

IN THE SUPERIOR COURT FOR THE
DISTRICT OF COLUMBIA CIVIL DIVISION

DISTRICT OF COLUMBIA,
a municipal corporation,
441 4th Street, NW
Washington, D.C. 20001,

Plaintiff,

v.

POLYMER80, INC.,
a Nevada
corporation,
134 Lakes Blvd.
Dayton, Nevada 89403-8804,

Defendant.

Case No. 2020 CA 002878 B
Judge William Jackson
Next Event: Status Hearing
Date: August 13, 2021 at 10:00 a.m.

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION OF POLYMER80, INC.
FOR RECONSIDERATION OF THIS COURT'S JUNE 22, 2021 ORDER**

Defendant Polymer80, Inc. ("Polymer80" or "Company") respectfully submits this Memorandum of Points and Authorities and Incorporated Motion for Reconsideration ("Motion") of the Court's Order, dated June 22, 2021, ("June 22 Order"), denying the Company's motion to dismiss the Complaint ("Dismissal Motion") for lack of personal jurisdiction. For the reasons stated in this paper, the Company's prior submissions in support of the Dismissal Motion, and the remainder of the record of this matter, Polymer80 respectfully submits that the Court should reconsider the June 22 Order because it overlooked binding Constitutional precedent and misapprehended the pertinent facts and applicable law. The June 22 Order's holding was therefore a clear error. Accordingly, upon reconsideration, the Court should find that it lacks personal jurisdiction over Polymer80 and dismiss the Complaint with prejudice.

PRELIMINARY STATEMENT

The reasoning founding the core conclusion of the June 22 Order's holding that Polymer80 is lawfully and properly subject to personal jurisdiction in this forum is clearly erroneous. Indeed, ample controlling and persuasive precedents cited by the Company (and the complete lack of contrary precedent proffered by plaintiff District of Columbia ("AG")) illustrates the following principles, which that Order disregards:

- The existence and availability in this forum of a generally accessible website is effectively of no moment with respect to the question of whether the owner and operator of that website is subject to personal jurisdiction in this forum.
- So too, is any supposed "advertising" contained on that website, where (as here) there is no proof that the advertising was and is specifically and deliberately directed to this forum.
- The conceded annual sale (again, as here, and as to the volume of which the AG agrees) of less than three of a nonresident entity's products into this jurisdiction falls extraordinarily short of constituting the requisite "minimum contacts" to hale that entity into this Court.
- Finally and most revealingly, the contention that a defendant's products have been recovered in purportedly greater numbers in this forum is also immaterial to the legal question of whether that defendant is subject to personal jurisdiction here, particularly, where the case at hand is not susceptible to a "stream of commerce" analysis, and there is zero evidence in the record that said defendant did anything at all to specifically and deliberately cause those products -- even if the questionable allegation is assumed to be true -- to be, or come into, this forum.

In sum, the record evidence does not support the June 22 Order's conclusion that Polymer80 has: (i) "minimum contacts" with Washington, D.C.; (ii) "purposefully availed" itself of the benefits of doing business there; and (iii) done anything sufficient to subject itself to an assertion of personal jurisdiction in this Court passing muster under the Due Process Clause of the Constitution of the United States. Since the Court's decision is, for many reasons, erroneous as a matter of law, the Court should exercise its abundant discretion to reconsider and reverse that decision, grant the Company's Dismissal Motion, and dismiss the Complaint, with prejudice.

PERTINENT FACTS AND PROCEDURAL HISTORY

The central allegations of the AG's Complaint have been discussed at length in Polymer80's prior filings.¹ At bottom, the AG alleges that Polymer80 has advertised and sold products on its website and through a network of dealers, and that certain of the Company's statements on its website were misleading to consumers in Washington, D.C. In response, Polymer80, filed, *inter alia*, the Dismissal Motion, arguing that, under the Due Process Clause of the United States Constitution, this Court lacks personal jurisdiction owing to the fact that the Company lacks the requisite "minimum contacts" with this forum. See Opening Memo at 13–14, 19–27.

