

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

CITY OF CHICAGO, an Illinois	)		
Municipal corporation,	)		
	)	Judge:	Myron H. Mackoff
Plaintiff,	)		
	)		
-vs-	)	Case No.:	2021 CH 01987
	)		
WESTFORTH SPORTS, INC.,	)		
	)		
Defendant.	)		

WESTFORTH’S MOTION TO DISMISS THE CITY’S
FIRST AMENDED COMPLAINT UNDER 735 ILCS 5/2-619.1

NOW COMES Defendant, Westforth Sports, Inc. (“Westforth”), by and through its undersigned attorneys, and hereby moves this Honorable Court under 735 ILCS 5/2-619.1 to enter an Order dismissing the claims brought against it in the First Amended Complaint by Plaintiff, the City of Chicago (the “City”). Specifically, the City’s claims against Westforth should be dismissed under 735 ILCS 5/2-619 because they are barred by the Protection of Lawful Commerce in Arms Act (the “PLCAA”), 15 U.S.C. §§ 7901-7903, and the City relies upon unconstitutional enactments to attempt to satisfy the predicate exception. Moreover, the City’s claims should be dismissed under 735 ILCS 5/2-615 because, as pled, they are legally insufficient under Illinois law. In support of this motion, Westforth states as follows:

INTRODUCTION

Westforth, a federally licensed firearms dealer (“FFL”) in northwest Indiana, opened its doors in 1957. Until its owner retired in 2023, Westforth operated within a mere seven miles of Indiana’s border with Illinois. During that time, Westforth legally sold many firearms, some of which, by one means or another, eventually ended up in Chicago, a function of time, sales volume, and proximity. Meanwhile, before Westforth was in business, while Westforth was in business, and since Westforth closed its business, Chicago has a significant crime problem and a violence problem. The City wants to blame someone. And so it has sued Westforth on various nuisance and other theories, asking this Court, among other things, to recognize regulatory duties via litigation that have not been imposed by any legislative body or regulatory agency. Despite regular ATF inspections and extensive outside scrutiny, Westforth remains licensed to sell firearms to this day.

The City asks this Court to hold Westforth liable for harms allegedly caused by third parties who criminally or unlawfully misused firearms after those firearms left Westforth’s possession and control. Congress enacted the Protection of Lawful Commerce in Arms Act (“PLCAA”), 15 U.S.C. §§ 7901-7903, to prohibit exactly this type of case. The City tries to invoke the PLCAA’s narrow predicate exception by alleging broad categories of purported statutory and regulatory “violations” to invoke the PLCAA’s statutorily-defined negligent entrustment exception. But accomplishing that under the PLCAA requires more than labels, it requires the City to plead facts showing an actual violation of a valid statute. It has not done so.

Regarding its claims relating to purported straw purchasers of firearms, City’s allegations center on purported “red flags,” hindsight, aggregate trace statistics, later criminal charges against customers, and alleged failure to prevent misconduct by others. Those allegations do not plead a knowing statutory violation, affirmative assistance, intent to facilitate a specific unlawful act, or

proximate cause. Under the United States Supreme Court’s recent decision in *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025) and other applicable authority, such allegations cannot trigger the PLCAA’s predicate exception. The City’s separate “assault weapons” and “melt point” handgun theories are even more attenuated. The City alleges that Westforth sold certain firearms to Chicago residents in Illinois but stops short of alleging that any such firearm was ever imported into Chicago, possessed in Chicago, recovered in Chicago, used in Chicago, or caused harm in Chicago. Chicago Municipal Code § 8-20-075, prohibits importation, sale, manufacture, transfer, or possession in Chicago; it does not prohibit mere ownership by a Chicago resident. The City’s attempts to treat mere Chicago residency as possession in Chicago to try to manufacture a statutory violation upon which to hang its proverbial hat.¹

Even apart from PLCAA, the City’s First Amended Complaint fails under Illinois law. Illinois Supreme Court decisions involving firearm-based nuisance theories -- including *City of Chicago v. Beretta USA Corp.*, 213 Ill. 2d 351 (2004) and *Young v. Bryco Arms*, 213 Ill. 2d 433 (2004) -- foreclose the City’s attempt to impose public nuisance liability for the aggregate effect of intervening criminal acts by third parties not under Westforth’s control. The City’s municipal cost recovery claim fails for the same reasons, and no amount of “upon information and belief” pleading can fix that. Thus, the City’s First Amended Complaint should be dismissed with prejudice.

¹ Notably, the City did not even attempt allege any violations regarding sales to Chicago residents until after a prior ruling – since overturned – that its claims relating to sales in Indiana did not subject Westforth to personal jurisdiction in Illinois.

FACTS²

Westforth is a federally licensed retail firearms dealer located, at all times material hereto, in Gary, Indiana. *See*, First Amende Complaint, ¶ 16. The City alleges that Westforth sold firearms to Illinois residents through both over-the-counter transactions and transfers through Illinois FFLs, including at least 538 firearms between January 2018 and April 2021. *Id.*, ¶¶ 17, 103. The City further alleges that some firearms sold by Westforth ultimately entered Chicago through straw purchasers, alleged unlicensed dealers, or other third parties, and that Westforth should be held responsible for the consequences of those downstream transfers. *Id.*, ¶¶ 1–6, 33, 111.

