

No. 26-4

IN THE
Supreme Court of the United States

SAMSUNG ELECTRONICS AMERICA, INC.,

Petitioner,

v.

JORDAN BREWER,

Respondent.

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

BRIEF IN OPPOSITION

MICHAEL B. TERRY

Counsel of Record

SOLESSE L. ALTMAN

E. ALLEN PAGE

BONDURANT MIXSON &

ELMORE, LLP

1201 W. Peachtree St. NW

Suite 3900

Atlanta, GA 30309

(404) 881-4100

terry@bmelaw.com

Counsel for Jordan Brewer

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QUESTIONS PRESENTED

1. Whether the Court has jurisdiction in this case to review an issue that was not presented to the Georgia Supreme Court.

2. Whether the Court's review is warranted to address an issue already resolved by *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023).

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INTRODUCTION

“The outcome of *Mallory* will determine this Court’s jurisdiction over [Samsung].” Before coming to this Court, that is what Samsung told the trial court.

That admission to the Georgia court came after Respondent Jordan Brewer bought a Samsung battery in Georgia, was injured in Georgia when the battery exploded in his pocket, was hospitalized and treated in Georgia, and sued Samsung, who had registered to do business in Georgia, in a Georgia court. After Samsung made the “strategic decision[]” to default, Resp. at 44a–45a, the trial court entered judgment. Samsung then set about on its years-long campaign to undermine and unwind that judgment, culminating here.

As part of that effort, back in 2021, before the Supreme Court of Georgia decided *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422, 863 S.E.2d 81 (2021), Samsung sought to delay proceedings by telling the trial court that “the forthcoming decision in *Cooper Tire* will be *dispositive* of the personal jurisdiction issue currently before this Court” because “if *Cooper Tire* is affirmed and *Klein* is therefore upheld, general personal jurisdiction over [Samsung] *is proper*, at least until the U.S. Supreme Court has an opportunity to consider the matter.” Resp. at 4a, 12a (emphases added). Then in 2022, after *Cooper Tire* went the other way but before this Court decided *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), Samsung again told the trial court that “[t]he outcome of *Mallory* will determine this Court’s jurisdiction over [Samsung].” Resp. at 25a (emphasis added). Consistent with those admissions, after *Mallory*, the trial court correctly concluded it had personal jurisdiction over Samsung under *Mallory* and *Cooper Tire*.

Samsung ceased pursuing the issue then. Mere days after this Court resolved *Mallory* and *Cooper Tire* in 2023, when the issue was as ripe as could be, Samsung opted *not* to ask the Georgia Supreme Court to take up the issue, instead seeking certiorari review only on state law grounds. So too this time around: Samsung again sought certiorari review only on state law grounds from the Georgia Supreme Court.

More than mere rhetoric, Samsung’s trial court admissions reveal that the Petition offers nothing for this Court to address—either procedurally or substantively. Its last-ditch effort to shirk the consequences of what the trial court called its “willful and deliberate” default, Resp. at 46a, is to now raise a federal due process argument that Georgia’s appellate courts never addressed, much less decided, in this case.

Despite not asking the Georgia Supreme Court to revisit *Cooper Tire*, Samsung now claims that *Cooper Tire*—and lower court cases applying it—somehow “break[] with this Court’s recent holding in *Mallory*.” Pet. at 3. That cannot be true. In *Mallory*, this Court expressly resolved the “split of authority” that arose between the Pennsylvania Supreme Court and the Georgia Supreme Court’s *Cooper Tire* decision. 600 U.S. at 127. By siding with Georgia, and upholding *Pennsylvania Fire*’s validity, the Court answered the very question the Petition purports to pose.

All told, the Petition falters at the starting gate and every stage thereafter. Samsung cannot invoke this Court’s certiorari jurisdiction. It cannot escape its waivers below. And even if it could, Samsung still fails to identify any new post-*Mallory* issue, much less point to a split that warrants certiorari. The only supportable conclusion is that *Mallory* is indeed “dispositive” of this case as Samsung admitted below.

Samsung wants to manufacture another bite at that apple, but this Court cannot, should not, and need not indulge. The Petition should be denied.

STATEMENT¹

I. The Judgment Against Samsung

A. Mr. Brewer's Georgia Injuries

In 2019, Mr. Brewer, a resident of Georgia, suffered severe burn injuries when the Samsung battery in a vape pen he purchased in Georgia exploded in his pocket in Georgia. Due to injury, he sought care in Georgia and suffered lost wages in Georgia. As the trial court outlined:

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 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.

Pet. at 63a–64a. His injuries and resultant condition “are permanent in nature.” Resp. at 1a–2a.

¹ In keeping with our obligation under Rule 15.2, our case statement addresses “perceived misstatement[s]” in the Petition.

B. Mr. Brewer's Georgia Lawsuit

Mr. Brewer sued several defendants, including Samsung Electronics America, Inc., (“Samsung”) in Chatham County, Georgia. In his Complaint, he alleged that Samsung “maintains a registered agent for service of process in the State of Georgia.” Pet. at 73a. He also alleged that Samsung “is subject to the jurisdiction of [the Georgia court] because its acts or omissions are based upon substantial contacts with this State,” including selling the products at issue, and that these “contacts with the State of Georgia” were “purposefully directed to the State of Georgia.” Pet. at 75a–76a. Specifically, he alleged that “Samsung designed and manufactured the subject batteries involved in this incident.” Pet. at 82a.

At the same time, Mr. Brewer also served requests for admission. V3-484. Georgia’s Civil Practice Act differs from federal law in that it permits a plaintiff to serve discovery at the time of the complaint. *See* O.C.G.A. § 9-11-36(a)(1). These requests asked Samsung to admit several pertinent facts and conclusions. On the merits, for example, Mr. Brewer asked Samsung to admit that it “manufactured the battery” at issue and that the battery contained both a “manufacturing” and a “design” defect. V3-486–87. He also asked Samsung to admit that the Georgia trial court “has personal jurisdiction” over Samsung. V3-489.

Samsung did not answer the complaint or respond to the requests for admission.

C. Samsung’s “Failed Legal Strategy” and “Willful and Deliberate” Default

When Samsung received service of the summons, complaint, and discovery requests, it made the “willful and deliberate” decision not to participate in the case.

Resp. at 46a. When Mr. Brewer’s counsel contacted Samsung about pending case deadlines, Samsung “did not seem to care.” V5-289.

Rather than follow Georgia law and court rules, Samsung supposedly followed its own internal protocol, by which it would informally attempt to dissuade a plaintiff from pursuing his claims. Samsung states in its Petition that it “followed that protocol here.” Pet. at 9. The courts saw it differently. The Court of Appeals recounted that Samsung “failed at every step to follow its own procedure”:

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 “[this was] a case where a party’s legal department is fully aware of the existence of a lawsuit and wilfully and continually ignores the associated legal responsibilities that accompany being sued for extended periods of time[.]”

Samsung Elecs. Am., Inc. v. Brewer, 368 Ga. App. 608, 608, 611–12, 890 S.E.2d 498, 502 (2023) (“*Brewer I*”); see also Pet. at 17a (“Samsung initiated its protocol, but ultimately did not comply with its own procedures.”). In fact, the trial court went further, calling Samsung’s approach a “failed legal strategy,” stating that Samsung acted with “indifference to the correct legal process,” and describing its litigation conduct as “beyond the pale and inexcusable.” Resp. at 46a.

D. Hearing and Judgment

Pursuant to Georgia law, the court entered an order of judgment on liability and set a hearing for damages. Samsung's Petition states it received no notice of the judgment order or hearing. Pet. at 10. Again, the courts below found otherwise: "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." *Brewer I*, 368 Ga. App. at 609, 890 S.E.2d at 500–01.

The trial court then conducted the damages hearing. After hearing "the testimony of live witnesses" and considering the "copious amounts of evidence" presented, including nearly a thousand pages of documents and the now-admitted requests for admission to which no responses had been served, the experienced trial judge² found that Mr. Brewer's "injuries and condition are permanent in nature" and awarded \$10,860,972 in damages. Resp. at 1a–2a.

These facts illustrate that the trial judgment was no "heist," as Samsung blithely remarks. Pet. at 11. On that point, the trial court also subsequently confirmed that Mr. Brewer's counsel had acted forthrightly, explaining that "Mr. Brewer was not in a position to

² Judge H. Gregory Fowler served as chief judge for twenty-five years when he took senior status shortly after the judgment, and he had recently received the highest honor awarded by the Council of State Court Judges for his ethics and professionalism. See Jan Skutch, *Chatham County Judge Earns State Award*, Savannah Now, October 28, 2019, available at <https://www.savannahnow.com/story/news/2019/10/28/chatham-county-state-court-chief-judge-gregory-fowler-earns-state-recognition-ethics-professionalism/2413690007/> (last accessed October 8, 2026).

refuse the Court's order to appear and present damages on the scheduled date." Resp. at 48a.

II. Post-Judgment Proceedings

A. In the Trial Court

Samsung moved to set aside the judgment, including for lack of personal jurisdiction.

While that motion was pending, the Georgia Supreme Court granted certiorari to consider *Cooper Tire*. Then Samsung moved to stay this case pending a decision in *Cooper Tire*, telling the trial court that "the forthcoming decision in *Cooper Tire* will be dispositive of the personal jurisdiction issue currently before this Court." Resp. at 4a. (Like the defendant in *Cooper Tire*, Samsung had registered to do business in Georgia.) Samsung further explained that the high courts' decision in *Cooper Tire* would resolve the jurisdictional issue either way:

The *Cooper Tire* decision is crucial to this Court's consideration of [Samsung's] Motion with respect to the issue of personal jurisdiction. If *Klein* is overruled in *Cooper Tire*, it will eradicate the only basis for this Court's exercise of personal jurisdiction in this case—general jurisdiction by virtue of [Samsung's] registration with the Secretary of State. *On the other hand, if Cooper Tire is affirmed and Klein is therefore upheld, general personal jurisdiction over [Samsung] is proper*, at least until the U.S. Supreme Court has an opportunity to consider the matter. Either way, the personal jurisdiction issue is disposed.

Resp. at 11a–12a (emphasis added). It reiterated the point on reply, arguing that “[i]t is undisputed that the outcome of *Cooper Tire* will control whether this Court has personal jurisdiction over [Samsung] in this case” and added that “if *Klein* is upheld, then the issue of general personal jurisdiction is disposed of (at least for the time being).” V5-307–09.

While that motion was pending, the Supreme Court of Georgia issued its decision in *Cooper Tire*, 312 Ga. 422, 863 S.E.2d 81 (2021). There it affirmed its original consent-jurisdiction decision, *Allstate Insurance Co. v. Klein*, 262 Ga. 599, 422 S.E.2d 863 (1992), based on the ongoing validity of *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917).

In the trial court—now occupied by a different judge after the former judge took senior status—the court denied Samsung’s stay motion but then set aside the judgment on narrow, state law grounds (a missing transcript). It explained that “this is a limited holding and the Court summarily rejects many of the other arguments raised by Samsung[.]” Pet. at 68a. In particular, consistent with Samsung’s admissions and the Georgia Supreme Court’s ruling, the court concluded that it “has general jurisdiction over Samsung” based on *Cooper Tire* and thus “need not further consider or rule on issues of specific jurisdiction.” *Id.*

With the judgment set aside, Samsung moved to open the default and withdraw its admissions.

While those motions were pending, after this Court granted certiorari in *Mallory*, Samsung again moved to stay the trial court proceedings, arguing that this Court “granted certiorari in *Mallory* to *finally* resolve” the jurisdictional issue. Resp. at 23a (emphasis added).

It said that *Mallory* involved “the same arguments [] raised in *Cooper Tire*” and that this Court was “holding *Cooper Tire* in abeyance, presumably pending the outcome of *Mallory*.” Resp. at 23a–24a. As it had with *Cooper Tire*, Samsung argued that “[t]he outcome of *Mallory* will determine this Court’s jurisdiction over [Samsung].” Resp. at 25a (emphasis added).

The trial court largely denied Samsung’s motions. In declining to open the default, the court devoted some eight pages to outlining why Samsung’s conduct in the lawsuit did not warrant that remedy. Among other things, the trial court explained that Samsung “willfully disregarded basic legal process” and, “although [its] protocol was not working out,” it “made strategic decisions to continue to pursue the protocol both when it was in default, when it was facing a default judgment[,] and even after receiving a massive final judgment against it.” Resp. at 44a–45a.

The court also took up the question of specific personal jurisdiction. It noted that Mr. Brewer had alleged “detailed facts regarding Samsung’s significant conduct in Georgia” and concluded that, because Samsung defaulted, it had “admitted the necessary facts required in order to establish personal jurisdiction.” Resp. at 49a. Similarly, in ruling on Samsung’s untimely motion to withdraw admissions, the court refused to allow Samsung to withdraw its admissions concerning both the facts underlying jurisdiction and the ultimate legal conclusion that Samsung was subject to jurisdiction. The court also denied the motion to stay.

Meanwhile, *Mallory* remained pending.

B. *Brewer I*

Samsung appealed the denial of its motions. Ga. Ct. App. No. A23A0452. Mr. Brewer cross-appealed the prior set-aside order. Ga. Ct. App. No. A23A0453. Because the set-aside order came first, the Court of Appeals would need to address the cross-appeal first.

In the cross-appeal of the set-aside order, Samsung did not “argue[] as an independent basis for affirmance that it is not subject to personal jurisdiction in Georgia,” as it now states. *Compare* Pet. at 12 (incorrectly citing the main appeal, No. A23A0452), *with* Br. of Appellee, No. A23A0453, Dec. 12, 2022. Indeed, its brief there did not address personal jurisdiction at all.

In the main appeal, when seeking reversal of the denial of the motion to stay, Samsung argued that the trial court erred in applying *state* personal jurisdiction law and argued “this portion of its order must be reversed.” *See* Br. of Appellant, No. A23A0452, Nov. 12, 2022, at 34. It did not seek reversal based on due process grounds, though *Mallory* remained pending. *Id.* at 32 n.8.

On June 30, 2023, the Court of Appeals agreed with Mr. Brewer’s position about the missing transcript issue in the cross-appeal, vacated the trial court’s set-aside order, and dismissed Samsung’s main appeal as premature. *See generally Brewer I*, 368 Ga. App. 608, 890 S.E.2d 498.

That ruling essentially coincided with this Court’s June 27, 2023, decision in *Mallory* and the subsequent June 30, 2023, denial of certiorari in *Cooper Tire* (No. 21-926). Just as the Georgia Supreme Court had done, this Court upheld *Pennsylvania Fire*. After the denial of certiorari, *Cooper Tire* became final.