The AG's relevant jurisdictional allegations regarding Polymer80's conduct can be distilled to the following; Polymer80: (i) operates a generally accessible website from which it sells products to consumers and (ii) purportedly "advertises" through that

¹ Those filings include Polymer80's: (1) Opposed Motion And Incorporated Memorandum Of Points And Authorities Of Polymer80, Inc. In Support Of Its Motion To Dismiss The Complaint Of The District Of Columbia, filed on July 31 ("Opening Memo"); (2) Reply Memorandum Of Points And Authorities Of Polymer80, Inc. In Further Support Of Its Opposed Motion To Dismiss The Complaint, filed on August 24, 2020; and (3) Memorandum Of Points And Authorities Of Polymer80, Inc. In Response To Plaintiff's Supplemental Brief As To Personal Jurisdiction ("Polymer80's Supplemental Brief"), filed on November 30, 2020.

website that its products are legal to purchase. See Compl. ¶ 1. Perhaps the primary component of the AG's jurisdictional stance, which the Court adopted in its June 22 Order, *does not relate to conduct by Polymer80*: the AG (and the Order) rest upon the flimsy allegation that so-called "ghost guns" supposedly made or sold by the Company have been *recovered* by law enforcement officers within Washington, D.C., and therefore can serve as a basis for asserting personal jurisdiction over Polymer80. See *id.* See also June 22 Order at 5.

As part of his opposition to the Dismissal Motion, the AG requested jurisdictional discovery relating to Polymer80's purported contacts with this forum in order to bolster the above-described meagre jurisdictional allegations. See AG's Opposition to Defendant Polymer80 Inc.'s Motion to Dismiss at 7, n.6. Significantly, the AG requested -- and obtained -- disclosure of "Polymer80's direct and *indirect* sales into the District." *Id.* (emphasis supplied). See Order, dated September 16, 2020. The AG thereafter conducted additional jurisdictional discovery, including deposing Polymer80's corporate representative and made various document requests, with which Polymer80 has fully and properly complied. Thereafter, the parties submitted supplemental briefing upon the Dismissal Motion confirming that which was already known -- Polymer80 does *not* have any meaningful, Constitutionally pertinent forum-directed ties with Washington, D.C.

The record before the Court upon the Dismissal Motion incontestably reflects that the Company:

- Does not advertise in any manner directly to Washington, D.C. consumers;
- Has no physical presence of any kind in this forum;

- Employs no one in this jurisdiction;
- Has no Washington, D.C.-related contact information or address of any sort;
- Has never visited this forum;
- Does not direct its independent dealers to sell products into this Forum and has no control over them;
- As the AG concedes, has only, by happenstance, sold nineteen (19) products over the course of seven years to consumers with forum-related contact information; and
- Otherwise has nothing to do with Washington, D.C.

Especially consequential to the AG's jurisdictional averments and the Court's analysis is that *nothing* that emerged as yet during discovery has revealed any suggestion -- let alone evidence -- that the purportedly large number of supposed "ghost guns" recovered in the District were directed towards this jurisdiction by Polymer80, or that Polymer80 had any information or knowledge relating to those products winding up in Washington, D.C. As discussed below, absent some allegation or suggestion that Polymer80 *purposefully* directed or caused those products to be sent into this forum, the alleged existence of such items in Washington, D.C. *cannot*, as a matter of law, serve as a basis for personal jurisdiction in accordance with Due Process. See, e.g., *Holder v. Haarmann & Reimber Corp.*, 779 A.2d 264, 269 (D.C. 2001) ("*Holder*"); *Hayes v. FM Broadcast Station WETT*, 930 F. Supp. 2d 145, 151 (D.D.C. 2013) (citations omitted).

As discussed next, the major premise of the Court's finding that the Company possesses the requisite "minimum contacts" with this forum is the claim that Polymer80 products have been "recovered" there. That claim, whether or not accurate, is a patently inadequate basis for this Court's jurisdiction under binding and fundamental

Due Process principles.