The City’s claims start with the premise that Chicago faces a serious gun-violence problem, which it characterizes as a “growing epidemic” that imposes physical, emotional, economic, law-enforcement, emergency-response, and public-health costs on the City and its residents. *Id.*, ¶¶ 23–25. The City then alleges that Westforth contributed to those harms by selling firearms to people the City characterizes as straw purchasers or traffickers, by allegedly selling certain firearms to Chicago residents, and by allegedly failing to stop transactions that the City says should have raised red flags. *Id.*, ¶¶ 31–33, 60–62, 103–105, 110–113.

Based on those allegations, the City asserts four claims against Westforth: public nuisance, municipal cost recovery, negligence, and negligent entrustment. *Id.*, ¶¶ 108–139. Each claim seeks to hold Westforth liable for harms and costs allegedly resulting from firearms after they left Westforth’s possession and control and were later transferred, possessed, or misused by independent third parties in Chicago. *Id.*, ¶¶ 111, 119–121, 126–130, 132–138. The City does not allege that Westforth itself committed any shooting, possessed any firearm in Chicago, or directed any customer

² The cited facts are taken from the City’s First Amended Complaint. For purposes of this motion, they are taken to be true.

to commit a crime, or otherwise intended to join in the criminal act of another. Rather, the City's theory is that Westforth's firearms business should be civilly liable for the alleged aggregate public consequences of later criminal or unlawful conduct by others. *Id.*, ¶¶ 1–8, 109–115, 120–121, 130, 138.

STANDARD OF REVIEW

735 ILCS 5/2-619.1 provides for a combined motion under sections 2-615 and 2-619. *See, Barron v. City of Chicago*, 2025 IL App (1st) 240066 (2025). A section 2-615 motion to dismiss challenges the legal sufficiency of the plaintiff's pleadings. *Id.* A section 2-619 motion to dismiss asserts that an affirmative matter defeats the claim. *Id.* Here, in addition to challenging the legal sufficiency of the City's First Amended Complaint under section 2-615, Westforth further asserts that PLCAA immunity and constitutional bars require dismissal under section 2-619.

ARGUMENT

THE CITY'S CLAIMS SHOULD BE DISMISSED UNDER 735 ILCS 5/2-619(9)

I. PLAINTIFF'S FIRST AMENDED COMPLAINT IS BARRED BY THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT.

PLCAA was Congress's response to a flood of civil lawsuits that sought to hold the firearms industry responsible for downstream lawbreaking by third parties. Activists had deployed litigation in an effort to compel firearms manufacturers and associated entities to adopt safety measures and practices that exceeded what state or federal statutes required.

* * * *

[] PLCAA reflects Congress's view that the democratic process, not litigation, should set the terms of gun control.

Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos, 605 U.S. 280, 301 (2025). In a unanimous decision penned by Justice Kagan and released on June 5, 2025, the U.S. Supreme Court spoke loudly and clearly regarding the extent of the statutory immunity extended to federal firearms

licensees such as Westforth. As applied here, *Mexicanos*, prohibits claims such as those brought against Westforth from proceeding under aiding and abetting, negligent entrustment, and other theories.

In enacting the PLCAA, Congress discussed suits such as this one and concluded that lawful sellers, such as Westforth, should not be liable for the intentional, criminal misuse of their products:

- Lawsuits have been commenced against manufacturers, distributors, dealers and importers of firearms that operate as designed and intended which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.
- The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.
- Businesses in the United States that are engaged...[in] the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

Id. at §§ 7901(a)(3)–(5). Thus, so as not to frustrate its purpose, the PLCAA requires the immediate dismissal of qualified civil liability actions such as this one.

Determining whether a civil claim is barred by the PLCAA is a two-step analysis. The court must first determine whether the complaint is a “qualified civil action.” If it is, like here, the only way to avoid dismissal is for the claims to fall within an exception to the Act. Since the City’s claims do not, they must fail.

A. This Case Is A Qualified Civil Liability Action.

The PLCAA prohibits “qualified civil liability actions,” defined as “a civil action or proceeding...brought by any person against a manufacturer or seller of a qualified product...for

damages, punitive damages, injunctive relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party...” *See*, 15 U.S.C §§ 7902(a), 7903(5)(A). Plaintiff is a “person” under the PLCAA because “[t]he term ‘person’ means any individual” *See*, 15 U.S.C § 7903(3). The firearms at issue in this case are “qualified products” under the PLCAA because “[t]he term ‘qualified product’ means a firearm ... that has been shipped or transported in interstate or foreign commerce.” *See*, 15 U.S.C § 7903(4). Westforth is a “seller” under the PLCAA because “[t]he term ‘seller’ means, with respect to a qualified product ... a dealer (as defined in section 921(a)(11) of title 18) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18.” *See*, 15 U.S.C § 7903(6)(B).

Thus, this case falls squarely within the Act’s definition. The City seeks damages, abatement, injunctive relief, court supervision, special-master monitoring, recovery assistance, exemplary damages, attorneys’ fees, and even more relief. The requested relief arises from alleged downstream criminal trafficking, straw purchasing, unlawful possession, and misuse by third parties. Irrespective of how the City may seek to construe its claims, such characterizations do not control. Indeed, the City seeks to hold Westforth civilly liable for alleged harms resulting from third-party misuse of firearms it sold, while the PLCAA bars the action unless the City sufficiently pleads a statutory exception.