Samsung's Petition makes no mention of this proceeding, but a few weeks later, on July 20, 2023, Samsung petitioned the Supreme Court of Georgia for certiorari review. It did not cite *Cooper Tire* or *Mallory*, nor did it raise any federal due process issue or any question supposedly left open in *Mallory*. *See generally* Pet. for Writ of Cert., S23C1174, July 20, 2023. Instead, Samsung raised only three state law arguments related to the issue of the missing transcript, arguing:

- (1) This Court Should Determine Whether Georgia Trial Courts Must Apply Appellate Standards
- (2) The Court of Appeals Opinion Arbitrarily and Unwisely Strips Trial Courts of Inherent, Plenary Authority
- (3) The Court of Appeals' Decision is Inconsistent with Georgia's Policy Favoring Transparency in Court Proceedings

Id. at i.

The Supreme Court of Georgia denied certiorari, and the case was remanded for the trial court to reconsider Samsung's original motion to set aside the judgment under the applicable standard.

C. *Brewer II*

After remand, Samsung filed a supplemental brief, which incorporated its prior jurisdictional arguments, (including where it had argued that *Mallory* would be dispositive on due process, per above) and also sought to "preserve" the separate (and long-since waived) dormant commerce clause issue identified by Justice Alito in *Mallory*. V4-556.

For a second time, the trial court set aside the judgment on a narrow, state law ground (venue). It again “reject[ed]” Samsung’s other arguments, including about the “absence of general or specific jurisdiction.” Pet. at 40a. Its decision “largely rest[ed] on...the relatively recent Supreme Court of Georgia decision adverse to Samsung’s position in *Cooper Tire*.” *Id.* (citing *Cooper Tire, Mallory, and Klein*).

Mr. Brewer appealed the erroneous venue ruling. Ga. Ct. App. No. A25A0272. Samsung then cross-appealed, re-raising the prior rulings of the trial court on its other motion to the extent not mooted. Ga. Ct. App. No. A25A0292.

In its cross-appeal, Samsung also purported to “conditionally cross appeal[]” the set-aside order, *see* Br. of Appellant, Case No. A25A0292, Oct. 15, 2024, at 32, even as it told the Court of Appeals that it “does not have standing to appeal the Set Aside Order,” Br. of Appellee, Case No. A25A0272, Nov. 4, 2024, at 22, and that it “ha[d] not actually been harmed by the lower court’s order,” Br. of Appellant, Case No. A25A0292, Oct. 15, 2024, at 33 n.7. It is only in this conditional cross-appeal that Samsung purported to argue lack of personal jurisdiction, *see* Pet. at 13 (citing Br. of Appellant, Case No. A25A0292, Oct. 15, 2024, at 32–34), though that was the wrong appeal.

By contrast, in Mr. Brewer’s appeal of the set-aside order, Samsung limited its arguments that the set-aside order “should be affirmed under the ‘right for any reason doctrine’” to *only* state law grounds: (i) its purported “status as a misidentified party,” (ii) its purported “lack of notice of the damages hearing,” and (iii) purported “improprieties concerning the damages award.” Br. of Appellee, Case No. A25A0272, Nov. 4, 2024, at i, 3.

Again, the Court of Appeals ruled in Mr. Brewer's favor and reversed the set-aside order. *See generally Brewer v. Samsung Elecs. Am., Inc. ("Brewer II")*, 376 Ga. App. 396, 917 S.E.2d 836 (2025). In doing so, the court rejected Samsung's three state law right-for-any-reason arguments raised in the main appeal. *Id.* at 401–02, 917 S.E.2d at 841. It also affirmed the cross-appeal as to the other motions. The court did not address the conditional cross-appeal that Samsung had disclaimed.

Samsung moved for reconsideration in both appeals but *again* did not advance any personal jurisdiction argument in support of the motions. *See* Samsung's Mot. for Reconsideration, Case No. A25A0272, July 3, 2025. The Court of Appeals denied the motions.

Samsung then petitioned for certiorari to the Supreme Court of Georgia for the second time. As it had before, Samsung raised only state law arguments:

- (1) The Court of Appeals misapplied the meritorious-reason standard for setting aside judgments within the term.
- (2) The Court of Appeals misapplied the right-for-any-reason doctrine by applying the abuse-of-discretion standard to the trial court's opinion, as opposed to its order.
- (3) The Court of Appeals affirmed the trial court's allowance of an impermissible category of damages.

Pet. for Writ of Cert., S26C0033, Aug. 6, 2025, at 4. Samsung raised neither personal jurisdiction nor due process. The Georgia Supreme Court denied the petition.

Samsung then filed this Petition, raising the federal due process argument not presented below.

REASONS TO DENY THE PETITION

I. The Court Lacks Jurisdiction Because Samsung did not Properly Present the Federal Issue to the Courts Below.

Under 28 U.S.C. § 1257(a), this Court has jurisdiction over “[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had[.]” In exercising that authority, this Court has “almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim ‘was either addressed by or properly presented to the state court that rendered the decision we have been asked to review.’” *Howell v. Mississippi*, 543 U.S. 440, 443 (2005).³ Neither occurred here, so the Court should hew to that well-worn path and decline to address this Petition.

Samsung acknowledges that neither the Supreme Court of Georgia nor the Court of Appeals of Georgia ever “addressed,” much less “decided,” the jurisdictional due process question. *Id.*; *see also* Rule 10(b), (c)

³ In *Howell*, the Court has explained that a “long line of cases clearly stat[e] that the presentation requirement is jurisdictional,” but acknowledged that other cases have raised the question of whether the preservation rule is merely “prudential.” 543 U.S. at 445; *see also Williams v. Reed*, 604 U.S. 168, 187 (2025) (Thomas, J., dissenting) (noting that “the Court’s historical practice has generally been to treat this preservation requirement as jurisdictional, although our more recent cases have expressed uncertainty on this issue”). In any event, whether the requirement is jurisdiction or prudential, Samsung’s failure to preserve warrants denial of the Petition.

(certiorari is proper when “a state court of last resort has *decided* an important federal question...” or when “a state court or a United States court of appeals has *decided* an important question of federal law...”) (emphases added). So to invoke jurisdiction, it would have to show that it “properly presented” the issue to the Georgia courts. It did not.

A. Samsung never “presented” the issue to the Supreme Court of Georgia.

Across two certiorari petitions, Samsung did not once present the due process issue to the Supreme Court of Georgia—the “highest court” under § 1257(a)—because its “brief[s] in the State Supreme Court did not properly present his claim as one arising under federal law.” *Howell*, 543 U.S. at 443. Just like *Howell’s* petitioners, Samsung did “not cite the Constitution or even any cases directly construing it, much less any of this Court’s cases” applying it. *Id.* Instead, as outlined above, both of Samsung’s petitions enumerated only purported *state law* errors concerning the applicable review standards and the propriety of the damages. *See supra*, Statement § II.B, II.C.

As for its first failed petition in *Brewer I*, Samsung conveniently omits any reference to it here. But that petition is notable because Samsung filed it mere weeks after this Court issued its *Mallory* decision and denied certiorari in *Cooper Tire*. After acknowledging to the trial court that *Mallory* would be dispositive, Samsung did not raise the due process issue or any question supposedly left open by *Mallory*.

So too in *Brewer II*, where, three years later, Samsung still did not raise the federal issue. While that petition uses the words “due process” once,

Samsung made that single passing reference to illustrate one of several hypothetical reasons that a different court might set aside a judgment in a different case. Pet. for Writ of Cert., S26C0033, Aug. 6, 2025, at 16. That only further proves the point—Samsung delineated those hypothetical reasons as distinct from the actual issue “in this case.” *Id.* And under Georgia law, a passing reference does not equate to presenting an argument. *See Time Warner Ent. Co. v. Six Flags Over Ga., LLC*, 254 Ga. App. 598, 604–05, 563 S.E.2d 178, 184 (2002) (“[A]ppellants abandoned any error with respect to a federal constitutional [due process] claim” when they “failed to cite to any relevant facts, give record citations, or present any legal analysis supporting that assertion.”); *cf., e.g., Loveless v. GSH Invs., LLC*, 379 Ga. App. 265, 273, 928 S.E.2d 600, 608 (2026) (finding that an argument supported by “single citation” to a provision was “deemed abandoned”).

Samsung’s double failure to present the federal issue to the Supreme Court of Georgia distinguishes its Petition here from those in the cases it cites to show jurisdiction. *See* Pet. at 1 (citing *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 476 (1975), and *Shaffer v. Heitner*, 433 U.S. 186, 195 n.12 (1977)). In those cases, the petitioners had “clearly raised the issue of the constitutionality” of the statute or process at issue before the state supreme court. *Cox Broad. Corp.*, 420 U.S. at 476; *Hemphill v. New York*, 595 U.S. 140, 148–49 (2022) (“At every level of his proceedings in state court, Hemphill argued that the admission of Morris’ plea allocution violated his Sixth Amendment right to confrontation[.]”). Samsung did not. That does not

suffice to invoke this Court's jurisdiction under § 1257(a).⁴ So the Court should deny the Petition.

B. Samsung also never “properly presented” the issue to the Georgia Court of Appeals.

Unable to show presentation at the Supreme Court of Georgia, Samsung instead points to an argument from one of its briefs to the Georgia Court of Appeals. But its reliance on that brief founders upon this Court's precedent and applicable state rules.

By its text, 28 U.S.C. § 1257(a) authorizes review of “[f]inal judgments or decrees rendered by the *highest court of a State* in which a decision could be had[.]” (emphasis added). Consistent with that text, this Court has always looked to whether the party presented the federal issue “[a]t every level of [the] proceedings in state court.” *Hemphill* 595 U.S. at 148; see also *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (“When the highest state court is silent on a federal question before us, we assume that the issue was not properly presented.”). To be sure, this Court can generally “consider the *merits*” of a lower court decision when a state's highest court denies certiorari. *Chesapeake & O. Ry. Co. v. Mihalas*, 280 U.S. 102, 104 (1929) (emphasis added). But that merits principle

⁴ Even if this Court had jurisdiction, Samsung's failure to present the issues would still render this case a poor vehicle because failing to appeal the issue waives the defense under Georgia law. See *Zekser v. Zekser*, 293 Ga. 366, 369–70, 744 S.E.2d 698, 701 (2013) (“By failing to complain in her application for discretionary review of the provisions of the decree concerning child support, Marlene has forfeited any appellate review of those provisions, and we decline to consider her additional enumeration of error.”). We address other state waivers in Section II.

does not govern preservation via presentation, and it does not vitiate Samsung's obligation to present the federal issue "[a]t every level of [the] proceedings in state court." *Hemphill*, 595 U.S. at 148. Presenting the issue only to an intermediate court is not enough.

In any event, Samsung did not properly present the issue to the Court of Appeals according to the applicable Court of Appeals Rules either. Samsung claims that it "argued as an independent basis for affirmance [of the set-aside order] that it was not subject to personal jurisdiction in Georgia," and that the Court of Appeals "did not address" that argument when it reversed the trial court. Pet. at 13–14. But recall that the proceeding from which Samsung block quotes its brief, Case No. A25A0292, was not the main appeal, where Samsung sought "affirmance" of the set-aside order. It was instead Samsung's "conditional cross appeal" for which it told the Court of Appeals that it lacked standing. *See supra*, Statement § II.C.

Samsung could have made the argument in the main appeal applicable to the set-aside order, Case No. A25A0272, but it did not. Its only passing citation to *Mallory* (with a "see generally" signal) was in reference to a *separate* argument about Georgia's venue provisions. Br. of Appellee, Case No. A25A0272, Nov. 4, 2024, at 18. As outlined above, Samsung instead argued for affirmance of the trial court's set-aside order as right for any reason based only on three state law grounds. *See supra*, Statement § II.C.

Samsung also could have incorporated by reference the argument from the brief in the conditional cross-appeal. The Georgia Court of Appeals Rules permit incorporation but require that "[t]he party adopting language from another brief shall *specify precisely what portion* of the other brief the party is adopting

and list the case number, if different.” Ga. Ct. App. Rule 23(a) (emphasis added). Samsung expressly “incorporate[d] the Background section from its opening brief in its cross-appeal, No. A25A0292,” Br. of Appellee, Case No. A25A0272, Nov. 4, 2024, at 4, but it did not incorporate the personal jurisdiction argument.

To confirm the point, after the Court of Appeals ruled in Mr. Brewer’s favor, Samsung again zeroed in on these same state-law issues when it moved the Court of Appeals to reconsider its reversal order, once again omitting reference to federal due process.

Little wonder, then, that the Court of Appeals never addressed it. The court’s silence proves that this Court’s assumption here: that when a “state court is silent on a federal question before us,” it is because “the issue was not properly presented.” *Adams*, 520 U.S. at 86. And because Samsung never “properly presented” the due process issue to the courts below, this Court lacks jurisdiction. *Howell*, 543 U.S. at 443. Thus, the Petition should be denied.

II. The Petition is Also a Poor Vehicle Because Samsung Repeatedly Waived Personal Jurisdiction in the Trial Court.

“[P]ersonal jurisdiction is a personal defense that may be waived or forfeited.” *Mallory*, 600 U.S. at 144 (plurality opinion); *see also id.* at 156 (Alito, J., concurring) (“If a person voluntarily waives” his rights under the Due Process Clause, “that choice should be honored.”). Parties that fail to abide by state laws can waive that defense. *See id.* at 145 (citing *York v. Texas*, 137 U.S. 15, 19–21 (1890)) (“A defendant who appears ‘specially’ to contest jurisdiction preserves his defense,

but one who forgets can lose his.”)⁵ Beyond failing to present the issue to the appellate courts, Samsung also repeatedly waived its personal jurisdiction defense under Georgia law based on its litigation decisions in the trial court. That makes its Petition a poor vehicle to address the issue.

A. Samsung admitted to the trial court that *Cooper Tire* and *Mallory* were dispositive of general jurisdiction.

As outlined above, *see supra*, Statement § II.A., Samsung repeatedly admitted to the trial court that the decisions in *Cooper Tire* and *Mallory* would be “dispositive of the personal jurisdiction issue currently before this Court.” Resp. at 4a. Samsung admitted that “if *Cooper Tire* is affirmed and *Klein* is therefore upheld, general personal jurisdiction over [Samsung] *is proper*, at least until the U.S. Supreme Court has an opportunity to consider the matter.” *Id.* (emphasis added). When *Cooper Tire* was affirmed, Samsung said the same thing about *Mallory*. Resp. at 25a.