A. June 22 Order

The Court's six-page June 22 Order accurately recited applicable Constitutional precedent providing that "Courts examining a nonresident defendant's contact with the District are to focus on whether the nonresident defendant purposefully directed its activities at District residents, and whether the claims against the defendant arise out of or have a substantial connection with business transacted in the District." June 22 Order at 4. According to the Court, "[t]he critical test is whether the nonresident's 'conduct and connection with the forum state are such that he [or she] should reasonably anticipate being haled into court there.'" *Id.* (citation omitted). The Court's subsequent analysis, which led to the conclusion that personal jurisdiction over the Company comports with the Due Process Clause of the United States Constitution exists here, spans two short paragraphs. That analysis and ultimate conclusion are predicated upon the following averments in the Complaint:

- "[T]he defendant's website sells firearms to consumers across the United States, and the District of Columbia is no exception." June 22 Order at 5.
- "The defendant has consistently made sales in the District, not to mention the defendant's products constitutes [sic] an overwhelming 83.2% of the Ghost Guns recovered by District law enforcement since 2017." *Id.* "In fact, nearly 100 firearms sold by the defendant were recovered during the first five months of 2020 alone." *Id.*
- "The record also reflects affidavits from investigators that the District's consumers can easily access defendant's website and purchase firearms for delivery in the District." *Id.*
- "The defendant also does not dispute that it sells and delivers firearms in the District of Columbia." *Id.*

- And, “[f]urthermore, the defendants [sic] do advertise to consumers in the District claiming that their products are legal to purchase and possess and the ability to buy and receive a Polymer80 [sic] in the District is very telling.” *Id.*

Moreover and most salient to the Court’s analysis, the Court found that “[w]ith regards [sic] to minimum contacts, as the plaintiff pointed out, importantly, **the extent to which the defendant’s firearms have been recovered in the District underscores the defendant’s contact with this forum.**” *Id.* (emphasis supplied). However, as explained below, each of these purported findings, individually and together, is erroneous, contradicts the evidence, and fails to support a finding of the requisite “minimum contacts” with this jurisdiction. And so, the Court’s assertion of personal jurisdiction over Polymer80 violates the core of the United States Constitution’s Due Process protections.

LEGAL STANDARDS

The Dismissal Motion rests upon a Constitutional “minimum contacts” argument. The key query in that connection is “whether any business transacted by [a nonresident defendant] in the District was sufficient to permit the court to conclude that ‘the assertion of personal jurisdiction comports with due process.’” *See Holder*, 779 A.2d at 269, quoting *Mouzavires v. Baxter*, 434 A.2d 988, 993 (D.C. 1981) (“*Mouzavires*”). In this regard, the Court must examine the “quality and nature of the nonresident defendant’s contacts with the District and whether those contacts are voluntary and deliberate or only random, fortuitous, tenuous and accidental.” *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 329 (D.C. 2000) (“*Shoppers*”). “[T]he most critical inquiry is not whether the nonresident defendant is physically present in the forum but whether the defendant’s contacts with the forum are of such a quality and nature that they manifest

a deliberate and voluntary association with the forum and are not fortuitous or accidental.” *Harris v. Omelon*, 985 A.2d 1103, 1105 (D.C. 2009), quoting *Mouzavires*, 434 A.2d at 995, 997 (quotations omitted). Crucially, the nonresident’s contacts with the forum must form a “substantial connection” therewith and not one that is fleeting, irregular, or immaterial. See *Holder*, 779 A.2d at 271, citing *Burger King v. Rudzewicz*, 471 U.S. 462, 475 (1985).

In light of these entrenched standards, the June 22 Order’s holding is clear error and, upon reconsideration, the Court should determine that it lacks personal jurisdiction over Polymer80. The Dismissal Motion was and is meritorious, given that Polymer80’s website and, particularly, its sporadic sales into this forum over some seven years are precisely the type of “fortuitous” contacts that fall well short of constituting the “purposeful availment” required to establish the necessary “minimum contacts.”