B. The PLCAA’s Predicate Exception Does Not Apply Here.

1. The City has not sufficiently alleged that Westforth directly committed any statutory violation that caused its purported harm.

The PLCAA allows an exception to its immunity where the seller “knowingly violated State or Federal statute applicable to the sale or marketing of [firearms] and the violation was a proximate

cause of the harm for which relief is sought[.]” 15 U.S.C. § 7903(5)(A)(iii). This exception has come to be known as the “predicate exception,” because a plaintiff not only must present a cognizable claim, but also must allege a knowing violation of a “predicate statute.” *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1132 (9th Cir. 2009) (emphasis added).³ Pursuant to the predicate exception, “a plaintiff not only must present a cognizable claim, he or she must also allege a knowing violation of a ‘predicate statute.’” *See, Ileto v. Glock*, 565 F.3d 1126, 1132 (9th Cir. 2009) (quoting *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 390 (2d Cir. 2008)). Further, a plaintiff “must plausibly allege that ... the violation proximately caused [p]laintiff’s alleged harm.” *See, Prescott v. Slide Fire Solutions, LP*, 410 F. Supp. 3d 1123, 1139–1140 (D. Nev. 2019). Courts dismiss claims where a plaintiff fails to adequately and plausibly allege that a knowing violation of a predicate statute proximately caused their harm. *Prescott*, 341 F. Supp. 3d at 1190–1193; *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1224 (D. Colo. 2015).

The First Amended Complaint lists numerous federal, state, and local provisions. However, listing statutes is not pleading a predicate violation. The City must plead facts showing that Westforth itself knowingly violated a qualifying statute and that the violation proximately caused the City’s alleged harm. The City has not done so here. Many of the provisions cited by Plaintiff regulate purchasers, unlicensed dealers, or third parties — not Westforth’s alleged conduct. Other cited provisions related recordkeeping and nothing plausibly alleged to have proximately caused Chicago’s claimed municipal costs or alleged nuisance. Strikingly, other portions are pleaded merely on threadbare, conclusory assertions that Westforth “aided and abetted,” “conspired,” “knew or should have known,” or “consciously avoided knowing.”

³ The predicate exception requires a violation of a law applicable to the sale of firearms committed with actual knowledge. An FFL cannot negligently, recklessly, or indifferently step into the predicate exception.

2. The City has not sufficiently alleged that Westforth aided and abetted any statutory violation that caused its purported harm.

“[A]n ordinary merchant does not become liable for criminal misuse of her goods simply by knowing that, in some fraction of cases, misuse will occur.”

Mexicanos, at syllabus.

Under the PLCAA, an FFL cannot be deprived of its statutory immunity under the “aiding and abetting” theory without “conscious ... and culpable participation in another’s wrongdoing.” *Id.*; citing *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 493 (2023). That is, the “aiding and abetting” exception to the PLCAA’s immunity requires a showing that the FFL “intend[ed] to facilitate [the offense’s] commission,” participated in a crime “as in something that he wishe[d] to bring about” and “[sought] by his action to make it succeed.” *Id.* (citing *Rosemond v. United States*, 547 U.S. 65, 71 (2014); *United States v. Peoni*, 100 F. 2d 401, 402 (2d Cir. 1930); *Twitter*, 598 U.S. at 490; *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949)). Applied to a seller of goods, “[t]he merchant becomes liable only if, beyond providing the good on the open market, he takes steps to ‘promote’ the resulting crime and ‘make it his own.’” *Mexicanos*, 605 U.S. at 292 (citing *United States v. Falcone*, 109 F. 2d 579, 581 (2d Cir. 1940), *aff’d*, 311 U.S. 205 (1940)).

Applying *Twitter*, the Court had held that aiding and abetting liability cannot attach where the relationship with the wrongdoers was no different than anyone else but was instead “arm’s length, passive, and largely indifferent.” *Mexicanos*; citing, *Twitter*, 598 U.S. at 502. More was needed “for a provider of generally available goods or services to be liable for a customer’s misuse of them.” *Id.* “When a company merely knows that ‘some bad actors’ are taking ‘advantage’ of its products for criminal purposes, it does not aid and abet. And that is so even if the company could adopt measures to reduce their users’ downstream crimes.” *Id.* (internal citations omitted).

The Court in *Mexicanos* recognized the difference between “indifference” and “assistance,” *id.* at 282, and indifference cannot form the basis for a claim of aiding and abetting. At best, the City’s complaint alleges indifference. Even assuming a general awareness that some subset of customers may do illegal things, that does not come close to clearing the high hurdle articulated by the U.S. Supreme Court in *Mexicanos*. Allegations that Westforth “should have known” or “consciously avoided knowing” or “believed” are simply not enough. This is a failure to plead the required intent. One cannot negligently, carelessly, blindly, or anything else short of intentionally fall into the predicate exception. The PLCAA’s predicate exception requires a knowing violation and, in the aiding and abetting context, *Mexicanos* requires intentional assistance. The City pleads neither with the required specificity.