When the trial court first ruled on Samsung’s motion to set aside the judgment, it accepted Samsung’s characterization that *Cooper Tire* was dispositive, noting that, based on “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.” Pet. at 68a. After remand, it did the same thing a second time,

⁵ In some circumstances, such procedural forfeiture can constitute “a state law ground that is independent of the federal question and adequate to support the judgment,” depriving this Court of jurisdiction under § 1257(a) and leaving nothing to review. *Glossip v. Oklahoma*, 604 U.S. 226, 242 (2025) (quoting *Lee v. Kemna*, 534 U.S. 362, 375 (2002)).

concluding that its decision “rest[ed] largely on...the Supreme Court of Georgia decision adverse to Samsung’s position in *Cooper Tire*[.]” Pet. at 40a (citing *Cooper Tire, Mallory, and Klein*).⁶

Georgia appellate courts will not review arguments on appeal that a party “conceded below that he was barred from asserting.” *Sims v. Nat. Prods. of Ga., LLC*, 337 Ga. App. 20, 20 n.1, 785 S.E.2d 659, 661 n.1. (2016). That is because a “party cannot complain of a judgment, order, or ruling that his own conduct produced or aided in causing[.]” *Hall v. Davis Lawn Care Serv., Inc.*, 314 Ga. 488, 495, 877 S.E.2d 593, 599 (2022). Samsung invited the trial court to treat *Cooper Tire* and *Mallory* as dispositive, and the trial court did so. Thus, it forfeited its ability to further challenge personal jurisdiction in the Georgia courts.

B. Samsung conclusively admitted that it is subject to specific personal jurisdiction.

Samsung’s Petition also presents a uniquely bad vehicle to address the *general* jurisdiction question because Samsung separately and conclusively admitted that it is subject to *specific* personal jurisdiction under Georgia law. It did so by failing to respond to Mr.

⁶ Note that elsewhere in that order, the trial court said that it “concludes that the defense of venue and personal jurisdiction is not waived.” Pet. at 36a. But that referred only to the state law venue argument. *See id.* at 37a (“Samsung did not waive the defense of venue under these circumstances.”); *see generally id.* at 30a–39a (section titled “Venue”). In Georgia, venue is a subset of personal jurisdiction, and courts sometimes use the terms interchangeably. *See id.* at 36a–37a (citing *Russell v. Hall*, 165 Ga. App. 547, 548–49, 301 S.E.2d 904, 906 (1983) (discussing “jurisdiction” based on whether a defendant resides in a particular county)). But venue is distinct from the due process issue.

Brewer's requests for admissions related to Mr. Brewer's Georgia-based injuries and Samsung's manufacture of the defective battery that was sold and then exploded in Georgia, and then by failing to timely move to withdraw those admissions.

Georgia's Civil Practice Act differs from federal law in that it permits a plaintiff to serve discovery, including requests for admission, at the time of the complaint. *See* O.C.G.A. § 9-11-36(a)(1). The Code section also states that matters not timely responded to are admitted and are "conclusively established unless the court, on motion, permits withdrawal or amendment of the admission." *Id.* at (a)(2), (b). Numerous Georgia cases confirm that a defaulting defendant who fails to respond to the requests (in addition to failing to answer the complaint) admits the matters within. *See, e.g., Njoku v. Adeyemi*, 355 Ga. App. 1, 4, 842 S.E.2d 317, 320 (2020).

In this case, Samsung's responses to Mr. Brewer's requests for admission were due fifteen days after Samsung defaulted. By failing to respond to the requests, Samsung admitted facts supporting *specific* personal jurisdiction; it also admitted the legal conclusion. *See supra*, Statement § I.B. To avoid the conclusive effect of those admissions, it had to follow O.C.G.A. § 9-11-36's requirements to withdraw them.

Applying those statutory requirements, Georgia courts have established a bright-line rule for *when* the admitting party must so move—*i.e.*, before judgment "is *granted*." *Njoku*, 355 Ga. App. at 4, 842 S.E.2d at 320 (emphasis in original). A motion to withdraw the admissions made *before* judgment is entered is timely and allows the trial court to withdraw the admissions if the standard is met. *See, e.g., id.* (finding motion to withdraw admissions timely); *Lynn v. Abernathy Eng'g*

Grp., LLC, 378 Ga. App. 291, 294, 925 S.E.2d 606, 608 (2026) (citing *Njoku*).

By contrast, a motion made *after* the court has entered judgment is “not timely” and thus is not a basis to set aside the judgment. *Brooks v. Multibank 2009-1 RES-ADC Venture, LLC*, 317 Ga. App. 264, 267, 730 S.E.2d 509, 512 (2012) (citing *Meadows v. Dalton*, 153 Ga. App. 568, 266 S.E.2d 235 (1980)). That is because a party cannot attack a trial court’s judgment that depended on the party’s own conclusive admissions.

And indeed here, the trial court relied on Samsung’s admissions in the October 2020 damages hearing well after Samsung defaulted. *See* V3-1, 483–89. Samsung waited until months *after* the judgment to move to open the default, and it still did not move to withdraw the admissions then. Instead, it waited until January 24, 2022, sixteen months after making the admissions, and after they had twice been relied upon in additional hearings and rulings on Samsung’s motions.

No Georgia rule prevented Samsung from timely moving to withdraw its admissions. The only reason it did not do so was its own “strategic decision[] to continue to pursue [its] protocol [] when it was in default.” Resp. at 44a–45a. Had Samsung instead “engage[d] local counsel” rather than “continued to delay,” it could have avoided the issue and “pursue[d] the appropriate legal procedures.” Resp. at 46a. Instead, having failed to timely move to withdraw, Samsung lost its ability to contest those admissions, and the admitted facts then became conclusive under Georgia law.

Therefore, even if this Court opined on general jurisdiction law post-*Mallory*, its ruling would not affect the outcome of this case. Samsung will remain bound to its admissions that it is subject to *specific*

personal jurisdiction, as the trial court correctly concluded when it ruled on the motion to open default before the appeals. *See supra*, Statement § II.A. That militates against granting certiorari.

III. On the Merits, *Mallory* Already Resolves the Petition’s Core Question.

Samsung’s admission that “the outcome of *Mallory* will determine [the trial court’s] jurisdiction” was not only binding under Georgia law—it was correct. *Mallory* resolved the due process issue that the Petition purportedly raises, both as to Georgia’s scheme more generally and also as it applies to Samsung.

A. Under *Mallory*, *Pennsylvania Fire* Authorizes Consent by Registration in Georgia.

Samsung’s Petition rests on the supposed distinction between statutory and judicial notice. But *Mallory* itself rejected that distinction. While *Mallory* considered a statute that includes a specific reference to personal jurisdiction, *Pennsylvania Fire*—which the *Mallory* decision upholds and relies upon—did not.

In *Pennsylvania Fire*, “[t]he Missouri Supreme Court had previously construed [the statutory registration requirement of] powers of attorney as consent to jurisdiction in Missouri for all claims.” *Mallory*, 600 U.S. at 152. The Missouri statute at issue required out-of-state insurance companies to designate an agent for service of process within the state. *Penn. Fire*, 243 U.S. at 94. Importantly here, Missouri’s statute *did not* explicitly state that compliance would establish jurisdiction over the company in Missouri or mention jurisdiction at all. Instead, Missouri’s Supreme Court interpreted the statute to have that effect. *Id.* at 94–95.

This Court upheld the constitutionality of that interpretation. *Id.* Such a “construction did not deprive the defendant of due process of law even if it took the defendant by surprise....” *Id.* at 95; see also *Robert Mitchell Furniture Co. v. Selden Breck Constr. Co.*, 257 U.S. 213, 215–16 (1921) (“Of course when a foreign corporation appoints [an agent for service of process] as required by statute it takes the risk of the construction that will be put upon the statute and the scope of the agency by the state court.”) (citing *Penn. Fire*, 243 U.S. at 96). Indeed, as this Court concluded in *Mallory*, “*Pennsylvania Fire* held that suits premised on these grounds do not deny a defendant due process of law.” 600 U.S. at 145. And of course, “*Pennsylvania Fire*’s rule for consent-based jurisdiction has not been overruled.” *Id.* at 146 n.11; see also *id.* at 152–53 (Alito, J., concurring) (recognizing that *Pennsylvania Fire* has not been overruled). *Mallory* thus confirmed that there is no constitutional difference in applying the notice rule to Pennsylvania’s *statutory* notice scheme (in *Mallory*) compared to Missouri’s *judicial* notice scheme (in *Pennsylvania Fire*). *Id.* at 135–36 (Pennsylvania’s statute “fall[s] squarely within *Pennsylvania Fire*’s rule”); see also *id.* at 152 (Alito, J., concurring) (discussing the two cases’ “near-complete overlap of material facts”).

And what was true of Pennsylvania is even more true of Georgia. Georgia’s scheme presents nearly the same state law and factual scenario upheld in *Pennsylvania Fire*. For while Georgia’s statute does not use the words “personal jurisdiction,” its Supreme Court has for decades interpreted the statute to subject foreign companies that register to do business in the state to general jurisdiction in Georgia. See *Klein*, 262 Ga. at 601, 422 S.E.2d at 865. That is why the Supreme Court of Georgia upheld the scheme as

constitutional under *Pennsylvania Fire* even before *Mallory*. See *Cooper Tire*, 312 Ga. at 424–25, 863 S.E.2d at 84. As to Georgia’s scheme, “*Pennsylvania Fire* controls” because “the state law and facts before [the Court] fall squarely within *Pennsylvania Fire*’s rule.” *Mallory*, 600 U.S. at 135–36.

If this sounds familiar, it is because this Court was aware of *Cooper Tire* when it ruled on *Mallory*. Far from “speculat[ing],” Pet. at 7, 14 (citing *Mallory*, 600 U.S. at 135), the Court agreed to hear *Mallory* (and hold *Cooper Tire*’s petition in abeyance) expressly to resolve the “split of authority” between the Pennsylvania Supreme Court’s application of *Pennsylvania Fire* in *Mallory* and the Georgia Supreme Court’s application of it in *Cooper Tire*. *Mallory*, 600 U.S. at 127. By upholding *Pennsylvania Fire*, this Court sided with Georgia—a point only further reinforced by its subsequent denial of certiorari in *Cooper Tire*—and answered the very question Samsung purports to pose.

Against that backdrop, for Samsung to read *Mallory* as it does is to bury its head in the sand. To be sure, Georgia’s statute doesn’t mention “consent.” Pet. at 15. But as the Court instructed, “neither *Pennsylvania Fire*, nor our later decisions applying it, nor our precedents approving other forms of consent to personal jurisdiction, have ever imposed some sort of ‘magic words’ requirement.” *Mallory*, 600 U.S. at 135 n.5. That was true in *Pennsylvania Fire*, it was true in *Mallory*, it was true when the Court declined certiorari in *Cooper Tire*, and it remains true today.

B. Applying Georgia’s Statute to Samsung Does Not Violate Due Process.

Samsung’s second argument is that its due process right is uniquely burdened because it first registered

before the Georgia Supreme Court’s *Klein* decision. Not so. Both *Pennsylvania Fire* and *Mallory* foreclose that arbitrary “first registration date” test and confirm that Georgia’s scheme satisfies due process in this case as it does in general.

Start with *Pennsylvania Fire*. The Court there held that when a registration statute is judicially construed to create general personal jurisdiction, that “construction [does] not deprive the defendant of due process of law *even if it took the defendant by surprise....*” 243 U.S. at 95 (emphasis added). And as the Court reiterated in *Robert Mitchell*, “[o]f course when a foreign corporation appoints [an agent for service of process] as required by statute it takes the risk of construction that will be put upon the statute and the scope of the agency by the state court.” 257 U.S. at 215–16 (citing *Penn. Fire*, 243 U.S. at 96). So even had this case been filed in 1991, Samsung could not rely on its own ignorance to show a due process violation.⁷

In any event, whatever risk Samsung might have absorbed when it first registered to do business in Georgia faded long ago. Samsung pretends it lacked notice of Georgia’s law in 2020 because it apparently first registered to do business in Georgia before the state’s original consent-jurisdiction decision in *Klein* in 1992. But just as Norfolk Southern (in *Mallory*) had “regularly updated its information on file with the [Pennsylvania] Secretary,” 600 U.S. at 135, Samsung too has repeatedly re-registered in Georgia since *Klein* was decided, as required by the corporation code’s

⁷ So too under Georgia law, which states that “ignorance of the law excuses no one.” O.C.G.A. § 1-3-6. That statute applies to caselaw as well as statutes. See *Jabaley v. Jabaley*, 208 Ga. App. 179, 179, 430 S.E.2d 119, 121 (1993).

typical annual registration requirement. *See* O.C.G.A. § 14-2-1622. Samsung’s 2019 registration—like the many filings that preceded it in the decades since *Klein* was decided—lists its Georgia-based registered office and agent. *See* Resp. at 51a–52a. Accordingly, just like the *Mallory* majority said of Norfolk Southern, Samsung “has agreed to be found in [Georgia] and answer any suit there for more than 20 years.” 600 U.S. at 135. That mitigates any due process concern.

IV. There Are No Splits or Policy Concerns that Need this Court’s Intervention.

A. There is no Decisional Conflict on the Question Presented.

Starting from its faulty premise, Samsung asks this Court to resolve what it calls a “split” between states. It devotes several pages to describing various states’ registration schemes, *see* Pet. at 16–22, before calling this variety “unworkable” because multi-state corporations might “be required to conduct [] multi-State surveys” to review the law, *id.* at 23. But that is not a split in the traditional sense, nor does it present an issue for certiorari review. This Court considers certiorari to resolve splits when a state court’s “*decision* [is] in conflict” with another court’s “*decision*[.]” Rule 10(b) (emphasis added).

Tellingly, the Petition cites no cases evincing a *decisional* conflict *about due process*—the issue it purports to present. Samsung identifies no post-*Mallory* decisions where one court holds a consent-by-registration statute unconstitutional in conflict with another that holds that statute constitutional. That is no surprise given that this Court granted certiorari in *Mallory* specifically to resolve such a split. For this reason, Samsung’s reliance on cases that predate

Mallory, such as *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2d Cir. 2016), or *Cooper Tire*, is misplaced—those cases cannot and do not “undermine[] the central rationale of *Mallory*” or present a post-*Mallory* split. Pet. at 22. That is why, at bottom, the only “constitutional...consequence[]” Samsung can identify (in § I.4.a) is the same supposed judicial-vs.-statutory notice distinction addressed above. *Id.* at 22.

