VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-04233

Jillian Taylor v. Forever 21, Inc., et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss for Lack of Personal Jurisdiction and Insufficient Service of Process (Motion: 2)
Filer: Walter E. Judge
Filed Date: February 14, 2023

The motion is DENIED IN PART.

This suit arises from a tort action brought by Jillian Taylor (the "Plaintiff") against Forever 21, Inc., Forever 21 Retail, Inc., Forever 21 International Holdings, Inc., Forever 21 Logistics, LLC, Forever 21 Real Estate Holdings, LLC, Alameda Holdings, LLC, Innovative Brand Partners, LLC, and unidentified third party/related entities[1] (the "Defendants") on a theory of strict product liability – defective design (Count I), strict product liability – inadequate warnings (Count II), breach of express warranty (Count III), breach of implied warranty of merchantability (Count IV), negligence (Count V), and res ispa loquitur (Count VI). Pl.'s Complaint (filed November 30, 2022). Plaintiff claims that Defendants are liable for injuries she sustained as the result of a defective product she purchased at a Forever 21 retail store, namely a "half-zip ribbed sweater," when it caught fire due to, *inter alia*, its defective state, which caused her serious burns and injury. *Id*. ¶¶ 20–29. Defendants move to dismiss the Complaint pursuant to V.R.C.P. 12(b)(2) and 12(b)(5) for lack of personal jurisdiction and insufficient service of process respectively. Def.s' Mot. to Dismiss, p. 1 (filed February 14, 2023). Defendants argue that this court is without personal jurisdiction over them because they (a) lack minimum contacts with Vermont, and (b) it would be inconsistent with traditional notions of fair play and substantial justice to be haled into this court, since the defendant entities are bankrupt, dissolved, and have no connection to Vermont except for this lawsuit. *Id*. pp. 1–2. As such, Plaintiff's "undifferentiated group pleading" is insufficient to meet their required burden to establish jurisdiction. *Id*. at 2. Furthermore, service of process was allegedly ineffective because Defendants are located in Delaware and California, and Plaintiff served them via the Vermont Secretary of State and her counsel. *Id*.

Plaintiff opposes this motion, arguing that Defendants have in fact established that the exercise of personal and specific jurisdiction over them, is consistent with United States Supreme Court

[1] The otherwise unidentified defendants are referred to in the Complaint as "DOES 1–10." Pl.'s Compl. ¶ 12.

and Vermont Supreme Court law, since Defendants effectively placed the allegedly defective sweater in the nationwide stream of commerce and availed themselves of the Vermont market. Pl.'s Opp'n to Defs.' Mot. to Dismiss, ¶¶ 2–4. Furthermore, Defendants have purportedly established minimum contacts in Vermont such that they can foreseeably and reasonably anticipate being brought into court here, *Id*. ¶¶ 4–5, and Defendants' bankruptcy is irrelevant to the question of jurisdiction. *Id*. ¶ 7. Finally, Plaintiff asserts that Defendants were properly served pursuant to 12 V.S.A. § 855–856 and 11 V.S.A. § 4010. *Id*. ¶ 9.

For the reasons stated below, Defendants' Motion to Dismiss is DENIED *without prejudice* so that jurisdictional discovery may be conducted, primarily with regard to the relationship between Defendants and Plaintiff's purchase of the sweater, as well as the viability of the claim against Defendants other than Forever 21, Inc. Defendants may refile their motion to dismiss upon development of a more complete record.

Relevant Background

In November 2019, Plaintiff, a resident of Grafton, Vermont, purchased a sweater from a Forever 21 retail store at the Holyoke Mall in Holyoke, Massachusetts. Pl.'s Compl. ¶¶ 1, 20. On December 5, 2019, Plaintiff was wearing the sweater while cooking in her kitchen at her Bellows Falls, Vermont home when a lit candle on her stove ignited the sleeve of the sweater, which happened so rapidly that she could not extinguish the sweater such that the sweater engulfed her in flames and the sweater melted[2] causing her serious burns and other injuries requiring significant medical intervention. *Id*. ¶¶ 25–29. Shortly prior to the incident, on September 29, 2019, Defendants filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware. Def.'s Mot. To Dismiss, Ex. 1. There, the bankruptcy court granted the dissolution of all entities listed as Defendants in this case, except for Forever 21, Inc. *Id*. Ex. 2; *In re: Forever 21, Inc.*, *et al.*, Order, Case No. 19-12122-MFW (Bankr. D. Del. Feb. 10, 2022). On July 20, 2022, Plaintiff filed a Motion for Relief from Stay with the United States Bankruptcy Court for the District of Delaware, requesting that the bankruptcy court permit Plaintiff to proceed with personal injury litigation against Defendants for the injuries caused by the aforementioned. Def.s' Mot. To Dismiss, Ex. 4; *In re: Forever 21, Inc.*, Motion for Relief from Stay to Proceed with Personal Injury Litigation and Collect Against Any Available Insurance Proceeds, Case No. 19-12122-MFW (Bankr. D. Del. July 20, 2022). The bankruptcy court approved a stipulation between Plaintiff and Defendants granting Plaintiff relief from the stay so that she could pursue her claim in state court. Def.'s Mot. To Dismiss, Ex. 5; *In re: Forever 21, Inc.*, Order Approving Stipulation Providing Jillian Taylor Limited Relief From the Automatic Stay to Pursue State Court Action Against Debtor, Case No. 19-12122-MFW (Bankr. D. Del. Aug. 8, 2022). Plaintiff then filed her Complaint in this court on November 30, 2022.