C. The PLCAA’s Negligent Entrustment Exception Does Not Apply Here.

The PLCAA allows another exception to its immunity in the case of negligent entrustment. *See*, 15 U.S.C. § 7903(5)(A)(ii). However, before a negligent entrustment claim that may be valid pursuant to Illinois common law can be exempted from immunity, the claim must meet the PLCAA’s specific definition of “negligent entrustment” which centers on the person to whom the product is supplied:

The term “negligent entrustment” means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, *the person to whom the product is supplied* is likely to , and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

15 U.S.C. § 7903(5)(B) (emphasis added).

In the purported “straw purchase” context, one recent Federal Court decision from Minnesota highlights what this limited, statutory exception to immunity afforded under the PLCAA allows and, importantly here, what it does not. Specifically, where Congress created an exception only where

the specific individual entrusted with the firearm uses it to cause harm, the exception does not apply in the context of a straw purchase where the firearm is used by another:

[Defendant] next argues that Plaintiffs' negligent entrustment claim is preempted by PLCAA. ECF No. 24 at 11-12. As noted above, PLCAA does not preempt a plaintiff's claim of "negligent entrustment," but only when that claim falls within PLCAA's specific definition of negligent entrustment: "the supplying of a [firearm] by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others." 15 U.S.C. § 7903(5)(B).

The parties' dispute revolves around the word "use" in this definition. [Defendant] interprets the word "use" narrowly, such that negligent entrustment claims are not preempted only if the seller provides a firearm to a person who actually uses it in a shooting. ECF No. 24 at 11-12. Plaintiffs argue that an actionable "use" under this definition may also occur when a straw purchaser transfers the firearm to another person who uses the firearm in a shooting. ECF No. 34 at 20.

"[T]he word 'use' poses some interpretational difficulties because of the different meanings attributable to it." *Dubin v. United States*, 599 U.S. 110, 118, 143 S. Ct. 1557, 216 L. Ed. 2d 136 (2023) (citation omitted). The "ordinary or natural meaning" of "use" is "variously defined as '[t]o convert to one's service,' 'to employ,' 'to avail oneself of,' and 'to carry out a purpose or action by means of.'" *Id.* (alteration in original) (citation omitted) (internal quotation marks omitted). Ultimately, however, the word 'use' takes on "different meanings depending on context" given the word's elasticity. *Id.* (citation omitted).

The phrase "use the product in a manner involving unreasonable risk of physical injury to the person or others" is ambiguous in this context because both [Defendant] and Plaintiffs offer reasonable interpretations of the statute. See *Owner-Operator Indep. Drivers Ass'n, Inc. v. Supervalu, Inc.*, 651 F.3d 857, 863 (8th Cir. 2011). Obviously, a person who uses a firearm in a shooting "uses" a firearm "in a manner involving unreasonable risk of physical injury to . . . others," 15 U.S.C. § 7903(5)(B), so Fleet Farm's proposed interpretation is clearly reasonable. But "using" a firearm by transferring it from a straw purchaser to another individual may also

“involv[e] unreasonable risk of physical injury to . . . others”; indeed, Congress regulates straw purchasing and the unlicensed distribution of firearms precisely because “the ease with which any person can acquire firearms . . . is a significant factor in the prevalence of lawlessness and violent crime in the United States.” Omnibus Crime Control and Safe Streets Act, Pub. L. 90-351, 82 Stat. 197, 225 (1968). Indeed, the ATF has identified straw purchasing as the most common trafficking channel for “crime guns.” *See* H.R. Rep. No. 117-346, at 17 (2022).

Given this ambiguity, the Court “may examine legislative history and other authorities to determine legislative intent” behind the provision. *Est. of Farnam ex rel. Farnam v. Comm'r of Internal Revenue*, 583 F.3d 581, 584 (8th Cir. 2009) (citing *Burlington N. R.R. Co. v. Okla. Tax Comm’n*, 481 U.S. 454, 461, 107 S. Ct. 1855, 95 L. Ed. 2d 404 (1987)). Committee reports often “represent the most persuasive indicia of congressional intent.” *Weber v. Heaney*, 793 F. Supp. 1438, 1448 (D. Minn. 1992) (citing *Hous. Auth. of Omaha v. U.S. Hous. Auth.*, 468 F.2d 1, 6-7 n.7 (8th Cir. 1972)). In this case, the House of Representatives’ committee report for PLCAA included a lengthy statement from the dissenting committee members, who took issue with PLCAA’s definition of “negligent entrustment.” H.R. Rep. No. 109-124, at 139-51 (2005). The dissenting members believed that the definition of “negligent entrustment” would “shut” the “courthouse door” to victims of shootings with firearms supplied by a “straw buyer.” *Id.* at 143. The dissenting members concluded: “Even though the dealer who irresponsibly supplied the gun trafficker with multiple guns should have known the guns would be sold to and used by criminals, they arguably did not ‘negligently entrust’ the guns since the persons to whom they sold the guns did not commit the underlying criminal acts.” *Id.* at 144.

It does not appear that supporters of PLCAA ever responded to the dissenting members’ concerns about the definition of negligent entrustment—in fact, such concerns were dismissed during a House Judiciary Committee hearing on the bill. *Protection of Lawful Commerce in Arms Act: Hearing on H.R. 800 Before the H. Comm. on the Judiciary*, 109th Cong. 46 (2005) (statement of Rep. Louis Gohmert). Given Congress’s awareness of and “failure to heed” the objection of PLCAA’s opponents, it appears that Congress’s intent was to preempt negligent entrustment actions *unless* a dealer sold a firearm to a person who directly used the firearm in a shooting. *See Booth v. Churner*, 206 F.3d 289, 299 n.9 (3d Cir. 2000) (interpreting a statute by looking to Congress’s awareness of and “failure to heed” the objection of the bill’s opponents); *see*

also George A. Costello, *Average Voting Members and Other "Benign Fictions": The Reliability of Committee Reports, Floor Debates, and Other Sources of Legislative History*, 1990 Duke L.J. 39, 45 (“[M]inority or dissenting views appended to committee reports can be useful . . . to establish that there was focused debate on a position advocated by opponents, but rejected by the committee.”).