Unable to show a split as to the due process issue, Samsung attempts to manufacture one based on differences in how states interpret their own registration schemes. But whether state courts determine that compliance with their respective states’ registration statutes constitutes consent to general jurisdiction is fundamentally a question of state law. That is not the province of this Court’s review. *See Robert Mitchell*, 257 U.S. at 216 (“Unless the state law either expressly or by local construction gives to the appointment of a larger scope, we should not construe it to extend to suits in respect of business transacted by the foreign corporation elsewhere.”).

For example, Samsung cites *PDII, LLC v. Sky Aircraft Maintenance, LLC*, 925 S.E.2d 28, 34–36 (N.C. Ct. App. 2025). But in that case, the Court of Appeals of North Carolina simply interpreted the statute. It looked to statutory language, Supreme Court of North Carolina precedent, and persuasive authority from other jurisdictions (as permitted by state law) to hold that “a foreign corporation that obtains a certificate of authority consents to general personal jurisdiction in North Carolina[.]” *Id.* at 36. That is quintessential state law, and—as the state supreme court’s stay order shows, *see* 924 S.E.2d 34 (N.C. 2026)—is actively being worked out in the state courts.

The same is true for every other example to which Samsung points. In some states, application of state law results in an interpretation that the foreign corporation registration statute creates consent to general jurisdiction.⁸ In others, state rules of statutory construction result in an interpretation that the foreign corporation registration statute does not create consent to general jurisdiction.⁹ But the question presented here is not whether states have correctly applied their own rules of statutory interpretation to correctly interpret their own statutes. *See* Pet. at i. And even if state courts interpret a uniform statute like the Model Business Corporation Act differently, they are still applying state law. It is not a due process violation for one state court—applying its own state law—to interpret a state statute differently from other state courts applying their own state laws, even if the states’ statutory schemes utilize similar language.

As for federal courts applying *Mallory* in those states, no multi-state decisional split has emerged there either. Instead, courts have consistently and correctly looked to *state law* to determine whether an entity consents to general jurisdiction through registration—whether the statute contains express consent language or, if not, whether it has been construed by the state’s courts to establish such

⁸ *See Erbey Holding Corp. v. BlackRock Fin. Mgmt., Inc.*, 2025 V.I. 25, ¶ 23, 2025 WL 3688048, at *8–9 (V.I. 2025); *Talenti v. Morgan & Bro. Manhattan Storage Co.*, 968 A.2d 933, 940–41 (Conn. App. Ct. 2009) (relying on *Wallenta v. Avis Rent A Car Sys., Inc.*, 522 A.2d 820, 823–24 (Conn. App. Ct. 1987)).

⁹ *See State ex rel. DKM Enters., LLC v. Lett*, 675 S.W.3d 687, 694–95 (Mo. Ct. App. 2023) (citing *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 52 (Mo. 2017)).

consent. They then uniformly apply *Pennsylvania Fire*: if the state law creates consent, then exercising jurisdiction comports with due process.

For example, in *Espin v. Citibank, N.A.*, the Eastern District of North Carolina found general jurisdiction based on the North Carolina appellate court’s “authoritative prior construction of North Carolina law....” No. 5:22-CV-383, 2023 WL 6447231, at *4 (E.D.N.C. Sept. 29, 2023). So too in *Lumen Technologies Service Group, LLC v. CEC Group, LLC*, cited by Samsung, where the District of Colorado found no general jurisdiction because Colorado’s registration statute neither included express language of consent nor had it been interpreted by Colorado’s state courts to create consent. 691 F. Supp. 3d 1282, 1295–96 (D. Colo. 2023).¹⁰ These cases all apply the same standard to determine whether the party

¹⁰ See also, e.g., *Scher v. Suffolk Univ.*, No. 24-cv-00407, 2025 WL 2693614, at *4 (D.N.H. Sept. 15, 2025) (no general jurisdiction where “no court has yet interpreted New Hampshire’s laws as consent to general jurisdiction”); *Lacour v. Wyndham Vacation Resorts, Inc.*, No. 1:24-cv-2879, 2024 WL 6910407, at *4–5 (N.D. Ga. Dec. 19, 2024) (finding general jurisdiction under Georgia statute that lacked explicit reference due to interpretation by Georgia Supreme Court in *Klein and Cooper Tire*); *Dozier v. Alliance Global Sols., LLC*, No. 3:24-cv-00348, 2024 WL 4445714, at *12 (M.D. Tenn. Oct. 8, 2024) (no general jurisdiction where Tennessee Supreme Court had not interpreted registration statute to constitute consent); *Bustos v. Ryder Truck Rental, Inc.*, No. 1:23-cv-00679, 2024 WL 2260786, at *8 (D.N.M. May 17, 2024) (no general jurisdiction where New Mexico Supreme Court interpreted compliance with registration not to constitute consent); *Madsen v. Sidwell Air Freight*, No. 1:23-cv-0008, 2024 WL 1160204, at *15 (D. Utah Mar. 18, 2024) (“[B]ecause Utah’s foreign registration statutes do not have any express consent language and have not been construed to establish jurisdiction, there is no general jurisdiction over a registered foreign corporation....”).

consented to general jurisdiction *as a matter of state law*. The answer to that question may vary state to state, but that does not present a multi-state conflict needing this Court’s intervention.¹¹

B. This Petition Doesn’t Implicate Samsung’s Other Policy Concerns.

The Court’s analysis in *Mallory* also confirms that Samsung’s policy concerns—federalism and forum-shopping—are not implicated in *this* case. To be sure, those policy concerns were before the Court in *Mallory*, and they featured in Justice Alito’s Concurrence. *See* 600 U.S. at 153–54 (Alito, J., concurring). But whatever their merits for *other* constitutional considerations after this Court’s recent rejection of the second *Mallory* petition, they present no basis for a constitutional due process challenge here.

Samsung protests that consent-by-registration undermines interstate federalism. Pet. at 27–28. But as Justice Alito explained, the Court has “never held that a State’s assertion of jurisdiction unconstitutionally intruded on the prerogatives of another State when the defendant has consented to jurisdiction in the forum State.” 600 U.S. at 156 (Alito, J., concurring). That is because due process is an individual right, and if “a person voluntarily waives that right, that choice should be honored.” *Id.* So too with forum-shopping, which Samsung insists will increase if states are

¹¹ Samsung also cites to a pre-*Mallory* decision by the Second Circuit that looked to but rejected Connecticut state court precedent in light of its view that “*Pennsylvania Fire* is now simply too much at odds with the approach to general jurisdiction adopted in *Daimler*....” *Brown*, 814 F.3d at 634–35, 638–39. Nothing suggests that the Second Circuit would ignore this Court’s ruling in *Mallory* if presented with a similar question today.

allowed to interpret their own registration statutes to require consent to general jurisdiction. Pet. at 28–30. Even if that were true, the Court has “never held that the Due Process Clause protects against forum shopping.” *Id.* at 154 (Alito, J. concurring).

But more to the point, whatever forum-shopping and interstate federalism concerns might arise in a “suit brought by an out-of-state plaintiff on claims wholly unconnected to the forum State,” *id.* at 162 (Alito, J., concurring), this case involved neither. Mr. Brewer, a Georgia resident, sued in Georgia because he suffered severe burns in Georgia after the vape pen he purchased in Georgia exploded in his pocket in Georgia and severely burned him, causing him pain and suffering and requiring medical treatment in Georgia and lost wages due to missed work in Georgia. Ultimately, Georgia’s exercise of jurisdiction over Samsung under these facts does not create interstate federalism concerns, nor can a Georgia resident bringing suit in Georgia for an injury that incurred in Georgia be considered forum-shopping.¹²

¹² These case facts also illustrate that the cookie-cutter amicus brief from the Atlantic Legal Foundation—reprising its role from *Cooper Tire* and *Mallory* and the follow-on cases *Syngenta Crop Protection, LLC v. Nemeth* (No. 24-1190, cert. denied, October 6, 2025) and now *Norfolk Southern Railway Co. v. Mallory* (“*Mallory II*”) (No. 25-1208, cert. denied, October 5, 2026)—is irrelevant here.

CONCLUSION

For any of the reasons above, the Court should deny Samsung's Petition for a Writ of Certiorari.

Respectfully submitted,

MICHAEL B. TERRY
Counsel of Record
SOLESSE L. ALTMAN
E. ALLEN PAGE
BONDURANT MIXSON &
ELMORE, LLP
1201 W. Peachtree St. NW
Suite 3900
Atlanta, GA 30309
(404) 881-4100
terry@bmelaw.com
Counsel for Jordan Brewer

October 14, 2026

APPENDIX

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APPENDIX A

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,

Defendant.

DEFAULT JUDGMENT

WHEREAS Defendant Samsung Electronics America, Inc. filed no Answer or other responsive pleading to Plaintiffs Complaint within the time allowed by law and the Court therefore entered an Order establishing Samsung Electronics America, Inc.'s default as to the issue of liability on September 16, 2020 (*see* Order dated 9/16/2020);

WHEREAS 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 medical records and bills associated with Plaintiff's injuries;

WHEREAS it is the finding of the Court after hearing the testimony and reviewing the evidence that Plaintiff's injuries and condition are permanent

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in nature and that Plaintiff has a remaining life expectancy of approximately fifty-five (55) years according to the statutory annuity and morality table;

IT IS HEREBY ORDERED AND ADJUDGED that judgment in the amount of \$10,860,972.00 be awarded to Plaintiff Jordan Brewer from Defendant Samsung Electronics America, Inc. as general and special damages, past and future.

***SO ORDERED AND ADJUDGED, THIS 12th
DAY OF OCTOBER, 2020.***

/s/H. GREGORY FOWLER
HONORABLE H. GREGORY FOWLER
Chief Judge, State Court of Chatham County

Order prepared by:
George T. Major, Jr.
Georgia Bar No. 619608
OLIVER MANER LLP
P.O. Box 10186
Savannah, Georgia 31412
(912) 236-3311

3a

APPENDIX B

IN THE STATE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

Civil Action No. STCV20-02285

JORDAN BREWER,

Plaintiff,

vs.

SAMSUNG ELECTRONICS AMERICA, INC.,
a New York Corporation,

Defendant.

DEFENDANT SAMSUNG ELECTRONICS
AMERICA, INC.'S REQUEST TO STAY
HEARING PENDING THE GEORGIA SUPREME
COURT'S FORTHCOMING
DECISION IN COOPER TIRE & RUBBER
COMPANY v. MCCALL AND NOTICE OF
SUPPLEMENTAL AUTHORITY AND ARGUMENT
IN SUPPORT OF ITS UNDERLYING MOTION

COMES NOW, Defendant Samsung Electronics America, Inc. ("SEA"), by and through its counsel of record, and files this its Request to Stay Hearing Pending the Georgia Supreme Court's Decision in *Cooper Tire & Rubber Company v. McCall* and Notice of Supplemental Authority and Argument in Support of its Underlying Motion, showing this Honorable Court as follows:

INTRODUCTION

SEA's underlying Motion to Set Aside Default Judgment or in the Alternative, Motion for New Trial ("Motion") is based on numerous meritorious reasons, including that SEA is the wrong party, and should be granted on each of those grounds. However, SEA's personal jurisdiction defense is becoming increasingly ripe due to the forthcoming Georgia Supreme Court decision in *Cooper Tire & Rubber Company v. McCall*, S20G1368, which will directly address whether Georgia courts can exercise general personal jurisdiction over foreign corporations solely because those corporations are registered to do business here. The Georgia Supreme Court recently held oral argument in *Cooper Tire* and a decision will be rendered within a few short months. While SEA is cognizant of the Court's and the parties' interest in a timely ruling on SEA's Motion, the forthcoming decision in *Cooper Tire* will be dispositive of the personal jurisdiction issue currently before this Court. If SEA is not subject to personal jurisdiction in Georgia, then the default judgment is void. *See B&D Fabricators v. D.H. Blair Inv. Banking Corp.*, 220 Ga. App. 373 (1996); O.C.G.A. 9-11-60(d)(1).

Notably, a trial court has a duty to inquire into its jurisdiction when there is doubt. *See B&D Fabricators*, 220 Ga. App. at 375 (holding that "a court has a duty to inquire into its jurisdiction, upon its own motion where there is doubt, and is authorized to dismiss a case against a defendant where personal jurisdiction is lacking")(citing *Cullwell v. Loans & Nettleton Co.*, 145 Ga. App. 519, 522-523 (1978)). Further, judicial economy will best be served by a short postponement of the hearing on the Motion until after the *Cooper Tire* decision is

released. Indeed, doing so will give this Court the benefit of the Supreme Court's guidance on the dispositive personal jurisdiction question, and it will avoid the inefficiency of the parties arguing the same issues presented in *Cooper Tire* at the Motion hearing and then again on a potential appeal depending on *Cooper Tire's* outcome. Moreover, Plaintiff will not be prejudiced by the short delay in this case, which has been pending for less than a year. As set forth herein, this Court should exercise its inherent authority and stay the hearing on SEA's Motion until after the Supreme Court renders its decision in *Cooper Tire*.

RELEVANT BACKGROUND

Plaintiff obtained a nearly \$11,000,000.00 default judgment against SEA on October 12, 2020. During the same term of court, on December 4, 2020, SEA filed its Motion. One of SEA's primary arguments in support of its Motion is lack of personal jurisdiction. Significantly, SEA is a foreign corporation formed under the laws of the State of New York with its principal place of business in New Jersey.¹ SEA also happens to be registered with the Secretary of State of Georgia. Currently, *Allstate Insurance Co. v Klein*, 262 Ga. 599 (1992) ("*Klein*") holds that merely registering to do business in Georgia is sufficient to establish general jurisdiction over an out-of-state corporation. *Id.* The *Klein* Court concluded that an out-of-state corporation who registers to transact business in this state is a "resident" for purposes of jurisdiction, thus rendering the Long Arm Statute inapplicable. However, that rule is contrary to the U.S. Supreme Court's determination that, under the

¹ See Declaration of Jeong Hwan On, ¶ 3 attached hereto and to SEA's Motion as Exhibit "A."

federal Constitution, “a corporation is subject to general jurisdiction only in a state where its ‘affiliations with the state are so continuous and systematic’ as to render [the corporation] essentially at home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)); see also *Daimler AG v. Bauman*, 571 U.S. 117, 137-138 (2014) (recognizing the “at home” standard for general jurisdiction will only be satisfied in a corporate defendant’s state of incorporation or in the state where its principal place of business is located); see also *BNSF Ry. v. Tyrrell*, 581 U.S. ___, 137 S. Ct. 1549, 1554(2017)(foreign corporation was not “at home” in Montana and therefore not subject to general jurisdiction despite having 2,061 miles of railroad track, employing 2,100 workers, and generating 10% of revenue in Montana).