Plaintiff contends that venue and jurisdiction to hear her Complaint is proper in this court pursuant to 12 V.S.A. § 402 and 4 V.S.A. § 31 respectively since Plaintiff resides in Windham County and the injury occurred in Windham County. Pl.'s Compl. ¶¶ 14–15. Likewise, Defendants have consented to jurisdiction here because they could reasonably anticipate being

[2] The sweater apparently "melted" as it was made up of "62% polyester and 38% acrylic." Pl.'s Compl. ¶ 22.

sued here as a result of their business transactions in Vermont; Defendants are in the business of selling women's clothing and have a substantial domestic and international commercial presence, an extensive e-commerce platform servicing Vermont, substantial media presence targeting women, and Forever 21, Inc. is registered to collect sales tax in Vermont in accordance with Vermont law. *Id*. ¶¶ 16–19. Defendants assert that their (former, where applicable) states of incorporation and principal places of business are only in Delaware and California, and have never at any time been a Vermont corporation. Def.s' Mot. To Dismiss, p. 5. In fact, there were no Forever 21 retail locations in Vermont as of February 2023, nor did they have any contacts with Vermont at any time relevant to the Complaint. *Id*. at 6, Ex. 6.[3] Defendants also argue that Plaintiff served process on the Vermont Secretary of State due to their alleged failure to designate a registered agent in Vermont, which made Plaintiff's service and subsequent mailing of a copy of the process/return of service to Defendants' registered agents in Delaware and/or California improper. *Id*. at 7.

In the remainder of the filings, Plaintiff and Defendants discuss at length their respective arguments for and against a finding of general and specific jurisdiction over Defendants. While the court need not address every letter, the court concludes that there is no general jurisdiction over Defendants in this case, however specific jurisdiction may be found pending discovery. Additionally, should jurisdiction be found in accordance with due process, service of process was not improper.

Standard

In reviewing a motion to dismiss, the court will assess the complainant's factual allegations with the benefit of all reasonable inferences given to the non-moving party. *Richards v. Town of Norwich*, 169 Vt. 44, 48 (1999). The superior court "has discretion to decide a pretrial motion to dismiss for lack of personal jurisdiction on the basis of affidavits alone, to permit discovery, and to conduct an evidentiary hearing." *State v. Atl. Richfield Co.*, 2016 VT 22, ¶ 9, 201 Vt. 342, 348 (citing *Godino v. Cleanthes*, 163 Vt. 237, 239 (1995)). If a court "chooses to rule on a motion to dismiss for lack of personal jurisdiction on the basis of affidavits alone, the party opposing [the] motion need make only a prima facie showing of jurisdiction, or, in other words, demonstrate facts which would support a finding of jurisdiction." *Id*. The nonmoving party's prima facie showing must go beyond the pleadings and rely upon specific facts set forth in the record. *Id*. (citing *Schwartz v. Frankenhoff*, 169 Vt. 287, 295 (1999)).

"It is well settled that Vermont courts must have both statutory and constitutional power to exercise personal jurisdiction over a nonresident defendant." *Atl. Richfield Co.*, 2016 VT 22, ¶ 10, 201 Vt. at 349 (quoting *Fox v. Fox*, 2014 VT 100, ¶ 9, 197 Vt. 466). Thus, "[b]efore a nonresident defendant can be brought into a Vermont court, the plaintiff must show that the Vermont long arm statute reaches the defendant, and that jurisdiction over him may be maintained without offending the Due Process Clause of the Fourteenth Amendment of the United States Constitution." *N. Aircraft, Inc. v. Reed*, 154 Vt. 36, 40 (1990). "Vermont's long-arm statute, 12 V.S.A. § 913(b), permits state courts to exercise jurisdiction over nonresident

[3] It is not clear when the Forever 21 at the Church Street Burlington Mall closed, and whether it was still in operation when the sweater in this case was purchased.

defendants 'to the full extent permitted by the Due Process Clause' of the U.S. Constitution." *Fox*, 2014 VT 100, ¶ 9, 197 Vt. 466 (quoting *N. Aircraft, Inc.*, 154 Vt. at 40 (1990)). "The first part of the test therefore merges with the second part, and the sole question is whether the assertion of personal jurisdiction satisfies due process." *Richards v. Kk Bakery Inv. Co. LLC*, No. 21-CV-03317, 2022 WL 2387618, at *2 (Vt. Super. Ct. May 16, 2022) (Barra, J.) (citing *Id.*).

The Due Process Clause requires the nonresident defendant to have sufficient "minimum contacts with [the forum state] such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation and citation omitted); *Havill v. Woodstock Soapstone Co.*, 172 Vt. 625, 626 (2001). For minimum contacts to not "offend traditional notions of fair play and substantial justice," the court must consider factors such as burden on the defendant, the interests of the forum State, the plaintiff's interest in obtaining relief, "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and "the shared interest of
the several States in furthering fundamental substantive social policies." *Asahi Metal Indus. Co. v. Superior Ct. of California, Solano Cnty.*, 480 U.S. 102, 113–115 (1987) (quoting *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). "To determine whether a defendant has the necessary 'minimum contacts,' a distinction is made between 'specific' and 'general' personal jurisdiction." *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013). "A court may exercise either general or specific jurisdiction over a nonresident defendant." *Fox*, 2014 VT 100, ¶ 27, 197 Vt. 466. In either case, "it is essential . . . that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). Moreover, "[u]nder this 'purposeful availment' requirement, a defendant cannot be summoned into a jurisdiction merely as a result of fortuitous, attenuated or random contacts." *N. Aircraft v. Reed*, 154 Vt. 36, 41–42 (1990).

Analysis

I. General Jurisdiction

General jurisdiction "applies to suits not arising out of or related to the defendant's contacts with the forum state." *Fox*, 2014 VT 100, ¶ 27, 197 Vt. 466 (quoting *Burger King Corp.,* 471 U.S. 462, 472 (1985)). Defendants argue that this court does not have general jurisdiction over them because they lack "continuous and systematic" business activities in Vermont that would render any of them "essentially at home" in this State, as required by the standard set forth in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011); none of the Defendants are incorporated or organized under Vermont law, and the only applicable states are Delaware and California. Def.s' Mot. To Dismiss, p. 11. Nor is a mere e-commerce presence in Vermont sufficient to find general jurisdiction. *Id*. p. 12 (citing *Kirby v. REHC 1, Inc.*, Docket No. 112-7-17, 2018 WL 8666296 (Vt. Super. Ct. Jun. 1, 2018) (Toor, J.)). Plaintiff rejects this reasoning, arguing that a prima facie showing of general jurisdiction was made because "Defendants' e-commerce activities and national marketing are directly connected to its business activities in Vermont and its expectation that its products will reach Vermont consumers." Pl.'s Mem. of