ARGUMENT

I

THIS COURT POSSESSES AND SHOULD EXERCISE THE INHERENT AUTHORITY TO RECONSIDER THE JUNE 22 ORDER.

It is beyond dispute that the Court has inherent authority and broad discretion to reconsider its prior rulings to correct errors and misapprehensions. See *Williams v. Vel Rey Props., Inc.*, 699 A.2d 416, 419 (D.C. 1997), citing *Blyther v. Chesapeake & Potomac Tel. Co.*, 661 A.2d 658, 662 (D.C. 1995) (Ruiz, J., concurring) (“Judges are constantly reexamining their prior rulings in a case on the basis of new information or argument, or just fresh thoughts No one will suggest that a judge himself may not change his mind and overrule his own order”) (citations omitted). See also *Callahan v. 4200 Cathedral Condo.*, 934 A.2d 348, 353 (D.C. 2007) (motions for reconsideration

“invoke[e] the [trial] court’s general discretionary authority to review and revise interlocutory rulings prior to entry of final judgment”); see also *United States v. Coughlin*, 821 F. Supp. 2d 8, 18 (D.D.C. 2011) *aff’d*, 527 Fed. App’x 3, 3 (D.C. Cir. 2013) (under equivalent Federal Rule of Civil Procedure 54(b), “reconsideration of an interlocutory decision is available under the standard ‘as justice requires’”).

This Court may “grant a motion for reconsideration of an interlocutory order only when the movant demonstrates: (1) an intervening change in the law; (2) the discovery of new evidence not previously available; or (3) a clear error in the first order.” *BEG Investments, LLC v. Alberti*, 85 F. Supp. 3d 54, 58 (D.D.C. 2015). For the reasons discussed in this Motion, the Company respectfully submits that there is, in fact, a clear error in the first order. Under these non-controversial principles empowering the Court to revisit its own prior rulings, the Company respectfully requests that the Court reconsider its analysis of the Constitutional Due Process principles undergirding the Dismissal Motion.

II

NEITHER THE AG NOR THE COURT IN THE JUNE 22 ORDER HAS ADDRESSED THE REQUISITE CONSTITUTIONAL DUE PROCESS ANALYSIS.

Throughout all of the AG’s briefing on the Dismissal Motion, his theory of jurisdiction regularly changed. Nonetheless, the AG was consistent about one thing -- disregarding the settled, governing Constitutional calculus and instead relying upon the purported recovery of “ghost guns” within the District as the primary basis for asserting jurisdiction over Polymer80. In his briefing, the AG neither refers to nor materially grapples with the fact that the reach of this Court’s long-arm jurisdiction over a non-resident defendant stretches only so far as Constitutional Due Process allows.

Shoppers, 746 A.2d at 329. Both the AG’s First and Second Supplements *do not even mention* “minimum contacts” and refer to the Due Process Clause but *once*, thus disregarding whether or not the Company’s jurisdictional contacts with this forum do, in fact, pass muster under the U.S. Constitution. Unfortunately, the Court’s analysis proceeded along those same lines. And the Court bolstered its reasoning with the five points from the June 22 Order highlighted above, none of which can serve as a proper basis for asserting jurisdiction. We now elucidate why, *seriatim*:

First, the Court stated that “[t]he defendant’s website sells firearms to consumers across the United States, and the District of Columbia is no exception.” June 22 Order at 5. This terse finding goes exactly to Polymer80’s point based upon voluminous case law in the Internet age -- that the Company’s generally accessible website does not exhibit the type of forum-directed purposeful availment necessary to support minimum contacts. See, e.g., Polymer80’s Supplemental Brief at 9–10, citing *Keeton v. Hustler Magazine*, 465 U.S. 770, 773–74 (1984) (“*Hustler*”); *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1230 (9th Cir. 2011) (“*Mavrix*”); *uBid, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 424 (7th Cir. 2010) (“*GoDaddy*”); *Johnson v. Barrier*, 2016 WL 3520157 (N.D. Ill. June 28, 2016) (“*Johnson*”).