Following the U.S. Supreme Court’s *Goodyear* and *Daimler* decisions, state supreme courts across the nation have recently held that merely registering to do business in a state will not subject a foreign corporation to general personal jurisdiction in the courts of that state, including²:

² A number of state’s supreme courts had already issued similar rulings prior to the *Goodyear* and *Daimler* holdings including, but not limited to: Michigan, see *Renfroe v. Nichols Wire & Aluminum*, 83 N.W.2d 590, 594 (Mich. 1957); Nevada, see *Freeman v. Second Judicial Dist. Court*, 1 P.3d 963, 968 (Nev. 2000); North Carolina, see *Byham v. National Cibo House Corp.*, 143 S.E.2d 225, 231 (N.C. 1965); and South Carolina, see *Yarborough & Co. v. Schoolfield Furniture Industries, Inc.*, 268 S.E.2d 42, 44 (S.C. 1980). Moreover, multiple states have included language in their applicable statutes to the effect that simply registering to do business and/or maintaining a registered agent for service in the state does not give rise to

- Delaware—*Genuine Parts Co. v. Cepec*, 137 A.3d 123, 127-128 (Del. 2016) (holding that predicated general jurisdiction on a foreign corporation’s registration to do business is incompatible with *Daimler* and the “at home” standard);
- Colorado—*Magill v. Ford Motor Co.*, 379 P.3d 1033, 1038-39 (Colo. 2016) (rejecting foreign corporation’s registration and appointment of registered agent as basis for general jurisdiction);
- California—*Bristol-Myers Squibb Co. v. Super. Court*, 377 P.3d 874, 884 (Cal. 2016), *reversed on other grounds*, 137 S. Ct. 1773 (2017) (stating that “a corporation’s appointment of an agent for service of process, when required by state law, cannot compel its surrender to general jurisdiction for disputes unrelated to its [forum-related] transactions”);
- Wisconsin—*Segregated Account of Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 376 Wis. 2d 528, 547-48 (2017) (finding Wisconsin corporate registration statute virtually identical to Georgia’s did not confer and could not confer residency or impose general personal jurisdiction upon foreign registrants as that would extend “general jurisdiction beyond the tapered limits [of *Daimler*]. . .[and] reflect the “sprawling view of

general jurisdiction, including, but not limited to, Arkansas, District of Columbia, Hawaii, Idaho, Maine, Maryland, Mississippi, North Dakota, Oregon, South Dakota, Utah and Washington.

general jurisdiction’ rejected by the Supreme Court in *Goodyear*”);

- Illinois—*Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 90 N.E.3d 440, 447 (Ill. 2017) (holding Illinois statute with language materially identical to Georgia’s “makes no mention of personal jurisdiction at all. . .[and] the fact that a foreign corporation registered to do business in Illinois is subject to the same duties as a domestic one in no way suggests that the foreign corporation has consented to general jurisdiction”);
- Oregon—*Figueroa v. BNSF Railway Co.*, 390 P.3d 1019, 1021-22 (Or. 2017) (concluding “that appointing a registered agent to receive service of process merely designates a person upon whom process may be served [and] does not constitute implied consent to the jurisdiction of the Oregon courts”);
- Missouri—*State ex rel. Norfolk S. Ry. v. Dolan*, 512 S.W.3d 41, 52 (Mo. 2017) (rejecting foreign corporation’s registration as consent to jurisdiction in Missouri on unrelated claims);
- Montana—*DeLeon v. BNSF Ry. Co.*, 426 P.3d 1, 4 (Mont. 2018) (“We conclude a company does not consent to general personal jurisdiction by registering to do business in Montana and voluntarily conducting in-state business activities”); and
- Nebraska—*Lanham v. BNSF Ry. Co.*, __ N.W.2d __, 305 Neb. 124, 134 (2020) (reviewing Nebraska registration statute nearly identical to Georgia’s and finding “registration to do business in Nebraska as implied consent to

personal jurisdiction would exceed the due process limits prescribed in *Goodyear*. . . and *Daimler*”).

By contrast, undersigned counsel’s research did not reveal a single post-*Daimler* high court decision in any state holding that due process permits a finding of jurisdiction based solely on compliance with a state’s corporate registration statutes. In addition, multiple federal courts have also followed the *Goodyear* and *Daimler* holdings in addressing state-law jurisdictional questions, including:

- *Orafol Ams., Inc. v. DBi Servs., LLC*, 2017 U.S. Dist. LEXIS 150476 (N.D. Ga. 2017) (Georgia registration and maintenance of a registered agent were “woefully insufficient” to render foreign corporation “at home” in Georgia so as to warrant finding of general jurisdiction);
- *Gulf Coast Bank & Trust Co. v. Designed Conveyor Sys., LLC*, 717 F. Appx. 394, 398 (5th Cir. 2017) (applying Louisiana law) (rejecting argument that Louisiana law required a foreign entity to consent to jurisdiction as a condition of doing business in the state as an “outdated view[s] of general jurisdiction” in light of *Daimler*);
- *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1318 (11th Cir. 2018) (reviewing Florida statute with language materially identical to Georgia’s and holding “[n]othing in these provisions would alert a corporation that its compliance would be construed as consent to answer in Florida’s courts for any purpose”);
- *In re Asbestos Prods. Liab. Litig. (No. VI)*, 384 F. Supp.3d 532, 534 (E.D. Pa. 2019)

(Pennsylvania’s “mandatory statutory regime purporting to confer consent to general jurisdiction in exchange for the ability to legally do business in a state is contrary to the rule in [*Daimler*] and, therefore, can no longer stand.”); and

- *Fidrych v. Marriott Int’l, Inc.*, 952 F.3d 124, 138 (4th Cir. 2020) (South Carolina statute with language materially identical to Georgia’s “does not make consent to general jurisdiction a consequence of obtaining a certificate of authority to transact business . . . due process require[s] more than mere compliance with a state’s domestication statute”).

It is expected that Georgia will soon join the growing number of states rejecting mere business registration as a basis for general jurisdiction over out-of-state corporations in the wake of *Goodyear* and *Daimler*. Indeed, on February 1, 2021, the Georgia Supreme Court granted certiorari in *Cooper Tire* to consider overturning *Klein* on the grounds that it is unconstitutional. See Supreme Court Docket, attached hereto as Exhibit “B.” That appeal has been fully briefed, and the oral argument was held on May 20, 2021. *Id.* Pertinent briefs filed in *Cooper Tire* by the appellant as well as two amicus briefs are attached hereto as Exhibits “C,” “D,” “E,” “F” and “G” and incorporated herein by express reference as additional authority and argument in support of SEA’s Motion.³ The Georgia Supreme Court’s decision in *Cooper Tire* is expected to be announced within the

³ SEA hereby adopts all arguments set forth in said briefs as its own in support of its Motion.

next few months, and the end of term in November at the very latest.⁴

If *Klein* is in fact overturned, it will be completely dispositive of SEA's personal jurisdiction defense; therefore, in the interest of judicial economy, this Court should exercise its inherent discretion to stay the hearing on SEA's Motion until after *Cooper Tire* is decided.

ARGUMENT AND CITATION OF AUTHORITY

It has long been recognized that "[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, counsel and the litigants." *Bloomfield v. Liggett & Myers, Inc.*, 230 Ga. 484 (1973) (quoting *Landis v. North American Company*, 299 U.S. 248, 254 (1936)). "How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Id.*

The *Cooper Tire* decision is crucial to this Court's consideration of SEA's Motion with respect to the issue of personal jurisdiction.⁵ If *Klein* is overruled in *Cooper Tire*, it will eradicate the only basis for this Court's exercise of personal jurisdiction in this

⁴ According to the Frequently Asked Questions on the Georgia Supreme Court website, "[a] decision is typically rendered from one to five months after oral argument." www.gasupreme.us/faq/ Undersigned counsel only recently learned that the argument was held and that the Court's decision will thus be issued in the next few months, hence the timing of the instant motion for stay.

⁵ If *Cooper Tire* does not overturn *Klein*, SEA's Motion should nevertheless be granted based on each of the other meritorious reasons as set forth in SEA's briefs.

case—general jurisdiction by virtue of SEA’s registration with the Secretary of State. On the other hand, if *Cooper Tire* is affirmed and *Klein* is therefore upheld, general personal jurisdiction over SEA is proper, at least until the U.S. Supreme Court has an opportunity to consider the matter. Either way, the personal jurisdiction issue is disposed.

The *Cooper Tire* decision also affects Plaintiff’s contention (which SEA disputes) that SEA waived its general and specific jurisdiction defenses by failing to raise them in a timely responsive pleading. However, as the Court of Appeals observed in *B&D Fabricators*, 220 Ga. App. at 373,

[t]he defense of lack of personal jurisdiction is not waived simply because a foreign corporation which has been served with process fails to answer the complaint timely. “[A] foreign corporation which is not transacting business within this state cannot be forced to come into the state to defend against a claim or to contest jurisdiction. Under OCGA § 9–11–60(d)(1), (f), a person may bring a motion to set aside a judgment void for lack of jurisdiction at any time. OCGA § 9–11–12(h)(1)(B) [which provides that a defense of lack of jurisdiction over the person is waived if not made by motion or included in a responsive pleading] cannot be constitutionally applied to preclude a non-resident from bringing such a motion after a default judgment is entered against it. . . . [W]hile it may not be wise to ignore the process, a defendant may do so, risk default, and later attack the judgment based upon the fact that the court did not have

jurisdiction over him.” *Id.* at 848(1), 459 S.E.2d 187.

Id. at 373-374 (emphasis supplied) (quoting *Hoesch America v. Dai Yang Metal Co.*, 217 Ga. App. 845, 847 (1995)). If *Cooper Tire* overrules *Klein*, the decision will eliminate both Plaintiff’s waiver argument (which is disputed) and this Court’s basis for personal jurisdiction over SEA.

Here, proceeding with the hearing on SEA’s Motion now—without the advantage of the Georgia Supreme Court’s forthcoming guidance in *Cooper Tire* on an entirely dispositive issue— would unnecessarily waste this Court’s and the parties’ time and resources. If the Court were to hear the case now, the parties would be required to argue a motion that presents the same legal arguments that the Georgia Supreme Court has agreed to decide. Further, if this Court subsequently goes on to apply existing precedent to decide the jurisdictional question prior to the Georgia Supreme Court’s ruling in *Cooper Tire*, it will necessitate an appeal in the event that *Klein* is overruled, which will also be a waste of time and resources.

In contrast to the significant waste that will occur if this hearing proceeds and SEA’s Motion is improperly decided, Plaintiff will not suffer any prejudice or harm from a brief stay. To be sure, the requested stay is anticipated to last no more than a few months while the parties and the Court await the *Cooper Tire* decision. The stay will not prejudice Plaintiff’s existing judgment or ability to collect same should it ultimately be upheld. Further, to the extent that Plaintiff needs to file suit against the proper defendant who manufactured the batteries that allegedly caused his injuries, he is still within the

statute of limitations and there is nothing whatsoever preventing him from doing so. Finally, staying the hearing pending the forthcoming *Cooper Tire* decision comports with this Court's duty to inquire into its jurisdiction where it is in doubt.

CONCLUSION

WHEREFORE, SEA respectfully requests that the Honorable Court stay the hearing on its Motion until after the Georgia Supreme Court renders its decision in *Cooper Tire*.

Respectfully submitted, this 28th day of June, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ James R. Doyle

JAMES R. DOYLE

Georgia Bar No.: 228495

ANDREW W. EATON

Georgia Bar No.: 558940

JESSICA CABRAL ODOM

Georgia Bar No.: 140935

1180 Peachtree Street NE

Suite 2900

Atlanta, Georgia 30309

Telephone: (404) 348-8585

Facsimile: (404) 467-8845

james.doyle@lewisbrisbois.com

andy.eaton@lewisbrisbois.com

jessica.odom@lewisbrisbois.com

Counsel for Defendant

Samsung Electronics America, Inc.

RAHIMI, HUGHES & PADGETT, LLC

/s/ Robert C. Hughes, III

ROBERT C. HUGHES, III

Georgia Bar No.: 140993

33 Bull Street, Suite 590

Savannah, Georgia 31401

Telephone: (912) 421-9988

Facsimile: (912) 421-9989

rhughes@rhp-law.com

Counsel for Defendant

Samsung Electronics America, Inc.

ELLIS PAINTER RATTERREE & ADAMS, LLP

/s/ Quentin L. Marlin

QUENTIN L. MARLIN

Georgia Bar No.: 567040

Post Office Box 9946

Savannah, Georgia 31412

Telephone: (912) 233-9700

qmarlin@epa-law.com

Counsel for Defendant

Samsung Electronics America, Inc.

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APPENDIX C

IN THE STATE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

CIVIL ACTION NO. STCV20-01141

JORDAN BREWER,

Plaintiff,

vs.

SAMSUNG ELECTRONICS AMERICA, INC.,
a New York Corporation,

Defendant.

DEFENDANT'S MOTION TO STAY CASE
PENDING THE U.S. SUPREME COURT'S
DECISION IN *MALLORY v. NORFOLK*
SOUTHERN RAILWAY CO. AND
ANTICIPATORY MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION

COMES NOW, Defendant Samsung Electronics America, Inc. ("SEA"), by and through its counsel of record, and files this its Motion to Stay Case Pending the U.S. Supreme Court's Decision in *Mallory v. Norfolk Southern Railway Co.*¹ and Anticipatory Motion to Dismiss for Lack of Personal Jurisdiction, showing this Honorable Court as follows:

¹ U.S. Supreme Court Docket No. 21-1168.

Within the next year, the U.S. Supreme Court is poised to hold in *Mallory* that this Court's sole basis for personal jurisdiction over SEA—a New York corporation headquartered in New Jersey—is unconstitutional.² As SEA has repeatedly emphasized throughout this litigation, the only reason this Court can claim jurisdiction over SEA right now is the simple fact that SEA registered to transact business with the Georgia Secretary of State.³ Recently, in *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422 (2021)(certiorari applied for Dec. 20, 2021)⁴, the Georgia Supreme Court imprudently reaffirmed *Allstate Ins. Co. v. Klein*, 262 Ga. 599 (1991), which holds that merely registering to do business in this state is sufficient to establish general jurisdiction over an out-of-state corporation. *Id.* In reaching that decision, the Georgia Supreme Court reasoned that registration equates to voluntary consent to general jurisdiction in this state. *Id.* In that regard, the Georgia Supreme Court determined

² See Affidavit of Jeong Hwan On attached hereto as Exhibit “A.”