Law in Supp. of Pl.'s Opp'n, p. 26. Such activity, she argues, constitute "continuous and systematic general business contacts" which support jurisdiction in Vermont. *Id*. pp. 21–25. On this point, Plaintiff cites some Vermont District Court opinions. See, e.g., *Sollinger v. Nasco Int'l, Inc.*, 655 F. Supp. 1385, 1386 (D. Vt. 1987) (granting general jurisdiction over Wisconsin corporation which advertised and made available products to Vermont consumers for mail and phone orders, holding that the defendant "clearly expects to do business with Vermont residents and Vermont thus has an interest in adjudicating disputes which concern Nasco's business"); *Tom & Sally's Handmade Chocolates, Inc. v. Gasworks, Inc.*, 977 F. Supp. 297, 300–301 (D. Vt. 1997) (citing *Burger King*, 471 U.S. at 475) (finding general jurisdiction despite foreign corporation defendant having no "office, warehouse, employees, agents, telephone listings or bank accounts in Vermont," without evidence product at issue was sold/received in Vermont, because it sought business via catalogs and foresaw its products reaching Vermont, thus "Defendant purposefully availed itself of the privilege of conducting activities in Vermont, thus invoking the benefits and protection of its laws").

In her memorandum, Plaintiff offers screenshots of the Forever 21 website, which includes the listing of the same sweater she purchased, and an interactive search bar on the site directs consumers in Vermont to the nearest in-store Forever 21 locations, none of which are in Vermont, and one of them being the Holyoke Mall. Pl.'s Mem. of Law in Supp. of Pl.'s Opp'n, pp. 12–14. The Holyoke Mall location where Plaintiff purchased the sweater is listed as 69.25 miles away from Bellow's Falls– zipcode 05101– which is the third closest location within 100 miles. *Id*. p. 14; Pl.'s Ex. B. Plaintiff also offers a detailed synopsis of Forever 21's business model; Plaintiff's Exhibit 3 is a 36-page document written by Jonathan Goulding, the Chief Restructuring Officer for Forever 21, which was filed in the bankruptcy court case and describes the nature of Forever 21's business. *Id*. Pl.'s Ex. 3. While the court need not examine every detail, the takeaway is that Forever 21 is a nationwide chain with over $4.1 billion in annual sales, designing and selling clothing targeted at young women for a competitive price. *Id*. pp. 11–12; Pl.'s Ex. 3. Indeed, Forever 21 has an online presence which solicits Vermont residents to purchase goods online and/or directs Vermont consumers to the nearest physical location to purchase them.

Here, Plaintiff has made a prima facie case for general jurisdiction under pre-*Goodyear* standards. However, notwithstanding Plaintiff's showing, the primary issue here is whether decades of prior case law are reversed by more recent United States Supreme Court rulings on general jurisdiction, specifically *Goodyear. Goodyear* was decided in 2011, subsequent to cases plaintiff cited, discussing "stream of commerce" jurisdictional questions which suggest that the court has general jurisdiction over Defendants in the current case. See, e.g., *Tom & Sally's Handmade Chocolates, Inc*, 977 F. Supp. at 300–301, supra. See also *Hedges v. Western Auto Supply Co.*, 161 Vt. 614, 615 (1994) (finding jurisdiction over nonresident defendant corporation regardless of whether it sold its products directly in Vermont because "distribution of products nationwide gives rise to reasonable expectation that manufacturer is subject to jurisdiction in every state"). This "stream of commerce" analysis with respect to general jurisdiction was effectively abolished in *Goodyear*; "Flow of a manufacturer's products into the forum, we have explained, may bolster an affiliation germane to specific jurisdiction . . . But ties serving to bolster the exercise of specific jurisdiction do not warrant a determination that, based on those ties, the forum has general jurisdiction over a defendant." 564 U.S. at 927. Indeed, this effect

has been acknowledged in other jurisdictions, even with reference to Vermont specifically. See *Hinrichs v. Gen. Motors of Canada, Ltd.*, 222 So. 3d 1114, 1159 (Ala. 2016) ("The holding[] in *Hedges v. Western Auto Supply Co.*, 161 Vt. 614, 615 (1994) . . . [is] now directly contrary to *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011), and *Daimler AG v. Bauman*, 571 U.S. ——, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014), which hold that a manufacturer is not automatically subject to jurisdiction in every state in which its products are sold."). In sum, current federal constitutional law has narrowed the scope of general jurisdiction significantly; "With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m]… bases for general jurisdiction.'" *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (citation omitted). Mere continuous and systematic business contacts in the state are not enough; those contacts must be so significant that they are equivalent to the business being "at home" in the state. *Id*. at 127. See also *Ford Motor Company v. Montana Eighth Judicial District Court*, 141 S.Ct. 1017, 1024 (2021) (finding general jurisdiction over Ford in Delaware and Michigan, where it is incorporated and headquartered respectively, but not where the accident occurred or where the product was purchased). As such, to find that a corporation is "at home" in a state other than that of its incorporation and principal place of business would have to be an "exceptional case." *Id*. (citing *Daimler AG*, 571 U.S. at 139, n.19).

To this court's knowledge, the Vermont Supreme Court has cited *Goodyear* once in an unpublished three-justice memorandum, and has not yet cited *Daimler AG*. In the former case, jurisdictional analysis was relatively cursory, but it did restate the standard; "[T]o be subject to general jurisdiction in the forum state, the defendant's 'affiliations with the State' must be 'so continuous and systematic as to render them essentially at home' there." *Straw v. Vill. of Streamwood*, No. 2019-147, 2019 WL 4928695, at *2 (Vt. Oct. 4, 2019) (unpub. mem.) (citing 4 C. Wright & A. Miller, Fed. Prac. & Proc. § 1067.5 (4th ed.), quoting *Goodyear*, 564 U.S. at 918). As discussed previously, this is "a high burden to meet." *Id*. (quoting 4 C. Wright & A. Miller, § 1067.2).