Second, the Court noted that “[t]he defendant has consistently made sales in the District, not to mention the defendant’s products constitutes [sic] an overwhelming 83.2% of the Ghost Guns recovered by District law enforcement since 2017.” *Id.* “In fact, nearly 100 firearms sold by the defendant were recovered during the first five months of 2020 alone.” *Id.* To begin, the record shows that Polymer80 has never made sales *in* the District; has no and never has had a presence in Washington, D.C.; and

has only made sporadic, fortuitous, and random sales from its website to people who happened to be there over the seven years it has been doing business. Furthermore, by dint of that same fact, it is gravely erroneous to conclude that Polymer80 has thus “consistently” made sales in this forum. Here, the Court has wrongly linked the miniscule nineteen (19) sales the Company concededly has made to Washington, D.C., consumers since 2014 with the allegedly “overwhelming” number of “ghost guns” recovered in the District since 2017. The irrefutable fact that the only contacts with this forum that possibly could be relevant to the minimum contacts analysis at hand are those through which Polymer80 “purposefully availed” itself of the benefits of doing business in Washington, D.C., illuminates the unsoundness of this reasoning. In the wake of the Company’s *de minimis* sales figures, it is logically (and Constitutionally) impossible that the “overwhelming” number of products allegedly being recovered in the District are attributable to forum-directed conduct by Polymer80.

Third, the Court found that “[t]he record also reflects affidavits from investigators that the District’s consumers can easily access defendant’s website and purchase firearms for delivery in the District.” *Id.* Polymer80’s generally accessible website, as explained in the case law the Company long ago proffered, is not a meaningful factor in the minimum contacts analysis. The fact that someone in the forum can access a generally accessible website in a given jurisdiction does not subject the operator of that website to jurisdiction in that forum. In this regard, we respectfully call the Court’s attention to *Johnson*. There, the District Court found that a pattern of sales through a defendant’s website, without more, was not an adequate basis for personal jurisdiction and stated as follows:

Indeed, as the Seventh Circuit recently clarified, “[h]aving an ‘interactive website’ (which hardly rules out anything in 2014) should not open a defendant up to personal jurisdiction in every spot on the planet where that interactive website is accessible.” *Advanced Tactical [Ordinance Sys., LLC v. Real Action Paintball, Inc.]*, 751 F.3d 796, 803 (7th Cir. 2014)]. Here, Plaintiff offers no evidence of geographically-focused targeting that could subject UMG to personal jurisdiction on the basis of its alleged online sales.

Johnson, 2016 WL 3520157 at *5. For this reason, Polymer80’s generally accessible website is not a proper foundation for the Court’s exercise of personal jurisdiction.

Fourth, the Court’s finding that “the defendant also does not dispute that it sells and delivers firearms in the District of Columbia” also is erroneous. June 22 Order at 5. While the Company has made nineteen (19) sporadic sales to Washington, D.C., consumers over the last seven years, the Company has provided ample legal authority showing why such paltry, non-forum directed activities do not amount to the requisite evidence of “purposeful availment” so as to establish the Constitutionally required “minimum contacts.” The failure of the June 22 Order to grapple with that authority or its collective and dispositive underlying rationale renders that Order plainly erroneous. Intermittent sales of an entity’s products, in circumstances such as those at hand, are, in plain English, just not enough. See, e.g., *Hustler*, 465 U.S. at 772; *Mavrix*, 647 F.3d at 1230; *GoDaddy*, 623 F.3d at 424; *Holder*, 779 A.2d at 269; *Johnson*, 2016 WL 3520157 at *5.

Fifth, the Court stated that “[f]urthermore, the defendants [sic] do advertise to consumers in the District claiming that their products are legal to purchase and possess and the ability to buy and receive a Polymer80 [sic] in the District is very telling.” June 22 Order at 5. However, the record demonstrates that the Company does not advertise

to consumers in Washington, D.C. Indeed, nothing on Polymer80's website has ever represented to local consumers (or anyone) that they had "the ability to buy and receive" Company products "in the District," or in any respect whatsoever singled out or mentioned this forum, its residents, or anything connected with Washington, D.C. The website at all times relevant to this action only stated that its products were legal to purchase *under federal law*.

