible for the manufacture or distribution of the battery), and paying the court costs to the clerk of court. The court further concluded, however, that Samsung had failed to establish that this was a proper case to open default judgment, specifically rejecting the company's argument that "it is not a proper party to [the] lawsuit and that manifest injustice would result if it were not permitted to open the default and present this argument."[10] Characterizing Samsung's action in pursuing its company protocol in response to similar lawsuits as "a failed legal strategy" that was "willful and deliberate and done with indifference to the correct legal process or else was gross negligence,"[11]

> the filing of required pleadings or for excusable neglect or where the judge, from all the facts, shall determine that a proper case has been made for the default to be opened, on terms to be fixed by the court. In order to allow the default to be thus opened, the showing shall be made under oath, shall set up a meritorious defense, shall offer to plead instanter, and shall announce ready to proceed with the trial.

OCGA § 9-11-55 (b).

10. The legal grounds of providential cause and excusable neglect were not at issue.

11. Gary Tulp, Samsung's litigation counsel, averred that in other cases where Samsung had been mistakenly named as a defendant in a battery case,

the trial court chronicled Samsung's response from the time it was served on July 22, 2020, until December 4, 2020, when "Samsung finally filed its motion to set aside the judgment."[12] The trial court recounted that Samsung had failed at every step to follow its own procedure in this case. It did not follow up with Brewer's attorney, did not timely send the promised documentation to support its assertion that it was not the responsible party until after the judgment was entered, and did not obtain a voluntary dismissal. The trial court summarized that "in a case where a party's legal department is fully aware of the existence of [a] lawsuit and wi[l]fully and continually ignores the associated legal responsibilities that accompany being sued for extended periods of time, there is no proper case to open default."

Turning to the issues on appeal, which include both the denial of Samsung's motion to open the default, and the grant of Samsung's motion to set aside the default judgment, this Court has indicated that, "the first and

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> [Samsung's] typical practice is for in-house legal department to promptly contact plaintiff's counsel, explain that [Samsung] is the wrong party, provide a supporting declaration if necessary, and obtain a voluntary dismissal . . . . Through the years, [Samsung] has followed this procedure and has routinely obtained voluntary dismissals in cases across the country.

12. The trial court pointed out that, "more than a month after receiving the $10 million . . . judgment against it, Samsung was advised that no dismissal was forthcoming. Fourteen days later, on December 4, 2020, Samsung finally filed its motion to set aside the judgment."

essential step against any final judgment, including a default judgment, is a motion to set aside the judgment under OCGA § 9-11-60 (d)." *The Pantry, Inc. v. Harris*, 271 Ga. App. 346, 347 (2), 609 S.E.2d 692 (2005). See also *Bank of Cumming v. Moseley*, 243 Ga. 858, 257 S.E.2d 278 (1979) (noting that once a default judgment is set aside, the case returns to the posture it occupied prior to the entry of the default judgment); *Granite Loan Solutions, LLC v. King*, 334 Ga. App. 305, 310 (3) (c), 779 S.E.2d 86 (2015) (explaining that where the trial court had entered a final judgment, it could not open the default without first setting aside the final judgment, which it had declined to do). Thus, we must first consider whether the trial court erred in granting Samsung's motion to set aside the default judgment.

Case No. A23A0453

In setting aside the judgment, the trial court concluded that,

> [i]n consideration of [the] evidence, and given the extreme breadth of the discretion afforded to this Court to determine what is a meritorious reason to set aside a judgment and whether to do so, the Court ultimately agrees with Samsung that reconsideration of the damages award is a sufficiently meritorious reason to set aside the judgment here and analyze whether the amount of general and special damages awarded to Mr. Brewer was appropriate.

The trial court pinpointed "[t]he limited evidence in the record, the discrepancy between the special damages and the overall award, and the failure to break down the damages" as "cause [for the] Court to question whether the judgment is supported by the evidence and lawful." It also found that the absence of a hearing transcript and more detailed order prevented "these questions [from being] answered to this Court's satisfaction[.]"

The trial court acknowledged that it did not "necessarily have a reason to doubt that the evidence supported the judgment," and that "[t]he original judge might have heard emotional testimony from Mr. Brewer and his mother regarding the impact this explosion had on a seventeen year old who was about to leave for college, including and not limited to the excruciating emotional and physical toll this took on him and how it will impact Mr. Brewer's future," and testimony "regarding additional special and general damages incurred." The trial court speculated that the evidence alternatively could have "established that Mr. Brewer's physical pain and suffering was more limited in time and that he will not have to undergo any future treatment[and that] Mr. Brewer's future general damages might not be as significant as indicated by the judgment."

1. Brewer maintains on appeal that, in granting Samsung's motion to set aside the default judgment, the trial court abused its discretion, as there was no meritorious reason to set aside the judgment, even during the same term of court. More specifically, Brewer asserts that, in setting aside the judgment and directing a new

trial on damages, the trial court failed to take into account the presumptions required by Georgia law that, not only did the former judge "faithfully and lawfully" perform his duties, but also that in the absence of a hearing transcript, the evidence supports the trial court's ruling. Brewer also asserts that Samsung had the burden of producing the transcript to challenge the damages, but failed to do so, and that the trial court's presumption of irregularity rather than regularity in such circumstances was an abuse of its discretion.[13]

Georgia's Uniform Superior Court Rule 3.3 (A) provides in relevant part that "[t]he judge to whom any

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13. Our Court has recognized a "presumption of regularity in judicial proceedings." *Revere v. State*, 277 Ga. App. 393, 395 (1) (b), 626 S.E.2d 585 (2006). See generally *Chadwick v. Brazell*, 331 Ga. App. 373, 379-380 (4), 771 S.E.2d 75 (2015) (finding that this Court is "unable to properly review this claim of error in the absence of the full transcript of the evidence presented at trial from which the [fact-finder] considered what it deemed to be the appropriate amount of damages"); *Wells Fargo Home Mtg. v. Cook*, 267 Ga. App. 368, 369 (1), 599 S.E.2d 319 (2004) (noting that "[q]uestions of damages are ordinarily for the [trier of fact]; the appellate court should not interfere with the . . . verdict unless the damages awarded . . . are clearly so inadequate or so excessive as to be inconsistent with the preponderance of the evidence, which must be determined from the trial transcript. Such issues cannot be determined absent a trial transcript from which all the evidence may be evaluated in light of the verdict[.] . . . Wells Fargo made no attempt to have the trial court make a transcript or a reconstructed transcript of the proceedings approved by the trial judge; therefore, we must assume that the judgment was correct and supported by the evidence") (citations and punctuation omitted).

action is assigned shall have exclusive control of such action." To that end, in the exercise of its authority, the

> court has plenary control of its judgments, orders, and decrees during the term at which they are rendered, and may amend, correct, modify, or supplement them, for cause appearing, or may, to promote justice, revise, supersede, revoke, or vacate them, as may, in its discretion seem necessary.

(Citation and punctuation omitted.) *Lemcon USA Corp. v. Icon Technology Consulting*, 301 Ga. 888, 891, 804 S.E.2d 347 (2017).[14] *Piggly Wiggly Southern v. McCook*, 216 Ga. App. 335, 337 (1), 454 S.E.2d 203 (1995) ("It has always been the rule in this State that where a judgment is not based on the verdict of a jury, but is the act of the judge, it is in the breast of the court during the term in which it is rendered, and in the exercise of a sound discretion[ ] the judge may set it aside.") (citation and punctuation omitted).