³ It is undisputed that SEA lacks the requisite “minimum contacts” to establish specific jurisdiction. See *id.* Additionally, Plaintiff cannot establish personal jurisdiction under any theory of waiver in the litigation itself, either by SEA's failure to answer, or by SEA's actions in defending this case. See *B&D Fabricators v. D.H. Blair Inv. Banking Corp.*, 220 Ga. 373, 375 (1996)(“The defense of lack of personal jurisdiction is not waived simply because a foreign corporation which has been served with process fails to answer the complaint timely.” Moreover, in every submission filed by SEA to date as well as the September 27, 2021 hearing on SEA's Motion to Set Aside, SEA has reiterated and incorporated its defenses and arguments based on lack of jurisdiction by reference, and, to preserve defenses, they are again hereby incorporated herein in their entirety.

⁴ U.S. Supreme Court Docket No. 21-926.

that foreign corporations are “on notice” of its holding in *Klein*, thus giving rise to implied consent to jurisdiction-by-registration, even though there is no express notice contained in the applicable registration statute itself. *Cooper Tire*, 312 Ga. App. at 434.

In erroneously concluding that such jurisdiction comports with federal due process, the Georgia Supreme Court observed that *Pennsylvania Fire Ins. Co. v. Gold Issue Mining and Milling Co.*, 243 U.S. 93 (1917)—a rarely cited, century-old case upholding consent-by-registration jurisdiction long before the U.S. Supreme Court’s seminal decision in *International Shoe v. Washington*, 326 U.S. 310 (1945)—has never been explicitly overruled. *Cooper Tire*, 312 Ga. App. at 432. However, even assuming, *arguendo*, that *Pennsylvania Fire* has yet to be overturned, implicitly or otherwise, courts have nevertheless found it incompatible with modern general and specific jurisdiction in the wake of *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), *Daimler AG v. Bauman*, 571 U.S. 117 (2014) and their progeny.

For example, in *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2d Cir. 2016), the Second Circuit articulated *Pennsylvania Fire*’s disconnect with modern jurisdictional jurisprudence as follows:

Pennsylvania Fire is now simply too much at odds with the approach to general jurisdiction adopted in *Daimler*.... *Pennsylvania Fire* cannot be divorced from the outdated jurisprudential assumptions of its era. The sweeping interpretation that a state court gave to a routine registration statute...that *Pennsylvania Fire* credited as a

general “consent” has yielded to the doctrinal refinement reflected in *Goodyear* and *Daimler* and the Court's 21st century approach to general and specific jurisdiction in light of expectations created by the continuing expansion of interstate and global business.

Id. at 638-39; *see also* *Lanham v. BNSF*, 939 N.W.2d 363, 370 (Neb. 2020)(“[i]n 2011 and 2014, the U.S. Supreme Court set significantly narrower due process limits on the states’ exercise of jurisdiction over out-of-state corporations”); *DeLeon v. BNSF*, 426 P.3d 1 (Mont. 2018)(“the Supreme Court [in *Daimler*] recently cautioned against relying on cases decided pre-*International Shoe*”).

Importantly, even the Georgia Supreme Court recognized that its holding in *Cooper Tire* is “**in tension**” with recent [U.S.] Supreme Court cases addressing when state courts may exercise jurisdiction over out-of-state corporations in a manner that accords with the due process requirements of the United States Constitution.” *Cooper Tire*, 312 Ga. at 422 (emphasis supplied). It went on to admit that “*Klein’s* general jurisdictional holding may be undermined if the [U.S.] Supreme Court ever reconsiders and overrules *Pennsylvania Fire*.” *Id.* at 437. In fact, Justice Bethel, in a separate concurring opinion, observed as follows:

in light of the trend in the recent opinions of the United States Supreme Court regarding the exercise of personal jurisdiction by state courts, there appears to be a meaningful chance that **the current law of Georgia will, at some point, be found to be**

**inconsistent with the requirements of
federal due process.**

Id. at 437 (Bethel, J., concurring)(emphasis supplied).

To be sure, *Cooper Tire* runs afoul of the U.S. Supreme Court’s determination that, under the federal Constitution, “a corporation is subject to general jurisdiction only in a state where its ‘affiliations with the state are so continuous and systematic’ as to render [the corporation] essentially **at home** in the forum State.” *Goodyear*, 564 U.S. at 919 (2011)(quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)). As the *Goodyear* Court observed, there are only two “paradigm” bases for general jurisdiction where a corporation could be considered “at home”: (1) its state of incorporation, and (2) the state of its principal place of business. *Id.* at 924.

Not surprisingly—given the current state of the law—a multitude of state and federal courts throughout the country have found consent-by-registration jurisdiction unconstitutional.⁵ It is

⁵ For example, **Delaware**—*Genuine Parts Co. v. Cepec*, 137 A.3d 123, 127-128 (Del. 2016) (holding that predicated general jurisdiction on a foreign corporation’s registration to do business is incompatible with *Daimler* and the “at home” standard); **Colorado**—*Magill v. Ford Motor Co.*, 379 P.3d 1033, 1038-39 (Colo. 2016) (rejecting foreign corporation’s registration and appointment of registered agent as basis for general jurisdiction); **California**—*Bristol-Myers Squibb Co. v. Super. Court*, 377 P.3d 874, 884 (Cal. 2016), *reversed on other grounds*, 137 S. Ct. 1773 (2017) (stating that “a corporation’s appointment of an agent for service of process, when required by state law, cannot compel its surrender to general jurisdiction for disputes unrelated to its [forum-related] transactions”); **Wisconsin**—*Segregated Account of Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 376 Wis. 2d 528, 547-48 (2017)

(finding Wisconsin corporate registration statute virtually identical to Georgia’s did not confer and could not confer residency or impose general personal jurisdiction upon foreign registrants as that would extend “general jurisdiction beyond the tapered limits [of *Daimler*]...[and] reflect the “sprawling view of general jurisdiction’ rejected by the Supreme Court in *Goodyear*”); **Illinois**—*Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 90 N.E.3d 440, 447 (Ill. 2017) (holding Illinois statute with language materially identical to Georgia’s “makes no mention of personal jurisdiction at all...[and] the fact that a foreign corporation registered to do business in Illinois is subject to the same duties as a domestic one in no way suggests that the foreign corporation has consented to general jurisdiction”); **Oregon**—*Figueroa v. BNSF Railway Co.*, 390 P.3d 1019, 1021-22 (Or. 2017) (concluding “that appointing a registered agent to receive service of process merely designates a person upon whom process may be served [and] does not constitute implied consent to the jurisdiction of the Oregon courts”); **Missouri**—*State ex rel. Norfolk S. Ry. v. Dolan*, 512 S.W.3d 41, 52 (Mo. 2017) (rejecting foreign corporation’s registration as consent to jurisdiction in Missouri on unrelated claims); **Montana**—*DeLeon v. BNSF Ry. Co.*, 426 P.3d 1, 4 (Mont. 2018) (“We conclude a company does not consent to general personal jurisdiction by registering to do business in Montana and voluntarily conducting in-state business activities”); **Alabama**—*Facebook, Inc. v K.G.S.*, 294 So.3d 122, 133 Ala. 2019)(rejecting argument that Facebook is subject to general jurisdiction in Alabama because it registered to do business there on the grounds that “any precedent that supported the notion that the exercise of general jurisdiction could be based on a simple assertion that an out-of-state corporation does business in a forum state has become obsolete”); **Nebraska**—*Lanham v. BNSF Ry. Co.*, 939 N.W.2d 363 (Neb. 2020) (reviewing Nebraska registration statute nearly identical to Georgia’s and finding “registration to do business in Nebraska as implied consent to personal jurisdiction would exceed the due process limits prescribed in *Goodyear*. . . and *Daimler*”); **New Mexico**—*Chavez v. Bridgestone Ams. Tire Operations, LLC*, 503 P.3d 332, 341 (N.M. 2021)(describing *Pennsylvania Fire* as “inconsistent with the ‘at home’ standard of *Daimler*” and concluding “it would be particularly

inappropriate to infer a foreign corporation's consent to general personal jurisdiction [by virtue of compliance with registration statute] in the absence of clear statutory language expressing a requirement of this consent”); **New York**—*Aybar v. Aybar*, 117 N.E.3d 1257 (N.Y. 2021)(holding that foreign corporation’s registration to do business and appointment of agent for service of process in New York did not constitute consent and waiver to general jurisdiction in New York); **Pennsylvania**—*Mallory v. Norfolk Southern Company*, 266 A.3d 542 (Pa. 2021), *see infra*. By contrast, undersigned counsel’s research did not reveal a single post-*Daimler* high court decision in any state other than the *Cooper Tire* decision in Georgia holding that due process permits a finding of jurisdiction based solely on compliance with a state’s corporate registration statutes. In addition, multiple federal courts have also followed the *Goodyear* and *Daimler* holdings in addressing state-law jurisdictional questions, including: *Orafol Ams., Inc. v. DBi Servs., LLC*, 2017 U.S. Dist. LEXIS 150476 (N.D. Ga. 2017) (Georgia registration and maintenance of a registered agent were “woefully insufficient” to render foreign corporation “at home” in Georgia so as to warrant finding of general jurisdiction); *Gulf Coast Bank & Trust Co. v. Designed Conveyor Sys., LLC*, 717 F. Appx. 394, 398 (5th Cir. 2017) (applying Louisiana law) (rejecting argument that Louisiana law required a foreign entity to consent to jurisdiction as a condition of doing business in the state as an “outdated view[s] of general jurisdiction” in light of *Daimler*); *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1318 (11th Cir. 2018) (reviewing Florida statute with language materially identical to Georgia’s and holding “[n]othing in these provisions would alert a corporation that its compliance would be construed as consent to answer in Florida’s courts for any purpose”); *In re Asbestos Prods. Liab. Litig. (No. VI)*, 384 F. Supp.3d 532, 534 (E.D. Pa. 2019) (Pennsylvania’s “mandatory statutory regime purporting to confer consent to general jurisdiction in exchange for the ability to legally do business in a state is contrary to the rule in [*Daimler*] and, therefore, can no longer stand”); and *Fidrych v. Marriott Int’l, Inc.*, 952 F.3d 124, 138 (4th Cir. 2020) (South Carolina statute with language materially identical to Georgia’s “does not make consent to general jurisdiction a consequence of obtaining a certificate of authority to transact business ...due

expected that the U.S. Supreme Court will soon follow suit.

Indeed, on April 25, 2022, the U.S. Supreme Court granted certiorari in *Mallory* to finally resolve the matter. In that case, the Pennsylvania Supreme Court correctly held that Pennsylvania’s foreign corporation registration statute, which expressly requires foreign corporations to consent to personal jurisdiction as a condition of doing business in that state, violates due process. *Mallory v. Norfolk Southern Railway Co.*, 266 A.3d 542 (Pa. 2021). In doing so, the Pennsylvania Supreme Court reasoned that the applicable statute’s requirement that a foreign company consent to personal jurisdiction in exchange for exercising its constitutional right to do business in that state was coerced, not “knowing, intelligent and voluntary,” and violates the unconstitutional conditions doctrine. *See generally id.* Significantly, these same arguments were raised in *Cooper Tire* and, in fact, resonate even stronger in *Cooper Tire* than *Mallory* because Pennsylvania’s registration statute expressly states that consent to jurisdiction is required to register, whereas the consent in *Cooper Tire* was merely implied in light of *Klein* (which gives foreign companies only constructive notice of such consent).

The U.S. Supreme Court’s decision in *Mallory* will be rendered during the October 2022 term. All signs point to *Mallory* being affirmed and, if so, this Court will be entirely devoid of jurisdiction over SEA. This result would require SEA’s dismissal and render every order in this case null and void. *See e.g.*,

process require[s] more than mere compliance with a state’s domestication statute”).

Temple v. Hillegass, 344 Ga. App. 454, 454 (2018)(recognizing that an order by a court lacking jurisdiction is “a nullity and void”).

To that point, it is noted that the U.S. Supreme Court is currently holding *Cooper Tire* in abeyance, presumably pending the outcome of *Mallory*. See *Cooper Tire* Docket Report, attached as Exhibit “B.” Previously, the U.S. Supreme Court had relisted⁶ *Cooper Tire* for a second conference on April 22, 2022, at which time both the *Mallory* and *Cooper Tire* petitions were given an additional round of consideration by the nine Justices. See *id*; see also *Mallory* Docket Report, attached hereto as Exhibit “C.” However, it appears the U.S. Supreme Court determined that *Mallory* is the better vehicle for establishing precedent on consent-by-registration jurisdiction because the registration statute at issue in *Mallory* requires express consent to jurisdiction, while in *Cooper Tire*, such consent was implied by virtue of the Georgia Supreme Court’s holding in *Klein*. See Brief in Opposition to *Mallory* Petition, p. 20 attached hereto as Exhibit “D” (noting that “affirming the judgment [in *Mallory*] would necessarily resolve cases like *Cooper [Tire]* too— **if a state cannot explicitly condition registration on consent, as Pennsylvania tried to do, it certainly cannot do so implicitly**”)(emphasis

⁶ The Justices decide how to rule on petitions for certiorari at a private conference. “Relisting” means to hold the case over to the next private conference. As one U.S. Supreme Court observer noted, “[i]n recent years, the relist has become the most publicly available signal that the Court is interested in hearing a case.” www.cocklegalbriefs.com/blog/supreme-court-distribution-list/

supplied).⁷ Thus, in the event *Mallory* is affirmed, it is anticipated that the U.S. Supreme Court will summarily grant the petition in *Cooper Tire*, vacate the Georgia Supreme Court's opinion and remand the case for reconsideration in light of *Mallory*.

For the same reasons the U.S. Supreme Court elected to hold *Cooper Tire* in abeyance pending the outcome of *Mallory*, this Court should likewise stay the instant case and await the *Mallory* decision to ascertain the limits of its jurisdiction over *SEA. Am. Life Ins. Co. v. Stewart*, 300 U.S. 203, 215 (1937) ("A court has control over its own docket. In the exercise of a sound discretion, it may hold one lawsuit in abeyance to abide the outcome of another"); *see also B&D Fabricators*, 220 Ga. at 375 ("a court has a duty to inquire into its jurisdiction, upon its own motion where there is doubt, and is authorized to dismiss a case against a defendant where personal jurisdiction is lacking")(citing *Cullwell v. Loans & Nettleton Co.*, 145 Ga. App. 519, 522-523 (1978)). It has long been recognized that "[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, counsel and the litigants." *Bloomfield v. Liggett & Myers, Inc.*, 230 Ga. 484 (1973)(quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). "How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Id.*

⁷ Remarkably, even the *Mallory* Respondent argued that the U.S. Supreme Court should grant the petition in *Mallory* and "hold" *Cooper Tire* until *Mallory* is decided should it be inclined to review consent-by-registration jurisdiction at this time. *Id.* at pp. 2, 22.