On this fifth point, the Seventh Circuit's decision in *GoDaddy*, a case cited by the AG himself and profiled at length by the Company in prior briefing, is instructive. In short, that Court found that advertising supported a finding of personal jurisdiction, only where it was both: (i) physically present *within* the jurisdiction in the form of physical billboards, and (ii) specifically tailored to the jurisdiction's audience, such as (in that action) because the advertisements referenced local sports teams and attractions and encouraged customers to use defendant's products. Moreover, the Seventh Circuit's ruling that the defendant entity had advertised in the subject forum was further buttressed by its *hundreds of thousands of customers in the jurisdiction*. See *id.*, 623 F.3d 421. Here, there is not even remotely any such physical presence or forum-directed advertising by Polymer80 *anywhere* in the record at hand. Rather, the only basis for the purported "advertising" is the mere existence and accessibility of a generic website -- a legally insufficient basis for a finding that the Company advertises to local consumers at a level satisfying key Due Process principles. See *Hustler*, 465 U.S. at 773–74; *Gather Workspaces LLC v. Gathering Spot, LLC*, 2020 WL 6118439, at *7–*9 (D.D.C. Oct. 16, 2020) ("*Gather Workspaces*").

III

THE ALLEGED PRESENCE OF POLYMER80 PRODUCTS IN WASHINGTON, D.C. DOES NOT SUPPORT JURISDICTION.

As noted above, the primary basis for the Court's June 22 Order was and is evidently the unproven averment that Polymer80's products have been recovered within Washington, D.C. The Court expressly found that, "[w]ith regards to minimum contacts, as the plaintiff pointed out, importantly, the extent to which the defendant's firearms have been recovered in the District underscores the defendant's contact with this forum." June 22 Order at 5. But, as Polymer80 has repeatedly emphasized, the alleged presence of products in a subject forum is an inadequate basis for asserting personal jurisdiction and, in fact, says *nothing* about the Company's alleged "contact with this forum."

The Court's stated finding as to "minimum contacts" arises from a solitary statement in an Affidavit supporting the AG's motion for preliminary injunction, which states that "[o]f these ghost guns recovered, the majority were Polymer80 brand frames." Affidavit of Richard "Cory" McCraw ("McCraw Affidavit") at 4, dated June 23, 2020, a copy of which is annexed as an exhibit to the AG's Motion For A Preliminary Injunction. The McCraw Affidavit says not a word about the circumstances under which Polymer80 products allegedly were recovered nor about the most important aspects of that supposed recovery -- *how* such products came to be in Washington, D.C., and whether they arrived there through the conduct or direction of Polymer80 itself. Nor does that sworn statement make clear how Mr. McCraw knows what he says he knows. The McCraw Affidavit, along with the rest of the record evidence before the Court, is utterly silent as to that most material question and so is unvarnished, unsupported, and

legally unreliable hearsay.

In this same connection and as to the Court's theory that the alleged presence of the Company's products in this forum is sufficient for the implementation of personal jurisdiction, such a finding is almost entirely founded upon conjecture and surmise -- and certainly no plausible suggestion or proof -- that Polymer80 has directed a substantial number of its products into Washington, D.C. See, e.g., AG's Supplemental Brief As To Personal Jurisdiction at 7-8; June 22 Order at 5. Yet, the Court has determined, absent evidence to this effect, that the Company itself *must have* directed those recovered products into Washington, D.C., or that its dealers *must have* done so at Polymer80's direction. Yet, from the discovery taken, we know that the Company itself sold only nineteen (19) items into this forum over the past seven years.

Therefore, the logical leap the Court has taken (upon the AG's suggestion) is untethered to the undisputed (and conceded by the AG) record evidence. Those sparse sales make it impossible, as a matter of elementary arithmetic, for the Company to have sold or delivered into this forum (deliberately or otherwise) the volume of products that the AG alleges and the Court has effectively found have been recovered under uncertain circumstances in Washington, D.C. In other words, of the items seized in this forum only nineteen (19), at most, can be Constitutionally linked to Polymer80. The remainder, which the Company itself demonstrably did not sell or direct into this forum, are essentially irrelevant to the Due Process minimum contacts calculus. No matter how politically or emotionally convenient, the mantra "ghost guns" does not change fundamental Constitutional precepts or the application of those precepts to the defendant entity presently before this Court.