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14. Outside of the term of court in which a judgment has been entered, it may be set aside only for one of three reasons:

> (1) Lack of jurisdiction over the person or the subject matter;
>
> (2) Fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant; or
>
> (3) A nonamendable defect which appears upon the face of the record or pleadings. . . .

OCGA § 9-11-60 (d).

"[A] trial court's discretion to set aside a judgment during the term it was entered is not without limits, and should be exercised for some meritorious reason," and it is within the trial court's discretion to determine whether the movant has established what amounts to "a meritorious reason." *Pope v. Pope*, 277 Ga. 333, 334, 588 S.E.2d 736 (2003) (noting the trial court's plenary powers to "set aside the judgment for irregularity, or because it was improvidently or inadvertently entered and for the purpose of promoting justice") (citations and punctuation omitted). See also *Bridgestone/Firestone North American Tire v. Jenkins*, 261 Ga. App. 20, 21 (2), 582 S.E.2d 9 (2003) (The "court may exercise its discretion for meritorious reasons to set aside a judgment within the same term of court.") (citations and punctuation omitted).

Nevertheless, "[w]henever a motion is made to vacate a judgment, even during the term at which the same was rendered, the movant must allege and prove some reason good in law why he had failed to make his defense at the time required." (Citation and punctuation omitted.) *Davison-Paxon Co. v. Burkart,* 92 Ga. App. 80, 83, 88 S.E.2d 39 (1955). The impetus is on "[t]he party moving to set aside [to] present facts so that the court can determine for itself whether, if the verdict and judgment were set aside, the result might be different on the next trial." (Citation and punctuation omitted.) *Daniels v. Burson*, 257 Ga. App. 318, 321 (1), 571 S.E.2d 184 (2002). And, [a]lthough

> the judge "retains a plenary control over his judgments and orders during the term at which

> they are rendered . . ., that rule was never intended to authorize the judge to set aside a judgment duly and regularly entered unless some meritorious reason is given therefor . . . . [T]he power of control even during the term should be exercised only upon sufficient cause shown and where the matter appeals to an exercise of sound legal discretion.

(Citations, punctuation and emphasis omitted.) *Holcomb v. Trax, Inc.*, 138 Ga. App. 105, 107, 225 S.E.2d 468 (1976). Thus, "the court's discretion, although broad, is not unbounded." (Citation and punctuation omitted.) *Buice v. State*, 272 Ga. 323, 325, 528 S.E.2d 788 (2000). This Court may reverse that discretion if it is manifestly abused. *Pope*, 277 Ga. at 334, 588 S.E.2d 736.

Here, Brewer bore the initial burden of proof to establish his damages at the hearing presided over by the trial judge following entry of the default judgment. See *Cotto Law Group LLC v. Benevidez*, 362 Ga. App. 850, 854 (1), 870 S.E.2d 472 (2022) (following default "[t]he claimant [still] bears the burden of showing the amount of the loss, and of showing it in such a way that the trier may calculate the amount from the figures furnished") (citation and punctuation omitted). As recited in the default judgment order, the first judge "heard the testimony of live witnesses regarding past and future damages and reviewed copious amounts of evidence presented including photographs of the injuries at issue and medical records and bills associated with [Brewer's] injuries," found that the injuries were permanent, and using a "statutory annuity and mortality table" assessed damages based on Brewer's life expectancy of an additional 55 years.

In contrast, as the movant seeking to set aside the default judgment, Samsung had the burden of proof to show "sufficient cause" for the trial court's finding of a meritorious reason to set aside the judgment. *Holcomb*, 138 Ga. App. at 107, 225 S.E.2d 468. See *Davison-Paxon Co.*, 92 Ga. App. at 83, 88 S.E.2d 39 (holding that, in moving to set aside judgment, "the movant must allege and prove" some reason); *Daniels*, 257 Ga. App. at 321 (1), 571 S.E.2d 184 (stating in relevant part that "[t]he party moving to set aside must present facts").

In its order granting the motion to set aside, the trial court stated that it "agree[d] with Samsung that reconsideration of the damages award is a sufficiently meritorious reason to set aside the judgment." However, the trial court concluded that there was a meritorious reason to set aside the judgment based on the *incomplete record on damages* before it, including the lack of a hearing transcript. But in other contexts, we have construed the lack of a complete record against the party who has the burden of showing error in the prior ruling. Accord *Thomas v. Alligood*, 358 Ga. App. 703, 710 (2) (a), 856 S.E.2d 80 (2021) (noting that "an appellant has the burden of proving trial court error by the appellate record, and must compile a complete record of what transpired in the trial court."); *Hayle v. Ingram*, 363 Ga. App. 657, 660 (1), 872 S.E.2d 310 (2022) (same). And we see no reason why the same rule should not apply in this unique context, where one judge is asked to set aside the judgment entered by different judge. Accordingly, the trial court erred by construing the lack of a complete record against Brewer, thereby improperly shifting the burden of proof from Samsung to Brewer at this stage of the proceedings.

Because the trial court improperly shifted the burden of proof from Samsung to Brewer by construing the incomplete record against Brewer rather than Samsung, we vacate the order granting Samsung's motion to set aside the default judgment and remand the case to the trial court for it to reconsider Samsung's motion under the proper legal standard and clarify whether Samsung met its burden of proof to show cause for the trial court to find a meritorious basis to set aside the default judgment. See *Dept. of Transp. v. Thompson*, 354 Ga. App. 200, 207 (1), 840 S.E.2d 679 (2020) (vacating the trial court's order on a motion to dismiss and remanding for reconsideration of the motion where the trial court improperly shifted the burden of proof to the defendant). We offer no opinion as to how the trial court should exercise its discretion upon the application of the proper legal standard.

2. Given the vacatur and remand of this case for the reconsideration of Samsung's motion to set aside the default judgment, we need not consider Brewer's remaining enumeration of alleged error.

Case No. A23A0453

3. Upon the trial court's grant of Samsung's motion to set aside the default judgment, Samsung filed a subsequent motion to open default. The trial court denied

the motion, and, following Samsung's application for interlocutory review and grant thereof, Samsung appeals from that order. However, because we have vacated and remanded the case granting Samsung's motion to set aside the default judgment to the trial court for reconsideration, the default cannot be opened without first setting aside that judgment. See *Granite Loan Solutions*, 334 Ga. App. at 307 (3), 779 S.E.2d 86 (noting that because the trial court declined to set the judgment aside, the court had "no occasion to reach the question of opening the default). Thus, this Court's consideration of the trial court denial of Samsung's motion to open default is premature at this time.

Judgment vacated and remanded with direction Case No. A23A0453. Case dismissed in Case No. A23A0452.

Dillard, P. J., and Senior Appellate Judge Herbert E. Phipps concur.

APPENDIX E — ORDER OF THE STATE COURT OF CHATHAM COUNTY, STATE OF GEORGIA, FILED JANUARY 7, 2022

IN THE STATE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

CIVIL ACTION NO. STCV2002285-CO

JORDAN BREWER,

Plaintiff,

vs.

SAMSUNG ELECTRONICS AMERICA, INC.,
A NEW YORK CORPORATION,

Defendant.