Accordingly, the Court concludes that the word “use” in 15 U.S.C. § 7903(5)(B) does not encompass the transfer of a firearm from a straw purchaser to another individual but refers only to direct use of a gun in a shooting or other violent crime. Because it is undisputed that Horton—the person to whom [Defendant] sold firearms—did not commit the shooting at Truck Yard's bar, Plaintiffs' negligent entrustment claim is preempted. The Court therefore dismisses Count IV of Plaintiffs' complaint.

See, Wiley v. Fleet Farm LLC, 799 F. Supp. 3d 860 (D. Minn. 2025); *see also, Soto v. Bushmaster Firearms Int'l, LLC*, 2016 Conn. Super. LEXIS 2626, *58 (Conn. Super. Ct. Oct. 14, 2016) (examining the negligent entrustment exception under PLCAA and holding that it applies only to “direct entrustments to a shooter, regardless of what an entrustor knew or should have known”).

The analysis in *Wiley* is sound, and the Court should construe the limited negligent entrustment exception to the PLCAA accordingly. The City has not alleged that any person to whom Westforth supplied a firearm ever used it to cause the harms about which the City complains. Thus, as pled, the City has not set forth allegations that bring their claims within the PLCAA's negligent entrustment exception.

* * * *

The purpose of the PLCAA is not merely to provide a defense from being held liable in a qualified civil liability action, but also to provide immunity from simply being sued and forced to present a defense on the merits of the case. *Ileto*, 565 F.3d at 1142. To allow what unquestionably constitutes a qualified civil liability action to proceed based on the City's allegations here would defeat the very purpose of the PLCAA and the immunity it provides. *See, City of New York v.*

Beretta U.S.A. Corp., supra.; *Ileto v. Glock*, supra.; *Estate of Kim v. Coxe*, 295 P.3d 380 (Alaska 2013). Accordingly, because this is a qualified civil liability action and Plaintiff has failed to satisfy the requirements of any exception to the PLCAA that would allow its claims to proceed, the City's claims against Westforth must be dismissed pursuant to the PLCAA.

II. THE CITY CANNOT RELY ON UNCONSTITUTIONAL ENACTMENTS TO SATISFY THE PREDICATE EXCEPTION.

A. Chicago Municipal Code § 8-20-075 And 720 ILCS 5/24-3(A)(h) Are Facially Unconstitutional.

The Second Amendment protects the right of ordinary, law-abiding citizens to keep and bear arms for lawful purposes, centrally including self-defense. *See, District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010). When the Second Amendment's plain text covers the regulated conduct, the government bears the burden to justify the regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. *See, N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). That inquiry is not interest balancing, and the government may not defend a modern ban merely by asserting that the regulated arms are dangerous, undesirable, disproportionately used by criminals, or contrary to public safety. Those are means-end arguments that *Bruen* forecloses. The question is instead whether the challenged enactment is relevantly analogous to a well-established historical tradition of regulation.

Neither Chicago Municipal Code § 8-20-075 nor 720 ILCS 5/24-3(A)(h) possess the requisite historical corollary to withstand Second Amendment scrutiny under *Bruen*. 720 ILCS 5/24-3(A)(h) bans commonly owned and possessed handguns based on the metallurgical composition of their barrel, slide, frame, or receiver. Chicago Municipal Code § 8-20-075 bans commonly owned and possessed firearms that, at all times material hereto, were available for legal sale throughout the

rest of Illinois. The ordinance bans firearms based on modern cosmetic and functional features — such as detachable magazines, grips, stocks, and barrel shrouds — that are common on semiautomatic firearms possessed by millions of Americans for lawful purposes. The historical record contains no founding-era or Reconstruction-era tradition of banning an entire class of commonly possessed firearms because of their metallurgical composition or specific, locally disliked features. Absent such, applying *Bruen*, both Chicago Municipal Code § 8-20-075 nor 720 ILCS 5/24-3(A)(h) are facially invalid in violation of the Second Amendment.⁴

B. Chicago Municipal Code § 8-20-075 Is Unconstitutional As Applied By The City Against Westforth In Its First Amended Complaint.

The City’s First Amended Complaint relies upon Chicago Municipal Code § 8-20-075, an ordinance that makes it unlawful to “import, sell, manufacture, transfer, or possess an assault weapon” in Chicago, to claim that Westforth somehow violated the code, despite not alleging that Westforth ever actually did any of those things. Instead, the City attempts to regulate conduct outside of Chicago and then reinvent its own ordinance to regulate its citizens’ ownership anywhere at all, rather than possession within Chicago. The City then goes even further to impute a violation to Westforth based upon its reinvented, but never codified, interpretation. This violates the Due Process Clause of the 14th Amendment of the United States Constitution.