Nonetheless, this court is reluctant to ignore the relevant holdings in *Goodyear*, *Daimler AG*, and *Ford Motor Co.*; jurisdiction "must be resolved under federal constitutional law, as defined in *International Shoe . . . and its progeny*." *N. Aircraft, Inc.*, 154 Vt. at 41 (emphasis added). Thus, in the present case, this court cannot find general jurisdiction over Defendants. Forever 21 is incorporated in Delaware and its principal place of business is California, therefore those two states are where it is "at home." Likewise, there do not appear to be any facts demonstrating that Defendants qualify as an "exceptional case" where the court could find they are "at home" in Vermont, and Plaintiff has not shown as much. Although Defendants avail themselves of the Vermont market via e-commerce and collect sales tax in Vermont, they do not have a physical retail store nor a principal office in Vermont, nor are they incorporated in Vermont. Pl.'s Mem. of Law in Supp. of Pl.'s Opp'n, p. 25. Plaintiff claims not to be aware of the proportion of e-commerce sales Defendants derive from Vermont and that this information is not relevant regardless, see *Id*. p. 25, n.1, however the court disagrees given the current federal standard for general jurisdiction. While there was a time that cases such as *Tom & Sally's Handmade Chocolates*, supra. demonstrated controlling law, it appears not to be the case post-*Goodyear*, thus there would have to be a showing of Defendants' exceptionally significant business presence in Vermont. Cf. *Hegemann v. M & M Am., Inc.*, No. 2:18-CV-00064, 2018

WL 4502181, at *4 (D. Vt. Sept. 20, 2018) (rejecting plaintiff's assertion that "exceptional" facts warranted exercise of general jurisdiction over nonresident defendant, because it had a "nominal to nonexistent" connection to Vermont). No facts are alleged demonstrating as much; the court cannot find such a connection here, and therefore the court does not have general jurisdiction over Defendants.

II. Specific Jurisdiction

Plaintiff's argument that this court has specific jurisdiction over Defendants is more tenable. To begin, the standard for a finding of specific jurisdiction is mostly unchanged post-*Goodyear*. "Specific jurisdiction is satisfied when a defendant has 'fair warning' that a particular activity may subject it to the jurisdiction of a state by virtue of the fact that the defendant 'purposefully directed' its activities at residents of the forum state and that the litigation results from injuries arising out of or relating to those activities." *State v. Atl. Richfield Co.*, 2016 VT 22, ¶ 14, 201 Vt. 342, 350 (internal citations omitted); *Burger King Corp.*, 471 U.S. at 472. This "fair warning" is a prerequisite for a finding of minimum contacts in accordance with due process, of which the inquiry focuses on "the relationship among the defendant, the forum state, and the cause of action." *Fox*, 2014 VT 100, ¶ 26, 197 Vt. 466, 479 (citing *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). There must be "some act by which the defendant purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Goodyear*, 564 U.S. at 924 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). However, "actual presence in the state is not a prerequisite for minimum contacts." *Richards v. Kk Bakery Inv. Co*., at *3 (quoting *Burger King*, 471 U.S. at 476). Additionally, "foreseeability . . . is critical to due process analysis . . . [which] is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Fox*, 2014 VT 100, ¶ 29 (quoting *Burger King*, at 474).

Defendants argue that their sole contact with Vermont, as alleged by the Complaint, is that Plaintiff allegedly transported the sweater from Massachusetts to Vermont, and injury subsequently occurred in Vermont. Def.'s Mot. to Dismiss, p. 14. A finding of minimum contacts on this basis alone, they argue, would violate due process. *Id*. (citing *Walden v. Fiore*, 571 U.S. 277, 285 (2014) "the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him."). As such, Defendants argue that the alleged injury in this case was "completely random, fortuitous, and non-foreseeable" in relation to the product sold in Massachusetts. *Id*. p. 15. Moreover, Defendants point out that there is "no allegation of direct mail, print, radio, or television media or marketing by any of the Defendants in Vermont" and that such a minimal online presence in Vermont does not make it foreseeable to be brought into this court on the present issue. *Id*. p. 16. To the contrary, Plaintiff argues that the recent decision in *Ford Motor Co.* supports a finding of specific jurisdiction, overcoming the fact that the sweater was neither manufactured, sold, nor purchased in Vermont. Pl.'s Mem. of Law in Supp. of Pl.'s Opp'n, p. 19 (citing *Ford*, 141 S.Ct. at 1026). Defendants refute this assertion, citing *Bristol-Myers Squibb Co. v. Superior Ct.*, 137 S. Ct. 1773, 1781 (2017). Reply in Supp. of Mot. to Dismiss, p. 10. Additionally, Plaintiff contends that prior Vermont Supreme Court decisions with similar fact patterns as the present case support a finding of jurisdiction. *Id*. pp. 20–24 (citing, e.g., *Hedges v. Western Auto Supply Co.*, 161 Vt. 614, 615 (1994) (finding

jurisdiction over nonresident defendant corporation regardless of whether it sold its products directly in Vermont because "distribution of products nationwide gives rise to reasonable expectation that manufacturer is subject to jurisdiction in every state.")). Defendants reject the application of *Ford Motor Co*. and citations to Vermont Supreme Court cases, arguing that Plaintiff mistakenly construed *Ford* and that the Vermont cases are now abrogated, see infra. Reply in Supp. of Mot. to Dismiss, pp. 10–15.

Here, as discussed below, the present case falls somewhere in the middle of current fact patterns addressed by the United States Supreme Court. While Plaintiff has made a prima facie showing of specific jurisdiction for purposes of this motion, Plaintiff will have to make an additional showing of certain facts pertaining to minimum contacts before jurisdiction may be sustained over Defendants.

a. Minimum Contacts, Foreseeability

To begin, in Vermont, the Court in *State v. Atl. Richfield Co.* discussed application of the "stream of commerce" doctrine at length as it pertains to minimum contacts. In relevant part:

"[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *World–Wide Volkswagen*, 444 U.S. at 297–98, 100 S.Ct. 559 (emphasis added). On the other hand, neither "random, fortuitous, or attenuated contacts," *Burger King*, 471 U.S. at 475, 105 S.Ct. 2174 (quotations omitted), nor "the mere unilateral activity of those who claim some relationship with a nonresident defendant can[ ] satisfy the requirement of contact with the forum State." *World–Wide Volkswagen*, 444 U.S at 298, 100 S.Ct. 559 (quotation omitted).