Filed January 7, 2022

ORDER

This Court, having read and considered Defendant Samsung Electronics America, Inc.'s ("Samsung") December 4, 2020 motion to set aside the October 12, 2020 default judgment entered against it in Civil Action No. STCV2001141 or, alternatively, motion for a new trial, as well as all related briefing; and having entertained oral arguments in this matter;[1] and Samsung having

1. Since the motion was filed more than 30 days after the entry of this final judgment, the Clerk of Court closed that case and assigned a new case number to this post-judgment matter.

essentially abandoned its arguments pursuant to O.C.G.A. § 9-11-60;[2] and Samsung having instead argued that this Court should exercise its plenary power to set aside the judgment entered in the same term of court as Samsung' s motion for relief;[3] **HEREBY GRANTS** Samsung' s motion on this basis. Samsung has established a meritorious reason for this Court to exercise its discretion to set aside the judgment; specifically, the damages in excess of $10 million awarded by the Court to Plaintiff Jordan Brewer must be reconsidered in light of the evidence and the form of the judgment.

Summarily stated, the record reflects that seventeen year-old Jordan Brewer was injured when a vaping device located in the pocket of his pants exploded. Mr. Brewer suffered severe burns on various parts of his body, including significant burns on one leg that required two surgical procedures and the use of cadaver tissue grafts

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2. Based on the arguments, this matter was set for hearing to address the issues raised under O.C.G.A. § 9-11-60, including the motion for new trial. Thus, counsel was given the opportunity to flesh out these alternative arguments (including but not limited to whether this was an extraordinary case as contemplated by O.C.G.A. §§ 5-5-40(a), 5-5-41(a)), but instead elected to argue that the Court should exercise its discretion to vacate its judgment filed within the same term of Court as the motion. Given this posture and the decision to set aside the judgment on the remaining basis, the Court does not issue a ruling on the abandoned arguments in this order.

3. See O.C.G.A. §§ 15-6-13(17), 15-7-40; 1997 Ga. HB 899. It is undisputed that the motion was filed within the same term of court as the judgment.

to repair these injuries. Mr. Brewer suffered extreme pain at times, both from the injury itself and the attempts to repair his burned leg. The repair required Mr. Brewer to travel for treatment and entailed numerous follow up visits. Mr. Brewer's physical activities were limited for a time and he has permanent scarring. Mr. Brewer's complaint seeks special damages for his past and future medical care as well as general damages for pain and suffering, including physical and emotional suffering, economic damages and disfigurement. Mr. Brewer also seeks punitive damages.

Based on its failure to timely respond to the complaint, Samsung is deemed to have admitted all its well-pled factual allegations.[4] Specifically, Samsung admitted it is subject to personal jurisdiction in this Court and that venue is proper because a substantial part of the events giving rise to Mr. Brewer's claims occurred in Chatham County. Samsung is also deemed to have admitted that it engaged in negligent conduct, including its negligent design and manufacturing of the batteries used in Mr. Brewer's vaping device, as well as its negligent failure to warn Mr. Brewer of the associated risks. Samsung further admitted that its batteries were a proximate cause of the explosion and Mr. Brewer's injuries. In addition to Samsung's deemed admissions based on its failure to answer the complaint, Samsung also failed to respond to

4. On July 20, 2020, service was perfected on Samsung's registered agent in Lawrenceville, Georgia, with proof of service being filed on July 24, 2020. O.C.G.A. § 9-11-4(h). No answer or motion to open the default entered against it was filed prior to the entry of judgment. O.C.G.A. § 9-11-55.

requests for admission that were served on it along with the complaint addressing many of these same factual assertions.[5] Samsung's admissions were broad enough for it to have admitted liability, leaving only the issue of damages to be determined.

Since the damages were unliquidated, the matter was called before the Court for a prove damages hearing. Samsung disputes receiving notice of this hearing and did not appear. Beyond that, the record reflects that after the hearing commenced and some evidence was presented, all Defendants except Samsung were dismissed by the Court.[6] Approximately one month after the damages hearing, the Court entered judgment in favor of Mr. Brewer and against Samsung. In its order, the Court noted that it had considered the live testimony regarding present and future damages, reviewed the photographs and medical records, and considered the life expectancy of Mr. Brewer. The Court accordingly awarded Mr. Brewer a judgment against Samsung only in the amount of $10,860,972.00, including past and future general and special damages. The judgment did not mention the claim for punitive damages or the complaint's factual assertions that the former Defendants were joint tortfeasors.

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5. See *Blount v. College Glen Condo. Assn.,* 2021 Ga. App. LEXIS 571, *4-6 (Dec. 23, 2021) (A21A1626) (addressing the failure to respond to requests for admissions).

6. O.C.G.A. §§ 9-11-15, 9-11-21. At the time of the trial, Defendant SEV Berwick Store, LLC was not in default. Defendant Hohm Tech, Inc. was in default (the time to answer was extended by stipulation until the day before the hearing), but it could still open the default against it as a matter of law.

Significantly, the undersigned was not the judge that presided over Civil Action No. STCV2001141. Instead, Chief Judge H. Gregory Fowler (who has since assumed senior judge status) heard the evidence presented at trial, dismissed the remaining Defendants during the course of the damages trial and then entered the judgment in favor of Mr. Brewer and against Samsung. The damages trial was not recorded by a court reporter and therefore cannot be transcribed for this Court's consideration.

Without a transcript, there are many unknowns. The original judge might have heard emotional testimony from Mr. Brewer and his mother regarding the impact this explosion had on a seventeen year old who was about to leave for college, including and not limited to the excruciating emotional and physical toll this took on him and how it will impact Mr. Brewer's future. There also might have been testimony provided regarding additional special and general damages incurred that could have been introduced by lay witnesses such as Mr. Brewer and his mother. Taken together, this evidence might have been sufficient to support the large award of damages.[7] On the other hand, the evidence might have established that Mr. Brewer's physical pain and suffering was more limited in time and that he will not have to undergo any future treatment. Mr. Brewer's future general damages might not be as significant as indicated by the judgment. Without a detailed order or a transcript, this Court cannot discern why the original judge on this case awarded such a large sum of general and special damages and how

7. *Ga. Traits & Rentals. Inc. v. Rogers,* 359 Ga. App. 207 (2021).

that amount was broken down. Although this Court does not necessarily have a reason to doubt that the evidence supported the judgment,[8] the Court's plenary powers are broad enough that reconsideration of the evidence on this issue is not prohibited if there is a meritorious reason to do so.

The evidence before this Court includes only the factual assertions in the pleadings; Samsung' s admissions; the witness list indicating that only Mr. Brewer and his mother testified at trial; and the documents that were entered into evidence at trial, including photographs, medical records and a summary of medical expenses incurred in the amount of $144,972.88.[9] In consideration of this evidence, and given the extreme breadth of the discretion afforded to this Court to determine what is a meritorious reason to set aside a judgment and whether to do so, the Court ultimately agrees with Samsung that reconsideration of the damages award is a sufficiently meritorious reason to set aside the judgment here and analyze whether the amount of general and special damages awarded to Mr. Brewer was appropriate.[10] The limited evidence in the record, the discrepancy between the special damages and the overall award, and the failure to break down the damages cause this Court to question whether the judgment is supported by the evidence and

8. See *Granite Loan Solutions, LLC v. King,* 334 Ga. App. 305 (2015).

9. See O.C.G.A. § 19-7-2.

10. *Utilicom Supply Assocs., LLC v. Terra Tech. Inc.,* 360 Ga. App. 509 (2021).

lawful. Since there is no trial transcript, these questions cannot be answered to this Court's satisfaction and the Court instead concludes that full reconsideration of the damages is warranted. For this meritorious reason, the Court exercises its discretion and **GRANTS** Samsung's motion on this basis.

However, this is a limited holding and the Court summarily rejects many of the other arguments raised by Samsung and finds they are not meritorious for purposes of this analysis.