1. Due process requires statutory clarity.

Clarity is the touchstone of due process when assessing a law or regulation. “A statute is unconstitutionally vague under the Due Process Clause if it fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages

⁴ While, the Seventh Circuit has rejected preliminary challenges to materially similar Illinois and local restrictions, *see, e.g., Bevis v. City of Naperville, Illinois*, 85 F.4th 1175 (7th Cir. 2023), they do not foreclose

seriously discriminatory enforcement.” See, *United States v. Williams*, 553 U.S. 285, 304 (2008) “The general rule on vagueness, as it has been developed in connection with the construction of criminal statutes, is that all that is required is that the language ‘conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.’” *United States v. Petrillo*, 332 U.S. 1, 8 (1947). The Illinois Supreme Court has recognized this with regard to evaluation of local ordinances:

The notion that an Ordinance is void for vagueness is a concept derived from the notice requirement of the due process clause. The concern animating the doctrine is twofold: (1) whether the law fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits so that one may act accordingly; and (2) whether the law provides reasonable standards to law enforcement to ensure against authorizing or even encouraging arbitrary and discriminatory enforcement.

Wilson v. County of Cook, 2012 IL 112026, *P21 (2012); citing, *Hill v. Colorado*, 530 U.S. 703, 732 (2000); *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

2. The City’s requested rendering of Chicago Municipal Code § 8-20-075 is incompatible with the ordinance’s plain language.

By its plain language, not to mention its section title, Chicago Municipal Code § 8-20-075 regulates “possession of assault weapons” inside Chicago:

8-20-075 Possession of assault weapons.

- (a) It shall be unlawful for a person to import, sell, manufacture, transfer, or possess an assault weapon.
- (b) This section shall not apply to corrections officers, members of the armed forces of the United States, or the organized militia of this or any other state, and peace officers, to the extent that any such person is otherwise authorized to acquire or possess assault weapons, and is acting within the scope of his duties, or to any person while engaged in the manufacturing, transportation or sale of assault weapons to people authorized to possess them under this section.

the facial challenges presented here or require a finding that every such restriction is categorically valid in every case.

(c) Notwithstanding subsection (a):

(1) Any person who lawfully possesses a firearm that on the effective date of this section became prohibited as being an assault weapon has 60 days after the effective date of this section to legally dispose of, or remove from the city, the assault weapon.

(2) Any person who is a qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C, and who lawfully possessed a duty-related assault weapon at the time of separation from active duty in law enforcement, shall legally dispose of, or remove from the city, the assault weapon within 60 days of such separation.

(d) Any assault weapon carried, possessed, displayed, sold or otherwise transferred in violation of this section is hereby declared to be contraband and shall be seized by and forfeited to the city.

See, Chicago Municipal Code § 8-20-075 (Added Coun. J. 7-17-13, p. 57262, § 1)

The ordinance should be interpreted to mean what it says. By its plain language, § 8-20-075 regulates possession of a Chicago-defined “assault weapon” inside Chicago. It does not regulate possession or ownership of a Chicago-defined “assault weapon” outside of Chicago. Accordingly, a Chicago resident’s ownership and possession of a so-called “assault weapon” outside of Chicago is not forbidden by the ordinance, and no person of ordinary intelligence would read § 8-20-075 otherwise. Thus, applying the ordinance to Westforth as a purported basis for surmounting the predicate exception, like the City is asking of the Court here, would violate due process.

B. Unconstitutional Statutes And Ordinances Cannot Satisfy The PLCAA’s Predicate Exception.

An unconstitutional statute or ordinance cannot supply the predicate “illegality” necessary for the City’s derivative theories. The settled rule is that an unconstitutional enactment “is not a law,” “confers no rights,” “imposes no duties,” and is “inoperative as though it had never been passed.” *Norton v. Shelby County*, 118 U.S. 425, 442 (1886); *see also*, *Ex parte Siebold*, 100 U.S. 371, 376–77 (1879). Illinois follows the same void-ab-initio principle. *See*, *People v. Gersch*, 135 Ill. 2d 384, 390 (1990). Additionally, the Illinois Supreme Court has applied that rule in a predicate-liability

setting, holding that a conviction resting on a facially unconstitutional statute is a “legal nullity” that must be ignored when offered as a predicate in a later proceeding. *See, In re N.G.*, 2018 IL 121939, ¶ 81.

Accordingly, if 720 ILCS 5/24-3(A)(h) or Chicago Municipal Code § 8-20-075 are unconstitutional, the City cannot use an alleged violation of either enactment to satisfy the PLCAA’s predicate exception.

THE CITY’S CLAIMS SHOULD BE DISMISSED UNDER 735 ILCS 5/2-615

I. THE CITY’S FIRST AMENDED COMPLAINT IMPROPERLY AVOIDS ITS FACT PLEADING OBLIGATIONS.

Illinois is a fact-pleading jurisdiction. On a section 2-615 motion, the Court accepts well-pleaded facts as true, but it does not accept conclusions of law or conclusions of fact unsupported by specific factual allegations. That rule has special force where a complaint relies on allegations made “upon information and belief.” In *Golly v. Eastman (In re Estate of DiMatteo)*, 2013 IL App (1st) 122948, ¶¶ 82–84 (2013), the First District held that an allegation made on information and belief “is not equivalent to an allegation of relevant fact,” and that the pleader should allege what efforts were taken to discover the facts pleaded on information and belief. *Golly* relied on *Patrick Eng’g, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 40 (2012), where the Illinois Supreme Court likewise explained that information-and-belief allegations may be tolerated at the pleading stage only because a plaintiff may lack discovery into facts hidden from it -- but the pleader still should allege what it did to learn those facts.