2016 VT 22, ¶ 15, 201 Vt. 342, 350–51. The Court goes on to discuss how the holdings in *World-Wide Volkswagen* and later stream of commerce cases such as *Asahi Metal Indus. Co. v. Super. Ct. of California*, 480 U.S. 102, 107 S.Ct. 1026 (1987) and *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 131 S.Ct. 2780 (2011) were mere plurality opinions and not binding precedent. See *Id*. ¶ 20. As such, the Court applied the standard from *World-Wide Volkswagen* stated previously in a products liability case, citing cases such as *Hedges*. *Id*. ¶¶ 21–22. The Court has restated a similar foundation of minimum contacts in other contemporaneous cases. See, e.g., *Fox*, 2014 VT 100, ¶ 28, 197 Vt. 466, 479 (quoting *Burger King Corp.*, 471 U.S. at 473) ("A corporation that 'delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State' may be sued in that state when those products subsequently injure consumers . . . [and is] subject to the other state's jurisdiction in connection with the consequences of their activities").

Although *Atl. Richfield Co.* is the leading Vermont Supreme Court decision interpreting the relevant law, Defendants correctly point out that the factual background in this case differs from the former. There, MTBE-gasoline was ultimately trucked into Vermont for distribution and purchase, where the sweater in this case was not. *Fox* concerns a relief-from-abuse order, which is not quite applicable to the current fact pattern. Similarly, *Walden v. Fiore* is not very instructive, as discussed below. However, the most recent decision applicable and factually

similar to the current case is *Ford Motor Co.*, a majority opinion, which both parties argue supports their respective positions. The court will apply the holding in *Ford* as follows.

The general holding in *Ford* was that specific jurisdiction is proper where "a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit." 141 S.Ct. 1017, 1022 (2021). In *Ford*, two plaintiffs bought a Ford vehicle in a neighboring state and were injured in accidents that occurred in their home states, asserting, *inter alia*, a products-liability claim. *Id*. at 1023. Plaintiffs brought suit in their respective home states. *Id*. The Court held that, although the vehicles were manufactured and sold in non-forum states, and Ford was not "at home" in those states, suit was properly brought against Ford in those states because they had specific jurisdiction:

In each complaint, the resident-plaintiff alleges that a defective Ford vehicle—an Explorer in one, a Crown Victoria in the other—caused the crash and resulting harm. And as just described, Ford had advertised, sold, and serviced those two car models in both States for many years. (Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region.) In other words, Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States. So there is a strong "relationship among the defendant, the forum, and the litigation"—the "essential foundation" of specific jurisdiction. (citing *Helicopteros*, 466 U.S., at 414, 104 S.Ct. 1868 (internal quotation marks omitted).

Ford Motor Co., 141 S.Ct. 1017, 1028 (2021). The Court distinguished this case from *Walden*, 571 U.S. at 289, where the Court declined to find purposeful availment since the defendant "never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada":

"Because that was true, the [*Walden*] Court had no occasion to address the necessary connection between a defendant's in-state activity and the plaintiff's claims. But here, Ford has a veritable truckload of contacts with Montana and Minnesota . . . The only issue is whether those contacts are related enough to the plaintiffs' suits. As to that issue, so what if (as *Walden* held) the place of a plaintiff's injury and residence cannot create a defendant's contact with the forum State? Those places still may be relevant in assessing the link between the defendant's forum contacts and the plaintiff 's suit—including its assertions of who was injured where. Here, resident-plaintiffs allege that they suffered in-state injury because of defective products that Ford extensively promoted, sold, and serviced in Montana and Minnesota . . . For all the reasons we have given, the connection between the plaintiffs' claims and Ford's activities in those States—or otherwise said, the "relationship among the defendant, the forum[s], and the litigation"—is close enough to support specific jurisdiction. *Walden*, 571 U.S., at 284, 134 S.Ct. 1115 (internal quotation marks omitted)."

Ford at 1031–1032.

Applied to the present case, accepting Plaintiff's factual allegations as true, the injury occurred in Windham County, Vermont, of which Plaintiff is a resident, so Defendants' cite to *Bristol-Myers*

Squibb Co. v. Superior Court of Cal., San Francisco Cty., is not very helpful. See 582 U. S. ——–, ——, 137 S.Ct. 1773, 1782 (2017) (finding a lack of "connection" in part because the "plaintiffs are not [forum State] residents and do not claim to have suffered harm in that State"). The key issue here, then, is whether the relationship between Defendants and Vermont is "close enough" to support specific jurisdiction over them. See *Ford*, infra. at 1032. On one hand, Plaintiff establishes that Forever 21 is a large, nationwide corporation which makes its products available to Vermont consumers and has a significant e-commerce presence extending to Vermont. Viewing this fact in the light most favorable to Plaintiff, it is highly unlikely that Forever 21 has never conducted business or had any presence in Vermont such that the relevant holding in *Walden* is applicable. In this way, Forever 21 is "a company like Ford." On the other hand, unlike in *Ford*, Plaintiff's allegations do not make clear that Forever 21 has "systematically" serviced Vermont or engaged in "extensive" promotions and sales in Vermont. Rather, Plaintiff's allegations are based primarily on Forever 21's nationwide retail presence in general, which includes Vermont. The latter alone appears to come closer to a hypothetical situation that the Court expressly declined to address in *Ford*, namely where the products in question were marketed "in only a different State or region." See supra. at 1028.