Rather than analyze these issues under a “minimum contacts” analysis, the Court’s heavy reliance upon the supposed presence of Polymer80 products in Washington, D.C. is, in reality, a “stream of commerce” hypothesis about jurisdiction that the AG has not asserted and that cannot and does not apply on these facts. Under such a theory generally, it is possible for a defendant to be subject to personal jurisdiction in a given forum where the defendant: (i) places its product into the stream of commerce *directed at* the forum state; and (ii) engages in conduct purposefully directed there. See *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 877 (2011) (“the defendant must have purposefully availed itself of the privilege of conducting activities within the forum state or have purposefully directed its conduct into the forum State”) (cleaned up). Otherwise put, the “placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.” *Asahi Metal Indus. Co. Ltd. v. Super. Ct. of Cal.*, 480 U.S. 102, 112 (1987) (O’Connor, J., plurality op.) (“*Asahi*”). Even where a defendant is specifically aware that its products are being distributed by others nationwide, such awareness is not an adequate basis for jurisdiction. See, e.g., *Bridgeport Music, Inc. v. Still N The Water Pub.*, 327 F.3d 472, 480–84 (6th Cir. 2003) (“*Bridgeport Music*”).

This is not a stream-of-commerce case. Consequently, the Court’s express finding that, “[w]ith regards to minimum contacts . . . the extent to which the defendant’s firearms have been recovered in the District underscores the defendant’s contact with this forum,” is Constitutionally unsustainable and cannot lawfully support jurisdiction over Polymer80. June 22 Order at 5. As with the defendant in *Bridgeport Music* and in accordance with *Asahi*, it is indisputable that here Polymer80 does not -- and cannot

under its agreements with its dealers -- have anything to do with where its products are sold. In other words, where the Company's products are sold is "out of its hands." See *Bridgeport Music*, 327 F.3d at 480; Transcript of Deposition of Alex Brodsky, dated January 15, 2021, at 97, a copy of the relevant portion of which is annexed as Exhibit A ("Q: And does Polymer know where, or what businesses, distributors [sell] products to? A: No. Those are their own records. We don't know what they're who and what they're selling. What dealers are they selling to.").

As a result, the mere purported presence in this forum of Polymer80's products cannot support a finding of the "minimum contacts" necessary for a Constitutionally defensible assertion of personal jurisdiction.

IV

RECENT PRECEDENT IN D.C. FEDERAL COURT COUNSELS DISMISSAL.

The jurisdictional discovery obtained by the AG (much of it, in fact, regarding the alleged substance of his two pretextual consumer protection claims) does not alter the most glaring deficiency of his stance on personal jurisdiction -- that Washington, D.C. law does not support the AG's jurisdictional position (not to mention) the Court's similar conclusion in the June 22 Order. In truth, neither the AG in its briefing nor the Court in the June 22 Order describe a single Washington, D.C. case establishing why or how personal jurisdiction is appropriate in all the circumstances.

On the other hand, a recent (October 2020) ruling by the United States District Court for the District of Columbia neatly illustrates that this Court does *not* have personal jurisdiction over the Company. As explained in Polymer80's Supplemental

Brief at 19–20, the decision in *Gather Workspaces*, 2020 WL 6118439, at *7–*9,² turned on the District Court’s evaluation of whether or not there was personal jurisdiction over a non-resident defendant, which, *inter alia*, had directly solicited fee-generating memberships in Washington, D.C.; provided clear forum-specific contact information to prospective local customers; and otherwise specifically targeted such consumers through sundry specifically local contacts. See *id.* at *5–*8. Nevertheless, the District Court found that defendant’s panoply of forum-directed activities, individually and together, were *inadequate* to generate personal jurisdiction. *Id.* at *8.