First, this is not a holding in favor of Samsung's argument that the damages award is so grossly excessive that it violates the Eighth Amendment or the Due Process Clause of the Fourteenth Amendment.[11]

Second, as to the issue of personal jurisdiction, the Supreme Court of Georgia recently issued a decision adverse to Samsung's position and instead suggesting that this Court has general jurisdiction over Samsung and thus can consider Mr. Brewer's claims against it.[12] Given this recent determination regarding general jurisdiction, this Court need not further consider or rule on issues of specific jurisdiction over Samsung in this case as well.

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11. See *Craig v. Halsey,* 264 Ga. App. 344 (2003) (addressing this issue with respect to punitive damages).

12. *Cooper Tire & Rubber Co. v. McCall,* 312 Ga. 422 (2021); *Allstate Ins. Co. v. Klein,* 262 Ga. 599 (1992); see O.C.G.A. § 14-2-1505.

Third, the Court agrees with Mr. Brewer that Samsung's default has resulted in a waiver of its right to notice, including notice of the earlier trial on damages.[13] Furthermore, Samsung's fairness argument to this effect is flawed. Samsung's registered agent was in fact served by the Court with a copy of the default judgment (which was done per the Court's standard practice of serving all parties listed on the order, including service on defaulting parties at the address where service was perfected);[14] and, similarly, it is the Clerk of Court's standard practice is to issue notice of any hearing to all parties, including to defaulting parties at the address where they were served.[15] Despite Samsung's assertions, there is no evidence or indication that the standard practice of the Court or the Clerk of Court was not followed and that these documents were not mailed to Samsung's registered agent, even if they were not received by Samsung's legal department.

Fourth, the Court agrees that improper venue is not a meritorious reason to set aside the judgment. Not only has proper venue been both admitted and waived

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13. O.C.G.A. § 9-11-5(a), (b).

14. This is the standard practice of not only the undersigned judge, but also of Senior Judge Fowler.

15. See *Oduok v. Fulton DeKalb Hosp. Auth.,* 340 Ga. App. 205 (2017); *Porter v. Tissenbaum,* 247 Ga. App. 816 (2001). While Samsung denies receiving the documents that were served on its registered agent via U.S. Mail, Samsung does not deny service of the complaint; this date of service generally is the date for determining when a party is in statutory default and subjects the party to the imposition of damages.

based on Samsung's failure to respond to the complaint and the requests for admission, but the limited briefing on this issue fails to convince this Court that venue is not otherwise appropriate here in Chatham County regardless pursuant to O.C.G.A. § 14-2-510(b)(4).[16]

Fifth, the Court is not persuaded by Samsung's fraud or mistake argument (which is not brought under O.C.G.A. § 9-11-60 and does not address Samsung's own potential negligence). In that same vein, the Court also rejects Samsung's post-judgment argument that Mr. Brewer should have known that Samsung is the improper party and this establishes a meritorious reason to set aside the judgment against it. Samsung attempts to lay all blame at the feet of Mr. Brewer's counsel without sufficiently acknowledging its own conduct. However, in light of the Court's determination to set aside the judgment, this Court need not further analyze and weigh the merits of this argument.

In close, only one of the aforementioned arguments establishes a meritorious reason that persuades this Court to exercise its discretion to set aside the judgment against Samsung. Although the Court now grants Samsung's motion and sets aside the judgment against it in order to reconsider the damages awarded, Samsung remains in default. The matter will therefore be rescheduled for another damages hearing.

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16. See *Kingdom Retail Group. LLC v. Pandora Franchising. LLC,* 334 Ga. App. 812 (2015). Furthermore, with respect to O.C.G.A. § 9-10-93, the Court follows the authorities that state that Samsung is not a "non-resident" pursuant to O.C.G.A. § 9-10-90 and thus for purposes of O.C.G.A. § 9-10-93.

Based on this ruling, the Clerk of Court shall **CLOSE** this case pursuant to O.C.G.A. § 9-1158. The Clerk shall **OPEN** Civil Action No. STCV2001141 and a copy of this order shall be filed in that action as well.

All further filings and proceedings will be filed and addressed in the record of Civil Action No. STCV2001141.

SO ORDERED, this 7th day of January, 2022.

/s/ Elizabeth E. Coolidge
Judge Elizabeth E. Coolidge
State Court of Chatham County

APPENDIX F — COMPLAINT IN THE STATE COURT OF CHATHAM COUNTY, STATE OF GEORGIA, FILED JULY 15, 2020

IN THE STATE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

Civil Action No.: STCV20-01141

JORDAN BREWER,

Plaintiff,

v.

SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION, SEV BERWICK STORE LLC D/B/A SOUTHEAST VAPES AND E-CIGS, HOHM TECH, INC, AND JOHN DOES (A-Z) INDIVIDUALLY OR ABC INC. (1-100),

Defendants.

Filed July 15, 2020

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

COMES NOW Jordan Brewer, the Plaintiff in the above-styled action, and files this Complaint for Damages and Demand for Jury Trial, showing the Court as follows:

I. PARTIES. JURISDICTION, AND VENUE

1. Plaintiff is a citizen and resident of Effingham County, Georgia.

2. Defendant Samsung Electronics America, Inc. is a New York, for-profit corporation with its principal office address at 85 Challenger Road, Ridgefield Park, New Jersey, 07660. Although Defendant Samsung is a New York corporation, it maintains a registered agent for service of process in the State of Georgia. Defendant Samsung may be served by and through its registered agent CT Corporation, 289 S. Culver Street, Lawrenceville, Georgia 30046.

3. Defendant Samsung is engaged in the business of designing, manufacturing, marketing, promoting, advertising, distributing, and selling lithium-ion batteries throughout the United States.

4. Defendant SEV Berwick Store, LLC is a Georgia limited liability company doing business as Southeast Vapes and E-Cigs (hereinafter "SEV Berwick") with its principal office located at 3320 Barkla Avenue, Mount Pleasant, South Carolina, 29466. Defendant SEV Berwick operates a retail location doing business under the name Southeast Vapes and E-cigs at 50 Berwick Boulevard, Savannah, Georgia 31419. Defendant SEV Berwick may be served through its registered agent for process, Rodney Bryant, at 528 Martin Luther King Jr Boulevard, #1, Savannah, Georgia 31401.

5. Defendant SEV Berwick is in the business of supplying, selling, importing, and/or distributing electronic cigarette ("e-cigarette" or "e-cig") vaporizers and components parts used by consumers in Georgia, including Plaintiff, to inhale nicotine-infused vapor.

6. Defendant Hohm Tech, Inc. is a California, for-profit corporation with its principal place of business located at 13949 Ramona Avenue, STE A, Chino, California 91710. Hohm Tech, Inc. does not maintain a registered agent for service of process in the State of Georgia but may be served with process through its registered agent for service of process, Benjamin Ramalho, at 13949 Ramona Ave STE A, Chino, CA 91710 in any manner suitable under Georgia law.

7. Defendant Hohm Tech, Inc. is engaged in the business of manufacturing, marketing, promoting, supplying, selling, importing, and/or distributing lithium-ion battery cells, including but not limited to the "Hohm Life 18650 3015mAh 20.7A or 3077mAh 31.5A" lithium-ion battery ("subject battery") that forms the basis of this lawsuit.