Here, Plaintiff has shown that the allegedly defective sweater is available for purchase online in Vermont, as well as at nearby retail locations. See Pl.'s Mem. of Law in Supp. of Pl.'s Opp'n, p. 14. Given Vermont's small size, rural demographic, and close proximity to commercial hubs in neighboring states, it is unsurprising and foreseeable that a Vermont consumer would travel 60 miles to a large shopping mall such as the Holyoke Mall to buy a product at a Forever 21 retail location. As such, it is foreseeable that Defendants could be haled into a Vermont court for suits arising from a purchase of the sweater. Cf. *Atl. Richfield Co.*, 2016 VT 22, ¶ 23, 201 Vt. 342, 355 (holding that nonresident manufacturer placing a product in a nationwide distribution system likely to eventually end up in the Northeast, including Vermont, knew or should have known that product would be brought there). Thus, as in *Ford*, the issue is whether Defendants' contacts with Vermont "are related enough" to the Plaintiff's suit. *Ford*, supra. at 1031–1032. Holding Plaintiff to this standard to find jurisdiction does not contradict, and for the most part is in line with, prior rulings by the Vermont Supreme Court. See, e.g., *Dall v. Kaylor*, 163 Vt. 274 (1995) (jurisdiction found where the out-of-state defendant was in the business of selling horses to a national market, it reached this market through advertisement in a national trade journal, and, though the sale at issue took place in Maryland, it arose from contact made as a result of the advertisement); *Brown v. Cal Dykstra Equip. Co.*, 169 Vt. 636 (1999) (mem.) (jurisdiction found where the Vermont plaintiff had responded to an advertisement that the out-of-state defendant had placed in a national magazine, even though the sale itself took place outside of Vermont). However, it is worth noting that the aforementioned Vermont cases do not concern defendant corporations as large and pervasive as Ford; the magnitude of Ford's commercial presence throughout the United States is immense, and whether the defendants in *Dall* and *Cal Dykstra Equip. Co.* had contacts with Vermont rising to the level in *Ford* is unclear. It also does not help that those decisions were issued before the rise of e-commerce. Nonetheless, while Forever 21 is a large corporation that sells products entering the stream of commerce reaching Vermont, the veracity of Forever 21's marketing and relationship towards Vermont consumers in particular and if/how this relates to Plaintiff's purchase of the sweater is underdeveloped as pleaded. Thus, while Plaintiff has made a *prima facie* showing of minimum contacts under the stream of commerce doctrine consistent with prior Vermont case law sufficient to survive a motion to

dismiss. Jurisdictional discovery is required to proceed further. See *Ball v. Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990) ("prior to discovery . . . the plaintiff's prima facie showing may be established solely by allegations").

b. Reasonableness

"Where a plaintiff makes the threshold showing of the minimum contacts required for the first test, a defendant must present 'a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'" *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 129 (2d Cir. 2002) (quoting *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 568 (2d Cir. 1996); *Burger King*, 471 U.S. at 477); *Atl. Richfield Co.*, 2016 VT 22, ¶ 27, 201 Vt. 342, 357 (same). The assertion of personal jurisdiction must be reasonable in order not to offend the "traditional notions of fair play and substantial justice" required by due process. *Id*. To determine reasonableness, the court considers:

(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies.

Id.; *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). Measured vis-à-vis minimum contacts, "the import of the 'reasonableness' inquiry varies inversely with the strength of the 'minimum contacts' showing—a strong (or weak) showing by the plaintiff on 'minimum contacts' reduces (or increases) the weight given to 'reasonableness.'" *Id*.

On these five points, Defendants' arguments that the reasonableness factors are either neutral or weigh in their favor are unpersuasive, with the exception of several named Defendants now being defunct entities. Preliminarily, the only reasonable Defendant in this case is arguably Forever 21, Inc., which is still a functioning corporation. Plaintiff was specifically granted relief from stay in bankruptcy court in order to pursue her claim against this particular Defendant. Although Plaintiff may still bring a claim against the other Defendants after bankruptcy proceedings have wrapped up, see *Hill v. Springfield Hosp.*, 2023 VT 23, ¶ 10 (holding that bankruptcy court decision closing the bankruptcy case operated to remove the automatic stay, meaning that plaintiff was no longer precluded from pursuing her claim against the defendant); 11 U.S.C. § 362(c)(2) (providing that automatic stay of litigation against debtor continues until bankruptcy case is closed or dismissed, or discharge is granted or denied, whichever is earliest), it appears that most of, if not all Defendants other than Forever 21, Inc. have been dissolved. Additionally, the court acknowledges that Defendants are "insured through ACE American Ins. (Chubb) for up to $26 million in coverage for this claim," however Plaintiff does not identify which Defendants are insured outside of being subsidiaries of Forever 21, Inc. Pl.'s Mem. of Law in Supp. of Pl.'s Opp'n, pp. 29, 32–34. While not dispositive of finding jurisdiction, if liability is not contingent upon which Defendant(s) are named, or alternatively if named Defendant(s) have no relation to the present case, it would be unreasonable to hale into court now-defunct entities which provide little to no value in the disposition of the case and/or would have no effect on the relief sought. Therefore, unless Plaintiff can show otherwise, Forever 21,

Inc. is likely the only reasonably proper Defendant in this case. As Plaintiff points out, this may be shown during discovery. See Pl.'s Mem. of Law in Supp. of Pl.'s Opp'n, p. 34 n.3.

That being said, there is no undue burden on Forever 21, Inc., or any other reasonably proper Defendant, to be brought into the Vermont court for this claim. Accepting the allegations in the Complaint and supporting affidavits as true, Defendant is a corporation with a significant nationwide presence. Defendant avails itself of the Vermont market online and has several nearby physical store locations. Defendant could just as easily, if not more easily, litigate in Vermont as Plaintiff could litigate in a different state such as Delaware or California. Even if litigating in the state where the sale took place would be less burdensome as Defendants suggest, it is inapposite since Massachusetts is a negligible distance from this court. See *Dall v. Kaylor*, 163 Vt. 274, 277 (1995) (citing *Lebel v. Everglades Marina, Inc.*, 115 N.J. 317, 558 A.2d 1252, 1258 (1989) (finding no burden on nonresident because interstate travel "not qualitatively that different" from travel within state)). Here, Plaintiff seeks relief under Vermont products-liability law, the product allegedly caused injury in Vermont, and significant portions of the evidence and witnesses are located in Vermont. While it is possible that more evidence is located in Massachusetts, Delaware, and/or California, Defendants offer no compelling basis for this argument; Defendants have not demonstrated that obtaining evidence in other states makes litigating in Vermont more burdensome than doing so in a different state. At the very least, this burden weighs as neutral.