Tellingly and differently here, Polymer80’s contacts with Washington, D.C. are far less plentiful and focused on this forum and its residents than those of the *Gather Workspaces* defendant. In other words, nothing unearthed by the AG through jurisdictional discovery has demonstrated the type or quantum of forum-specific contacts that the District Court found lacking some nine months ago in a strikingly similar case. Compared with its counterpart in *Gather Workspaces*, the record at bar reveals that the Company’s limited, random, fortuitous, tenuous, and non-directed links to Washington, D.C. are precisely the kind of non-purposeful ties that do not and cannot amount to the requisite minimum contacts for Due Process purposes. See *also Shoppers*, 746 A.2d at 329; *Johnson*, 2016 WL 3520157, at *5. The June 22 Order neither cites, nor mentions, nor relies upon anything contradicting this fact.

² Despite at least two opportunities to address *Gather Workspaces*, the AG has never done so. Nor did the Court discuss it in its June 22 Order.

CONCLUSION

For all of the reasons set forth above and in the remainder of the record of this action, it is respectfully submitted that the Court should: (i) grant the instant Motion; (ii) upon reconsideration, wholly grant Polymer80's Dismissal Motion; (iii) dismiss the Complaint with prejudice; and (iv) award to the Company such further relief as may be deemed just and proper. In addition, Polymer80 respectfully requests oral argument upon this Motion.

Dated: August 2, 2021

Respectfully submitted,

KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
Sumner Square
1615 M Street, N.W. Suite 400
Washington, D.C. 20036

/s/ Matthew J. Wilkins

Matthew J. Wilkins
(202) 326-7900
mwilkins@kellogghansen.com

*Counsel to Defendant
Polymer80, Inc.*

James J. McGuire
Mark A. Berube
Mark T. Doerr

(All admitted Pro Hac Vice)

GREENSPOON MARDER LLP
590 Madison Avenue
Suite 1800
New York, New York 10022

Of Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 2, 2021, I caused a copy of the foregoing document to be filed electronically and to be served on counsel of record for all parties through the Court's CaseFile Xpress electronic filing service.

/s/ Matthew J. Wilkins

Matthew J. Wilkins

Rule 12-I Certificate

The undersigned hereby certifies that on August 2, 2021 he contacted counsel for the District of Columbia ("District"), via email, to request the District's consent to the relief sought through this Motion. Counsel for the District informed the undersigned that the District opposed the Motion.

/s/ Mark T. Doerr
Mark T. Doerr

EXHIBIT A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

IN THE MATTER OF:

DISTRICT OF COLUMBIA
a municipal corporation
400 6TH Street, NW
Washington, D.C. 20001

Plaintiff

v.

POLYMER80, INC.
a Nevada corporation
134 Lakes Blvd.
Dayton, Nevada 89403-8804

Defendant

Case No.
2020-CA-002878 B

Friday,
January 15, 2020

Via Video Teleconference

DEPOSITION OF:

ALEXANDR BRODSKY

called for examination by Counsel for the
Plaintiff, pursuant to Notice of Subpoena, when
were present on behalf of the respective parties:

1 MR. MCGUIRE: Objection to form.

2 THE WITNESS: That is a list of some
3 of our dealers that we sale products to. Yes.

4 BY MR. DOWNES:

5 Q Is it fair to say that the
6 distributors might sale Polymer's products to
7 companies that are not listed in Exhibit 6?

8 A It is fair to say that. Yes.

9 Q And does Polymer know where, or what
10 businesses, distributors sale those products to?

11 A No. Those are their own records. We
12 don't know what they're, who and what they're
13 selling. What dealers are they selling to.

14 Q Okay. Does Exhibit 6 represent a full
15 and complete list of Polymer's current
16 distributors and dealers?

17 A No, it does not.

18 Q Okay. Can you tell me what should be
19 excluded and what should be included, that is not
20 currently on Exhibit 6?

21 MR. MCGUIRE: With respect to both
22 distributors and dealers?