8. Upon information and belief, Defendants John Does (A-Z) or ABC Inc. (1-100) are the entities and individuals that manufactured, designed, marketed, advertised, distributed, imported, exported, sold, and/or supplied e-cigarette components including but not limited to the Aegis Mini or other AEGIS starter kit, or the subject battery that form the basis of this complaint

9. This Court has personal jurisdiction over Defendant Samsung because Defendant Samsung has (1) transacted

business within the State of Georgia; (2) committed tortious acts or omissions within the State of Georgia; (3) caused tortious injury to Plaintiff in the State of Georgia caused by acts and omissions outside the State of Georgia at a time when Defendant Samsung regularly transacted or solicited business and/or engaged in any other persistent course of conduct in Georgia and/or derived substantial revenue from goods used or consumed or services rendered in Georgia.

10. Defendant Samsung is subject to the jurisdiction of this Court because its acts or omissions are based upon substantial contacts with this State, including but not limited to:

a) selling and delivering products—including the subject battery giving rise to this action—to persons, firms, or corporations in this state via its distributors, dealers, wholesalers, and brokers. These products were used by consumers in Georgia, such as Plaintiff, in the ordinary course of commerce and trade.

b) conducting and engaging in substantial business and other activities in Georgia by selling products to persons, firms, or corporations in this state via its distributors, wholesalers. Such products were used by consumers in Georgia, such as Plaintiff, in the ordinary course of commerce and trade;

c) engaging in solicitation activities in Georgia to promote the sale, consumption, use, maintenance, and/or repair of their products; and

d) selling products with knowledge or reason to foresee that these products would be shipped in interstate commerce and would reach the market of Georgia users or consumers.

11. Defendant Samsung has such sufficient minimum contacts with the State of Georgia that are purposefully directed to the State of Georgia that the filing of this action does not offend traditional notions of fair play and justice.

12. Defendant SEV Berwick is subject to the jurisdiction of this Court because it is a Georgia-registered limited liability corporation that conducts its business within the confines of Chatham County, including selling the products purchased by Plaintiff giving rise to the injury complained of in this action.

13. Defendant Hohm Tech, Inc., is subject to the jurisdiction of this Court because Defendant Hohm Tech, Inc. has (1) transacted business within the State of Georgia; (2) committed tortious acts or omissions within the State of Georgia; (3) caused tortious injury to Plaintiff in the State of Georgia caused by acts and omissions outside the State of Georgia at a time when Defendant Hohm Tech, Inc. regularly transacted or solicited business and/or engaged in any other persistent course of conduct in Georgia and/or derived substantial revenue from goods used or consumed or services rendered in Georgia.

14. Specifically, Defendant Hohm Tech, Inc. is subject to the jurisdiction of this Court because its acts or omissions

are based upon substantial contacts with this State, including but not limited to:

a) selling and delivering products—including the subject battery and "wrapping" giving rise to this action—to persons, firms, or corporations in this state via its distributors, dealers, wholesalers, and brokers. These products were used by consumers in Georgia, such as Plaintiff, in the ordinary course of commerce and trade.

b) conducting and engaging in substantial business and other activities in Georgia by selling products to persons, firms, or corporations in this state via its distributors, wholesalers. Such products were used by consumers in Georgia, such as Plaintiff, in the ordinary course of commerce and trade;

c) engaging in solicitation activities in Georgia to promote the sale, consumption, use maintenance, and/or repair of their products; and

d) selling products with knowledge or reason to foresee that these products would be shipped in interstate commerce and would reach the market of Georgia users or consumers.

15. Defendant Hohm Tech, Inc. has such sufficient minimum contacts with the State of Georgia that are purposefully directed to the State of Georgia so that the filing of this action does not offend traditional notions of fair play and justice.

16. Venue is proper in this Court because a substantial part of the events giving rise to the claims asserted herein occurred within the confines of Chatham County, Georgia, and Defendant SEV Berwick is a resident of this venue.

17. Jurisdiction and venue are proper in this Court.

II. BACKGROUND AND FACTUAL ALLEGATIONS

18. Plaintiff re-alleges and incorporates by reference all allegations contained in paragraphs 1 through 17 as if fully alleged herein.

19. E-cigarettes or "vapes" are battery-operated devices that deliver nicotine through flavored liquids and other chemicals to users in the form of vapor instead of traditional tobacco smoke.

20. A growing market of specialty stores have arisen throughout the United States that engage in selling e-cigarettes and their components to consumers, including Defendant SEV Berwick's establishment, Southeast Vapes and E-Cigs.

21. At all times relevant, Plaintiff was a customer of SEV Berwick, located at 50 Berwick Boulevard, Savannah, GA 31419

22. In January of 2019, Plaintiff entered the SEV Berwick retail store to purchase a vaping device.

23. While Plaintiff was inside, agents or employees of SEV Berwick offered vaping device several options for

Plaintiff to purchase, including AEGIS Geekvape "starter kits."

24. Plaintiff purchased the AEGIS Mini or an AEGIS "starter kit" compiled by Defendant Berwick, which included the AEGIS Mini vaping device, a "box modification," a larger "tank" for the vaping liquid, and two of the subject rechargeable batteries intended to power the device.

25. The device would not operate without two lithium-ion batteries.

26. The subject batteries were wrapped in a black and gold wrapping bearing the Hohm Tech logo and marks indicating the product name: Hohm Life.

27. After Plaintiff purchased device or the the starter kit, agents or employees of SEV Berwick opened the packaging and assembled the vaping device with the contents of the starter kit, including the two subject batteries.

28. After assembling the device for Plaintiff, Agents or employees of SEV Berwick instructed Plaintiff how to fill the device's "tank" with flavored nicotine "juice," how to activate the device's inner coil or "atomizer" to heat the nicotine "juice," and how to inhale the vaporized "juice" using the device.

29. Agents or employees of SEV Berwick did not give Plaintiff any instructions or warnings regarding proper maintenance, use, or storage of the subject batteries.

30. Hohm Tech did not provide Plaintiff with any instructions or warnings regarding proper maintenance, use, or storage of the Hohm Tech batteries.

31. Samsung did not provide Plaintiff with any instructions or warnings regarding proper maintenance, use, or storage of the subject batteries.

32. Plaintiff departed from the store with the device as assembled by SEV Berwick personnel.

33. On July 17, 2019, Plaintiff was preparing for work at his home located at 330 Katama Way, Pooler, Georgia 31322.

34. On that day, Plaintiff was operating the subject vape device in the manner he was instructed and in the manner in which it was designed and intended, and the device was in substantially the same condition as it was when it was purchased from Defendant SEV Berwick.

35. As he was leaving for work, Plaintiff placed the vape device in his pants pocket with no other items inside the pocket.

36. Within moments of placing the vape device in his pants pocket, there was a fire/explosion that originated from one of the subject batteries.

37. The fire/explosion caused severe bums to Plaintiff's left hip and leg.

38. While the subject battery was expelling heat inside his pocket, Plaintiff attempted to remove the vape device with his hands and was burned.

39. As a result of the fire/explosion, Plaintiff sustained severe burns and scarring to his body.

40. As a result of the fire/explosion, Plaintiff was required to undergo extensive and painful medical treatment.

41. Plaintiff missed work because of his injuries.

42. Plaintiff suffered and continues to suffer mental and physical pain and suffering because of this incident.

43. The subject batteries were marketed as safe products, suitable for ordinary use including in combination with the vaping devices described herein when, in fact, the risks of the product's design outweighed its utility, and was unreasonably dangerous and posed a serious burn hazard to users with no adequate warning of their dangers to cause a fire and/or explosion.