The second and third factors are mostly uncontroverted in that they weigh in favor of Plaintiff. "Vermont has a 'manifest interest' in providing means of redress for its residents . . . and Plaintiffs have an interest in adjudicating where they reside." *Richards v. Kk Bakery Inv. Co.*, at *3 (citing *Burger King*, 471 U.S. at 483). See also *Ford Motor Co.*, 141 S.Ct. at 1030 (recognizing that when a product fails in a particular state, that state has a significant interest in providing their residents with a convenient forum for redressing injuries inflicted by out-of-state actors and enforcing their own safety regulations). Indeed, the Vermont Supreme Court has adopted current products liability law in accordance with these interests. See, e.g., *Webb v. Navistar Int'l Transp. Corp.*, 166 Vt. 119, 133 (1996) (adopting products liability rules consistent with "the policy of ensuring that manufacturers bear the cost of casting defective products into the [Vermont] market. The manufacturer must remain responsible for damages resulting from the defect, regardless of the extent to which other factors contributed to the injuries"). Assuming the pleaded allegations as true, these factors are all applicable to resident Plaintiff and her alleged injury based in Vermont. Additionally, although Plaintiff obtained counsel in Delaware as part of the bankruptcy proceeding, Plaintiff required a relief from the automatic stay in that court to pursue the present claim; outside of that motion, it does not appear that Plaintiff is "litigating" in Delaware in the traditional sense– this is not an indicator of forum-shopping as Defendants suggest. Def.s' Mot. To Dismiss, p. 19.

The fourth and fifth factors tend to weigh in favor of Plaintiff. The Delaware bankruptcy court specifically granted an automatic stay with respect to Forever 21, Inc. for Plaintiff to pursue her claim in state court, and it did not specify any state as more or less proper. Contrary to Defendants' assertion, see Def.s' Mot. To Dismiss, p. 20, this does not suggest that the Delaware court specified an interest in exercising jurisdiction over this claim *per se*. On that note, if other named Defendants are also determined to be reasonably proper as discussed previously, it would

not be economical nor logical for Plaintiff to pursue the same claim in different courts. See *Berlin Convalescence Ctr., Inc. v. Stoneman*, 159 Vt. 53, 60 (1992) (issue preclusion prevents "repetitious litigation of what is essentially the same dispute"); *Trepanier v. Getting Organized, Inc.*, 155 Vt. 259, 265 (1990) (an issue is precluded under Vermont law where "preclusion is asserted against one who was a party or in privity with a party in the earlier action"). As such, as the situs of the alleged injury and Plaintiff's residence, Vermont has a stronger interest in resolving the controversy than the other states which Defendants argue have priority, namely Massachusetts (state of sale), Delaware (state of incorporation), and California (principal place of business). See *Ford Motor Co.*, 141 S.Ct. at 1032–1033 (Alito, J., concurring) (where injury occurred in plaintiffs' home states, "send[ing] the [Montana and Minnesota] plaintiffs packing to the jurisdictions where the vehicles in question were assembled (Kentucky and Canada), designed (Michigan), or first sold (Washington and North Dakota) or where Ford is incorporated (Delaware) or has its principal place of business (Michigan)" does not reflect "traditional notions of fair play and substantial justice" as set forth in *World-Wide Volkswagen Corp.*).

In sum, Defendants have not made a compelling case that the exercise of jurisdiction in Vermont over, at the very least, Forever 21, Inc., is unreasonable and violates due process.

III. Service of Process

Pursuant to the relevant service of process statute, 12 V.S.A. § 855, and in accordance with Vermont's long-arm statute, 12 V.S.A. § 913(b), the Secretary of State is appointed the agent for service of process purposes for a foreign corporation that "has had 'contact with the state,' has conducted 'activity in the state' or there has been 'contact or activity imputable to it . . . sufficient to support a Vermont personal judgment against it . . . arising or growing out of that contact or activity.'" *Schwartz v. Frankenhoff*, 169 Vt. 287, 292 (1999) (quoting 12 V.S.A. § 855). "Section 855 'expresses a policy to assert jurisdiction over foreign corporations to the full extent permitted by the Due Process Clause of the Fourteenth Amendment.'" *Id*. (quoting *Chittenden Trust Co. v. Bianchi*, 148 Vt. 140, 141 (1987)). Such service upon the Secretary of State "shall be of the same legal force and effect as if served on the foreign corporation at its principal place of business in the state or country where it is incorporated according to the law of that state or country." 12 V.S.A. § 855. "The service shall be sufficient if a copy of the process, with the officer's return thereon showing the service upon the Secretary of State, is sent by the plaintiff to the foreign corporation by registered mail, and if the plaintiff's affidavit of compliance herewith is filed with the process in court." 12 V.S.A. § 856. Additionally, "[i]f a . . . foreign limited liability company fails to appoint or maintain an agent for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the agent's address, the Secretary of State is an agent of the company upon whom process, notice, or demand may be served." 11 V.S.A. § 4010(b). "If the process, notice, or demand is served on the Secretary of State, the Secretary of State shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its registered office." 11 V.S.A. § 4010(c).