The outcome of *Mallory* will determine this Court's jurisdiction over SEA. In the likely event *Mallory* is affirmed, it will necessarily result in a reversal in *Cooper Tire* and will eradicate the only basis for this Court's exercise of personal jurisdiction in this case—general jurisdiction by virtue of SEA's registration with the Secretary of State. Accordingly, proceeding with any hearing in this case before *Mallory* is decided would unnecessarily waste this Court's and the parties' time and resources. Moreover, an affirmance of *Mallory* will render this Court's orders and judgments void and will necessitate motions for relief and/or appeal, which likewise will not serve the interests of judicial economy. In contrast to the significant waste that will occur if proceedings go forward and orders are entered without jurisdiction, Plaintiff will not suffer harm from a stay. To be sure, instead of trying to capitalize on his mistake in naming the wrong party by pursuing a windfall default judgment against SEA (whom Plaintiff knows has nothing to do with the true facts underlying this case), he and his mother can simply lift the stays in their respective federal cases against the real parties in interest and actually seek justice on the merits. Because Plaintiff's ability to conduct discovery and secure judgments against the parties potentially at fault for his injuries will not be impacted by a stay in this case, the instant motion should be granted. Then, once the U.S. Supreme Court affirms *Mallory* and *Cooper Tire* is reversed, this Court will have no choice but to dismiss this case. In anticipation of that result, SEA hereby moves to be so dismissed.

WHEREFORE, SEA respectfully requests that the Honorable Court stay the hearing on its pending motions until after *Mallory* is decided, and then

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dismiss the case should *Mallory* be affirmed and *Cooper Tire* be reversed as expected.

Respectfully submitted, this 19th day of May, 2022.

**LEWIS BRISBOIS BISGAARD
& SMITH LLP**

/s/ James R. Doyle

JAMES R. DOYLE

Georgia Bar No.: 228495

ANDREW W. EATON

Georgia Bar No.: 558940

JESSICA CABRAL ODOM

Georgia Bar No.: 140935

1180 Peachtree Street NE

Suite 2900

Atlanta, Georgia 30309

Telephone: (404) 348-8585

Facsimile: (404) 467-8845

james.doyle@lewisbrisbois.com

andy.eaton@lewisbrisbois.com

jessica.odom@lewisbrisbois.com

*Counsel for Defendant Samsung
Electronics America, Inc.*

**RAHIMI, HUGHES & PADGETT,
LLC**

/s/ Robert C. Hughes, III

ROBERT C. HUGHES, III

Georgia Bar No.: 140993

33 Bull Street, Suite 590

Savannah, Georgia 31401

Telephone: (912) 421-9988

Facsimile: (912) 421-9989

rhughes@rhp-law.com

28a

*Counsel for Defendant Samsung
Electronics America, Inc.*

**ELLIS PAINTER RATTERREE
& ADAMS, LLP**

/s/ Quentin L. Marlin
QUENTIN L. MARLIN
Georgia Bar No.: 567040
Post Office Box 9946
Savannah, Georgia 31412
Telephone: (912) 233-9700
Qmarlin@epra-law.com

*Counsel for Defendant Samsung
Electronics America, Inc.*

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APPENDIX D

IN THE STATE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

CIVIL ACTION NO. STCV2001141-CO

JORDAN BREWER,

Plaintiff,

vs.

SAMSUNG ELECTRONICS AMERICA, INC.,
A New York Corporation,

Defendant.

ORDER

This Court, having read and considered Defendant Samsung Electronics America, Inc.'s ("Samsung") motion to open the default against it pursuant to O.C.G.A. §§ 9-11-4(h), 9-11-12(a) and 9-11-55; and having considered all the relevant briefing and evidence in the record; and having further entertained oral arguments in this matter; **HEREBY DENIES** Samsung's motion.¹

¹ The Court hereby adopts and incorporates by reference herein its factual and legal findings as set forth in its January 7, 2022 order in the related case, Civil Action No. STCV2002285 (and also filed in the docket for this case), granting the motion to set aside the judgment in this case.

**I. FACTUAL AND PROCEDURAL
BACKGROUND**

On July 15, 2020, Mr. Brewer filed the instant tort case naming several defendants, including Samsung. Mr. Brewer asserted product liability causes of action against Samsung based on its allegedly negligent design and manufacturing of the vaping device battery at issue, along with its negligent failure to warn of the risks and harms associated with this battery.

On July 20, 2020, Samsung's registered agent was served with a copy of the summons, complaint and requests for written discovery (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 -- all of this written discovery expressly stated that responses were due within 45 days.

On the same day it was served, Samsung's registered agent transmitted and Samsung's legal department received a copy of the complaint.² The following day, Samsung reviewed

² Samsung admits that it timely received the complaint. There is no assertion that Samsung was not also provided with all documents that accompanied the complaint as indicated on

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 the other party should have been named in the lawsuit. Despite its purported lack of involvement with these batteries, Samsung had been named as a party in at least seventeen other lawsuits alleging negligent conduct on the part of Samsung with respect to these batteries. Samsung had even developed the following protocol for handling these battery-related lawsuits: first, contact the appropriate attorney making the claim; second, provide the attorney with a declaration verifying that Samsung was not the correct entity and providing the information on the correct entity; and third, obtain a dismissal. By using this protocol, Samsung was able to avoid having to procure outside litigation counsel and thus avoid filing any pleadings or motions in these battery-related lawsuits. Samsung therefore attempted to follow this protocol in this instance.

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 to Mr. Brewer's counsel to address the pending lawsuit.

By August 19, 2020, 30 days had passed since the date of service and Samsung had not yet filed any

the service sheet, including the summons, complaint and discovery.

responsive pleadings. As of this date, Samsung was in **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**.

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 September 10, 2020, Samsung's legal department again unsuccessfully attempted to call to Mr. Brewer's counsel to address the pending lawsuit.³

On **September 16, 2020**, Michael Sharples, who served as 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 the declaration was not immediately provided to Mr. Hunter and it is undisputed that no dismissal was received thereafter.

³ The order of the two events on that date is unknown.

Also on **September 16, 2020**, the Court **entered an interlocutory order** granting Mr. Brewer's request for the entry of default judgment against Samsung. However, since the damages were unliquidated, the matter still needed to be set for a prove damages hearing. No date was stated in the order. Samsung contends that it did not receive this order.⁴

On October 9, 2020, the matter was called before the Court to address the issue of damages. Samsung contends it received no notice of the hearing, so it did not appear to contest damages.

On October 12, 2020, a judgment was entered in favor of Mr. Brewer and against Samsung.

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 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.⁵ 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. Samsung later provided the declaration to substantiate this assertion.

On November 4, 2020 and November 9, 2020, the parties again attempted to communicate. Samsung

⁴ The order of the two events on this date is unknown as well.

⁵ Given that Mr. Brewer's counsel failed to comply with USCR 36.4 and did not include their email addresses on their filings, the Court does not fault Samsung for failing to email opposing counsel.

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 and 46 days after Samsung became aware of the default judgment that had been entered against it, Samsung filed a **motion to set aside the judgment** within the same term of court.

On September 27, 2021, this Court heard and considered the arguments raised by the parties with respect to Samsung's motion. In lieu of immediately ruling, the parties were ordered to mediation. Since the parties could not reach an agreement, the Court then considered the motion to set aside the judgment.

On January 7, 2022, the Court issued its ruling and granted this motion.⁶

On January 24, 2022, Samsung filed its motion to open the default against it in this case. Summarily stated, Samsung contends that it has fulfilled the conditions to allow the Court to consider opening the default against it. In that regard, Samsung argues that based on its prompt conduct in response to the

⁶ The Court's prior order was neither an invitation nor a prohibition on filing a motion to open default. While the Court appreciates the argument that Samsung could have filed a joint motion to set aside the judgment and open the default, which arguably would have been more expeditious, the Court does not find that the failure to do was erroneous or that it caused harm to the Plaintiff.

lawsuit and the fact that it is not a proper party to this action, this is a proper case in which the Court should open the default pursuant to O.C.G.A. § 9-11-55.

On June 4, 2022, the matter was called before the Court and the parties presented their arguments on the motion. In consideration of all the record evidence, the Court now turns to the substance of Samsung's motions.

II. LEGAL ANALYSIS

It is undisputed that Samsung failed to file its answer in the 30 day time frame which ran from the date of service as provided by O.C.G.A. §§ 9-11-4(h) and 9-11-12(a) and that Samsung is in default. In considering Samsung's motion to open this default against it, the Court's analysis is guided by O.C.G.A. § 9-11-55(b),⁷ which provides as follows:

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 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 instant, and shall announce ready to proceed with the trial.

⁷ The Court rejects any estoppel argument raised by Mr. Brewer with respect to this motion.

In order to open a default, the payment of costs must have been satisfied and four conditions must be met, including: (1) a showing under oath; (2) an offer to plead instanter; (3) the announcement of ready to proceed for trial; and (4) setting up a meritorious defense. Furthermore, “[t]his court has previously held that the ‘showing’ required by this Code section to be made ‘under oath’ includes the showing of a ‘meritorious defense.’ Generally, the opening of a default rests within the sound discretion of the trial court. However, compliance with the four conditions is a condition precedent; in its absence, the trial judge has no discretion to open the default.” Stewart v. Turner, 229 Ga. App. 119, 121 (1997); see Leeper v. Safebuilt Ga., Inc., 353 Ga. App. 121 (2019). Once the required elements have been met, only then does the Court have discretion to consider whether one of three legal grounds to open the default has been established.

The permissible legal grounds for opening the default include providential cause, excusable neglect or a proper case, and are defined as follows:

The phrase “providential cause” is a term of art.... [Providential cause] generally encompasses events over which a party or his attorney had no control, including the illness of a party or his lead counsel; the death of a party; the absence of counsel due to military service; and acts of God. Providential cause generally does not embrace those circumstances that could have been avoided by the defaulting party’s exercise of due diligence.

The term “excusable neglect” is likewise a term of art... “[It] does not mean gross

negligence. It does not mean a willful disregard of the process of the court, but refers to cases where there is a reasonable excuse for failing to answer.”

Turning to the final ground and the one at issue here, this Court has explained that the proper case ground is the broadest of the three and permits “the reaching out to take in every conceivable case where injustice might result if the default were not opened.”

By the Default Judgment Statute’s plain language, the trial court is instructed, when determining whether a proper case exists for the opening of default, to consider “all the facts.” The statute omits reference to any specific fact that a trial court must consider. Requiring a “reasonable excuse” to open default under the proper case ground is thus unsupported by the statutory language and, further, would render the proper case ground “mere surplusage” by subsuming that ground into the excusable neglect ground.

As with the other two grounds, our prior proper case decisions generally reflect that the defendant’s failure to file a timely answer must not have resulted from willful or gross negligence. Whether the plaintiff will be harmed or prejudiced by opening the default is likewise a universally pertinent consideration when the proper case ground

is pled. Finally, a trial court should bear in mind that this statute “conveys very ample powers” to open defaults and “[i]n keeping with the policy of deciding cases on their merits, this provision should be liberally applied.”

Bowen v. Savoy, 308 Ga. 204, 206-09 (2020) (cites omitted); see Troika Entertainment, LLC v. Mendez, 360 Ga. App. 904 (2021) (“the ‘proper case’ ground for opening default has been construed to confer discretion on the trial court broader than that conferred on the other two grounds, as if reaching out to take in every conceivable case where injustice might result if the default were not opened, although the defendant’s failure to file a timely answer must not have resulted from wilful or gross negligence”).

A. The Preconditions to Open Default

Pursuant to the foregoing law, the Court first considers whether all of the preconditions for opening the default have been met and summarily concludes that these conditions have been satisfied. First, there is a showing under oath, which includes various affidavits (including both the affidavits of Jeong Hwan On and the affidavit of Michael Sharples) and the verified complaint. Second, there is an offer to plead instanter and a copy of the proposed answer attached to the motion for the Court’s consideration. Third, there is an announcement that Samsung is ready to proceed to trial. Although Samsung both announced ready and simultaneously argued that the case should be dismissed before trial, the Court rejects the argument that Samsung’s continuing assertion of its defenses means that the condition to announce ready for trial has not been fulfilled. Fourth, there is a meritorious defense under oath.

For purposes of this O. C.G.A. § 9-11-55 analysis, the assertion under oath that Samsung is not the party that manufactured, distributed or had anything to do with the allegedly defective batteries at issue is sufficient to fulfill this condition. Finally, Samsung has paid the costs to the Clerk of Court. Since the statutory preconditions have been fulfilled, the Court now has the authority to consider whether this is a proper case to open the default as asserted.

B. Legal Basis for Opening Default - Proper Case

Samsung's argument relies on the Court's broad discretion to find that this is a proper case to set aside the default. While various arguments are raised, the thrust of Samsung's argument is that it is not a proper party to this lawsuit and that manifest justice would result if it were not permitted to open the default and present this argument. In consideration of the arguments and the opposition, the Court looks to the totality of the evidence, considers all the arguments and ultimately rejects Samsung's request for this relief. Summarily stated, in a case where a party's legal department is fully aware of the existence of the lawsuit and wilfully and continually ignores the associated legal responsibilities that accompany being sued for extended periods of time, there is no proper case to open the default.

The record shows that Samsung's legal department immediately received and reviewed the complaint, which presumably also includes the summons and requests for written discovery, including requests for admission. Samsung's legal department had ample opportunity to read the plain language on the summons advising Samsung that it had to file an

answer within 30 days of service or it would be subject to a default judgment. It also had ample opportunity to observe that the discovery was due within 45 days, including the requests for admission. Thus, even though Samsung's legal department was located in New Jersey and was arguably unfamiliar with Georgia law, the information regarding Georgia's process for the entry of default judgment was right in front of them. Nonetheless, Samsung's legal department disregarded the plain language in the summons and the warning regarding the entry of default. Samsung's legal department— which was staffed with at least one senior paralegal and one lawyer — failed to consider the legal implications of the failure to timely address this lawsuit.

The record reflects that Samsung is a sophisticated company. Despite the existence of many related companies, the Samsung entity at issue had its own legal department and regularly handled incoming litigation. Samsung was familiar with similar battery-related litigation, even though it contends that it had no role with respect to the batteries. Samsung even set up a protocol for handling battery suits in order to avoid engaging outside counsel (presumably to avoid the aggravation or expense or both) to address these matters. Samsung contends that it has used this protocol numerous times and has successfully spoken with opposing counsel, provided documentation in the form of a verification of non-involvement and then obtained a dismissal without issue in accordance with its protocol. Despite having this protocol in place, Samsung's legal department failed to fully and timely follow it in this instance.