44. As a direct and proximate result of Defendants' negligent design and/or manufacturing of of the subject batteries, and/or Defendants' sale and/or placing of the subject batteries into the stream of commerce, failure to warn of the subject batteries dangers, or other negligence regarding the subject batteries, Plaintiff suffered severe and painful burns to his hip, leg, and hands that were foreseeable during proper and ordinary use.

45. Plaintiff seeks recovery for all general and special damages allowed under Georgia law in an amount to be determined by the jury at trial.

46. At all times relevant, Plaintiff exercised ordinary care and diligence in his use of the products at issue. Plaintiff neither did nor failed to do anything that caused or contributed to the above-referenced incident or his injuries and damages.

COUNT I—STRICT LIABILITY AGAINST SAMSUNG

47. Plaintiff adopts and re-alleges paragraphs 1-46, and incorporates them by reference as if stated fully herein.

48. Defendant Samsung designed and manufactured the subject batteries involved in this incident.

49. At all times relevant, Defendant Samsung was and is engaged in the business of selling lithium-ion batteries for use and consumption by consumers in Georgia, like Plaintiff.

50. The subject battery was defective in its design and manufacture because it was prone to cell failure during ordinary use without adequate safety features to prevent the battery cell from rupturing and expelling heat and battery contents.

51. The subject battery was defective due to its inadequate warnings or instructions, which, among other things, failed to warn Plaintiff that, during ordinary use,

the cells could short or otherwise fail, causing the cell to rupture and discharge its contents.

52. Because of these defects, the subject batteries were unreasonably dangerous to a person who might reasonably be expected to use or be affected by the product.

53. The subject batteries were defective at the time they were sold by Defendant Samsung or at the time they left Defendant Samsung's control.

54. The subject batteries were expected to reach the user without substantial changes to the condition in which they were sold.

55. The subject batteries did reach the user without substantial change in the condition in which they were sold.

56. Plaintiff was a person who would be reasonably expected to use or be affected by the subject device.

57. Plaintiff could not by the exercise of reasonable care, have discovered the risks herein mentioned, nor perceived their danger.

58. The subject batteries were defective due to inadequate post-marketing warnings or instructions because Defendant knew or should have known of the risk of serious bodily harm from the use of the subject batteries, yet Defendant still failed to provide an adequate warning to consumers.

59. Had Plaintiff received adequate warnings regarding the risks and dangers associated with the use of the subject batteries, he would not have used them.

60. Defendant Samsung knew or should have known that the subject batteries would be used without inspection by Plaintiff and that the subject batteries would create a foreseeable risk of harm to users, including Plaintiff, which outweighed the utility or benefit of the product as designed. As a direct and proximate result of the defect in the subject batteries, Plaintiff suffered catastrophic injuries and damages, medical expenses, mental and physical pain and suffering, and disfigurement. These injuries are permanent, and, in the future, Plaintiff will suffer medical and other necessary expenses, mental and physical pain and suffering, and disfigurement.

61. Plaintiff is entitled to recover special and general damages from Defendant Samsung arising from the defective battery.

COUNT II—NEGLIGENCE AGAINST SAMSUNG

62. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 61 above as if stated fully herein.

63. Defendant Samsung had a duty to exercise reasonable care in the design, manufacture, and distribution of its products into the stream of commerce, including a duty to assure that its products did not pose a significantly increased risk of bodily harm.

64. Defendant Samsung failed to exercise ordinary care in the design, formulation, manufacturer, sale, testing, quality assurance, quality control, labeling, marketing, promoting, and distribution of its product into interstate commerce in that Defendant knew or should have known that the product, specifically the batteries at issue, created an unreasonable risk significant bodily harm and was not safe for use by consumers.

65. Even though Defendant knew or should have known that the subject batteries caused an unreasonable risk of bodily harm, Defendant Samsung continued to market the subject batteries to consumers, including Plaintiff, when there were safer alternative methods for providing battery power in applications in consumer products.

66. Specifically, the subject batteries were designed in such a way that the subject batteries were (1) prone to fail without proper safety features to prevent a thermal event within the cell that could cause the cell to rupture and expel heat and the cell's contents and (2) did not contain or bear adequate warnings of the risk of the same to a user during ordinary use.

67. Defendant Samsung had a duty to warn consumers, including Plaintiff, of the dangers associated with the subject batteries.

68. As a direct and proximate result of Defendant Samsung's negligence, Plaintiff suffered serious injury, which is ongoing and permanent and accompanied by mental and physical pain and suffering, medical expenses,

lost wages, and all other general and special damages arising from Defendant's negligent act/omissions.

69. Defendant Samsung's negligence in selling without providing adequate warning and instruction regarding the proper use and dangerous propensity of the batteries was so egregious that it rises to the level of reckless disregard for the safety and well-being of the consumer public and constitutes willful and wanton conduct as defined by O.C.G.A. § 51-12-5.1 because it knew the risks to life and limb described herein when it sold the subject battery. Such conduct warrants the imposition of punitive damages.

COUNT III—NEGLIGENCE AGAINST DEFENDANT SEV BERWICK LLC

70. Plaintiff adopts and re-alleges paragraphs 1 - 69, and incorporates them by reference as if stated fully herein.

71. Defendant SEV Berwick—including its agents and employees—as a seller of the subject batteries and assembler of the vape device at issue, had either actual knowledge or constructive knowledge of the latent defects within the subject battery.

72. By opening, assembling, and selling the vape device to Plaintiff—fully assembled by SEV Berwick agents or employees, including the subject batteries—Defendant SEV Berwick had a duty to inspect and discover the defect posed by the subject batteries and warn consumers of the hazards and defects known or discoverable by an ordinary, prudent retailer.

73. Defendant SEV Berwick knew or should have known that the subject batteries would be used in their defective state, and that Plaintiff could not, through reasonable inspection, discover the defect presented herein nor perceive the danger such defects posed.

74. Defendant SEV Berwick was under a duty to properly and adequately assemble, test, distribute, market, promote, advertise, supply, and/or sell the batteries, and the vaping device as a whole, in a reasonably safe condition as not to present a danger to members of the general public who reasonably and expectedly, under ordinary care and circumstances, would come into contact with it, including Plaintiff.

75. Defendant SEV Berwick had both the ability and duty to inspect or test the subject batteries before selling it to Plaintiff to assess for any defects in the batteries.

76. At the time of the subject incident, the subject batteries were in substantially the same condition as when sold and distributed by Defendant SEV Berwick.

77. For the reasons set forth above, the subject batteries were unreasonably dangerous to foreseeable users, including Plaintiff.

78. Defendant SEV Berwick sold the subject batteries in their defective condition despite its duty to inspect and warn Plaintiff of their defective state.

79. Defendant's failure to warn and inspect breached its duty owed to Plaintiff.

80. As a direct and proximate cause of Defendant SEV Berwick's negligent acts and/or omissions, Plaintiff sustained serious and permanent bodily injuries resulting in pain and suffering, permanent impairment, disability, mental anguish, inconvenience, loss of the enjoyment of life, medical expenses for past and future treatment, lost wages, and loss of capacity to labor.

81. Defendant SEV Berwick's negligence in selling without providing adequate warning and instruction regarding the proper use and dangerous propensity of the batteries was so egregious that it rises to the level of reckless disregard for the safety and well-being of the consumer public and constitutes willful and wanton conduct as defined by O.C.G.A. § 51-12-5.1 because it knew the risks to life and limb described herein when it sold the subject battery. Such conduct warrants the imposition of punitive damages.

COUNT IV—STRICT LIABILITY AGAINST ROHM TECH, INC.

82. Plaintiff adopts and re-alleges paragraphs 1— 81 above, and incorporates them by reference as if stated fully herein.