Here, Defendants argue that they were not properly served because they have no registered agent in Vermont, have no physical or corporate presence in Vermont, and Plaintiff's counsel mailed them process, rather than the Secretary of State, to Defendants. Def.s' Mot. to Dismiss, pp. 21–

22. Defendants allege that the Secretary did not mail a copy of the process to Defendants' agents in Delaware and California. *Id*. at 22. Additionally, Defendants argue they lack sufficient contacts to support judgment against them in Vermont. *Id*. p. 23. On the latter point, this is the same due process jurisdictional issue addressed earlier in this opinion which will be resolved pending discovery, and is therefore inapposite since the claim will be dismissed should jurisdiction not be found. The remaining arguments that Plaintiff did not comply with proper procedure are not dispositive. By their own admission, Defendants are foreign corporations or limited liability companies and have no registered agent in Vermont, therefore it was not improper for Plaintiff to serve the Secretary of State pursuant to 12 V.S.A. § 855 and 11 V.S.A. § 4010(b) respectively. Plaintiff has submitted to the court the service of process paperwork sent by the Vermont Secretary of State to each of the seven named Defendants, each having been forwarded to Plaintiff and containing a certified mail receipt number. Pl.'s Mem. of Law in Supp. of Pl.'s Opp'n, Ex. 2 pp. 20–26. Plaintiff also mailed a copy of the service paperwork to each Defendant via certified mail, and submitted copies of these to the court with the required affidavits. See Affidavits of Compliance (7) (filed January 6, 2023). However, regarding the corporate Defendants, namely Forever 21, Inc., Forever 21 Retail, Inc., and Forever 21 International Holdings, Inc., Plaintiff and the Secretary of State arguably mailed process to the wrong address. For those Defendants, although Plaintiff properly served the Secretary of State pursuant to 12 V.S.A. § 855, the Vermont Supreme Court has explained that the "sent to the foreign corporation" language in 12 V.S.A. § 856 "requires the secretary of state and the plaintiff as well, to mail copies of the process to the defendant corporation by registered mail, *directed to its principal place of business*." *O'Brien v. Comstock Foods, Inc.*, 123 Vt. 461, 463 (1963) (emphasis added). Here, Plaintiff and the Secretary of State did not explicitly do so, and instead sent the process to those Defendants' agents for service in California (Forever 21 Inc. and Forever 21 International Holdings, Inc.) or Delaware (Forever 21 Retail, Inc.). See Affidavits of Compliance with 12 V.S.A. § 856 (3) (filed January 6, 2023); Pl.'s Mem. of Law in Supp of Pl.'s Opp'n, Ex. 2 pp. 20–22. For the remaining Defendants which are all limited liability companies, Plaintiff and the Secretary of State also mailed copies of process to Defendants' respective agents for service. See Affidavits of Compliance with 11 V.S.A. § 4010 (4) (filed January 6, 2023); Pl.'s Mem. of Law in Supp., Ex. 2 pp. 23–26. Here, unlike the service procedure for corporate defendants, 11 V.S.A. § 1040 does not require that Plaintiff also mail copies herself, and only requires that the Secretary of State mail process "to the company at its registered office." 11 V.S.A. § 4010(c). The Vermont Supreme Court has not commented on what office this refers to specifically.

In sum, the only potential defect in service here is that process was sent by Plaintiff *and* the Secretary of State to Defendants' agents for service in their respective states rather than their principal place of business or otherwise "registered office." This defect, if error at all, does not warrant dismissal of Plaintiff's suit. Service of process is primarily a notice-giving device. *Mountain View Ass'n. Inc. v. Town of Wilmington*, 147 Vt. 627, 629 (1987) (citing 4 C. Wright & A. Miller, Federal Practice and Procedure: Civil § 1083, at 333 (1969)). Process that is in substantial compliance with statutory requirements may be amended to cure its defects. V.R.C.P. 4(j); *Smith v. Brattleboro Reformer, Inc.*, 147 Vt. 303, 304 (1986). "Where service is technically defective, but the defendant has received notice of the action and no prejudice is shown from allowing plaintiff to make proper service, the court should retain the case and allow plaintiff to properly serve." *Murphy v. Mactaw, Inc.*, No. S0653-06CNC, 2006 WL 6047603

(Vt. Super. Ct. Dec. 20, 2006) (Katz, J.) (citing *Mountain View*, 147 Vt. at 629). Here, there is nothing to suggest that Defendants were prejudiced by having the process mailed to their agents for service rather than place of business by both Plaintiff and the Secretary of State. Despite Defendants' assertion, the Affidavits and Exhibits supplied by Plaintiff also demonstrate that the Secretary of State did in fact mail the process. Intuitively, service would end up at the business regardless if process was served on the agent by either party, and would therefore be just as effective. See *Howe v. Lisbon Sav. Bank & Trust Co.*, 111 Vt. 201, 208 (1940) (holding defective service amendable where it can be generally understood what was meant by the process, and service substantially complied with the statute because process made clear the subject matter of the litigation and the court having jurisdiction over the case). Additionally, for the LLC Defendants, it is not clear that statute explicitly precludes serving their agents directly; "[a]n agent for service of process appointed by a . . . foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company." 11 V.S.A. § 4010(a). See also *Reynolds Corp. v. National Operator Services, Inc*., 208 F.R.D. 50 (W.D.N.Y. 2002), quoting *Wright & Miller* (since defendant received actual notice of action, provisions of state law governing service of process should be liberally construed). Nonetheless, the fact that Plaintiff herself sent notice to the LLC Defendants' agents is inapposite since statute does not prohibit this, rather it only requires the Secretary of State to do so. Plaintiff has shown that they did, and Plaintiff was in fact required to also send copies of process herself to the corporate Defendants. See Pl.'s Mem. of Law in Supp. of Pl.'s Opp'n, Ex. 2 pp. 20–26; 12 V.S.A. §856. Therefore, since all Defendants did effectively receive notice, there is no substantial error warranting dismissal. If necessary, Plaintiff may amend her service such that Defendants are properly noticed at a particular address, however it appears to the court that Defendants already received notice through their respective agents.

IV. Without Prejudice

As discussed previously, Plaintiff has made a *prima facie* showing of jurisdiction, however, Plaintiffs must ultimately demonstrate personal jurisdiction by a preponderance of evidence. *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981). This requires more factual development with respect to minimum contacts relevant to specific jurisdiction and the long arm statute, as well as which Defendant(s) are proper in this case. Plaintiff may do so pursuant to court's discretion to allow for jurisdictional discovery. See *Atl. Richfield Co*., 2016 VT 22, ¶ 9, supra. As such, Defendants' motion to dismiss is denied *without prejudice* and they may refile the motion upon development of a more complete record. See generally *Richards v. Kk Bakery Inv. Co. LLC*, at *4 (discussing Plaintiff's burden to establish a more complete record beyond mere factual allegations of jurisdiction).

Pursuant to V.R.E.F. 9(d)(1)(D).
Electronically Signed June 18, 2023 1:19 PM