The first step in the protocol was making contact with opposing counsel. In this case, Samsung admittedly had difficulty making contact with Mr. Brewer's counsel. Samsung made several attempts to call Mr. Hunter, including: (1) a call immediately after being served on July 22, 2020; (2) another call 19 days after that on August 10, 2020; and (3) another call a month after that on September 10, 2020 which was a week past the time to open the default as a matter of right. It was only on its fourth attempt on September 16, 2020 that Samsung's legal department finally reached Mr. Brewer's counsel. By this point, the first step in the protocol had already failed and Samsung was already in default as a matter of law, regardless of Mr. Hunter's actions or inactions. Moreover, even though there is no evidence that Mr. Hunter provided assurances at this point, Samsung's legal department nonetheless relied on the contents of this discussion and past experience and assumed that the protocol was still sufficient. Not only was this an improper assumption by the legal department under these circumstances but, significantly, Samsung's legal department failed to promptly follow up with opposing counsel in furtherance of its protocol.

Based on the failure to follow up, the second step of Samsung's protocol was not completed. The second step is to provide documentation to support Samsung's assertions that it is not the responsible entity in this battery-related litigation. During the September 16, 2020 call, Samsung advised that it would provide this documentation to Mr. Brewer's counsel. However, it failed to do so. In fact, Samsung failed to follow up for almost a month after that call and only acted after receipt of the default judgment against it.

On Monday, October 19, 2020, Samsung received the October 12, 2020 final order that was dated a week earlier and awarded damages in excess of \$10 million against Samsung. Despite being faced with a large judgment against it, Samsung did not treat this matter as an emergency. Instead, Samsung waited two days before finally reaching back out to Mr. Hunter on October 21, 2020. The second step of the protocol and Samsung's documentation was only provided after that time. At that point, Mr. Hunter agreed to consider Samsung's position; however, there is no evidence that he agreed to dismiss Samsung.

The third step of Samsung's protocol is to obtain the dismissal. Once again, Samsung did not follow up on this step and try to obtain the dismissal until approximately a month after the phone call with Mr. Hunter and after it received the judgment on October 19, 2020. Once there was a judgment against it, Samsung's litigation counsel also became involved and was no doubt aware that dismissal was no longer a simple process — the judgment would need to be set aside before Samsung could be dismissed. Nonetheless, there is no indication that outside counsel was consulted at this point in light of the breakdown of the protocol and this significant issue. Samsung did not file anything with the Court and instead continued to pursue its protocol. The parties spoke on October 28, 2020 and agreed to speak again on November 9, 2020. On November 20, 2020, 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.

The laissez-faire handling of this matter by Samsung's own legal department precludes a finding that this is a proper case for this Court to open the default. This is not a case like Strader v. Palladian Enters., LLC, 312 Ga. App. 646 (2011), where a party passed the summons and complaint on to a third-party such as an insurer and reasonably but incorrectly assumed that a timely defense would be provided. Instead, the totality of the evidence establishes that this is a case where Samsung knowingly retained the responsibility to act and also wilfully failed respond to the lawsuit, all while knowing that no defense was forthcoming. This case is therefore more akin to Constructamax, Inc. v. Andy Bland Constr., Inc., 280 Ga. App. 403 (2006), a case where the defendant retained responsibility for responding to a lawsuit against it and even extended the time to file an answer, but ultimately never responded. *Id.* (finding “no evidence in the record to show that Constructamax was diligent in its efforts to obtain or confirm representation by local counsel [despite being] fully aware of the pending lawsuit at least 20 days before the answer was due to be filed [and knowing it was in default, and only filing] its motion to open default two months later, two extended deadlines had expired and approximately 109 days had passed since service of the complaint”). The mere fact that Samsung denies having knowledge that it was in default — which is belied by the language in the summons — does not mean Samsung has a legal excuse for not complying with the legal process. Butterworth v. Safelite Glass Corp., 287 Ga. App. 848 (2007). Samsung was notified of the law and its legal department should have been cognizant of this issue. Ignorance of the law is not a

legal excuse. O.C.G.A. § 1-3-6; Mecca Constr., Inc. v. Maestro Invs., LLC, 320 Ga. App. 34 (2013).

Similarly, the fact that Samsung did not get notices confirming that it was in default or notices of any motions or hearings after the fact does not legally excuse Samsung's failure to act. Samsung was no longer legally entitled to such notices and cannot now be heard to complain about this or reasonably use this to support its proper case argument. O.C.G.A. § 9-11-5(a) ("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, and all service in the action....").

Despite being a sophisticated entity used to dealing with litigation such as this, and despite the matter being handled by Samsung's legal department, and despite having ample notice of the limited time to file responsive pleadings, Samsung elected to follow its protocol to resolve the matter. In taking this calculated risk that its protocol would work, Samsung wilfully disregarded basic legal process and the plain language set forth in the summons and wilfully declined to file a responsive pleading. Even though Samsung did not receive copies of orders or notices of hearing confirming its status after default, Samsung was clearly advised that it had 30 days to respond to the complaint or it would be subject to a default judgment. As such, Samsung cannot credibly claim ignorance of the law by its own legal department in support of its assertion that this is a proper case.

Additionally, the evidence shows that although Samsung's protocol was not working out, Samsung made strategic decisions to continue to pursue the

protocol both when it was in default, when it was facing a default judgment and even after receiving a massive final judgment against it. No assurances were made to Samsung prior to it going into statutory default that would have allowed Samsung's legal department to believe it was authorized to disregard the stated time frame to answer the complaint. Had the legal department noted the language in the summons or considered Georgia law or consulted with local counsel, it could have attempted to work out a stipulation to extend the time to answer in order to pursue its protocol. But it did nothing during the critical thirty day time frame after service except make three unsuccessful attempts to call Mr. Brewer's counsel. Samsung cannot argue that it forgot about this case — the evidence shows that Samsung was well aware of the case and elected not to treat it with any urgency. Samsung knew that it needed to be dismissed from this action pursuant to the third step in its protocol, but it continually failed to follow up to obtain express assurances or else act on its own behalf to make sure that this occurred.

Once Samsung finally communicated with opposing counsel, at best Mr. Brewer's attorney agreed to consider Samsung's position and the declaration verifying its proper party position. But then Samsung never provided this declaration prior to the entry of judgment. In fact, the declaration was provided more than a month after the entry of default judgment and only after Samsung was facing what many would consider to be an emergency or at least a critical legal situation.

After receiving the sizable judgment against it, Samsung's counsel was addressing the matter and was at the helm of the ship. Yet Samsung still failed

to immediately act and failed to file anything with the Court. Instead, Samsung continued to delay engaging local counsel in order to pursue the appropriate legal procedures, apparently in to buy itself additional time to see if the protocol might still work. Samsung knew better, but simply and wilfully failed to act accordingly.

Samsung's conduct in failing to respond to the complaint and continuing to pursue its protocol was a failed legal strategy. It was willful and deliberate and done with indifference to the correct legal process or else was gross negligence on the part of Samsung, particularly since its established protocol was not working in this instance. Samsung ignored the fact that it was in default and failed to follow up or receive assurances that this failure would or could be remedied. Both before and after the entry of final judgment, there was no urgency shown by Samsung with respect to this matter. Given that this conduct was done by the legal department of a sophisticated entity used to dealing with lawsuits making these same serious allegations, Samsung's conduct is beyond the pale and inexcusable. See K-Mart Corp. v. Hackett, 237 Ga. App. 127 (1997).

Although the Court appreciates that it has significant discretion and that it should liberally permit the opening of a default to prevent injustice, the Court concludes that Samsung's conduct establishes that this is simply not a proper case to do so. While Samsung contends that this is not a case where it sat idly by; or a case where it failed to act promptly; or a case where its actions were not the result of assurances from opposing counsel; or a case where it showed willful disregard for the legal process; the record reveals just the opposite.

Samsung argues that its defense to this action is so strong and meritorious, that it must be allowed to present it in order to avoid an injustice occurring. While Samsung has established a meritorious defense for purposes of O.C.G.A. § 9-11-55 and vigorously denies being the proper party, Samsung wilfully failed to timely and properly assert this defense. The Court also notes that this is not a case where Mr. Brewer failed to serve the intended party, but is instead a case where Samsung contends that Mr. Brewer failed to name the proper party. See Parsons v. Mertz, 320 Ga. App. 786 (2013) (“[plaintiff] concedes that the man who appeared at the magistrate court hearing was not the man who identified himself as Ryan at the closing [and thus,] in the absence of proper service on the correct defendant Ryan, the trial court did not abuse its discretion by failing to grant a default judgment against Ryan”). Based on the totality of Samsung’s conduct, particularly its willful omissions, the Court exercises its discretion and rejects Samsung’s argument on this basis. Billy Cain Ford Lincoln Mercury v. Kaminski, 230 Ga. App. 598 (1998). The Court rejects the argument that a contrary result is demanded by Georgia law simply based on the merits of the defense. See Charming Shoppes v. Parrish, 214 Ga. App. 729, 731 (setting aside a default judgment against the improper defendant pursuant to O.C.G.A. § 9-11-60(d) where judgment entered against a party not properly served and further holding judgment could not be amended to change the party name).

In denying Samsung’s motion, the Court further notes that Samsung’s knowledge of this lawsuit and its failure to act resulted in Mr. Brewer wasting his time and resources trying to pursue an entity that continually ignored his lawsuit and the significance

of his claims. Mr. Brewer was not in a position to refuse the Court's order to appear and present damages on the scheduled date. While Mr. Brewer might have requested a continuance, Samsung's continuing failure to act provided no assurances to Mr. Brewer that this was a prudent path to follow. Thus, Mr. Brewer proceeded with the damages hearing and now suffers from prejudice as a result of Samsung's conduct in this action.

Additionally, given that the massive judgment has been set aside, there is nothing compelling about Samsung's arguments under 0 .C.G.A. § 9-11-55 and nothing sufficient to convince this Court that this is a proper case to set aside the default against Samsung. This determination specifically includes Samsung's arguments regarding personal jurisdiction. By engaging the egregious conduct set forth above, Samsung is deemed to have admitted all the well-pled factual allegations in the complaint, including those allegations that may be sufficient to establish personal jurisdiction in this Court. Samsung has thus waived any affirmative defenses that are prohibited by its admissions, including its affirmative defense of lack of personal jurisdiction to the extent it is established by Samsung's deemed admissions.

The Court also is unpersuaded to open the default based on any argument that Samsung might be subjected to punitive damages. The time to deny the allegations that might support such a claim has long since passed and Samsung elected to ignore that opportunity. Samsung must now work with the record it created and is entitled to defend itself against all the damages sought, even to the extent it might be able to prove Mr. Brewer is not entitled to

any damages from Samsung, despite its deemed admissions.

Finally, even though there is another lawsuit against another related Samsung entity, this also does not compel the Court to reach a different determination. Instead, this is an issue for Samsung to raise in the related lawsuit if it becomes ripe in that matter at all.

Based on the totality of the circumstances including Samsung's conduct prior to moving to set aside the judgment, the Court declines to find this is a proper case to open the default. The Court's holding means that Samsung is deemed to have admitted all the well-pled factual allegations set forth in the complaint. Unfortunately for Samsung, Mr. Brewer has asserted detailed facts regarding Samsung's significant conduct in Georgia, Samsung's knowledge of the defective batteries at issue and how the defects at issue caused harm to Mr. Brewer. By virtue of being in default, Samsung likely has admitted the necessary facts required in order to establish personal jurisdiction and liability to Mr. Brewer as a result of its conduct. To the extent liability has been established as a matter of law, this case must now proceed to trial on the remaining issue of damages. See Avery v. Schneider, 356 Ga. App. 304 (2020) (physical precedent only).

III. CONCLUSION

Based on the foregoing, the Court **HEREBY DENIES** the motion to open the default against Samsung.

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SO ORDERED, this 3 day of August, 2022.

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

cc: All counsel of record via e-file

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APPENDIX E

STATE OF GEORGIA

Secretary of State

Corporations Division

313 West Tower

2 Martin Luther King, Jr. Dr.

Atlanta, Georgia 30334-1530

Annual Registration

Electronically Filed

Secretary of State

Filing Date: 03/21/2019 12:39:19

BUSINESS INFORMATION	
BUSINESS NAME	SAMSUNG ELECTRONICS AMERICA, INC.
CONTROL NUMBER	J552409
BUSINESS TYPE	Foreign Profit Corporation
JURISDICTION	New York
BUSINESS INFORMATION CURRENTLY ON FILE	
PRINCIPAL OFFICE ADDRESS	85 CHALLENGER RD, RIDGEFIELD PARK, NJ, 07660-2106, USA
REGISTERED AGENT NAME	C T CORPORATION SYSTEM

52a

REGISTERED OFFICE ADDRESS	289 S Culver St, Lawrenceville, GA, 30046-4805, USA	
REGISTERED OFFICE COUNTY	Gwinnett	
OFFICER	TITLE	ADDRESS
MOON-HYUNG LYU	CFO	85 CHALLENGER ROAD, RIDGEFIELD PK, NJ, 07660, USA
MOON-HYUNG LYU	Secretary	85 CHALLENGER ROAD, RIDGEFIELD PK, NJ, 07660, USA
Young Hoon Eom	CEO	85 CHALLENGER ROAD, RIDGEFIELD PK, NJ, 07660, USA
UPDATES TO ABOVE BUSINESS INFORMATION		
PRINCIPAL OFFICE ADDRESS	85 CHALLENGER RD, RIDGEFIELD PARK, NJ, 07660-2106, USA	
REGISTERED AGENT NAME	C T CORPORATION SYSTEM	
REGISTERED OFFICE ADDRESS	289 S Culver St, Lawrenceville, GA, 30046-4805, USA	
REGISTERED OFFICE COUNTY	Gwinnett	

53a

OFFICER	TITLE	ADDRESS
MOON-HYUNG LYU	CFO	85 CHALLENGER ROAD, RIDGEFIELD PK, NJ, 07660, USA
Young Hoon Eom	CEO	85 CHALLENGER ROAD, RIDGEFIELD PK, NJ, 07660, USA
Moon-hyung lyu	Secretary	85 challenger road, ridgefield park, NJ, 07660, USA
AUTHORIZER INFORMATION		
AUTHORIZER SIGNATURE	Michelle Chang	
AUTHORIZER TITLE	Authorized Person	