83. Defendant Hohm Tech, Inc. is engaged in the business of purchasing battery cells from manufacturers such as Defendant Samsung and "wrapping them" with

terminal insulators and selling the wrapped batteries under their brand name.

84. The subject batteries and their wrapping were defective in their design and manufacture because the cell was prone to cell failure during ordinary use and was without adequate safety features to prevent the battery cell from rupturing and expelling heat and battery contents. The wrapping was defective in that it prevented any charge from contacting the batteries and causing shorts in the cell.

85. The subject batteries were defective due to their inadequate warnings or instructions.

86. Because of these defects, the subject batteries were unreasonably dangerous to a person who might reasonably be expected to use or be affected by the product.

87. The subject batteries were defective at the time they were sold or otherwise transferred to Hohm Tech by Defendant Samsung and was defective at the time they left Defendant Samsung's and Hohm Tech's control.

88. The subject batteries were expected to reach the user without substantial changes to the condition in which they were sold.

89. The subject batteries did reach the user without substantial change in the condition in which they were sold.

90. Plaintiff was a person who would be reasonably expected to use or be affected by the subject device.

91. Plaintiff could not, by the exercise of reasonable care, have discovered the risks herein mentioned, nor perceived their danger.

92. The subject batteries were defective due to inadequate post-marketing warnings or instructions because Defendant knew or should have known of the risk of serious bodily harm from the use of the subject batteries, yet Defendant still failed to provide an adequate warning to consumers.

93. The subject batteries were defective due to inadequate post-marketing warnings or instructions because Defendant knew or should have known of the risk of serious bodily harm from the use of the subject batteries, yet Defendant still failed to provide an adequate warning to consumers.

94. Had Plaintiff received adequate warnings regarding the risks and dangers associated with the use of the subject batteries, he would not have used them.

95. Defendant Hohm Tech knew or should have known that the subject batteries would be used without inspection by Plaintiff and that the subject batteries would create a foreseeable risk of harm to users, including Plaintiff, which outweighed the utility or benefit of the product as designed. As a direct and proximate result of the defect in the subject batteries, Plaintiff suffered catastrophic injuries and damages, medical expenses, mental and

physical pain and suffering, and disfigurement. These injuries are permanent, and, in the future, Plaintiff will suffer medical and other necessary expenses, mental and physical pain and suffering, and disfigurement.

96. Plaintiff is entitled to recover special and general damages from Defendant Hohm Tech arising from the defective battery.

COUNT V—NEGLIGENCE AGAINST HOHM TECH, INC.

97. Plaintiff adopts and re-alleges paragraphs 1 —96 above, and incorporates them by reference as if stated fully herein.

98. Defendant Rohm Tech had a duty to exercise reasonable care in the design, manufacture, and distribution of its products into the stream of commerce, including a duty to assure that its products did not pose a significantly increased risk of bodily harm.

99. Defendant Hohm Tech failed to exercise ordinary care in the design, formulation, manufacturer, sale, testing, quality assurance, quality control, labeling, marketing, promoting, and distribution of its product into interstate commerce in that Defendant knew or should have known that the product caused significant bodily harm and was not safe for use by consumers.

100. Even though Defendant knew or should have known that the subject batteries caused an unreasonable risk of

bodily harm, Defendant Hohm Tech continued to market the subject batteries to consumers, including Plaintiff, when there were safer alternative methods for providing battery power in applications in consumer products.

101. Specifically, the subject batteries were designed in such a way that the subject battery was (1) prone to fail without proper safety features to prevent a thermal event within the cell that could cause the cell to rupture and expel heat and the cell's contents; (2) that their terminal wrappings were designed in such a way that they did not prevent contact with the terminal poles of the cell from preventing a short or cell failure; and (3) did not contain or bear adequate warnings of the risk of the same to a user during ordinary use.

102. Defendant Hohm Tech had a duty to warn consumers, including Plaintiff, of the dangers associated with the subject batteries.

103. As a direct and proximate result of Defendant Hohm Tech's negligence, Plaintiff suffered serious injury, which is ongoing and permanent and accompanied by mental and physical pain and suffering, medical expenses, lost wages, and all other general and special damages arising from Defendant's negligent act/omissions.

104. Defendant Hohm Tech's negligence in selling without providing adequate warning and instruction regarding the proper use and dangerous propensity of the battery was so egregious that it rises to the level of reckless disregard for the safety and well-being of

the consumer public and constitutes willful and wanton conduct as defined by O.C.G.A. § 51-12-5.1 because it knew the risks to life and limb described herein when it sold the subject battery. Such conduct warrants the imposition of punitive damages.

DAMAGES AND PRAYER FOR RELIEF

105. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 104 as if the same were stated in full.

106. As a direct result of the actions and inactions of Defendants Samsung, SEV Berwick, Hohm Life, Inc. and John Does (A-Z) and ABC, Inc. (1-100), Plaintiff has and will continue to suffer physical and mental injuries and substantial economic and non-economic damages.

107. Plaintiff seeks damages from Defendant Samsung, Defendant SEV Berwick LLC, Defendant Hohm Tech, Inc., and Defendant John Does (A-Z) and ABC, Inc. (1-100) in an amount to be determined by the enlightened conscience of a fair and impartial jury and as demonstrated by the evidence, for the past and future mental and physical pain and suffering, disfigurement, and past loss of earnings.

APPENDIX G — STATUTORY PROVISIONS INVOLVED

Ga. Code Ann. § 14-2-1501 Authority to transact business required

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this Code section:

(1) Maintaining or defending any action or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositories with respect to its securities;

(5) Effecting sales through independent contractors;

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;

(7) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

(8) Securing or collecting debts or enforcing any rights in property securing the same;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction not in the course of a number of repeated transactions of a like nature;

(11) Effecting transactions in interstate or foreign commerce;

(12) Serving as trustee, executor, administrator, or guardian, or in like fiduciary capacity, where permitted so to serve by the laws of this state;

(13) Owning (directly or indirectly) an interest in or controlling (directly or indirectly) another entity organized under the laws of, or transacting business within, this state; or

(14) Serving as a manager of a limited liability company organized under the laws of, or transacting business within, this state.

(c) The list of activities in subsection (b) of this Code section is not exhaustive.

(d) This chapter shall not be deemed to establish a standard for activities which may subject a foreign corporation to taxation or to service of process under any of the laws of this state.

Ga. Code Ann. § 14-2-1505
Effect of certificate of authority

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights under this chapter and has the same but no greater privileges under this chapter as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Appendix G

Ga. Code Ann. § 14-2-1507
Registered office and registered agent of foreign corporation

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(A) An individual who resides in this state and whose business office is identical with the registered office;

(B) A domestic corporation, nonprofit domestic corporation, or domestic limited liability company whose business office is identical with the registered office; or

(C) A foreign corporation, foreign or nonprofit corporation, or foreign limited liability company authorized to transact business in this state whose business office is identical with the registered office.

Appendix G

Ga. Code Ann. § 9-10-90
"Nonresident" defined

As used in this article, the term "nonresident" includes an individual, or a partnership, association, or other legal or commercial entity (other than a corporation) not residing, domiciled, organized, or existing in this state at the time a claim or cause of action under Code Section 9-10-91 arises, or a corporation which is not organized or existing under the laws of this state and is not authorized to do or transact business in this state at the time a claim or cause of action under Code Section 9-10-91 arises. The term "nonresident" shall also include an individual, or a partnership, association, or other legal or commercial entity (other than a corporation) who, at the time a claim or cause of action arises under Code Section 9-10-91, was residing, domiciled, organized, or existing in this state and subsequently becomes a resident, domiciled, organized, or existing outside of this state as of the date of perfection of service of process as provided by Code Section 9-10-94.