The City’s complaint repeatedly uses “information and belief” to bridge essential gaps in its theory. Yet the City does not plead the source of its belief. That omission is fatal under *Golly*. Moreover, the City is not an ordinary private plaintiff trying to plead facts locked exclusively inside

a defendant's files. Many of the information-and-belief allegations concern matters uniquely available to the City or law enforcement: CPD recoveries, Chicago crime incidents, ATF traces, etc. If the City contends that a Westforth-sold gun was recovered in Chicago, traced by ATF, tied to a crime, or classified as an illegal firearm, it should be able to plead the underlying facts directly.

The "assault weapon" and melting-point allegations illustrate this defect. Other than ATF, who is generally forbidden by law from producing trace information,⁵ only the City possesses the data concerning the initial retail sale of every firearm recovered in the City of Chicago, including those sold by Westforth. A firearm trace is not a mystery to the law-enforcement agency that requests it. ATF tracing is "the systematic tracking of a recovered firearm from its manufacturer or importer, through its subsequent introduction into the distribution chain (wholesaler/retailer), to identify an unlicensed purchaser." *See, Ctr. for Investigative Reporting v. U.S. Dep't of Justice*, 14 F.4th 916, 921 (9th Cir. 2021). Any law-enforcement agency may request that ATF trace a recovered firearm, and ATF tracks the firearm from the manufacturer or importer through licensed wholesalers and dealers "on to the first retail purchaser of that gun." *Id.* So, for instance, City should have record of every Chicago-defined "assault weapon" alleged to have been recovered in Chicago and allegedly contributing to the "nuisance." Those are not facts within Westforth's possession – FFLs do not get notice of where a firearm is recovered when a firearm is traced – and they are facts available to the City through the trace process it invokes.

The Court should disregard the City's information-and-belief allegations to the extent they are offered as substitutes for essential facts. At minimum, the Court should require the City to

⁵ The Tiahrt Amendment generally prohibits ATF from producing trace database information in discovery in litigation or otherwise. *See, Everytown for Gun Safety Support Fund v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 984 F.3d 30, 43-44 (2nd Cir. 2020).

replead with particularized, nonconclusory facts. Without those facts, the information-and-belief allegations cannot carry the City's burden under section 2-615.

II. THE CITY FAILS TO PLEAD A VIABLE NUISANCE CLAIM.

Even accepting well-pleaded facts as true, the Court should dismiss Count I because the City's public-nuisance theory is the same expansive firearms-liability theory the Illinois Supreme Court rejected in *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351 (2004) and *Young v. Bryco Arms*, 213 Ill. 2d 4338 (2004). To plead public nuisance, a plaintiff must allege facts supporting four distinct elements: 1) the existence of a public right; 2) a substantial and unreasonable interference with that right by the defendant; 3) proximate cause; and 4) injury. *See, Beretta*, 213 Ill. 2d 351; *Burns v. Simon Props. Grp., LLP*, 2013 IL App (5th) 120325. The City's First Amended Complaint fails to plead facts to satisfy these elements.

A public right must be collective in nature; it is not the individual right that every person has not to be assaulted, defrauded, or negligently injured. *See, Beretta*, 213 Ill. 2d 351; *Burns*, 2013 IL App (5th) 120325. In *Bryco*, the plaintiffs asserted a right to use Chicago's public spaces without undue risk of injury from illegal firearms. The Supreme Court warned that if every disturbance or apprehension of danger to person or property were deemed a public nuisance, "the law of nuisance would swallow the entire law of torts and most of the criminal law." *See, Young v. Bryco Arms*, 213 Ill. 2d 433. That is precisely the defect here. The City alleges that Westforth's firearm sales ultimately increased the risk of shootings, violent crime, and law-enforcement costs in Chicago. But the asserted right is not an indivisible public resource like a public road, waterway, air, or public property. It is a generalized claim that Chicago residents should not be exposed to criminal misuse of firearms by third parties. *Beretta* and *Bryco* rejected that, and a public nuisance claim cannot be used

to convert downstream criminal violence into a civil products-distribution claim against a lawful commercial seller.

III. THE CITY FAILS TO PLEAD A VIABLE MUNICIPAL COST RECOVERY ORDINANCE CLAIM.

The Court should dismiss Count II because the City has not pleaded recoverable costs under MCC § 1-20-020. The ordinance permits recovery only for costs the City incurs to provide services reasonably related to that person's violation of law or failure to correct unlawful conditions; it does not create open-ended municipal recoupment for generalized policing, prosecution, emergency-response, victim-services, and violence-prevention costs caused by independent third-party crimes.

The “free public services doctrine” provides that “public expenditures made in the performance of governmental functions are not recoverable,” because the costs of police, fire, emergency, and similar public services are borne by the public as a whole. *See, County of Erie v. Colgan Air, Inc.*, 711 F.3d 147, 150–52 (2d Cir. 2013). Illinois reached the same practical result in the firearms context, where the Illinois Supreme Court rejected the City's effort to shift the public costs of gun violence to upstream firearm-industry defendants because the alleged harms were remote, derivative, and dependent on intervening criminal acts by third parties. *Beretta*, 213 Ill. 2d 351. MCC § 1-20-020 should therefore be construed, at most, to permit recovery of discrete costs reasonably related to Westforth's own, proven, direct violation – not ordinary municipal costs the City already incurs to police, prosecute, treat, and prevent crime. Otherwise, the ordinance would swallow the public-services rule and revive the municipal cost-shifting theory *Beretta* rejected.

