

ADDENDUM A

STATE OF SOUTH DAKOTA)	
	:	
COUNTY OF HUGHES)	
IN CIRCUIT COURT)	
SIXTH JUDICIAL CIRCUIT)	
STATE OF SOUTH DAKOTA,)	
Plaintiff,)	32CIV16-000092
)	
v.)	
WAYFAIR INC.,)	
OVERSTOCK.COM, INC.,)	
and NEWEGG INC.,)	
Defendants.)	

**DEFENDANTS' STATEMENT
OF MATERIAL FACTS**

Pursuant to SDCL § 15-6-56(c)(1), Defendants Wayfair Inc., Overstock.com, Inc. and Newegg Inc. submit this statement of material facts as to which there is no genuine issue to be tried:

1. Defendant Wayfair Inc. (“Wayfair”) has its principal place of business in the Commonwealth of Massachusetts and lacks a physical presence in South Dakota. Complaint ¶¶ 18, 19; Joint Answer ¶¶ 18, 19.

2. Defendant Overstock.com, Inc. (“Overstock.com”) has its principal place of business in the State of Utah [and] lacks a physical presence in South

Dakota. (Brackets added.) Complaint ¶¶ 16, 19; Joint Answer ¶¶ 16, 19.

3. Defendant Newegg Inc. (“Newegg”) has its principal place of business in the State of California and lacks a physical presence in South Dakota. Complaint ¶¶ 15, 19; Joint Answer ¶¶ 15, 19.

4. In the previous calendar year (2015), Defendant Wayfair had gross revenue from the sale of tangible personal property delivered into South Dakota in excess of \$100,000, and/or sold tangible personal property for delivery into South Dakota in two hundred or more separate transactions. Complaint ¶ 41; Joint Answer ¶ 41.

5. In the previous calendar year (2015), Defendant Overstock.com had gross revenue from the sale of tangible personal property delivered into South Dakota in excess of \$100,000, and/or sold tangible personal property for delivery into South Dakota in two hundred or more separate transactions. Complaint ¶ 41; Joint Answer ¶ 41.

6. In the previous calendar year (2015) Defendant Newegg had gross revenue from the sale of tangible personal property delivered into South Dakota in excess of \$100,000, and/or sold tangible personal property for delivery into South Dakota in two hundred or more separate transactions. Complaint ¶ 41; Joint Answer ¶ 41.

7. Defendant Wayfair is not registered to collect South Dakota sales tax. Complaint ¶ 40; Joint Answer ¶ 40.

8. Defendant Overstock.com is not registered to collect South Dakota sales tax. Complaint ¶ 40; Joint Answer ¶ 40.

9. Defendant Newegg is not registered to collect South Dakota sales tax. Complaint ¶ 40; Joint Answer ¶ 40.

Dated this 22nd day of February, 2017.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, LLP

By: /s/ Jeff Bratkiewicz

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2017, a true and correct copy of the foregoing Defendants' Statement of Material Facts was served electronically via the Odyssey system, via e-mail, and/or via U.S. mail, postage prepaid, upon the following attorneys of record for Plaintiff, the State of South Dakota:

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ADDENDUM B

STATE OF SOUTH DAKOTA)	
	:	SS
COUNTY OF HUGHES)	
IN CIRCUIT COURT)	
SIXTH JUDICIAL CIRCUIT)	
STATE OF SOUTH DAKOTA,)	
Plaintiff,)	32 Civ. 16-92
v.)	
WAYFAIR INC)	
OVERSTOCK.COM, INC)	
NEWEGG INC)	
Defendants.)	

PLAINTIFF’S RESPONSE TO DEFENDANTS’ STATEMENT OF MATERIAL FACTS

The State of South Dakota hereby submits its Response to the Defendants’ Statement of Material Facts, pursuant to SDCL 15-6-56(c)(2). The State’s responses below are specifically limited to and for the purposes of this litigation alone and shall not be used or interpreted for any other purpose.

The following numbered paragraphs correspond to the same numbered paragraphs from the Defendants’ Statement of Material Facts.

1. Defendant Wayfair Inc. (“Wayfair”) has its principal place of business in the Commonwealth of

Massachusetts and lacks a physical presence in South Dakota.

ADMIT that Wayfair’s principal place of business in [sic] the Commonwealth of Massachusetts and that Wayfair lacks a “physical presence” in the traditional sense.

2. Defendant Overstock.com, Inc. (“Overstock”) has its principal place of business in the State of Utah and lacks a physical presence in South Dakota.

ADMIT that Overstock.com’s principal place of business in [sic] the State of Utah and that Overstock.com lacks a “physical presence” in the traditional sense.

3. Defendant Newegg Inc. (“Newegg”) has its principal place of business in the State of California and lacks a physical presence in South Dakota.

ADMIT that Newegg’s principal place of business in [sic] the State of California and that Newegg lacks a “physical presence” in the traditional sense.

4. In the previous calendar year (2015), Defendant Wayfair had gross revenue from the sale of tangible personal property delivered into South Dakota in excess of \$100,000, and/or sold tangible personal property for delivery into South Dakota in two hundred or more separate transactions.

ADMIT

5. In the previous calendar year (2015), Defendant Overstock.com had gross revenue from the sale of tangible personal property delivered into South Dakota in excess of \$100,000, and/or sold tangible

personal property for delivery into South Dakota in two hundred or more separate transactions.

ADMIT

6. In the previous calendar year (2015), Defendant Newegg had gross revenue from the sale of tangible personal property delivered into South Dakota in excess of \$100,000, and/or sold tangible personal property for delivery into South Dakota in two hundred or more separate transactions.

ADMIT

7. Defendant Wayfair is not registered to collect South Dakota sales tax.

ADMIT

8. Defendant Overstock.com is not registered to collect South Dakota sales tax.

ADMIT

9. Defendant Newegg is not registered to collect South Dakota sales tax.

ADMIT

Dated this 23rd day of February, 2017.

/s/ Kirsten E. Jasper
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CERTIFICATE OF SERVICE

On this 23rd day of February, 2017, the undersigned hereby certifies that a true and correct copy of the *Plaintiff's Response to Defendants' Statement of Material Facts* in the above-entitled matter was served electronically through the Odyssey File and Service system, upon the following:

Jeffery L. Bratkiewicz at jeffb@bangsmccullen.com
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and sent by email to:

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/s/ Kirsten E. Jasper

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