Appendix G

Ga. Code Ann. § 9-10-91
Personal jurisdiction over nonresidents of state

A court of this state may exercise personal jurisdiction over any nonresident or his or her executor or administrator, as to a cause of action arising from any of the acts, omissions, ownership, use, or possession enumerated in this Code section, in the same manner as if he or she were a resident of this state, if in person or through an agent, he or she:

(1) Transacts any business within this state;

(2) Commits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act;

(3) Commits a tortious injury in this state caused by an act or omission outside this state if the tortfeasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(4) Owns, uses, or possesses any real property situated within this state;

(5) With respect to proceedings for divorce, separate maintenance, annulment, or other domestic relations action or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or if the defendant resided in this state

preceding the commencement of the action, whether cohabiting during that time or not. This paragraph shall not change the residency requirement for filing an action for divorce; or

(6) Has been subject to the exercise of jurisdiction of a court of this state which has resulted in an order of alimony, child custody, child support, equitable apportionment of debt, or equitable division of property if the action involves modification of such order and the moving party resides in this state or if the action involves enforcement of such order notwithstanding the domicile of the moving party.

APPENDIX H — SEA 1985 BUSINESS REGISTRATION

8552409 SAMSUNG ELECTRONICS AMERICA, INC. 12/10/85

85-52409

DUPLICATE

State of Georgia

OFFICE OF THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

Whereas, "SAMSUNG ELECTRONICS AMERICA, INC."

incorporated under the laws of the State of NEW YORK has filed in the Office of the Secretary of State duly authenticated evidence of its incorporation and an application for Certificate of Authority to transact business in this State, as provided by **"THE GEORGIA CORPORATION CODE"** of Georgia, in force April 1, A.D. 1969.

Now Therefore, I, **MAX CLELAND**, Secretary of State of the State of Georgia, by virtue of the powers and duties vested in me by law, do hereby issue this Certificate of Authority and attach thereto a copy of the application of the aforesaid corporation.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 10th day of December in the year of our Lord one Thousand Nine Hundred and Eighty Five and of the Independence of the United States of America the Two Hundred and Ten.

Max Cleland

SECRETARY OF STATE, EX-OFFICIO CORPORATION COMMISSIONER OF THE STATE OF GEORGIA

Appendix H

DUPLICATE 8552409

State of Georgia

OFFICE OF THE SECRETARY OF STATE OF GEORGIA

To all to whom these Presents Shall Come, Greeting: Whereas, "SAMSUNG ELECTRONICS AMERICA, INC." *incorporated under the laws of the State of* NEW YORK *has filed in the Office of the Secretary of State duly authenticated evidence of its incorporation and an application for Certificate of Authority to transact business in this State, as provided by* **"THE GEORGIA CORPORATION CODE"** *of Georgia, in force April 1, A.D. 1969.*

Now Therefore, I, **MAX CLELAND**, *Secretary of State of the State of Georgia, by virtue of the powers and duties vested in me by law, do hereby issue this Certificate of Authority and attach thereto a copy of the application of the aforesaid corporation.*

In Testimony Whereof, *I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this* 10th *day of* December *in the year of our Lord one Thousand Nine Hundred and Eighty* Five *and of the Independence of the United States of America the Two Hundred and* Ten.

/s/ Max Cleland

SECRETARY OF STATE, EX-OFFICIO CORPORATION COMMISSIONER OF THE STATE OF GEORGIA

Appendix H

FILE IN DUPLICATE

☒ Filing Fee for Profit Corporation – $150.00

☐ Filing Fee for Non-Profit Corporation – $50.00

☐ Check if name previously reserved.

APPLICATION FOR
CERTIFICATE OF AUTHORITY

TO: MAX CLELAND
Secretary of State
Suite 306-West Tower
2 Martin Luther King, Jr., Drive, S.E.
Atlanta, Georgia 30334

Pursuant to the provisions of Section 14-2-314 or Section 14-3-244 Official Code of Georgia Annotated, the undersigned corporation hereby applies for a Certificate of Authority to transact business in your State, and for that purpose submits the following statement:

I. The name[1] of the corporation is <u>Samsung Electronics America, Inc.</u>

II. The name which it elects to use in Georgia, pursuant to Section 14-2-312(b), if its name is in conflict with an existing corporation is <u>N/A</u>

III. It is incorporated under the laws of <u>New York</u>

1. The name style authorized to be used in Georgia, when there is a conflict, is the true corporate name with the state or country of incorporation added. [i.e. ABC, Inc. (Florida)]

IV. The date of its incorporation is July 28, 1978

V. The period of duration is perpetual

VI. The address of its principal office or registered office in the state or country under the laws of which it is incorporated is 301 Mayhill Street, Saddle Brook, N.J. 07662

VII. The address and county of its proposed registered office in Georgia is 1355 Terrell Mill Road Bldg 1460, Suite 100, Marietta, GA 30067 and the name of its proposed registered agent in Georgia at that address is Philip Norman

VIII. The purpose or purposes which it proposes to pursue in the transaction of business in Georgia are any and all lawful acts or things authorized by the certificate of incorporation and the laws of the State of Georgia

IX. The names and respective addresses of the four principal officers:

Name	Office	Address
Yong Suk Lee	President	301 Mayhill St., Saddle Brook, NJ 07662
None	Vice President	
K.S. Choi	Secretary	301 Mayhill St., Saddle Brook, NJ 07662
K.S. Choi	Treasurer	301 Mayhill St., Saddle Brook, NJ 07662

X. The amount of the corporation's stated capital is $500,000.00

XI. The date which the corporation commenced or proposes to commence business in Georgia is February 1, 1984

XII. This application is accompanied by a Certificate of Legal Existence[2], duly certified by an authorized officer[3] of the jurisdiction in which the corporation is incorporated.

Dated November 5, 1985

Samsung Electronics America, Inc.

By /s/ ________________________
(President or Vice-President)

Or /s/ ________________________
(Secretary or Assistant Secretary)

2. A Certificate of Legal Existence is a one page certificate attesting to the current existence of the corporation. Do not attach certified copies of the Articles of Incorporation in lieu of the Certificate of Legal Existence.

3. Authorized officer is the Secretary of State of the state of the original incorporation, or the proper certifying official for corporations in the state, province or country.

Appendix H

CONSENT OF REGISTERED AGENT

I, Phillip Norman (Name of Registered Agent) (Person or Corporation), hereby consent to serve as registered agent for the authorized corporation.

/s/ Phillip Norman
(Signature)

Appendix H

State of New York }
Department of State } **ss:**

I Hereby Certify*, that I have made diligent examination of the index of corporation papers filed in this Department for a certificate, order or record of a dissolution of*

SAMSUNG ELECTRONICS AMERICA, INC.

the certificate of incorporation of which corporation was filed July 28, 1978, under the name of SAMSUNG ELECTRONICS INC., with perpetual duration, and such certificate changing name to SAMSUNG ELECTRONICS AMERICA, INC., was filed August 25, 1978, *and that upon such examination, I find no such certificate, order or record, and that so far as indicated by the records of this Department, such corporation is a subsisting corporation.*

Witness *my hand and the official seal of the Department of State at the City of Albany, this 26th day of* November *one thousand nine hundred and* eighty-five.

/s/____________________________
Secretary of State