IV. THE CITY FAILS TO ALLEGE FACTS TO SUPPORT A FINDING THAT ANY PURPORTED FAILURE BY WESTFORTH PROXIMATELY CAUSED ITS HARM.

Proximate cause requires both cause in fact and legal cause. Cause in fact exists only where there is a reasonable certainty that the defendant's conduct caused the alleged injury—either because

the injury would not have occurred “but for” the conduct or because the conduct was a material element and substantial factor in bringing it about. *See, Lee v. Chicago Transit Auth.*, 152 Ill. 2d 432, 455 (1992); *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 258 (1999). Legal cause is a separate limitation based on foreseeability and policy: the defendant’s conduct must be so closely tied to the injury that the law is justified in imposing responsibility. *See, Simmons v. Garces*, 198 Ill. 2d 541, 558 (2002); *Beretta*, 213 Ill. 2d 395–96. Where the alleged injury results from independent intervening acts of third parties, Illinois courts ask whether those acts were so clearly foreseeable that the defendant’s conduct should still be treated as the legal cause. *Galman*, 188 Ill. 2d at 257–59; *Beretta*, 213 Ill. 2d at 407–08. If a defendant’s conduct merely furnished a condition that made the later injury possible, and a third party independently caused the injury, proximate cause is lacking as a matter of law. *Galman*, 188 Ill. 2d at 257–58; *Bryco*, 213 Ill. 2d at 450–56.

A. The City Fails To Allege Facts To Support Proximate Cause On Its Straw Purchase Theory.

The City’s straw-purchase theory fails because the alleged causal contribution is too remote and too insubstantial to satisfy proximate cause. Illinois requires more than a showing that a defendant’s conduct furnished a condition by which later injury became possible; if independent third parties subsequently cause the injury, the original conduct is not proximate cause. *See, First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 257–59 (1999). That rule controls here. Even accepting the City’s allegations, the asserted harm depends on multiple intervening acts after any Westforth sale: alleged straw purchasing, trafficking, unlawful possession, later criminal misuse, and then municipal response costs.

Nor does the City plead facts showing that Westforth’s alleged straw-purchase sales were a substantial factor in Chicago’s alleged citywide nuisance or municipal costs. *See, e.g. Daniels v.*

Arvinmeritor, Inc., 2019 IL App (1st) 190170, ¶ 40 (discussing causation principles and noting that “de minimis exposure is not sufficient”). The City’s own theory is citywide and aggregate. Even if every firearm allegedly sold to the identified straw purchasers had later been recovered in Chicago, those allegations would still amount to only a tiny fraction of Chicago’s alleged gun-violence problem and would not establish that Westforth legally caused the City’s claimed nuisance or public-service costs. At most, the complaint alleges that Westforth contributed in some remote way to a broader social problem. Illinois law does not permit proximate cause to stretch that far.

B. The City Fails To Allege Facts To Support Proximate Cause On Its S “Assault Weapon” Or “Melt Point” Handgun Theories.

Even more, the City’s “melting point” and “assault weapon” theories fail proximate cause for a simpler reason: the City does not identify a single such firearm sold by Westforth that was recovered in Chicago, used in Chicago, or connected to any City cost or injury. The City alleges only, on information and belief, that “a number” of alleged melting-point guns were sold to Chicago residents, and that Westforth sold at least 47 alleged assault weapons to Chicago residents. But a sale to a Chicago resident is not the same as importation into Chicago, possession in Chicago, recovery in Chicago, or criminal use in Chicago.

Without identifying even one firearm that was moved from Westforth to Chicago and caused a cognizable harm, the City pleads no causal chain at all—only an assumption that residency equals Chicago possession and that theoretical unlawfulness equals injury. That is insufficient under Illinois law. If the straw-purchase allegations are too remote because they depend on intervening third-party criminal acts, the melting-point and assault-weapon allegations are weaker still: they do not even plead a recovered firearm, a criminal act, or a City response tied to any specific Westforth sale. Any claims predicated on those alleged sales therefore fail for lack of proximate cause.

CONCLUSION

The City's First Amended Complaint is barred by PLCAA and fails to plead legally sufficient claims under Illinois law. Plaintiff has not pleaded facts to bring its claims within the predicate exception, has not pleaded negligent entrustment within PLCAA's statutory definition, and relies upon evasive non-pleading and imagined violations of unconstitutional statutes to attempt to get over the sizeable hurdles before it. The City's effort to impose liability on Westforth based on speculative downstream conduct by third parties is foreclosed by PLCAA, *Mexicanos*, due process, and ordinary pleading principles.

WHEREFORE, Defendant, Westforth Sports, Inc., respectfully requests that this Court dismiss Plaintiff's First Amended Complaint with prejudice, dismiss all claims and requested remedies, and award such other and further relief as the Court deems just and appropriate.

Dated: Dayton, Ohio
June 10, 2026

Respectfully submitted,

By: /s/ Timothy R. Rudd

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CERTIFICATE OF SERVICE

I, an attorney licensed in Illinois *pro hac vice*, on oath, state that I served a copy of the above-mentioned document via email to counsel of record on June 10, 2026.

/s/ Timothy R. Rudd

Timothy R. Rudd (ARDC 6338284, PHV)

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.